The Palgrave International Handbook of Human Trafficking
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With 50 Figures and 42 Tables
The UN has noted that “slavery has evolved and manifested itself in different ways throughout history,” with more contemporary forms compounding “long-standing discrimination against the most vulnerable groups in society” (UN 2018). Statistics reveal that trafficking for a variety of exploitative practices exists everywhere, is growing year on year, and is one of the top three criminal trades in the world alongside arms and drug smuggling (UNODC 2014, 2016). According to the United Nations Office on Drugs and Crime (UNODC), at least 152 different nationalities were trafficked and detected in 124 different countries, with domestic trafficking accounting for 27% of all detected cases of trafficking in persons worldwide (UNODC 2014). The International Labour Organization (ILO) has estimated that, in 2016, there were 40.3 million victims of modern slavery worldwide (ILO 2017). Of this total, 24.9 million people were thought to be engaged in forced labor, with 15.4 million people living in forced marriages (ILO 2017). Of those subject to forced labor, an estimated 16 million victims were exploited by private actors, namely in the sectors of domestic work (24%), construction (18%), manufacturing (15%), and commercial agriculture (12%). According to the ILO, threats and acts of physical violence were experienced by a third of forced labor victims, with just under a quarter having had their wages withheld. Notably, women and girls accounted for 58% of total forced labor victims. Trafficking for sexual exploitation and forced labor are the most detected forms of trafficking. Collectively, women and girls represent around 79% of all victims of trafficking (UNODC 2016). The OECD Trafficking in Persons Report estimates a substantial majority of detected trafficked persons across the globe are females – mainly women, but increasingly girls. The vast majority of detected victims of trafficking for sexual exploitation are females. At the same time, the majority of detected victims for forced labor globally appear to be men. That suggests the reason or purpose for trafficking is connected to the gender of the person trafficked. Any response has to be cognizant of this dynamic but is not at present. The demand for different forms of human trafficking fuels its trade. The demand for females to service the sexualized commercial trade increases the number of women and girls trafficked for sexual exploitation (for instance, non-state torture, pornography, prostitution, forced marriage). The demand for exploitative labor in, for example, the construction industry, domestic service, and the like exposes loopholes traffickers use in order to abuse vulnerable individuals. The types of
exploitation traffickers employ have mushroomed as has the definition of modern slavery and human trafficking. For some, these definitions are too broad now; for others, it is essential that the law keep pace with reality.

So far, the story of human trafficking and modern slavery, we suggest, therefore, is one of failure and some success: a mixed bag, failure and some success of laws, policies, and implementation; failure and some success of joined-up approaches, community engagement, and services; failure and some success of genuinely listening to and acting in the best interests of victims/survivors. The growing number of persons being trafficked and the enormous profits for traffickers both attest to this.

The first concerns laws. It is a success story that there are myriad laws in place covering slavery, modern slavery, and human trafficking at international, regional, and domestic levels. These have changed over many centuries and are country-specific. While the definitions have changed, there are significant shortcomings. These are examined in some of the chapters in this book. Ranging from eighteenth-century slavery to twenty-first-century definitions, one has to question if the definition is working to end trafficking? Indeed, if we look at the rates of prosecutions and convictions across the globe, it is a failure – a paltry number by any standard. Governments refuse to take this issue seriously or collude in some measure leading to a lack of a culture of accountability. Laws are never enough; they are the start.

Implementation is key. Here too, there is a failure to adequately and fully implement the international and/or regional laws that detail how it should be implemented in practice. For instance, there is useful guidance available concerning the Council of Europe Action on Trafficking in Human Beings Convention 2005. The European Court of Human Rights of the Council of Europe has equally provided far-reaching guiding case law for some forms of trafficking, what a comprehensive investigation looks like, as well as how to identify and treat victims of trafficking with dignity. Most people suggest the implementation gap is where the real failing of laws, policies, and action plans lies. We would agree. Partnership working is a critical component in ending trafficking in human beings. The United Nations has been calling for partnerships between NGOs, the police, and governments for several years. There are tool kits and model action plans. There is still a reluctance to work in partnership with non-state actors, even though we know it is the site where most victims present. The implementation gap and a lack of adequate financial resourcing must end.

Institutional failings, therefore, make up a large part of why trafficking in human beings is seemingly flourishing. There are multiple institutional mechanisms in existence designed to help end trafficking, for instance, UN, regional, and national anti-trafficking coordinators and anti-trafficking tsars, to name a few. Institutional mechanisms vary in their effectiveness and independence. Institutions have the power to effect positive transformative change. Some are critically examined in this handbook.

The final failure and some success are the treatment of victims/survivors. There has been a significant increase in victims of trafficking being identified and, in some parts of the world, there have been significant improvements in how they are treated. However, often it is the victims/survivors who are asked (forced) to demonstrate
incredible resilience: from the relentless violence perpetrated by the traffickers and abusers, to finding a way through the criminal justice system, and finally entering the maze of the asylum process. At every stage, like functioning alcoholics, victims are being asked to be functioning survivors, never allowed to take a moment to rest, think, and start to recover, until the legal processes are finally complete. In some instances, the end is death. Victims/survivors want to be recognized as human beings who live in a community: they want their dignity restored and to live in peace in order to commence the rebuilding of their lives and that of their families. Admittedly, the law and services, to date, have failed mainly victims/survivors. That must end. Some chapters in the handbook examine the treatment of victims.

Trafficking in human beings is a twenty-first-century issue and challenge. It has explicitly been embedded in the UN's ongoing 2013 Agenda for Sustainable Development (SDGs) SDGs on human trafficking in goals 5.2, 8.7, and 16.2, and indicator 16.2.2. Each one addresses different aspects of modern slavery and intersects with the causes of trafficking. This crime is not going to go away by itself. So, it is the view of the editors that the causes must be addressed, including, but certainly not limited to, vulnerability, poverty, child abuse, so-called natural disasters and climate change, and gender and race inequality.

The book strives to steer toward some answers to these enormous questions. One thing is clear: we must act – more effectively, together, now.

Outline of the Handbook

This book is an international, comprehensive reference tool in the field of trafficking in people and slavery. It is a high level, systematic, and comprehensive book due to its breadth of entries from leading experts to international organizations and NGOs on the ground, covering everything from historical perspectives to cutting-edge topics. This handbook is genuinely international, spanning the entire globe, with contributions from actively engaged scholars and practitioners on virtually every continent (including Europe, North America, Australia, Africa, Asia, and South America). This book also covers problematic areas that cannot be found in other reference works, including family-based torture, victim/perpetrator identification, the role of women’s NGOs, parliamentarians, and a new UN Treaty. Not only does the project now represent the most comprehensive single collection on the topic but it is also a clear reflection of collective support and input to ensure that this will (hopefully) be the primary resource for academics, students, NGOs, and decision-makers who are conducting an inquiry into human trafficking. The Palgrave International Handbook of Human Trafficking is divided into eight key sections: (1) Legacies of Slavery and Human Trafficking, (2) Explanations and Methods of Inquiry, (3) Types of Trafficking in Human Beings, (4) Human Trafficking and Response Mechanisms, (5) Local/National/International Response Mechanisms, (6) Organizational Profiles, (7) The work of Nongovernmental Organizations, (8) Future Issues and Directions in Controlling Human Trafficking. Each section contains between 8 and 20 chapters, with an extraordinary number of chapters detailing response...
mechanisms and types of trafficking in persons. It is indeed an astounding range: organ trafficking, criminal activity trafficking, supply chain, sexual exploitation, and adoption, to name a few. Eminent scholars and practitioners have written the chapters in their respective field. Collectively, they are experts in their aspects of human trafficking daily and who have vast amounts of experience. These chapters are groundbreaking.

A unique feature of this book is its living nature. It is both at the forefront of research and of practice: it is online and can be and will be updated as and when the authors so decide and when there are new developments in the area. It, therefore, provides (as far as we are aware) the only up-to-date, comprehensive resource in the field.

October 2019

John Winterdyk
Jackie Jones

References


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I, **John**, would like to acknowledge and thank my co-editor Professor Jackie Jones. Although this is our second edited collaboration – after two successful workshops on human trafficking held at the Oñati Socio-Legal Studies Institute in Spain – the scope and volume of this project was such that without her support and “extra lifting,” this project might not have come to fruition. It has been a genuine pleasure and honor to work with her again, especially on this important collection. I am also indebted to the contributors who have contributed to this collection and would like to extend a special thanks to our Section Editors. Unlike any other edited works I have undertaken, this project truly exemplifies the importance of teamwork in which all parties eagerly worked toward ensuring timely completion of the project.

I would also like to extend my heartfelt thanks to Ms. Josie Taylor (Commissioning Editor – Criminology and Socio-Legal Studies) for inviting me to undertake this project during a meeting we had a couple of years ago at an annual ACJS conference. Along with her colleagues Ruth Lefevre and Eleanor Gaffney and several other “behind-the-scenes” Palgrave staff, they collectively helped not only to keep us on track but provided, beyond the call-of-duty, support to many of the contributors who had questions about various technical issues that I felt less competent in answering. It has been a sincere pleasure to work with the Palgrave team and one that I would welcome doing again.

I would be remiss if I did not acknowledge my companion in life, Rose, who, while at times rightfully questions my sanity, long working hours, and numerous trips abroad doing human trafficking-related work, is always there to lend her support and encouragement. While no one has the right to expect such tolerance and patience, I am eternally grateful and indebted to her for all she has done and all who she is! And while our grandson is still too young to appreciate or understand the relevance of this work, I hope that any positive result and inspiration that might come from those who use the handbook will help to ensure that our collective efforts to expose and eradicate this blight on humanity will make his and his generation’s life safer and happier.

I, **Jackie Jones**, would like to thank John for providing me the opportunity to co-edit this fantastic project and being a brilliantly supportive (patient) colleague. John has been incredibly successful in bringing people on board and keeping contributors and the publishers on side. Thank you.
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I want to note my amazement at the resilience and my total respect for all victims/survivors of all forms of trafficking. Thank you for having the courage to speak up and speak out. You deserve so much better, and I am sorry I cannot do more.

Finally, I thank my son, Callum, my biggest teacher in life. Thank you for all your support and the many philosophical discussions. Let us hope your generation can do and will do better than mine.
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Part I

Legacies of Slavery and Human Trafficking
Understanding of twenty-first-century slavery and strategies for its prevention and eradication is still often shaped by cursory and Eurocentric conceptualizations of transatlantic slavery and its abolition. This Eurocentric historical understanding tends to be limited in its scope and so typically underplays the centrality of slavery to economic development, downplays the role of the enslaved in resisting their enslavement and securing abolition, and overemphasizes the role of white abolitionists (be they members of the Clapham Saints in Britain or white soldiers of the Union in the USA). The impact of this narrative has been twofold. Firstly, it has helped perpetuate the racial inequalities of transatlantic slavery to the present day by undermining the significance of transatlantic slavery in creating Western prosperity and the racial inequality within and between nations. Secondly, it has helped to shape an understanding of slavery as detached from wider economic, political, and social attitudes which create inequalities and the space in which slavery exists. Furthermore, the celebration of abolition and abolitionists encourages a belief that the problems of modern-day slavery can be addressed through legislation and increased policing that targets human traffickers. Instead, to tackle both the legacies of historical slavery and the forces...
that create the space for modern-day forms of slavery, it is necessary to address the economic, political, and social inequalities that (at local and global levels) create the conditions and structures which enable modern-day forms of slavery to emerge.

Introduction

This chapter’s purpose is to identify lessons that can be learnt from the history of slavery to help in the fight against contemporary injustice and slavery. In doing so, the chapter rests on a central premise that traditional historiographical narratives of slavery and abolition are flawed, having typically celebrated European abolitionists and silenced the role of enslaved people’s resistance to their enslavement and the central role of their labor in Western economic development. This Eurocentric narrative served to legitimize European colonialism in the nineteenth and twentieth centuries. The consequence of this interpretation of the past has been to detach the countries and societies that existed post-slavery from those that existed during slavery, with slavery considered an alien institution totally at odds with the values, principles, and practices of these nations. This attitude continues to this day. The West prides itself on values of democracy and human rights and sees slavery as anathema to these values and, therefore, itself. Consequently, ideas of reparations for continuing legacies of slavery are dismissed as slavery is not seen as something for which Western nations bear responsibility; after all, they abolished it, while others still practiced some forms of slavery. (Such positions were clearly illustrated at the 2001 UN Conference Against Racism and Xenophobia where European countries faced calls for reparations by Caribbean nations. See Beckles (2013). Beckles also details how Caribbean nations and reparations advocates perceive this history and its legacy. For a wider history of the reparations movement, see Howard-Hassmann (2008: 26–41).) Furthermore, this conceptualization of slavery as alien to Western values, combined with a celebration of historic abolitionism, defines an approach toward issues of modern-day slavery that exonerates the economic, social, and political practices of the West. Instead, a belief is fostered that slavery can be dealt with by legislative measures that focus on empowering policing operations against criminal enterprises that operate and/or profit from forms of modern-day slavery and human trafficking. However, when the history of slavery is more fully explored and the links between historical forms of slavery to wider economic and social policies are understood, it becomes clear that slavery is an institution that emerges and exists not because of criminal actors, but because slavery reflects relationships more widely replicated within society. Therefore, any efforts to address slavery must focus on addressing the wider economic, political, and social forces which create the conditions for slavery in the first place.

In looking to the history and legacies of transatlantic slavery to learn lessons for the fight against modern slavery, this chapter notes how arguments for reparations for transatlantic slavery and the fight against slavery today are often positioned as competing objectives (particularly by advocates of learning from historical
abolitionism). This chapter argues that such competition is false as it depends on a failure to understand the shortcoming of historical abolition and how the legacies of transatlantic slavery and the causes of modern-day slavery overlap. Both are the result of failures to deliver on the promises of human rights in the second half of the twentieth century. Both the legacies of transatlantic slavery and the conditions which enable modern-day slavery to exist can be addressed by promoting and guaranteeing human rights and equality for individuals so that life chances are no longer dependent on the lottery of birth, nationality, citizenship, and race. This is the lesson that this chapter argues needs to be taken from the history of slavery and abolition – that slavery reflects the wider structures, values, and relationships of society and these, therefore, need to be addressed if slavery is to be eradicated. Historical abolition did not address these wider forces; indeed, it reinforced them. Efforts to address slavery today which do not learn this lesson will similarly offer a form of abolition which is incomplete and unsatisfactory.

To advance this argument, the chapter first places transatlantic slavery within the historical context of slavery more generally and identifies how transatlantic slavery reflected, while diverging from, European patterns and rationalizations of inequality. This section also explores how abolitionism did not challenge but reinforced the religious and scientific theories which legitimated race-based slavery. The chapter then moves on to look more specifically at modern-day slavery. By linking back to transatlantic slavery and the shortcoming of abolitionism, the chapter links how reparations and the causes of modern-day slavery are both found in global and economic inequality and the failure to tackle these and to deliver the promise of human rights. The chapter concludes that policies to guarantee universal human rights can both address the legacies of transatlantic slavery and diminish the forces which create the space in which modern-day slavery operates.

**A Brief History of Transatlantic Slavery**

Slavery is a phenomenon that has been near constant throughout human history. Practiced by most societies, slavery has been central to economic and social relationships, underpinned by religious ideology and legal reasoning, and, typically, rationalized as either necessary, good, or inevitable (Walvin 2007: 5–34; Patterson 1983; Thomas 1997; Clarence-Smith 2006). Often slavery served as a punishment for criminal offences and an alternative to capital punishment. Equally, slavery could be an alternative fate to death on the battlefield and a means to incorporate the defeated into the triumphant society. At other times, slavery was the result of self-enslavement by those pushed to the brink of starvation by poor harvests resulting from drought or other climatic experiences – perpetual enslavement of one’s lineage in return for your and, therefore, your descendants’ survival (Davidson 2010: 246; Patterson 1983: 129–131). Transatlantic slavery was similarly the product of values and attitudes and practicalities at the time which made its emergence a rational economic development.
Transatlantic slavery emerged because practices in the African and European societies enabled a trade in enslaved persons to develop. The first European slave traders on the West coast of Africa joined a pre-existing coastal traffic in enslaved persons, purchasing enslaved people in Dahomey (which became known as the Slave Coast) and exchanging them in Ghana (which became known as the Gold Coast) (Thornton 1992: 111; Smallwood 2007: 10–20). For Europeans, entering a slave trade was not a new practice. Enslaved Africans had previously reached the European world via North Africa and the trans-Saharan slave trade (Northrup 2002: 6). Enslaved Africans had been featured in the slave markets of Italian city-states alongside Slavic peoples and, once the trade in Slavs decreased, had become increasingly important in providing the labor force for Mediterranean sugar production (Northrup 2002: 6; Walvin 2007: 5–34). As Europeans ventured down the West coast of Africa, their participation slave trading was, therefore, not surprising. As Europeans colonized islands of the west coast of Africa, the cultivation of sugar and the use of enslaved Africans in this process also migrated from the Mediterranean (Eltis and Richardson 2007: 6; Walvin 2007: 37–38; Thornton 1992: 16). Following the colonization of the Americas by Europeans, the Portuguese turned to the cultivation of sugar by enslaved Africans as a means to make their American colonies financially productive (Walvin 2007: 41). Other Europeans followed suit, and importation of enslaved Africans to provide labor in their colonies to produce agricultural products such as tobacco, rice, and sugar was established (Walvin 2007: 42). This decision was made easier by the Atlantic currents and winds helping to develop the triangular trade between Europe, Africa, and the Americas in the North Atlantic and a return trade between Africa and Brazil in the South Atlantic (Eltis and Richardson 2007: 8).

While the origins of the transatlantic slave trade reflected the prevalence of slavery in Africa and Europe and basic economic motives, the institutionalization of slavery in the Americas reflected the values, ideology, and practices of European societies. Christianity provided an early justification for the enslavement of Africans as, surely, it was better to be the slave of Christians than of heathens? (Blackburn 1997: 61). Both Christian and Muslim societies had long considered the enslavement of people from outside their faith to be acceptable (Walvin 2007: 22). Later, racial ideology deemed African people inferior and so came to legitimize their enslavement (Blackburn 1997: 61–65, 2011b: 88; Swaminathan 2009: 166). In both cases, the utility of religion and science in the intellectual rationalization and legitimization of inequality and exploitation reflected the role of religions and science in European societies. Seymour Drescher has detailed how the frontier nature of colonies enabled their societies to develop norms different and more extreme to those within Europe, but it is nonetheless the case that European ideologies and practices informed the development of colonial societies, including the institutionalization of slavery and the role of punishment as public spectacle and deterrent (Drescher 2012: 85–89). In the USA, Southern planters legitimized slavery as benign by rooting their conceptualization of themselves in the chivalry of English feudal lords who supposedly protected those weaker and lesser than themselves (women, children, and household servants) but who also had the right and the duty to recourse to
violence (Fox-Genovese and Genovese 2005: 337; Davis 2006: 198). This self-conceptualization and legitimization demonstrates how European society provided a bedrock from which settler colonial societies emerged, how appeals to religion were utilized to legitimize slavery as well as other forms of inequality and exploitation, and how chattel slavery both differed from and echoed wider societal relationships. Similarly, ideas of the innate inferiority of Africans due to their racial difference reflected arguments about the poor and working class to legitimize their exploitation within European countries, where first poverty and inequality were put down to God’s will and then later to ideas of degeneration and racial inferiority (Blaut 1993: 33; Pollard 2000: 104–111; Davis 1975: 467–468, 489; Linebaugh and Rediker 2013: 17). On both sides of the Atlantic, the economic development of early capitalism depended upon the exploitation of persons deemed exploitable by the elites for reasons such as race, religion, or poverty (Mintz 1985; Thornton 1992: 72–97). Often this unfairness was identified by those at the bottom. For example, accounts of poor whites and slaves mixing and rebelling or running away together are common (Linebaugh and Rediker 2013: 237–247). The support of Manchester’s working class for the cause of the Union against slavery during the US Civil War, as well as the extent of working class petitioning against the slave trade and slavery, also attests to how the industrial working class of Britain identified with the exploitation of enslaved Africans and saw their struggles as shared (Linebaugh and Rediker 2013: 237–247; Blackburn 2011a).

Shared interests between the white poor and enslaved Africans, however, were not always identified. During the period of slavery in the USA, the fear of slavery and the idea of slavery as being worse than poverty and subsistence wages acted to align the interests of the poor white men to the interests of the rich, slave-owning aristocratic class (Bell 1988: 767; Patterson 1983: 255–261). In this sense, slavery enabled the enfranchisement of all poor, landless, white men because fear of slavery reduced the likelihood of their becoming a socially revolutionary threat to the elite. In contrast, poor white men in European countries would have to wait a longer period for suffrage. However, European colonialism acted in a similar manner to slavery in the USA by uniting the interests of the poor with the elite. Poor white people in Europe could benefit emotionally and psychologically from the national and racial pride that came with being part of an important imperial power. Likewise, poor colonists could benefit from opportunities that were not afforded to colonized peoples (Huttenback 1976; Howard 1978: 15; Howard-Hassmann 2008: 98–99; Johnson 2006: 319–321). Theories of race that argued there were hierarchies within and between races and therefore legitimated and helped to entrench both racial and class hierarchies (Davis 2006: 153; Jordan 1968; Winfield 2007: 71). These ideologies were not ended with the abolition of slavery.

The persistence, indeed, the entrenchment of ideologies of racial hierarchy after the abolition of slavery across the Americas, illustrates how the abolition of slavery did not end the societal attitudes and values that had enabled slavery to flourish. An important factor in the entrenchment of pro-slavery and racist arguments was the economic decline of the British West Indian colonies following abolition (which was interpreted by defenders of slavery as a vindication of their arguments concerning
African laziness) (Drescher 1977: 20; Davis 2006: 189). The correlation between abolition and West Indian economic decline, however, also contributed to the developing narrative that abolition was a selfless gift to the enslaved. As Robin Blackburn describes, abolition became associated with progress and civilized behavior (Blackburn 2011b: 395–449). The British, who were first to abolish both their slave trade and institution of slavery, congratulated themselves on their national, racial, and religious superiority (Blackburn 2011b: 475; Quirk 2011: 54–110). The British pushed abolition of the slave trade as a moral crusade forcing and bribing other European and American nations into passing anti-slave trading legislation (Davis 2006: 270; Thomas 1997: 557–785; Kielstra 2000; Eltis 1987: 208–211). Ultimately, especially once the USA had abolished slavery through the Civil War, slavery became seen as backward and abolition modern and progressive (Davis 1966: 268–269). This changing view of abolition helped the European and American nations (which had instituted chattel slavery and grown rich from the profits) to congratulate themselves for providing the gift of freedom and enlightenment. Across the transatlantic world, the role of enslaved people in resisting enslavement and in fighting to gain their freedom was erased from popular memory. In Britain, abolition was represented as a gift from enlightened white men in parliament. Meanwhile the resistance of enslaved individuals and of working-class petitioners and women who identified the fight against slavery with their own struggle against starvation wages and for political voice was erased until recently. (Recent decades have seen work to recapture the role of women, the working class, and enslaved persons to the fight against abolitionism, and this has become increasingly publicized. However, the leadership of white men remains largely credited as the main reason for the success of abolition. See, for example, Davis (1975: 306, 2006: 205), Blackburn (2011b: 281), Midgley (1992: 1–6), Clapp and Jeffrey (2011), and Oldfield (1998: 14, 33–43).) In the USA, the sacrifice of white soldiers for the Union was used to develop a narrative of white sacrifice for the liberation of enslaved African Americans and to reaffirm the idea of American Exceptionalism and right to colonize the continent of America (Blight 2002: 122). For a nation where the ideal of American citizenship was founded in the Revolutionary War against British tyranny, the erasing of African American resistance to slavery, including in the Civil War as soldiers, spies, and saboteurs, helped to undermine (in white eyes) the eligibility of African Americans for freedom as they had not fought for it as all Americans should (Blight 2002: 120–152; Foner 1988; Tulloch 1999: 113). In consequence, this constructed memory of slavery and abolition not only helped the social hierarchies of slavery to persist past its abolition but masked these continuities and helped foster, among white people’s perspectives at least, a belief that abolition made amends for slavery.

Therefore, while abolishing the institution of slavery, abolition did not address the wider factors and forces within society that had created the space for slavery to flourish. Abolition was a reform which altered the legal framework of inequality, social hierarchy, and the acceptable limits of institutionalized exploitation and barbarity. Equality was provided to freed people, in the sense that they were now free to join the ranks of free, poor labor and to work for starvation wages. (Indeed,
economic arguments against slavery had often centered on slavery as being inefficient and costly due to the need to pay to feed, house, and clothe slaves when they were not economically contributing their labor due to them being a child, ill, injured, sick, or too old, whereas employers of free labor did not have to pay people unless they were working. See Davis (1975: 492). This situation characterized the lived experience of poor working-class white people across most of the Western world, who did not have voting rights and who were prevented from establishing and joining trade unions to negotiate collectively for better pay and conditions (Davis 2006: 23; Davidson 2010: 246–248; Thompson 2013). The ramifications of this move will be discussed throughout the remainder of this chapter. Of course, racial prejudice remained and continues to be a determining factor in economic opportunity and life outcomes to this day. What is more, Eurocentric historical narratives of slavery and abolition continue to significantly influence how the legacies of transatlantic slavery and modern-day slavery are understood and addressed.

The Reparations Debate

Before this chapter considers the issues of modern-day slavery, it is helpful to briefly consider the debate over reparations for transatlantic slavery. Reparations advocates argue that (often financial) redress should be paid to the descendants of enslaved persons to correct generations of unfair poverty due to the legacies of slavery and discrimination. The reparations debate first emerged in the USA during the 1960s (Biondi 2007). The debate before faded during the successes of the Civil Rights Movement and then re-emerged as frustration about the continued impoverishment and racial discrimination against African Americans, despite the successes of the Civil Rights Movement, took hold (Torpey 2006: 48–49; Bittker 2003; Robinson 2000). The re-emergence of calls for reparations was also influenced by the payment of reparations by Germany to Eastern European survivors of Nazi era crimes following the collapse of the Soviet Union (Brooks 2004: xv; Biondi 2007: 258–259; Howard-Hassmann and Gibney 2008: 7–8). Calls for reparations are not limited to the USA. Rather, the US reparations movements have caused many in African and Caribbean nations to look to deeper histories to explain the causes of contemporary injustice. Consequently, calls for reparations to African and Caribbean nations for the legacies of slavery have arisen (Gifford 2000; Howard-Hassmann 2004). This case was prominently debated at the 2001 United Nations World Conference Against Racism and Xenophobia where it was agreed that the slave trade and slavery had been crimes against humanity although they might not have been considered so at the time (Howard-Hassmann 2008: 37). Frustrated with the lack of achievement at this conference and with the low level of support from African nations, the Caribbean Community of Nations (CARICOM) has since developed a legal claim for reparations from European nations (Beckles 2013). As with calls for reparations in the USA, calls for reparations to African and Caribbean nations argue that the harms of slavery are still manifest in unequal distributions of wealth and in racial inequality. CARICOM’s Ten-Point Plan for reparations therefore
calls for financial compensation, apology, and funding for programs of education, commemoration, and the fostering of links between Caribbean and African nations (Leigh Day 2014).

The response to calls for reparations is still largely shaped by Eurocentric narratives of slavery and abolition. Opponents of reparations argue that the process of abolition already constituted compensation, either due to the amount of blood and money spent on abolition (as in the case of the US Civil War) or through the cost of suppressing other countries’ slave trades (as in the case of Britain). (Opposition to reparations in the USA is typified by David Horowitz’s (2002) Uncivil Wars: The Controversy over Reparations for Slavery. Some of Horowitz’s arguments concerning the sacrifice of Union soldiers are unpicked by Manfred Berg (2009: 83). For a discussion of the claim for reparations for African Caribbean nations and the position taken by Britain and other Western nations at the 2001 UN Conference Against Racism and Xenophobia in Durban, see Beckles (2013: 172–210). In Britain’s Black Debt, as Beckles develops and articulates the case for reparations to Caribbean nations, he often presents opposition to the arguments put forward by opponents to reparations. For an overview of the origins of the reparations movement for Africa and critique of the legal framing sometimes selective historical contextualizing of reparations claimants, as well as the opposition of countries such as the USA at the 2001 UN Durban conference, see Howard-Hassmann (2008).) In addition, opponents of reparations argue, firstly, that the gift of abolition did not have to be given and that those who have received the gift should be grateful and, secondly, that the African nations who claimed they were harmed by the slave trade should acknowledge that Africans and others (aside from the Europeans) practiced slavery and often did not abolish it until they were forced to do so by colonial interventions or Western pressure (Beckles 2013: 169–170). Any inequalities which exist today, opponents of reparations argue, are not the result of past wrongdoing or an uneven playing field where the hierarchies and prejudices of slavery still persist, but the result of the failings of black people and independent African nations to take advantage of the opportunities offered to them as free and equal players in national and global economics (Beckles 2013). In making these arguments, opponents of reparations clearly echo the Eurocentric historical narratives that presented abolition as an enlightened gift. In doing so, they underline the effect that these narratives have had in promoting abolition to distract from and downplay the significance of preceding centuries of slavery. The failure of abolition to challenge the economic, political, and social hierarchies that had existed in slavery and remained during colonialism is highlighted.

It is also the case that the way in which reparations advocates define their arguments shows that they too are influenced by how the history of slavery has been remembered. Frustrated with how historical narratives have been typically Eurocentric and frustrated with the harmful legacies of slavery (identified by reparations advocates as racially codified economic and social inequality), arguments for reparations are typically pan-African and at times as selective as the Eurocentric narratives they challenge. In seeking reparations for transatlantic slavery, reparations advocates must demonstrate the continuing financial harms caused by historical slavery to the descendants of enslaved people.
In doing so, the harm of slavery is necessarily represented as exceptional and isolated from wider historical injustices and inequalities that, as discussed in the first half of this chapter, created the space for transatlantic slavery to flourish in the first place and which have perpetuated the inequalities of slavery to this day. Furthermore, by rooting the case for present-day rights in the rectifying of historical wrongdoing, reparations are regressive as they do not base the case for equality and justice for individuals’ suffering from the legacies of slavery within their rights but within the violation of their ancestors’ rights (Torpey 2006; Evans and Wilkins 2018). The repair offered by reparations, while arguably justified and potentially beneficial, does not offer a repair that is thorough enough to fully overcome the legacies of transatlantic slavery as it fails to address the wider forces and harms central to this history but not specific only to transatlantic slavery and racial inequality.

Modern-Day Slavery and Abolitionism

Historical understanding of slavery does not just impact upon how legacies of transatlantic slavery are understood. The fight against modern-day slavery is similarly hampered by how historical slavery and its abolition have been remembered and the lessons that individuals and organizations therefore seek to take from this history. The role of abolitionists in banning slavery by passing legislation is still celebrated by those who seek to look to the past for action against modern forms of slavery (Quirk and LeBaron 2015: 8–15; Davidson 2015: 1–12; Kempadoo 2015: 8–20; Bales 2000: 29–31, 263–264; Rickert 2009: 46). In looking to the past, such arguments take advice from a Eurocentric reading of history and the role of abolitionist heroes, rather than the failure of historical abolition to deliver full abolition by dealing with the wider structures which enabled slavery to occur (Bravo 2011). Such leanings were particularly apparent in how politicians sought to utilize the 2007 Bicentenary of the Abolition of the British Slave Trade Act as a means to promote national pride and how 2007 contributed to a growth in campaigning against modern-day slavery and human trafficking. The impact of such historically informed campaigning can also be seen in the passing of the UK’s 2015 Modern Slavery Act and following campaigning pressure from the Anti-Trafficking Monitoring Group and the shortcomings of this act (Beddoe and Brotherton 2016: 10).

The 2007 Bicentenary served to introduce into UK popular consciousness the idea of reparations for the legacies of transatlantic slavery and to raise the issue of contemporary forms of slavery. It is not surprising that these two issues arose together. On one hand, the Bicentenary offered an opportunity to challenge how past Eurocentric historiography had celebrated only white abolitionist leaders and to consider how the history of slavery had shaped the modern world; and many within the museum sector and African and African Caribbean communities of Britain were keen to promote African perspectives and challenge past Eurocentric narratives (Museum in Docklands 2008; Fouseki 2010; Wilson 2010; Dresser 2009; Prior 2007; Hamilton 2010). On the other hand, the Bicentenary encouraged an interpretation of this history that reinforced a focus on abolition and thus notions of moral leadership and British superiority (Goggins 2006; Brown 2007; Wood 2010a;
The British government was often keen to promote this narrative to counter the negative reputational fallout of the Iraq War (Wood 2010b). These two themes coalesced in arguments which fought to utilize the inspiration of abolitionist heroes of the past for a campaign against modern-day slavery. While seemingly positive (who could argue against combating modern-day slavery?), this process also had two negative impacts. Firstly, these arguments distracted from and downplayed the legacies of transatlantic slavery and the case for reparations by positioning the ideas of addressing modern-day slavery and the legacies of historical slavery as somehow competing interests. Rarely explicitly stated, when the history of transatlantic slavery was discussed, a segue would be made to say that: “whilst that history was bad, isn’t it awful that slavery still exists nowadays?” (Brown 2007). This served to shift public and political attention from transatlantic slavery and its legacies and downplayed the problems identified by reparations advocates by insisting that focus must be on addressing the harms suffered by those enslaved today (Quirk 2015: 85–89). Secondly, such arguments encouraged a conceptualization of modern-day forms of slavery as wholly alien to Western economic practices and values. Therefore, modern-day slavery could be eradicated by instigating policing actions and legislation that curtailed specific opportunities and practices of malefactors. By framing modern-day slavery as a crime and not a social, economic, and political failing, modern-day abolitionists argue that individuals today can help abolish modern-day forms of slavery by being vigilant for potential victims of human trafficking and by calling upon governments to act (Rickert 2009). In this argument, wealthy Western individuals today can be abolitionist heroes like Wilberforce and Lincoln (Davidson 2015: 10). However, while laudable, individual actions cannot compete against a global, systemic valuation of economic profit over human welfare. Moreover, the process of prioritizing contemporary slavery over the legacies of historical slavery is a mistake as both issues stem from the same problem and can be addressed through similar steps.

Contemporary forms of slavery, like historical slavery, reflect wider economic, political, and social policies and ideologies. Similarly, the legacies of transatlantic slavery identified by advocates of reparations (racial inequality at local and global levels) also reflect these same forces. In this sense, legacies of transatlantic slavery identified for repair by reparations advocates are typically not direct legacies of transatlantic slavery, but harms that have been perpetuated and constantly recreated by the continuation of economic, political, and social policies at national and international levels that protect and maintain inequalities. (Reparations claims highlight how more recent policies have impacted upon current inequalities by perpetuating historical injustices. Regarding reparations to African and Caribbean nations, they highlight the role of colonialism and global economics; see Leigh Day (2014), Beckles (2013), Howard-Hassmann (2008), and Quirk (2015: 86). Advocates of reparations for African Americans also highlight the role of Jim Crow, segregation, and discrimination up to the present day. See, for example, Bittker (2003), Robinson (2000), and Brophy (2006: 100).) These same policies help to create the conditions for contemporary forms of slavery as inequality at national and international levels persist. This is both the case with traditional forms of slavery in nations such as
Mauritania and India where slavery and debt bondage reflect traditional racial and caste hierarchies and are legitimized by traditional ideologies and religions and with modern forms of human trafficking (Bales 2000). Both rely on economic inequality to create a vulnerable and exploitable group of people. Both rely on weak protection from state forces and complicity from the public.

While modern-day forms of slavery are roundly condemned by politicians and public alike, modern-day slavery exists because of economic inequality at global and local levels and because of policies which deny certain individuals state protection leaving them vulnerable to exploitation. Slave labor in Thai fishing boats, in West-African cocoa farms and precious metals mines, on Middle Eastern construction sites and domestic service, and in Western nations in food cultivation, sex work, and drug cultivation, manufacture, and distribution are all facilitated by wider economic inequality and controls on migration (Bales 2007: 213–228). While politicians may talk about the need to combat modern-day slavery and enact legislation to tackle specific instances of human trafficking or labor exploitation, their wider political agenda and the policies they enact frequently exacerbate the problem. For example, prioritizing controls on migration, criminalizing those in violation of migration laws, and promoting deregularization of the free market and deregulated labor markets all further endanger those vulnerable to exploitation (Davidson and Howard 2015; Sharma 2015: 36–40; Davidson 2010: 246–248; Anderson 2010; Anderson et al. 2011). These policies, plus popular demand for cheap consumer goods (and illicit drugs and sex), combine to create the conditions in which slavery exists. While the UK government has proclaimed itself a leading nation in the fight against modern-day slavery with its 2015 UK Modern Slavery Act, its action has been perfunctory and largely for show (Beddoe and Brotherton 2016; Roberts 2015: 14–19). While talking the good talk, the UK government’s refusal to accept unaccompanied child migrants from refugee camps in Calais (an act that left children vulnerable to human trafficking and sexual exploitation) is more characteristic of its actions (Travis and Taylor 2017). In addition, those who are identified as victims of human trafficking in the UK are often criminalized for violations of migration laws or other laws they had been forced to violate (even though this is against the government’s own guidance) (Kelly and McVeigh 2018; Beddoe and Brotherton 2016). Similarly, European nations more widely seek to enact policies against modern slavery while simultaneously refusing to accept migrants for spurious reasons and returning many thousands to countries where they are vulnerable to forced labor and placed at the mercy of human traffickers if they wish to try and reach Europe again (Sunderland and Frellick 2015: 41–45). Economic national interests shape international policies on issues such as tax and migration – which contribute to global economic inequalities – making people desperate to travel to wealthier nations in search of employment and a better future (LeBaron and Howard 2015: 89–92; Traxler and Woitech 2000; Christian Aid 2014; Anderson 2010; Niño-Zarazúa et al. 2017). The deregulation of Western labor markets through the neutering of trade unions and organized labor over recent decades has corresponded with increasing inequality that has widened the spaces in which exploitation that includes modern-day slavery can exist and grow (Wilkinson and Pickett 2010: 13).
In short, there is a vicious economic circle in operation. Without addressing these wider factors, the form of abolition offered today, like its historical predecessor, tackles only the most extreme cases of exploitation while legitimizing the system that creates this exploitation by entrenching inequality (Bravo 2011: 582).

**Conclusion**

This analysis of how to address the legacies of transatlantic slavery and the causes of modern-day slavery runs counter to the popular historical understanding of the history of slavery and abolition and to popular national identities as outlined above. It calls for reforms to the entire structure and hierarchy of the current, dominant global model of economic organization. As such, it is an analysis that threatens the current position of global elites as it calls for reforms which in their scope and extent (if not their methods) are arguably revolutionary. This is because this analysis identifies wealthy nations and individuals not only as beneficiaries of a historical institution of slavery but also of slavery today. While Western nations and the global elite claim to be opposed to slavery, they perpetuate a global system in which slavery is a logical and inevitable outcome. Rather than being a deviation from the values and structures that they have put in place, slavery replicates the model of these very structures and exists only because these structures create the space and means for modern-day slavers to operate and the vulnerable crop of people to enslave. While curation of historical understanding has used the abolition of transatlantic slavery to legitimize the current global economic model and leadership of wealthy Western nations and the global elite, a deeper historical analysis as briefly outlined in this chapter reveals the superficial and self-serving nature of such analysis. Going further, the failures of past abolition reveal that confronting slavery in isolation from wider social, economic, and political reform and transformation is largely a symbolic and self-serving gesture. Modern-day abolition, if it takes historical abolition as an example to follow, offers a similarly compromised gift. Instead, the full repair of legacies of transatlantic slavery and a true approach to the prevention of modern-day forms of slavery both depend upon ending the social and economic hierarchies and principles upon which the modern world operates. For example, local and global wealth redistribution; the provision of housing, education, and employment; and the right to freedom of movement will all serve to close down the spaces in which exploitation proliferates. In short, to repair the legacies of slavery and to prevent new cases of slavery, human rights must be prioritized.

**References**


Resistance and the Enslaved

Thomas Day

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Introduction

In the wake of the conquest of Jamaica in 1670, the English, and then British, developed the third largest island in the Caribbean into an economically vital sugar-producing powerhouse. Scholars have spent decades studying how the colonization of Jamaica transformed the Caribbean and the Atlantic world, including foundational work by Dunn (1972) and more recent studies such as Pestana’s (2017) exploration of the conquest itself. Central to any story of Jamaican history are the enslavement, violent trafficking, fatal punishments, torture, and overworking of African slaves. Plantation owners in the West Indies established slave agriculture as the cornerstone of economic growth within the British Empire, and this system of labor provided the foundation of a transatlantic trade network so influential that, according to Eric Williams (1994, p. 52), it created a “triple stimulus to British industry” and helped spur on the Industrial Revolution a century later. But slavery was not an institution built on stable ground, and the violent and oppressive regimes of white overlords were answered in kind by armed resistance from the enslaved. During over two centuries of British rule in Jamaica, a series of violent clashes between the enslavers and the enslaved erupted, and each played a substantial role in shaping the history of

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the island. They also had a role in the broader history of the British Empire. This chapter seeks to understand how two of those moments of resistance, the 1760 uprising by African slaves known as Tacky’s Rebellion and the 1832 upheaval of Afro-Jamaicans known as the Christmas Rebellion or the Baptist War, played a role in shaping how observers thousands of miles away understood slavery, race, and empire.

While the American Revolution represents the most famous act of resistance to British imperial authority, it was far from the only. We cannot understand the British Empire, or the systems of power, authority, and control that it used to expand across the globe, without understanding these moments of rebellion. During these periods of upheaval, newspapers represented the most direct and widely available means by which British subjects could learn about and interpret challenges to British rule. Among the most important threats to the order of the empire were those posed by the people held in perpetual bondage in the Atlantic world. The first great slave rebellion in the British Caribbean came with the 1760 conflict known as Tacky’s Rebellion, or Tacky’s War, named for the man who led the insurrection. Part 1 will explore how newspapers helped shape discourse surrounding this conflict and examine how interpretations of Tacky, and his rivals in Jamaica, played out in eighteenth-century British papers and the role that these newspapers had in forcing British eyes onto imperial problems. Part 2 will highlight the continuation of discourses on empire, slavery, and rebellion in the wake of the 1832 Baptist War, so named for the role that Baptist missionaries allegedly played in inspiring the uprising.

**Historical Background**

As Britain, not Jamaica, is the focus of this work, it is important to frame this study within British history. Although eighteenth-century Britain’s democratic structures were notoriously corrupt and would remain in that state until at least (and likely well after) the Reform Act of 1832, Britain did have a vibrant public sphere and myriad forms of popular political expression. Scholars, including MacKenzie (2004), Brown (1985), Jones (1996), Wilson (1998), and Greene (2013), among many others have explored in detail the role of the British newspaper in both British culture and in the imperial project throughout the eighteenth and nineteenth centuries. While each paper would have had its own political angles and motivation, what matters for this study is the broader trends. A more detailed survey could explore the details of the discourse, but for the sake of this project, we can find something of significance in the larger narratives. Tracking public opinion, in a modern sense, can be difficult in the eighteenth century, and so rather than proving that public opinion shifted in the aftermath of rebellion, this study will show that rebellion forced discursive engagement with slavery in the metropole, even far from the places in Britain where slavery and its economic benefits to the empire were more visible.

In 1760 the empire was largely still made up of Anglophone Protestants mostly in the British Isles and the Americas, the Irish Catholics, and the many enslaved Africans who toiled in the fields and cities of colonies from New England to
Barbados. By 1832 the scale and makeup of the empire had changed dramatically. While the United States was lost, colonies in Canada, Africa, Australia, and most famously India allowed the reach of British imperial power to stride the globe. However, even as the empire grew, slave owner influence in Parliament reached its nadir. In the last decades of the eighteenth century, the British faced a sustained debate over the place of slavery in the Empire. This culminated in court cases that brought about the legal end of slavery within England (1772) and Scotland (1774) and hotly contested parliamentary debates that brought about the official end of the British slave trade (1807). The enslaved in Jamaica knew the tides were turning against their masters and set out to secure their freedom by what Michael Craton (1982) has described as a sort of large-scale unfree work action. Faced with a slave owning master class intent on withholding freedom, the Jamaicans of 1832 took to the streets to secure their liberty and faced brutal repression in response.

Through the detailed exploration of the two conflicts, we can understand the way that interpretations of resistance to bondage played a fundamentally important role in shaping discourses about empire, race, loyalty, and subjecthood. What follows is only a sample of the larger discourse that focuses on a series of stories that start this exploration. The stories quoted here reappear across a range of newspapers in Britain, and so the papers may not represent the largest cities in Britain nor those ports most directly benefited by the slave trade. However similar, or in some cases verbatim copies, of these stories ended up in other papers across the British Isles. This range of cities also represents a distance across the British Isles engaged in the discourse of imperial debate. As such this study tries to find the most complete and earliest printings of each narrative. It is by no means exhaustive but illustrates that a further analysis of the wide reach of these stories could be a fruitful study of yet another influence of slavery and resistance on the history of the British Empire and the Atlantic world.

**Part 1: Tacky’s Rebellion**

Scholars in the fields of slavery and rebellion, including Richard Burton (1997) and Vincent Brown (2008), have focused on the importance of the African origin of the instigators of Tacky’s Rebellion, both from the perspective of contemporary white Jamaicans and from that of the African rebels themselves. Both Michael Mullin (1995) and Marvis Campbell (1988) cited more systematic and material influences on what inspired and drove the 1760 uprising, including the role of the Maroons and resource scarcities. But to the question of scale, few have gone as far as Trevor Burnard (2004, p. 10), who described Tacky’s Rebellion as the most significant revolt in the Americas prior to the American Revolution “in terms of its shock to the imperial system.” It certainly had a far-reaching impact on Jamaica itself. As described by both Burnard (2004) and Newman (2011), in the years following the 1760 uprising, the Jamaican Assembly passed a series of harsh laws designed to reinforce white control over slaves and prevent future insurrections. The laws failed to have the desired effect of suppressing future uprisings, and the enslaved
The population of Jamaica would rise up repeatedly throughout the 1760s. The violence of the second half of the eighteenth century in Jamaica kicked off with Tacky.

Tacky’s Rebellion began on Easter Sunday of 1760 and would continue until October 1761, though violent uprisings would occur throughout the 1760s after the suppression of the first rebellion. The revolt broke out in a culture of growing apprehension among the white planters due to the ongoing Seven Years War and the rising population of slaves, many of whom had come from the same region of Africa, and whose status as recent immigrants made them, in the eyes of slave owners, more dangerous and more prone to acts of resistance. According to Reynolds (1972), an over-reliance upon the free Maroon communities, with whom the British signed a treaty in which the Maroons agreed to help suppress future runaways in return for quasi-independence, and the general laxity of security brought about by the Easter holiday gave slaves the perfect opportunity to unite and mobilize into what Craton (1982, p. 127) referred to as “marronage on an unprecedented scale.”

As British newspapers began to report on the insurrection, the rebellion, or as it was called in the Derby Mercury of June 20, 1760, “some Disturbances among the Negroes,” quickly expanded into three separate insurrections by June 27. Over the course of June, July, and August, the size and scale of the revolt varied from report to report. The swirly numbers and range of the rebellion was indicative of the larger confusion that accompanied news from the colonies. Nothing from the Caribbean was ever certain beyond a doubt, and so meaning was forged through the reprinting and consumption of the stories themselves. In the case of Tacky’s Rebellion, the focus of meaning fell on violence. Both the rebellious slaves and their white masters committed acts of violence, and both allegedly engaged in seemingly barbarous cruelties. The Derby Mercury of August 1, 1760, reported gruesome and scintillating details about the rising tide of violence, highlighting the rebels’ plan to turn skulls into drinking vessels and the scheme by whites to collect ears as tokens of their kills.

The British press used the language of savagery, violence, and cruelty to describe both sides of the struggle, not just the rebellious African slaves. The shared burden of this violence is indicative of what Jack Greene (2013, p. 156) has described as the “deviant and distinctive” creole character. To British observers, this rebellion was a specifically creole affair, both in terms of its brutality and the makeup of those who fought on the side of government. The Caledonian Mercury reported that a militia leader named Mr. Bayley “had with great celerity collected near 130 whites and blacks,” and later, on April 10, “the rebels were attacked by a party of Crawford town Negroes.” Another hero of the rebellion identified by the Leeds Intelligencer of July 1, 1760, was a Mr. William Trowers who led 12 black loyalists against a large rebel force and “boldly engaged” with the enemy. In these stories we see a collection of multiracial Jamaican militiamen against an enemy force of “Gold Cost” or “Coromantee” Africans. As a result, loyalty, like violence, was not unique to either race, and foreigners were driving the uprising, not unruly domestic subjects.

Loyalty to the British Empire played a central role in the larger narratives of Jamaican history as well. The Caledonian Mercury of March 13, 1762, produced a history of Jamaica including the story of how English troops only drove out the last of the Spanish defenders, thanks to the aid of disloyal and mistreated slaves. The
Mercury provided a clear warning to the Jamaican planters and a warning to the British readers who may have thought the overlords to be just in their treatment of the slaves:

For as the negro slaves of that island, of which there are about one hundred thousand, their merciless masters know too well the cruelties they have practiced upon those miserable wretches, to expect any other return than betraying them to an enemy, or cutting their throats; and of this there hath been such recent experience, by an open rebellion of the negroes in various parts of Jamaica for many months, that only chance this nation hath of preserving it, if attacked, seems to be that of preventing the enemy from effecting a land.

While in normal circumstances, the ill treatment of slaves may have been an acceptable cost of their value as producers, in a time of war when the British nation was engaged with its historic enemies of Spain and France, the risk was far too high. Loyalty and stability were vital to Britain’s imperial interests.

As reported by the Caledonian Mercury on July 19, 1760, during the tensest moments of Tacky’s Rebellion, white Jamaicans expressed dread that, using an army of well-treated slaves trained to be soldier, French invaders would unite with rebellious Jamaican slaves and capture the island for France. In light of these growing threats to British control over Jamaica, there was only one proposed solution: amelioration. This was a call for the improved treatment of slaves and was shared by the press and in the halls of political power in London and with the Governor of Jamaica who transmitted this message to the Jamaican Council in December of 1760. The Governor called upon the overseers and owners to secure the island’s safety not just through civil commitment to justice but also to “keep their Negroes steady in the Affection” and prevent future uprisings through compassion rather than control.

The crown had a second reason to court the sympathies of the black population of Jamaica: so that the slaves and free blacks could be used to fight against the Spanish and French in the Americas. In February of 1762, the Governor announced the declaration of war against the Spanish to the Assembly of Jamaica and set about attempting to raise a force of 500 free blacks and 2000 slaves to be used in the coming conflict. The Leeds Intelligencer reported on the arming of blacks being proposed in the Jamaican Assembly as early as October 27, 1761. Although the Maroons and free blacks were already engaged with the rebels by this point in time, the Intelligencer put forward that the motion “had been strongly opposed and carried in the negative.”

Instead of arming the slaves as requested, the Jamaican Assembly focused on suppressing them further. In December of 1760, the Assembly passed two acts calling for the raising and arming of parties used to suppress the rebellion, and one passed to reward those slaves who had aided the colony by turning on their fellow slaves. On top of the fiscal response of raising more defenses and rewarding loyalty, the Assembly also redefined the social status of all non-Whites on the island. Specifically, the legislature sought to restrict assemblies of slaves, prevent the ownership of arms by slaves, and require the possession of travel tickets for slaves away from their plantations.
Regardless of the cause of the rebellion or the fault for its intensity, both Jamaican and English observers believed that corrective action and retribution was required. Punishment in Hanoverian England was, according to V.A.C. Gatrell (1994), a common and unremarkable event and, in the rare occasions when it was recorded in the newspapers, was often done under nonviolent euphemisms. But there were no euphemisms here in the language used by the press; executions were described regularly and in detail. The language used by newspapers concerned both the punished and the punishments. In July reports began of the executions, with the *Manchester Mercury* and the *Derby Mercury* of July 1760 both reporting that the ringleaders of the rebellion “were taken and executed.”

The most detailed stories of state violence often identified the slaves by name, providing a humanizing element to the victims. The *Caledonian Mercury* printed the story of a slave named Davy who had both of his arms broken prior to being hanged for promising to kill ten white men, a severe punishment for boastful talk. It was only these moments of uniqueness, or moments when the victims of state violence were personalized, that the reader felt any real impact. According to Gatrell (1994 p. 283), it “took an imaginative effort or personal shock to realize that the concept of normality failed to connect with the fearsomeness of what happened,” and so when newspapers made a concerted effort to identify and personalize the victims of state violence, those stories became more meaningful.

The *Caledonian Mercury* reported on October 1, 1760, of a man named Pompey, who was purported to be one of the leaders of the rebellion and was posthumously decapitated, while Jamaican authorities executed another man named Harry in Spanish Town for “being principally concerned in the contriving and intending to carry on an insurrection at Louidas.” The *Oxford Journal* of August 23, 1760, published an additional detailed report on the fate of specific slaves. The authorities executed Quaco and Antony, both accused of having taken part in the rebellion, by burning one at the stake and hanging the other. Their female counterparts, Sappho, Princess, Sylvia, and Doll, watched the executions “with Halters round their Necks,” and then the government banished the women from the island.

The punishment of banishment, through rarely reported, must have been common. Among the laws passed by the Assembly in December of 1760 was an Act designed to “prevent a Captain, Master or Super Cargoe of Any Vessel bringing back slaves Transported off the Island.” Years after the rebellion in July of 1764, the *Caledonian Mercury* reported on the last of the “untractable Negroes, whose Savage Natures nothing could subdue” were sold off the island. Deportation was a common fate assigned by the state to women in the early nineteenth century West Indies, and so it is likely that a similar treatment was often reserved for slaves in the British colonies. But banishment is hardly as exciting as gibbeting and hanging and conflagration.

There was a second narrative constructed by the newspapers, focusing on the strength and resilience of the condemned. If providing names made them more human and telling only tales of bloody executions made them more interesting, the stories of boldness and strength in their death throes portrayed the slaves as strong and, in some ways, sympathetic. The *Oxford Journal* of July 26, 1760, reported that the slaves who were hanged in chains
alive for their crimes managed to survive for 8 days, and the Leeds Intelligencer of July 29 that year included commentary about the survival of one slave for 2 days in the same condition. The Dublin Courier of August 6 went furthest in painting the slaves with a sympathetic brush. The whites of Kingston captured, tried, and condemned a group of slaves to be gibbeted alive 20 ft high and survived for 9 days. In those 9 days, they, allegedly, complained not about the excessive heat (as would be expected on a tropical Caribbean island) but instead “they complained more of the cold in the night.” The rebels, despite their treason, showed strength even in the face of impending and inevitable death. The authority tried the slaves, found them guilty, and condemned them to die.

In 1760 Tacky and his fellow African rebels stood as conflicted figures in British discourse. They were both the inhuman savages born of the Caribbean and familiar sufferers under the lash of imperial authority. As familiar as the enslaved could become, there was still a clear othering underway, as the mythology surrounding black resilience to heat and violence undergird these stories. Nevertheless, through reports of these rebellions and punishments, the struggles of slavery and empire came flying back across the Atlantic into the cities and towns of Great Britain. Resistance by the enslaved forced the discourse of loyalty, punishment, and amelioration into the public view. Acts of resistance could force even distant public attention onto key issues of imperial policy and racialization, and Tacky’s Rebellion was one such act. Eighty years later, after decades of growing restrictions and continued violence, the British had one final moment to confront the resistance of the enslaved.

Part 2: The Baptist War

In 1831, 2 days after Christmas, the specter of a second Haiti transformed itself into reality as thousands of the enslaved in Jamaica effectively went on strike. Led by educated and well-traveled slaves, as well as free people of color and Baptist missionaries, the strikers set out to nonviolently, and with due loyalty to the crown, declare and confirm their rights as free men. The enslaved in Jamaica believed, as many rebellious slaves in history have, that the crown had granted them their freedom and but for the machinations of planters, slavery would be gone. The Baptist missionaries, for whom the conflict came to be named, served both as white allies to black Jamaicans and, as described by Reckord (1968), as sources of unification and communication through religious services. In the end, according to Craton (1982), upward of 60,000 black Jamaicans joined the rebellion at its height, and the total death count of the response exceeded 500 black and 14 white Jamaicans.

The rebels’ first act of resistance, and the initial spark to large-scale violence, was the burning of the Kensington Estate. This conflagration served as a signal to the larger population of agitators who attempted to mobilize around a series of well-known black leaders including George Taylor, Thomas Dove, and, most famously, Samuel Sharpe. According to Craton (1982), Sharpe sought to organize a resistance
to work on a large scale to force the issue of freedom, and while his lieutenants may have had more violent intentions, Sharpe at the very least sought a peaceful recognition of freedom. The rebellion quickly spread across a range of parishes and soon the island was at risk again. In response, the governor called upon both the militia and the British regulars under General Willoughby Cotton. As was so often the case in rebellions in the plantation colonies, the slaves were unable to unite their disparate forces from across island and in short order the rebellion was surprised, and reprisals began.

1832 represented a moment of change across the British Empire, the Reform Act of 1832 drove political reform into public discourse, and the long years of abolitionist activism had brought the end of slavery into sight. This left the traditional authorities in panic in Jamaica. Their power and control was under siege by both reformers at home and abroad and the black Jamaicans who struck out to secure their freedom. To satisfy the bloodlust of the aggrieved planters and enact a perverse justice for the uprising, the Jamaican Assembly and British military put hundreds of slaves to death. The government executed Sam Sharpe, one of the key leaders of the rebellion who was also a Baptist preacher, on May 23, 1832, and thoroughly and broadly put down the rebellion. Though from the perspective of the British public, this was merely the start of the troubles. While the British newspapers were sparse in their depictions of the narrative of the rebellion, they examined the response by the Jamaican government in detail.

Some newspaper articles, such as one published by The Examiner on February 26 in 1832, focused on the critical role of labor in relation to the rebellion. In this version of events, the enslaved rose up not for their freedom but out of an unwillingness to work. The Examiner argued that the slaves “expressed their determination not to work after New Year’s-day” and reported that “nine-tenths of the slave population had refused to turn out to work” in Trelawney. Despite planter attempts to discredit the slaves, newspapers in Britain by and large did not see the insurrection as an act of wanton violence and savage killing but overwhelmingly as a civil dispute over labor and liberty. Given the context of reform and the civil unrest in Britain, including the 1819 Peterloo Massacre and the 1830 Swing Riots, the violent resistance by unhappy laborers would have been familiar. But were these rebels to be understood as fellow strugglers or racial others?

The Bristol Mercury of April 28, 1832, directly addressed the question of who these rebels were by positing whether a relationship of total or limited dependency led to the best results for workers. In a lengthy reprint of an article from the Quarterly Magazine and Review, the Mercury asked:

Whether, as a general truth, it is best for a labourman to labour as an hired labourer or as a slave? Whether it is best for him to labour for wages which shall be his own, or to be dependent upon his master for what he shall please to give him? Whether it is best for him that his wife should be independent of his employer, or should be his master’s slave? Whether it is best for him to be subject to no penalty except for his own crimes, or to be liable to be sold for his master’s debts? Whether it is best for him to be secure from punishment until found guilty on fair and open trial, or to be left as his master’s discretion to be flogged, imprisoned, and tortured whenever his master pleases?
At the heart of the discourse over the rebellion was the assumption that the slaves in Jamaica were laborers and therefore subject to British law. This represented a radical change from the rebellion in the previous century, where newspapers described the rebellious slaves as foreigners, acting in their own interests and not as members of the larger British polity. In the case of the *Bristol Mercury* of April 28, 1832, the editors described slaves as men and fellow laborers and “unoffending British subjects,” with “an unquestionable right to the King’s protection.”

Considering this growing rhetorical connection between British laborers and Jamaican slaves, the planters needed a scapegoat for the outbreak of violence, and they needed it for two very specific reasons. First, the rebellion brought into sharp focus Jamaican relations with the capital and Jamaican portrayals of Africans and racial slavery in popular culture. As illustrated by Andrew O’Shaughnessy (2000), ever since the American Revolution, a political divide had sundered the West Indians from their domestic cousins. In many ways this separation went back even earlier and encompassed not only cultural differences developing between the West Indians and their British counterparts but also questions over the loyalty of the white merchants and planters during times of crisis. These questions did not dissipate in the half century following the American Revolution, and in the months after the Baptist War, the question of West Indian loyalty reemerged. In April of 1832, a group of West Indian notables met to discuss British policy for the colonies and slavery, and as the *Hereford Journal* of that month reported, “if relief cannot be afforded them by the country to which they profess allegiance, why not permit them to transfer that allegiance to America?”

The second cause for concern among the Jamaican authority was a response to the reports of large-scale judicial violence in the wake of the rebellion. If the slaves were merely laborers seeking redress, what justification could exist for reactionary violence on such a scale. In a world within memory of the Peterloo Massacre, the news of brutal retaliations on laborers was scandalous, all the more so because some of the punishments came down upon the heads of white Baptist missionaries. To defend themselves, the planters went to the press to paint the missionaries as responsible for inciting rebellion. In a February 20th letter to the *Caledonian Mercury*, a planter reported that the “poor deluded slaves” were led into the rebellion by “these canting incendiaries.”

By attacking the missionaries, the Jamaican planters were reacting against an active opposition to their power, an opposition that had mobilized its presence in the British popular discourse. The *Bristol Mercury* of February 22, 1831, a full year before news of the rebellion would reach Britain, printed a diatribe against the planter elite of Jamaica taken from *The Anti-Slavery Reporter*. The story described the slave owners not only as ungrateful to the point of near disloyalty but also as “anti-Christian” and full of “ancient and most inveterate prejudices.” West Indian slaveholders were therefore on the defensive long before the rebellion broke out; the rebellion just gave them both a need and an active opportunity to paint themselves the victims.

The Jamaican white leadership not only portrayed their enemies as misled but in turn took on the mantle of the oppressed for themselves. In an April 26th article
published in the *Cheltenham Chronicle* in 1832, the slave owners made clear the battle lines drawn up on the island: “There is however, one comfort – that the day is past when the opinion of the government of the mother country has any weight with the inhabitants of Jamaica. A faction has vowed our destruction; but while we have the command of 25,000 bayonets, with British hearts to wield them, we shall laugh at the opinion of our oppressors.” The language of oppression was entirely reversed. Now it was not the slaves who were too busy, according to the *Hampshire Advertiser* of April 14, 1832, displaying the “symptoms of sullenness and indisposition to labour,” to be oppressed, but instead it was the whites and landowners who had to put up with the burden of British supervision.

Domestically the planters argued that, far from being cruel and heartless masters, they had in fact behaved with an open and generous hand. In a memorial of 1832, the Jamaican Assembly remarked upon the “unusual Indulgences . . . granted to the Slaves by their Masters” and deplored the knowledge that “the Leaders and Chief Promoters of the Insurrection should appear to have been almost exclusively composed of Persons employed in confidential situations” and “belong[ed] to a Class of People to whom additional Comforts are afforded by the Masters.” The white Jamaican leadership felt betrayed, by the missionaries who misled the slaves, by the slaves who cast aside their well-earned loyalty, and by the British Government, leaving them alone to face this monumental task. A fair number of newspapers across the British Isles took the planters at their word on these betrayals, and many more may have had it not been for one vital decision in the aftermath of the insurrection.

This understanding of oppression and fear was not just a public relation move, it was real, or at least real for the Assembly of Jamaica. In the wake of the 1760 rebellion, the Assembly had focused on suppressing African cultural legacies and the freedoms of persons of color in Jamaica. The planters had pushed back at any suggestion that they take on the burden of providing for their own defense or any calls for easing the burden on the slaves. 1832 represented a radical shift in that regard. Not only did the Assembly pass a series of bills relating to the funding of militia, repayment of debts accrued during the war, and “An Act for the Relief of Insolvent Debtors Imprisoned for Debt,” but they went even further and funded updates to the security apparatus of the island including the establishment of a permanent police force.

The 1760 revolt had led to immediate legal action against African traditions and civil freedoms for people of African descent, whether enslaved or free; however, this was not the Assembly’s immediate response in 1832. Instead the Assembly’s focus was overwhelmingly on funding, paying for, and reestablishing a civil defense force, and this included rewarding and expanding the role of the maroons within Jamaica. In written reactions to “an event which will be deplored as having brought ruin and devastation to one of the most fertile districts of the Island,” the Assembly behaved somewhat subdued when they avoided the fiery rhetoric shared in the newspapers and instead used the language of despair, disappointment, and melancholy.

The examinations of slaves and whites recorded during the aftermath of the rebellion revealed a great deal, but the problem for the planters was that it made
them as guilty as the “sectarians.” In his testimony before parliament, Lieutenant-Colonel George Codington summed up the two influences he believed had led to the outbreak of violence:

My opinion of the cause of the rebellion is, in the first instance, the agitation of the question both in the newspapers in England and in this country, and its being imprudently discussed by the proprietors themselves in the hearing of the slaves, thereby making them acquainted with those improper opinions which are very often expressed in those publications. In the second place, by the imprudence of the sectarians in their language addressed to the slaves.

This was not the smoking gun the planters needed to justify their tyrannical response to the Baptists in the British press.

While one trend of newspaper stories clearly followed the Jamaican white party line, the second was critical both of the slaves for committing acts of violence and of the Jamaican planters for their decision to target the missionaries as culprits. Newspapers in Britain reported on the trials and punishment of various missionaries, including the execution of Sam Sharpe. These newspapers portrayed the missionaries not as traitors who were responsible for the inciting of slave rebellion, but lambs sacrificed to the greed and wanton cruelty of the barbarous planters. Between newspaper articles, anti-slavery societies, and interested activists who wrote letters to the editors, a collection of defenders united in the British press to rally around the accused missionaries. Importantly it was not the plight of the enslaved that moved them to action.

The primary focus of this defense was on a small cadre of men, including three noteworthy ministers, Knibb, Whitehorse, and Abbot, who became the standard bearers for the oppressed religious leaders in the West Indies. In their name, men like J.G. Fuller and other activists argued in defense of the religious ministries. In a letter to the editor of the *Bristol Mercury* in February of 1832, Fuller argued in the *Bristol Mercury* of February 28, 1832, that some of the accusations against the anti-slavery advocates were “too contemptable for formal refutation,” and it was not possible that “these men are guilty, though a host of rebels may rise to condemn them.” Certainly, this was no defense of the slaves; in fact, the slaves themselves rarely came up in these missives. But Fuller reserved his greatest vehemence for those defenders of slavery who slandered the missionaries. Fuller identified these men as villains whose “impure lives are a stigma on man who have professed unblushingly the horrid principles of Atheism” and were men who were “haters of morality... the lovers of sensuality.”

Another activist and anti-slavery agitator, the Reverend John Dyer, secretary of the Baptist Missionary Society, wrote a similar letter to the editor of the *London Evening Standard* in February 1832. For Dyer, the pro-slavery forces were not just lacking in character but were in reality the true bringers of violence to the West Indies. Dyer was unsurprised that the planters once again sought to frame the missionaries, but Dyer believed that “the blameless and inoffensive” preachers had long suffered from the “causeless hostility” of the planter elite. Dyer did not seek to examine the causes of the “lamentable disturbances” rocking Jamaica “or what grievances, real or supposed, may have led to the destruction of property which
has taken place”; instead he focused his ire and attention on the attempts by the white planters to target and punish the missionaries.

Both the proponents and opponents of slavery made skillful use of the language of loyalty. When Reverend Thomas Burchell stood accused of instigating the rebellion, it was claimed by the Chester Chronicle of May 11, 1832, that for Burchell to leave Jamaica would be “dishonorable,” despite the “unnecessary roughness” doled out to missionaries at “the instigation of the white inhabitants.” In the Chronicle, it was made clear that that loyalty and honor belonged to the missionaries and roughness and cruelty to the white inhabitants of Jamaica. Again, the slaves were secondary to the narrative, and in this article the Chronicle made only one passing reference to the slaves (calling them the “colored inhabitants”) and no reference to the damages done by the slaves to the plantations.

The Chronicle did mention damage done to the Baptists; specifically it referenced the destruction of the Baptist chapel in Montego, not by the slaves but by the whites of Jamaica. The Liverpool Mercury viewed with some trepidation the violent rhetoric of the Jamaican Courant and believed that the missionaries had no logical reason to incite a rebellion they could not hope to win. But when the Jamaican Courant stated that there were “fine hanging woods” and hoped “that the bodies of all Methodist preachers who may be convicted of sedition may diversify the scene,” it left the editor of the February 24, 1832 edition of the Mercury with real concerns about the fairness of a trial in Jamaica. With the end of the period of martial law, according to the Coventry Herald of May 4, 1832, the whites were able “to wreak their vengeance, in every possible mode... in the illegal and atrocious outrage.” It was not just that the whites were in power and of questionable loyalty, but they were in fact the savages, as the Drogheda Journal of March 10 made explicit. Resistance to white cruelty and planter savagery was to become a rallying cry, and the Journal believed “the whole British nation will learn against what virulent hostility they [the missionaries] have to contend.”

For many in Britain, the Jamaicans, and specifically the white Jamaicans, were untrustworthy, violent, and disloyal; meanwhile the missionaries were oppressed, under assault, and ill-treated. The slaves made very few appearances in these articles, as the focus rapidly shifted from the story of the rebellion itself. Religious minorities in Britain did not represent a unified political or social front, and it is hard to describe en masse the attitudes of non-conformist religious groups as it related to reform in the nineteenth century. As religious outsiders and a minority group within the Empire, the Baptists would have been to some degree outside the norm. But not so far outside as to be exiled and kept away from the structures of power. While it took an act of emancipation to normalize Catholic relations within Great Britain, other religious minority groups had less difficulty in achieving success and reform in high office. The significance of race and freedom becomes all the more visible when read in the light of the popularity of the Baptists in popular press.

While most of the stories stated that the missionaries had escaped actual punishment, the Dublin Morning Herald reported in April of 1832 that one missionary had been executed as a result of court-martial. And in the Fife Herald, of May 10, a newspaper heavily critical of the slaves thus far, the treason of the planters became
enlarged to cover the entirety of the West Indies, where “there is a secret understanding among the leaders of the Assemblies of the different Islands, and that they are determined to bully the Government.” In the extreme, the whites of Jamaica were murdering innocent missionaries and plotting a mass betrayal of the British government.

West Indian influence was on the wane, and their only attempts at influencing the newspapers came in the form casting blame upon the missionaries, whereas the missionaries countered with claims of cruelty, savagery, and disloyalty. It was as though the planters had become the slaves, replacing the savage African pagan with the violent and cruel white overlord. The language used in the criticism of the planters, words like savage, vengeful, and hostile, was specifically designed to negate the complaints of the planters. White West Indians had portrayed the slaves as docile or calm by nature, subservient to their masters who in turn were held to the expectation of a certain noblesse oblige. All the while the actual victims of white violence, bondage, and the centuries of racially justified slavery remained pawns in the hands of white policymakers.

While the planters argued that it was the missionaries who turned the slaves to violence, the missionaries made a far more compelling case that it was in fact the planters who delivered violence to the West Indies and not the slaves. It was notable that even anti-slave story printed in the Durham County Advertiser in February of 1832 took measures to point out the generally lack of violence in the rebellion when it made note that “great damage has been done to property, but not much to life: the slaves seeming to be more eager in burning the houses, and devastating the plantations, than in offering violence to the persons of their employers.” The slaves were merely “poor ignorant fellow-creatures” who did not know any better. But the planters were educated and wealthy whites who looked the Empire in the eyes and plotted behind her back. They struck out with savagery, violence, and vengeance, destroyed houses of worship, and killed missionaries. It was thus unsurprising that sympathy should so quickly and decisively fall on the side of the abolitionists.

**Conclusion**

In the reports of 1832, we see again what occurred in 1760: both in the depictions of the rebellious slaves as sympathetic or relatable and in the criticism of the planters as complicit in bringing about the crisis. While the planters roundly ignored calls for amelioration in 1760, in 1832 emancipation was inevitable. But in both cases, there was a clear dialogue in the British press over the legal and political realities of the Jamaican situation and the presence of a public understanding that Jamaican slave resistance was fundamentally a part of the Atlantic world. By examining these two keystone moments in resistance to slavery, we can uncover both how the British people understood their empire and how much race and slavery played a role in that understanding. Bondage, the violence of slavery, and the human trafficking that made it possible all played a fundamental role in the ideas of British imperialism, race, and labor, in the eighteenth and nineteenth centuries.
Driven by the actions of enslaved men and women, these moments of illumination forced Britons in some small way to confront the realities of a system of bondage that defined a centuries-long colonial project. If the systems of slavery play a fundamental role in how historians understand empire in the modern and early modern world (and they must), then so too does resistance by the enslaved play a role. Even in situations where the institution of slavery was not a real threat, and the racial order of white supremacy was not undermined, acts of rebellion brought slavery into view for the distant observer. If, as Randolph Starn (1971, p.4) has argued, moments of crisis represent times when the “national character and institutions were thought to have been decisively shaped and tested,” then we must consider the impact of enslaved, fighting against their enslavement challenged had on the national character and institutions of the British Empire, as well as the other slave holding imperial powers of the eighteenth and nineteenth centuries. The legacy of both the challenge that slave rebellions created for imperial powers and the impact those acts of resistance had on directing public discourse can still be seen in the twenty-first century. Civil disobedience, protests, rallies, and marches may not bring direct results (in the same way that the rebellions of 1760 and 1832 did not end slavery in Jamaica), but they do force observers, even those thousands of miles away, to see and discuss the violence and oppression of imperial systems. We are left then to see plainly that rebellion by those trafficked in human bondage and their descendants must be central to our understandings of the making of the modern world.

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Concepts of Slavery in the United States
1865–1914

Catherine Armstrong

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Abstract

The post-emancipation era was defined by the United States’ attempts to come to terms with the loss of slavery and to renegotiate its economic and political position in a global context. By moving slavery into the historic past, politicians remodeled the United States as part of the antislavery alliance with Britain and other European nations, for whom slavery and its eradication was approached with a missionary zeal, representing a key pillar in their imperialist foreign policy. However, many in the United States were unable to consign slavery as quickly to the history books, and slavery and its legacy was a hugely significant issue as the United States grappled with its own identity on the world stage, with the practicalities of coercive labor practices within its own borders and externally, and with the hardening racial doctrines enabled by theories of social Darwinism that seems to militate against the healing of the wounds caused by almost three hundred years of forced labor practices. Domestically, systems of convict labor and debt bondage kept African Americans and some new immigrants trapped in labor systems akin to slavery, while overseas, as the United States became an

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imperial power, slavery was used as a justification for intervention, for rejection of imperialism, and as a means to deploy inferior races in civilizing employment, who otherwise would not work. Defining a group of workers as slaves was a rhetorically powerful act during this period, as it became a means for conservatives to control and exclude Chinese laborers from the American body politic, as well as a means to control and limit women’s sexual work by labeling even voluntary prostitution as white slavery. Pointedly observing the inherent racial traits that allowed the continued existence of slavery overseas, for example, in Africa and the Middle East, was a way for the United States to define itself as an antislave power alongside its European competitors. In fact, the rhetoric of this period was defined by the racial othering of both slave and slave owner as the United States used slavery and its legacy to construct a new role on the world stage.

**Keywords**

Othering · Emancipation · Convict labor · Peonage · Coolies · White slavery · Social Darwinism · Imperialism

In December 1865, with the ratification of the thirteenth amendment to the US Constitution, the nation drew a line under the part of its history involving chattel slavery and moved forward into an era in which “neither slavery nor involuntary servitude, except as the punishment of a crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.” Leaving aside for a moment the very important caveat within the amendment permitting such labor systems as part of the criminal justice system, this text in one swoop converted the United States from a slave-owning nation to one in which such forms of labor were illicit. By moving slavery into the historic past, politicians remodeled the United States as part of the antislavery alliance with Britain and other European nations, for whom slavery and its eradication was approached with a missionary zeal, representing a key pillar in their imperialist foreign policy. However, many in the United States were unable to consign slavery as quickly to the history books, and slavery and its legacy was a hugely significant issue as the United States grappled with its own identity on the world stage, with the practicalities of coercive labor practices within its own borders and externally, and with the hardening racial doctrines enabled by theories of social Darwinism that seems to militate against the healing of the wounds caused by almost 300 years of forced labor practices.

Much of the evidence for this chapter comes from the period prior to the outbreak of World War I, although a few later examples illustrate continuities beyond that era. In the period between 1865 and 1914, definitions of slavery were malleable and mutable, as slavery became something that others practiced, while discourse around “our old slavery days” – antebellum slavery – also evolved into a pernicious nostalgia that served to further belittle and limit the achievements of the freemen and
women struggling to find their place in the changed nation. In the hands of some commentators, slavery became a dirty word, an accusation flung at the ethnic other, especially when slavery was perceived to threaten white women at home or abroad. For others the rhetorical battle over the meaning of slavery was waged to prove that emancipation was only partial and that African American enslavement still stalked the new expanding United States. The thirteenth amendment allowed for some slavery and involuntary servitude, as a punishment for criminal transgression. Convict forced labor had a long history in the North American colonies and throughout the British Empire, especially, although not solely, in Australasia. It was an economic enterprise as well as a means of controlling the behavior of particular underclasses and a way to keep transgressors off the streets and thus protect law-abiding citizens. All of these aspects that appear in the form of convict labor that emerged in the Southern United States after the end of slavery, and also in the debt bondage system of sharecropping, were consciously chosen replacements for newly illegal chattel slavery. Debt bondage had also been practiced alongside slavery in the antebellum era (Daniel 1972); thus this period is one of significant continuity with the antebellum era, as racial and class control was exerted by members of the hegemonic elite through systems of coerced labor both before and after the Civil War.

On the other hand, significant changes were wrought at this moment, and perceptions of slavery rapidly evolved in 50 years after emancipation. This chapter will first explore the conceptual legacy of chattel slavery and show how popular and elite print culture used the idea of our “old slavery days” to entrench a sense of the superiority of the white, Protestant, nativist vision of the United States. It will also show how new forms of coerced labor did the same work for the nation trying to come to terms with the cataclysmic Civil War. This was a period in which the United States considered its place on the world stage for the first meaningful time since the War of Independence, and this context illustrates why global slavery became a concern for Americans. Despite fashioning themselves as exporters of emancipation, Americans of all races often did so while adopting and adapting Social Darwinist views about the hierarchy of races, and they used such concepts to “other” the slave owner as they had once “othered” slaves and as they continued to “other” the freemen and women. Women became particularly important to discussions about slavery perpetrated by “others,” both domestically and on an international stage, as attempts to enforce ideals of domesticity onto white women led to their being given an artificial victimhood in the white slave panic and in discussions about Arab world slavery. This chapter will acknowledge that coerced labor was still a reality in the United States after emancipation but crucially that rhetorical debates over the definition of slavery and the nation’s role in ending it reflect a tendency to deny the horrors of chattel slavery, to romanticize the victims’ relationships with their abusers, and an inability to reconcile the history of the slave past into the identity of the nation. Evidence for this comes from a range of textual and visual primary documents, including newspaper articles and cartoons. The significance of these artifacts of popular culture is complex; therefore they will be treated in a methodologically sensitive way, understood to be neither solely reflecting nor creating cultural change.
Slavery Within the United States: Coerced Labor Continued and the Nation Fails to Understand Its Past

In practical terms, the emancipation of African Americans in 1865 was partial at best. Their inferior treatment in all aspects of life in the Jim Crow era is not news, but it is important here to highlight ways in which systems of coerced labor continued to exist after 1865 in the United States. African Americans were not the sole victims of these systems; many poor white Americans from a range of ethnic backgrounds were ensnared in systems of convict labor, share cropping, and indentured servitude until the outbreak of World War II. Their mistreatment was similar to that of black Americans because it resulted from the actions of a vulnerable hegemonic power within the nation, which was desperate to reinforce its position of control in a rapidly changing world. However, the virulence of the assault that freemen and women experienced in the aftermath of the Civil War was unique in its intensity, and it is no surprise that African Americans made up vastly disproportionate numbers of convict and coerced laborers. In this era the system of oppression felt through extralegal intimidation such as lynching was also targeted primarily at black Americans.

The convict labor system was not only of a moral equivalence to chattel slavery but might be considered a system of slavery (Blackmon 2009). The entire legal system was rigged against African Americans, capturing those innocent of any crime and by rapidly expanding the activities considered against the law. Frederick Douglass offered statistics proving that the convict leasing system was inherently racist: when he wrote, ninety percent of Georgia’s convicts were African American (Douglass 1893). In contravention of the thirteenth amendment, which required any criminal undertaking involuntary labor to have been convicted of a crime, many of those in the convict labor system had not had a trial but were advised by a corrupt judge, in collusion with men desiring unfree laborers for their agriculture or industry, that the best way out of the predicament was to agree to work to pay off their bond. The often-illiterate accused signed documents they were unable to comprehend with no legal representation and later often had their prison term arbitrarily extended for minor transgressions or to cover payment for food or clothing. Treatment of the convicts often amounted to abuse little better than the excesses of chattel slavery: harsh, sadistic punishments; poor food, accommodation, clothing, and medical treatment; and very long working hours with no notion of how they might become free. The uses of convict labor are many and include industry, for example, coal mining in Pennsylvania and public improvements, such as road and railroad construction, especially in Florida, and agricultural work throughout the south. As well as the economic benefit to the businessman of having cheap laborers, the state did not have to house these individuals (a real boon after the devastation of the Civil War), and their labor could be employed in times of labor unrest to strike break. The industrialists kept fields, factories, and mines working in the face of labor protests, and such activities further served to pit black laborers against white laborers. Southern states also used prisoners to labor within their walls and still do. The notorious Parchman prison farm, part of Mississippi State Penitentiary, was founded in 1901 and was deliberately structured as a plantation from the chattel slavery era.
The regime there, which notoriously included white supremacist James Vardaman and his interest in hunting convicts on horseback for entertainment, was worse than slavery (Oshinsky 2009). These examples show how after emancipation the definitions of slavery were contested and assumptions were made that antebellum chattel slavery was the archetypical “slavery” against which all other coercive regimes must be judged. The convict leasing system finally began to wane in the early decades of the twentieth century due to public disquiet, the decrease in profitability, and the increase in the number of penitentiaries, offering an alternative way of dealing with prisoners.

Often, those African Americans not ensnared by the criminal justice system found themselves trapped in a cycle of debt that bound them to their former master. Despite the tendency of many former slaves to try to find work in the northern or western parts of the country, many others were reluctant to do so, partly because of the system that defined an African American traveling away from home as a criminal vagrant. Such dependency on the former systems of enslavement left a crippling psychological legacy on the freemen and women and perhaps helps to explain why so many strategically internalized the racism of the Jim Crow era and reproduced it so frequently in the WPA narratives collected in the 1930s, where they talked in fond terms about former masters and plantation owners after slavery. Photographic evidence from the 1930s, also collected as part of the New Deal initiatives, indicated that poor white families were also caught in sharecropping, again with few opportunities to escape their entrapment. Although sharecropping initially presents itself as unlike slavery, in the autonomy it allowed its laborers, many were unable to move from one employer to another because of their indebtedness, a situation which employers (masters) did little to discourage or alleviate. In many southern states, it was against the law for a sharecropper to leave their master without paying off the debt; thus the master’s control was facilitated by the legal system, allowing him to restrict the movement of his laborers without resorting to the chains of chattel slavery.

Occasionally the legal system was deployed to construct a new definition of slavery that did work in the favor of the disadvantaged laborer. There was an appreciation that the abusive and sadistic treatment of labor, for example, in cases of physically restraining employees, was no longer acceptable in the postbellum world. This mirrors some proslavery discourse about slavery emerging before the Civil War, which emphasized fair treatment of laborers resulting in efficiency, good economy, and the opportunity for slave holders to display “civilized” values, all of which worked to enhance the status of the slave owners in the eyes of his white peers. Similarly, in the late nineteenth century, many in the south understood that the integration of their cultural and economic institutions back into the United States was predicated on establishing and enforcing certain standards. For example, in 1903, in the state of Georgia, there was a series of trials convicting plantation owners of peonage and the use of physical violence to coerce and restrain laborers, in violation of the 1867 act against peonage labor.

Other similar forms of bonded labor existed throughout the United States, such as peonage in the American Southwest (Kiser 2017) and padrone labor in the fruit industry of the Atlantic coast (Hahamovitch 1997). Forced labor activity was
common during the nineteenth century, but there were isolated incidents of coerced labor practices until the outbreak of World War II. These two regional systems relied on financial entrapment of a vulnerable group, alienated either by poverty, a lack of language skills, or by ethnic discrimination. As with African Americans in the south, both migrant labor on the East Coast and peons in the Southwest accepted their status and even had gratitude for the opportunities and protection offered. Often these laborers did not consider themselves enslaved or coerced, and in many ways, their plight was little different to those trapped in poverty in many parts of the United States. In the period after the Civil War, the term “slavery” expanded into “modern-day slavery,” no longer referring solely to a specific economic relationship but rather as an umbrella term encompassing many types of coercive labor situations.

However, during the late nineteenth and early twentieth centuries, reference to the term “slavery” almost always required a comparison with times past. During this period the stories told about America’s antebellum labor system evolved dramatically. The conservative, nostalgic telling of the stories about “our old slavery days” reconstructed the chattel slavery era as a feudal golden age of mutual dependence, love, and respect between the races (Van Deburg 1984). According to this rhetoric, antislavery activists had been a corrupt and hypocritical influence, deliberately trying to break apart the United States, with no genuine love for the African American, whose fate would have been far safer in the hands of southerners, more experienced in handling the so-called Negro problem. The earliest historians of slavery such as Ulrich B. Phillips, the son of a Georgia slave owner, emphasized this when studying the plantation records of the recent past, ignoring the voices of the enslaved themselves. This analysis of the past mirrored the attitudes of many Americans, who, especially after a generation had passed, had begun to doubt that the ending of slavery was a good enough reason to justify the mass bloodletting of the Civil War, which saw approximately 750,000 deaths. A counter narrative also emerged of heroic abolition, of which Abraham Lincoln became the icon. This story foregrounded the activity of white campaigners, who offered inspiration to a new generation of social reformers targeting alcohol abuse, prostitution, and other morally unhygienic phenomena. African American thinkers contributed to this assessment of the legacy of abolition, and countering with tales of the powerful racial origin of Africans, their ongoing resistance to the rhetoric of a benevolent slavery continued well into the twentieth century. However, American conceptions of slavery were not solely influenced by domestic experiences. The international context of antislavery imperialism was increasingly important to Americans’ understanding of the complex definitions of slavery as they created their own “moral empire” (Tyrrell 2010).

**Antislavery Imperialism: The Influence of the International Context**

As the nineteenth century progressed, the United States was increasingly sensitive to perceptions from overseas, especially from Europe, about its relationship with slavery and the slave trade. One European nation after another redefined their
attitudes toward unfree labor and crafted an identity as antislavery nations. The British definition of modernity and civilization in this period was one that rejected slavery within its own bounds and saw it as a duty to carry that message around the world. Of course, this antislavery imperialism was problematic in that it was often hypocritical in its treatment of labor of subject peoples, professing to spread anti-slavery throughout its imperial territories while simultaneously recognizing that coercion was required to remodel these regions as capitalist, modern colonies. This hypocrisy reached its nadir at the turn of the twentieth century in the awful abuses seen in the Belgian Congo under King Leopold, which caused an international outcry and triggered further antislavery activism, this time critical of the imperialist agenda in the United States led by George Washington Williams and E. D. Morel. During the Civil War, the United States signed up to treaties with the British agreeing to act against the illegal transatlantic slave trade and then rendered its own system of slavery illegal. The Civil War era had forced sober re-evaluation, and after much delay, some politicians seemed ready in the last quarter of the nineteenth century to see the United States join its European rivals in global antislavery activities of its own.

The United States’ role as an imperial and antislavery nation had painful birth pangs, often debated within the popular and elite literature. The nation’s birth a century earlier had explicitly rejected empire and led to a suspicious view of European empire building (McCarthy 2009). However, economic and strategic imperatives in the Pacific and Caribbean, as well as the nation’s interest in African matters due to its own African diasporic population, led to a more global outlook. Following the British rhetoric, much of the United States’ involvement in overseas adventures that led the nation to imperialism was justified through proclaiming benefits to the colonized people: commerce, Christianity, and civilization. Underpinning those was the idea that slavery, wherever it was found, must be rooted out, as it was now considered contrary to those social, cultural, and economic goals. These attitudes had changed quickly in the United States. During the Civil War, the Confederacy in its more exuberant early days considered spreading a plantocracy not only across the continental United States but also overseas. In the period immediately prior to the war, apologists such as George Fitzhugh defined chattel slavery and serfdom as the more modern labor systems, preferable to the metaphorical enslavement of free labor. But, influenced by powerful European ideas, the American pro-imperialist faction remodeled the nation as one carrying civilization to dependent and inferior races, and one of the main facets of this mission was to stamp out retrograde labor practices such as slavery. This argument was also deployed in the domestic sphere, as General John Sanborn justified encroachment into Native American territory suggesting that US jurisdiction there would allow the nation to protect those formerly enslaved by tribes such as the Creek, Choctaw, and Cherokee (Krauthamer 2013). This antislavery rhetoric was especially powerful in the 1890s on an international level during the Philippine occupation but also appeared in discussions of Cuba and Hawaii. In the Philippines, the targeted “Moros,” not only slave holders but Muslims, were perceived as standing in the way of progress and abusing their own people, injustices that US soldiers on the ground were powerless to influence, but that peppered
antislavery rhetoric back home. In 1912, discussions of Philippine slavery also affected the presidential election as Howard Taft campaigned to delay Philippine independence because of their inability to stamp out slavery, despite its legal abolition in 1903 (McCoy 2009).

This antislavery imperialism did not go unchallenged, and perceptions of misguided foreign adventures and of the hypocritical behavior of imperialists were frequently discussed in text and visual form in newspapers. Anti-imperialists such as Democrat William Jennings Bryan and the Anti-Imperialist League were often conservative and evoked racially deterministic ideas to dissuade the American public of the sense of holding overseas colonies. It was American imperialists who tended to challenge the racial outlook of their day (Love 2004). Anti-imperialists held the view that to bring such polities into the American fold would dilute the purity of the American people, and the specter of inferior races having a say within the American political system was raised to frighten a weary populace, already grappling with its own “Negro problem.” Other more moderate anti-imperialists felt that the nation was simply unready for such colonial activity, having so recently been wrenched apart in war.

The justification of imperialism was contested when examining the US relationship with Africa. Imperialists saw the opportunity to match European economic and strategic success and felt that Americans were being left behind after the Berlin Conference of 1884. African American commentators grappled with the complexities of a global awareness of the role of people of the African diaspora. The descendants of those taken in the slave trade felt a strong affinity with the people of Africa, but their understanding of their own role in the spreading of civilization was complex. Some felt that the advanced nature of African civilization was underplayed by white hegemons in Europe and the United States, for reasons of racial and economic expediency, and such a view was expressed in 1895, at the Atlanta Congress of Africa, while others felt that members of the African diaspora did indeed have a role to play in returning to Africa as educators, sharing the lessons about agriculture, development, and progress that had ironically been forced on them through slavery. The experiments, first by Martin Delany and others in Liberia and later by Booker T. Washington in Togo, reveal this controversial use of colonialist attitudes toward indigenous Africans. Martin Delany’s views toward Africans were tainted by ideas of racial hierarchy, and while he espoused a black nationalism on a global scale, he also viewed African Americans as representatives of a higher civilization (Whyte 2015). Booker T. Washington’s Tuskegee Institute sent representatives to German Togo in 1901 to educate Africans on how to be capitalist, free laborers who could cultivate cotton in the same manner as African Americans did in the postbellum southern states (Zimmerman 2010). This mission was especially problematic because of the entrenchment of unfree labor models in the southern Jim Crow agricultural system. The farms established required coercion of the local indigenous African population (German attitudes at the time argued that without coercion, the inherently indigent African would not work), and the resistance of indigenous Africans to the scheme resulted in the return of the Tuskegee farmers to America with little success.
The perceptions of slavery were influenced not only by attitudes of imperial nations such as the British but also by the world’s changing demographic situation. Economic migration, both forced and free, had been a feature of world history since ancient times, when entire small populations of subject peoples were moved around by marauding powers to suit their economic and strategic requirements. However, the changes in technology of transport and communication of the modern era resulted in mass movement of people. In the late nineteenth century, as now, the boundaries between forced and free migration were difficult to discern. With the ending of the forced migration of Africans through the transatlantic system and diplomatic efforts to prevent the forced movement of people in the Islamic World slave system, corrupt systems of convict transportation and later indentured servitude and blackbirding arose to fill the gap left by the chattel slave markets. For the United States, the presence of indentured servitude caused a conceptual problem: was this a system of enslavement, thus to be avowed and prevented, or rather was this a legitimate way for those in need of cheap labor to acquire it? The answer to that question depended on the political expediency of the time. For example, those intent on arguing that Chinese immigration to the United States was a negative force and would taint the country because “coolie” laborers were decidedly un-American, indentured servitude was a form of slavery which brought coerced, inferior laborers into the country. Denis Kearney, leader of the anti-Chinese labor movement in California in the 1870s, called Chinese laborers “cheap slaves.” Chinese, like African Americans, were “degraded” labor and not easily incorporated into the free labor ideology of the emancipation era (Aarim-Heriot 2003). However, for those, such as American settler colonists, who ran a profitable sugar industry in Hawaii who saw the necessity of a cheap labor force, indentured servitude offered a way of acquiring large numbers of workers. They were accused of coercive contract labor practices in their treatment of laborers from China, Japan, and Puerto Rico (Poblete 2014). These workers, recent arrivals from overseas, were often represented (and at times coerced) by their countrymen who assisted their arrival and settling in to their new homes, as in the East Coast padrone system. These patterns persist into the present day, with the line blurred between facilitation and coercion. The acceptability of certain labor forms was also determined by racial attitudes, with labor practices defined as acceptable when perpetrated by those not seen as racially challenging to the American populous. Thus, in the period after emancipation, American attitudes to slavery and forced labor continued to be defined by racial ideology.

Racism Evolving: Othering the Slave, Othering the Slave Owner

While it is true that the racial ideology justifying Atlantic world slavery was particularly virulent, in most forms of slavery in evidence around the world and across time, some othering of the victim takes place. This represents a continuum over the longue durée, but a postbellum change was that the racial rhetoric that othered the chattel slave was adapted to other those trapped in different coercive
labor situations. However, after emancipation, and with the United States consider-
ing its position as a global economic and strategic power, antislavery imperialism
also caused the development of a new type of rhetoric within the United States,
which othered the slave owner. This also built on a rhetorical continuum as, prior to
the Civil War, abolitionists had been vocal and strategic in their use of popular media
to alienate the slave owner from the mainstream of American society. Then slave
owners were accused of transgressing Christian norms of behavior or representing a
backward, almost feudal system out of kilter with the modern world. They were not
attacked on racial grounds because, of course, they represented a pillar of white
hegemonic power. What was new after emancipation was the way that racially
deterministic discourse was used to attack and alienate the slave owner in far distant
parts of the globe, especially in the Philippines, Hawaii, Africa, and the Middle East.

Racially othering the victims of abusive labor practices within the United States
and globally continued apace after the Civil War. As shown above, the Jim Crow
legal, extralegal, and social systems of control kept the black laboring population in
their place and for decades after emancipation bound them to corrupt and coercive
employers through convict labor and debt bondage systems. In some cases, such as
the citrus industry of central Florida, this persisted even until after World War II.
Systems of control had two main functions, to reinforce the hegemony of the white
population, including its poorer members, by teaching them about their superiority,
while at the same time preventing attempts by the African American population
through individual ambition or collective organization to improve their lives in situ
or by moving elsewhere.

This othering of the forced laborer was practiced by two types of perpetrator,
firstly those defending them as justified because of the nature of the laborers who
would not otherwise work hard because of their lazy or childlike natures. Second,
defenders of forced labor situations did so with the goal of maintaining social and
racial hierarchies, caring less about the economics of labor and more about threats to
society from integration and miscegenation. During the late nineteenth century,
theories of scientific racism that ranked ethnic groups according to innate abilities
and characteristics emerged from the academy and became commonplace through-
out American society. Developed from Charles Darwin’s theories (ironically Darwin
was an antislavery proponent), scientific racism was developed by important Amer-
ican theorists such as Louis Agassiz, who in the decade prior to the outbreak of the
Civil War photographically surveyed enslaved African Americans in South Carolina.
Agassiz was not a proslavery apologist, but he did believe that African Americans
were entirely differently descended to the white man (he was an adherent of the
theory of polygenesis), and, although he expressed sympathy for the plight of the
individuals that he encountered, he firmly believed that they were racially inferior.
This ranking resulted in the fear of higher-ranking races that dilution of their
bloodstock would result in weakening. These now distasteful racial views affected
all aspects of political, social, and economic policy, including attitudes toward and
controls of immigration, on urban development, on the improvement of health and
education provision, on attitudes to alcohol and other intoxicating substances, and on
views about labor systems.
Not all Americans at the turn of the twentieth century were disdainful toward racial mixing, and they challenged the predominance of racial determinism. African American thinkers such as W.E.B. Du Bois countered arguments about the natural inferiority of black people by pointing to advanced civilizations in Africa and the Middle East as well as challenging the static ideas of race that underpinned hierarchical systems. The anthropologist Franz Boas preferred to challenge social Darwinism with views sympathetic to the twenty-first-century understanding, suggesting that differences in attainment between the races were caused by cultural inequality and not by inherent racial difference. But in this period, their voices were often drowned out by the strength of adherents to racial determinism, whose ideologies in the United States impacted victims of forced labor.

Since the arrival in California of large numbers of Chinese immigrants, the rhetoric of racial difference was employed to keep this population in a socially and economically inferior position. After emancipation newspapers used both text and cartoon to suggest that many of the Chinese arriving on the West Coast were forced laborers, dismissively known as “coolies.” The indentured labor system that took many migrants out of China was indeed often corrupt, and traffickers made false promises to migrants heading to Hawaii and Peru as well as the United States. However, many of the Chinese settlers made the journey as free migrants, and being tarnished as forced laborers or even slaves was an attempt by conservative commentators to stir up resentment and prevent further migration. This partially succeeded as from 1888 onward, the Chinese were the first racial group to be systematically targeted by immigration control legislation. However, this law did not prevent the arrival of many migrants from China, and despite facing prejudice, within a generation many settlers successfully established themselves. This is an example of the racial othering of victims of forced labor but also of the mutability of definitions of forced labor. The concept of slavery is being used here as a weapon to prevent the arrival of those seen as racially undesirable. It is not being used to defend the victims of forced labor or to further national goals, even in a hypocritical and cynical way as imperialists sometimes did, but rather to defend the racial purity of the nation.

American strategic interests were furthered more successfully in some cases by othering the slave owner and slave trafficker rather than attacking the supposedly enslaved. Just as European empire builders did, by identifying the slave owner as racially inferior, Americans justified imperial intervention. In the Philippines, the United States entered the vacuum left by the collapsing Spanish empire and encountered a complicated system of racial hierarchy that looked unlike anything they had experienced in their contact with Native Americans and African Americans, although President Roosevelt did compare the hostile General Aguinaldo with Sitting Bull to justify US interference (Blount 1913). To rank the different ethnic and religious groups within the Philippine Islands, the Americans identified tribes which appeared more and less “advanced” in terms of clothing and other appearance markers but also used religion and slavery as ways to differentiate, identifying the “Moros” as “other” in two ways. Firstly, they were Muslims, and relatively recent immigrants to the islands, depicted as interlopers taking advantage of indigenous Philippine islanders. Americans, especially southerners, used this concept as a way
of delineating differences between enslaver and enslaved, so that Philippine prac-
tices more closely mirrored the type of slavery they were used to in the antebellum south (Salman 2001). And secondly, the Moros practiced slavery, seen as more suspicous because of their religion. Global slavery in the late nineteenth century was increasingly depicted as perpetrated by Muslims. The presence of this subversive population bent on corrupting the other Philippine tribal groups allowed imperialists to justify American involvement in the region.

Elsewhere, in parts of the world where the United States was more an inter-
ested observer than an active participant, Muslim slave owners and traders gained a notorious reputation. In the Middle East and East Africa, led by the British but copied by the Americans, slave trading was refashioned as a Muslim occupation, one that was promulgated by corrupt and greedy “Arabs” with its victims being vulnerable, backward Africans who needed military protection. This was despite the willingness of the British in East and Central Africa to negotiate with slave traders such as Tippu Tip for power. Muslim traders further east were also depicted as targeting white victims from regions such as Circassia. This “white slavery” attracted much newspaper attention in the United States, representing as it did the “world turned upside down” – the continued existence of slavery and one that subverted accepted racial norms. Again, the use of white slavery as a rhetorical tool to alienate the slave owner was not a new phenomenon but a continuity from before emancipation. During the Civil War, abolitionists had used extremely light-skinned enslaved children to promote their cause to waver-
ing northerners, with the message that the southern system of slavery was so corrupt that even white-looking children were caught up in it.

The white slavery of the late nineteenth century was a gendered phenomenon. Female Circassian slaves captured by Turks and taken into harems as sex slaves horrified and titillated American and British audiences, as visual representations of these scantily clad women, and their exoticized Arab captors, appeared in newspapers and high art and literature. From the late nineteenth century, the term “white slavery” also took on a new meaning becoming a synonym for sex trafficking and all forms of prostitution. First in Britain and later in the United States, white slavery panics took hold, with authors fearing that innocent girls and women were enslaved by traffickers often depicted as the racial other.

**Slavery: White Slavery and Gender – A New Phenomenon?**

Antislavery rhetoric from the late eighteenth and early nineteenth centuries often focused on the female victim and the abuses perpetrated on her body in an attempt to persuade the public of the true horror and moral corruption of the slave trade and the system of slavery itself. This model had its flaws as a persuasive tool, however, because the victims of the transatlantic system were black and, like poor white women, for many commentators these victims could not be considered part of the ideal of “true womanhood” that defined a protected and cosseted role for white, wealthy, and respectable women. As we have seen, abolitionists stretched
definitions of whiteness to proclaim as victims of white slavery those white-seeming light-skinned slaves paraded in the north to raise money for the cause. In the later nineteenth century, definitions of whiteness became yet more flexible, welcoming more ethnic groups into the fold. White slavery had local and global variants, encompassing types of slavery perpetrated by racial others far away, by exoticized perpetrators, and by sex trafficking to the United States, which also had strong overtones of the otherness of the trafficker and the whiteness, and sexual purity, of the victims.

Throughout history, Arab world slavery, with its aim of population growth and the spread of Islam, always had more focus on the female enslaved than did the Atlantic world system, whose goal was to furnish the strongest laborers. The position of enslaved women taken as concubines to the harems of the Middle East is a complex one, and some of those were able to achieve positions of immense political and economic power and were protected and highly valued. Others found themselves physically and sexually abused, used as little more than tools of procreation. The hidden polygamous world of the harem fascinated observers from Europe and the United States and from the early nineteenth century onward became a fashionable topic for artistic and literary representation, although fascination with the gentility and beauty of Circassian women had been present in Southern European and Middle Eastern culture since the early modern period. Various such scenes were depicted explicitly for titillation or as political attempts to label the Turkish or Arab heads of household as corrupt and cruel with their domestic arrangements as decidedly unchristian.

During the Civil War, Circassian women were displayed in the United States as part of P.T. Barnum’s show, tapping in to abolitionist concern about white women escaping a life of enslavement. However, in the 1870s when the issue caused a sensation in American newspapers, when news broke that white women and girls were still being kidnapped and enslaved as concubines in Ottoman harems, the racial othering took a new turn because not only did the race of the victim make her more sympathetic in the minds of an American newspaper audience, but now that the United States had emancipated its own slaves, it was easier for America’s people to distance themselves from the practice. While in the United States such slavery was represented as typical of the cruel Turk, throughout the nineteenth century, the Ottoman Empire attempted to suppress the slave trade in white women and girls, but the trade persisted partly because of the impoverishment of subject peoples like the Circassians who were willing to sell their children in the hope that, with one less mouth to feed at home, the enslaved child might have a better life elsewhere. Such complications in this type of sexual slavery did not frequently make the newspapers of the United States, which preferred to use the stories to further orientalist motives of othering and exoticizing the people of the region.

At the turn of the twentieth century, a more sustained white slavery panic, mirroring one in the British press, developed around the issue of sex trafficking to and within the United States. By labeling coerced prostitution (and in some cases, all prostitution) as white slavery, the press failed to acknowledge the diverse ethnic backgrounds of the women doing sex work and, also, reflecting debates continuing
into the twenty-first century, ignored the thorny problem that many sex workers undertook the job willingly. The white slavery panic is part of the progressive agenda to improve the moral hygiene of the American people by using the mechanisms of the state to change the behavior of those who were too weak or unwilling to change on their own (Leonard 2016). This agenda encompassed many types of reform including the treatment of disease and mental health and attitudes to alcohol and drugs. White slavery literature, novels, pamphlets, and newspaper accounts told stories of vulnerable women and girls who through naivete or greed were enticed into a life of prostitution by men and women depicted as the ethnic other (Donovan 2006). This enticement might involve the corruption of a city office girl, the tempting of a country girl to move to the city, or the international trafficking of women and girls to the United States. In white slavery discourse, the city itself was to blame as a site of corruption, but it was the specter of organized rings of traffickers led by French, Russian, or Jewish gang members that caused fear in the minds of readers. However, in 1910, an inquiry, with John D. Rockefeller junior as foreman, found evidence of no such organization.

Much of the white slavery literature was written by activists such as Frances Willard or Jane Addams working with female victims or by members of law enforcement such as Theodore Bingham or Clifford Roe and carried with it the ring of authority. However, this literature was also titillating for the reader, as the downfall of the young women was, for the time, graphically described in often highly melodramatic language. The coercion of the women was emphasized, and the use of the term “slavery” heightened the audience’s awareness of the nature of this victimhood. While protecting and defending vulnerable young girls was the aim of campaigners, to do so by emphasizing the whiteness of their skin renders their work problematic and factually incorrect, and the body of literature as a whole reflects a concern, not only with the victims of forced prostitution but with independent, single women as wage earners in an urban environment, without a master (their father or husband) to control them. As with the case of Chinese immigration, this is another example of the rhetoric of slavery being deployed to restrict the opportunities of the supposed victims of enslavement.

**Conclusion**

The period immediately after emancipation in the United States represents one of continuity and change of coming to terms with the psychic shock of the war itself and its consequence of the abolition of slavery. Formerly enslaved individuals found themselves trapped in forced labor situations as part of systematic tools of social and economic control. But in other ways, the abolitionist legacy that had defined slavery as un-American also affected the zeitgeist after emancipation. Combined with the antislavery imperialist agenda of Europe, this legacy encouraged Americans to see themselves as activists on the global stage, using opposition to slavery as one weapon in the expansionists’ arsenal. During this period the definition of slavery was expanded profoundly, evolving from an economic relationship defined by
chattel ownership to a term which encompassed many types of abusive and coercive labor. Thus, in this period, indentured servitude and prostitution, among other phenomena, were deliberately defined as “slavery” for the purposes of exclusion or control. As the mass global movement of people increased exponentially, defining aspects of that movement as slavery was a way of legally and rhetorically limiting it.

The racially deterministic theories emerging out of social Darwinism framed much of the discourse on enslavement and allowed the othering of both victim and perpetrator depending on which was most expedient for contemporaries. Writing that urged the United States to act against slavery referred to the hierarchy of races, suggesting either that slave traders and owners were inherently cruel and corrupt, and their childlike victims from backward races needed protection, or that their presence within US society was undesirable and they should be turned away, or that their victims deserved protection because their whiteness, and thus their superiority, added to the injustice of their enslavement. Writing that denied that particular labor practices counted as slavery both within the United States and globally also employed discourse about the hierarchy of races, arguing that the racial profile of the supposed victims ironically meant that they could not become modern free workers without coercion at this stage of their development. While there was some resistance to racial determinism around the discourse of slavery from both white and black thinkers, their voices often became lost as racist ideology was embedded in European and American writing emerging both from the intellectual elite and from the popular press. Prior to the Civil War, in the construction of the ideal victim of slavery, abolitionists used female slavery as a powerful rhetorical weapon, and this happened similarly after emancipation, when coupled with white victimhood, the discourse became a powerful reiteration of the era’s values of true womanhood. Therefore, while in the period after emancipation the domestic concepts of slavery and antislavery from antebellum rhetoric retained their power, these morphed into new forms as slavery as a concept itself expanded and as the United States grappled with its own position on the world stage as a former slave power and a new imperial one.

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When Freeing the Slaves Was Illegal: “Reverse-Trafficking” and the Unholy, Unruly Rule of Law

Faith Marchal

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Abstract

During nineteenth century, when racialized chattel slavery in the United States was at its peak, a form of abolitionism known as the Underground Railroad emerged to challenge what had been firmly established in American society through what the author calls an unholy, unruly rule of law. This was slaveholder law, and it had evolved over several centuries – haphazardly at first, and as abolitionism began to take hold, out of desperation – to protect the interests of slaveholders at the expense of millions of enslaved African Americans.

The Underground Railroad was a clandestine, loosely organized network of men and women, black and white, who risked social censure, imprisonment, injury, and even death in their efforts to aid and abet thousands of fugitive slaves escaping from enforced bondage. Acts of slave-hunting, recapture, transportation, and re-enslavement of fugitive slaves – akin to what we know as illegal trafficking today – were then perfectly legal. By contrast, acts of assistance to people

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escaping from bondage into freedom – akin to the work of human rights and anti-trafficking activists today – were illegal and hence incredibly risky for all concerned. Participants in the Underground Railroad therefore knowingly broke the rule of law through deliberate acts of civil disobedience, a collective act of resistance the like of which would not be seen in the United States for over 100 years.

Thus, the Underground Railroad turns our understanding of human trafficking, as well as our understanding of the rule of law, upside down.

**Keywords**

Slavery · Slaveholding · Abolitionism · Human rights · Human rights activism · Human trafficking · The Underground Railroad · The rule of law

**Introduction**

This chapter is in two parts. Part One provides the historical and legal context from which the American abolitionist movement and, specifically, the clandestine anti-slavery activist network that later became known as the Underground Railroad emerged. It explains what that network was up against – including a bulwark of federally sanctioned slaveholder law – and what it managed to accomplish, against all the odds.

It was a history that took many years to emerge. The need for secrecy, the lack of a centralized organizational structure, and the resulting dearth of contemporaneous accounts, letters, diaries, and scrapbooks meant that the first attempt at writing a comprehensive history of the Underground Railroad would not be made until 1898. Its compiler, Wilbur Siebert, relied primarily on reminiscences – both published and unpublished – of surviving abolitionists and their families, including the published memoirs of Samuel May (1869), Levi Coffin (1876), Laura Haviland (1881), and Calvin Fairbank (1890), as well as the earliest published accounts of the Underground Railroad’s operations in Pennsylvania (Still 1872; Smedley 1883). Siebert also drew on recollections from books, archived newspapers, personal letters, and diaries, as he freely acknowledged (Siebert 1898). However, the work of black abolitionists and the self-emancipatory efforts of enslaved African Americans and the friends and family members who assisted them were largely ignored by scholars until the publication of Larry Gara’s myth-busting book of 1961, *The Liberty Line* (Gara 1961).

A further problem for scholars of slavery and anti-slavery resistance was that the transcripts of over 2,000 interviews conducted with formerly enslaved African Americans during the late 1930s languished in the Library of Congress, largely unstudied, until the 1970s when they were finally collated and published. Those transcripts – part of the Federal Writers Project – are themselves somewhat problematic. In all but a few states, most of the interviewers were white, and all the interviewers – whether black or white – carried with them the authority of role. At a
time when racial prejudice was at its height, these factors would almost certainly have made a difference in the way former slaves responded (Yetman n.d.). Despite the methodological issues that were obvious even at the time, they remain among the few extant firsthand accounts of the lived experiences of slavery and, in a few instances, firsthand personal experiences of what it was like to travel via the Underground Railroad.

Catherine Clinton has called the lack of serious historical scholarship a regrettable form of “disremembering” (Clinton 2004). Perhaps it is only coincidence, but the renewal of scholarly interest in the history of slavery and anti-slavery resistance in the United States largely coincided with the civil rights movement of the 1960s and the emergence of black studies in American universities. Similarly, perhaps it is only coincidence that, with a few exceptions, the establishment of academic research centers specifically dedicated to slavery and anti-slavery resistance at Yale, Harvard, and other prestigious American universities largely coincided with the establishment of the National Park Service’s Network to Freedom program in the late 1990s, itself the result of a Congressional directive. This program was specifically set up to find ways of exploring and commemorating the Underground Railroad.

During the latter decades of the twentieth century, Underground Railroad scholarship established beyond doubt that, unusually for its time, its participants were racially integrated, its operators both black and white. The origins of the railroad metaphor to represent the many and various means and routes of escape remain a matter for speculation, but it is likely that it emerged with the growth of actual railroads in the mid-nineteenth century, when anti-slavery activism was at its peak (Bordewich 2005). For freedom-seekers and those who assisted them in their escape and flight, however, travelling via the Underground Railroad went far beyond metaphor: it was to journey toward full humanity, with all its rights, privileges, and responsibilities at a time when enslaved people were considered, in law, little better than beasts of burden (Du Bois 1903). Thus, the Underground Railroad turns our understanding of human trafficking and what is meant by the rule of law, upside down.

Part Two explores the problematic historical aftermaths of abolitionism after the end of the Civil War, when slavery was formally abolished and the need for the Underground Railroad evaporated. The ratification of three Constitutional amendments – providing for freedom from slavery, full citizenship, and the right to vote – appeared to signal the beginning of the end of injustice for African Americans. Yet worse was to come, as earlier slaveholder law mutated into something equally if not more dismissive and divisive. As Du Bois would later put it, the granting suffrage to blacks “ended a civil war by beginning a race feud” (Du Bois 1903). Known as Jim Crow, the deep-seated bias against blacks that had underpinned slaveholder law went on to distort the universality of rules of law grounded in the reciprocal recognition of a common humanity. It was a situation that ungrounded, and continues to unground, justice itself for millions of African Americans.

These troubling aftermaths also show why the Underground Railroad should be viewed not simply through the lens of history but through the lens of the ongoing struggle for human rights. Arguably, we could not enjoy the human rights that tend to be taken for granted today without the efforts of those individuals prepared
to stand up and defend those rights, and this has always taken considerable personal
courage, both then and now.

This chapter concludes by drawing parallels between illegal anti-slavery activism
then and legal anti-slavery and human rights activism today and connects yesterday’s
unfinished business with today’s persistent, if unintended, consequences.

Part 1: Yesterday

A Most “Peculiar Institution”: A Genealogy of Slaveholder Law

The first black people to be imported to the American colonies as involuntary
workers arrived on the shores of Virginia in 1619. Within little over a generation,
slave status had become hereditary. From 1662, in a departure from English common
law whereby the status of children traditionally followed the status of their fathers,
the law applicable in the colony of Virginia determined instead that the status of
children born to enslaved women would follow the status of their mothers, rather like
the laws governing the offspring of farm animals. This applied whether or not the
father was black or white, enslaved or free. Over the next two centuries slave law
gradually, if haphazardly – given its previous absence in English common law –
made it legal not only to control the labor of a person for a time-limited period, as in
the case of indentured service. Additions to slaveholder law would eventually make
it legal to own a person, as well as that person’s descendants, as one might own items
of property, and in perpetuity (Finkelman 2012).

The chances of an enslaved person being able to achieve his or her own freedom
by legal means, such as buying oneself, were extremely low and entirely subject to
the whim of the slaveholder. As for slaveholders, at times the law also made it
difficult and costly to manumit, or free, one’s own slaves. As early as 1691 Virginia’s
General Assembly passed a law requiring any newly freed slave to “leave the colony
within 6 months and the former master to pay for their trip,” which was a clear
disincentive to manumission for land-rich but cash-poor slaveholders (Rowe 2005).

Later legal developments meant that even if a slaveholder wanted to free his or
her slaves and could afford to do so, acts of manumission would require state
approval. For example, the 1723 Act Directing the Trial of Slaves, Committing
Capital Crimes; and for the More Effectual Punishing Conspiracies and Insurrec-
tion of Them; and for the Better Government of Negros, Mulattos, and Indians, Bond
or Free was passed in Virginia in response to rumors of slave insurrections and was
very precise: “No Negro, Mulatto, or Indian slaves shall be set free, upon any
pretence whatsoever, except for some meritorious services, to be adjudged and
allowed by the Governor and Council, for the time being.”

In due course, additional legislation would also prohibit blacks from testifying
against whites, which meant that for all intents and purposes, enslaved people would
not count as legal persons in law. This meant that they could not act as witnesses in
their own or others’ defense, regardless of the nature of crimes committed against
them, for instance, rape, physical cruelty, or torture (Finkelman 2012). The situation
was such that in 1791, John Wesley would write to William Wilberforce that “American slavery was the vilest that ever saw the sun” (Losurdo 2011).

The construction of this body of law had at first been haphazard and “after the fact,” with insecure theoretical underpinnings. As the result of a series of impromptu decisions, it did not sit comfortably with what is known as positive law, that is, law that has been posited presumably for the greater good. However, neither did it sit comfortably with the tenets of natural rights that had informed the Declaration of Independence. It fits better into what one might call situational law, in the sense that for each situation that presented itself as a problem, a decision was taken to resolve it by legislation (Davis 1975).

The problem was that racialized chattel slavery stood in stark contrast to the nation’s founding documents – the Declaration of Independence, the Constitution and its first ten amendments, known as the Bill of Rights. Slavery may have been described in the Declaration as an imposition of a tyrannical British monarch, but after independence and after the United Kingdom abolished slavery in its remaining colonies, slavery did not die a natural death in the United States, as the founding fathers might have hoped. Those hopes proved to be naïve at best. Despite concerns about the ethical and moral aspects of slavery that they themselves expressed, primarily in their private writings, slavery instead grew exponentially, particularly after the invention of the cotton gin in 1793 and the explosion in the demand for cheap labor. This led to a significant financial capital investment in unfreedom, in the perpetuation of slavery. As British historian George Bancroft would note when slavery was at its peak, nowhere in all the legislation of America was there “one single law which recognizes the rightfulness of slavery in the abstract” (Bancroft 1851). There was not an area within the United States, north or south, which did not in some way profit from slavery (Farrow et al. 2006).

After the cessation of the transatlantic slave trade in 1807, an enormously profitable internal slave market rapidly took its place. It is estimated that some 700,000 slaves were forcibly uprooted from their homes and families in upper-south slave states such as Virginia and Maryland and sent to the labor-hungry cotton fields of the Deep South (Tobin and Jones 2008).

Early photographs, plantation inventories, newspaper advertisements for the sale of slaves, and handbills offering rewards for their capture combine to illustrate the sheer banality and ordinariness of slavery in people’s everyday lives. Slavery had been institutionalized and systemized. It was indeed a “peculiar institution,” the euphemistic terminology of the day belying a curious reluctance to acknowledge in words what was openly and legally practiced.

That said, it was a system based on fear, as Dr. James McCune Smith, the black University of Glasgow educated physician, himself a former slave, so keenly observed. In 1843 he wrote from his New York City home: “The laws they enact in regard to us are positive proof that our oppressors are getting more and more convinced that we are men like themselves; for they enact just such laws as the experience of all History has shown to be necessary in order to hold men in slavery. Their opinion of our manhood, then, may be measured by the severity of their laws” (McCune Smith 2006).
To white slaveholders, the notion that blacks might eventually wish to be free was worrying enough, but the notion that they might want to – and did – escape and, at times, collectively rebel against their enslavement was deeply threatening (Aptheker 1943). In Southern Virginia, in 1831 a slave insurrection involving some 60 fugitive slaves, organized by Nat Turner, resulted in the deaths of dozens of whites. The Nat Turner rebellion, as it became known, terrified slaveholders as never before. This is partly because Nat Turner was known to be literate. He was thought to have been influenced by the inflammatory writings of black abolitionist David Walker, whose *Appeal in Four Articles* claimed that despite being “subjected to the most wretched condition on earth, yet that spirit and feeling which constitute the creature, man, can never be entirely erased from his breast... The whites... are afraid that we, being men, and not brutes, will retaliate...” (Walker 1829).

By the early 1830s, in response to the inflammatory writings of both black and white abolitionists and as a way of limiting access to any information that might inspire further rebellion, slaveholder law also prohibited the teaching of slaves. In today’s parlance, one might say that slaveholder law was a desperate attempt to contain risk. Risk containment in this context worked in two ways: to restrict and control the growing black population and to enclose and protect from interference the interests of slaveholders. The 1857 *Dred Scott v. Sandford* case established that slavery could be expanded into territories where previously it had been barred and, significantly, stipulated that black people – including *free* blacks – were not and could never be citizens and thus had no legal standing in court.

As for slavery itself, black abolitionist David Walker presented it as a moral evil (Walker 1829). It represented a moral contradiction, as the ownership of other human beings stood in sharp contrast to the spirit of the Enlightenment, which regarded the tendency to define and treat other people as physical objects morally repugnant – at least in the abstract (Davis 2014). Furthermore, different states had different laws relating to enslavement and manumission, reflecting the tensions between states’ rights and federal authority that had characterized American politics since the country’s founding. Those laws could be chopped and changed, enhanced or diminished in impact, and exceptions made according to the personal and financial interests of the most influential politicians and lawmakers of the day, many of whom were slaveholders. It is for these reasons that slaveholder law can be called both unholy and unruly.

The point of providing a genealogy of slaveholder law is to demonstrate that, despite its unruliness, its emergence as the prevailing law of the land was not simply an accident. Rather, it was the result of a series of deliberate, conscious legal decisions, taken as situations arose. Nowhere in the world was chattel slavery – the form of slavery that treats people as items of property – so unequivocally racially constructed, so prolonged, and so comprehensively supported and legitimized by the law of the land as in the United States where, as it was boldly claimed in 1776, all men were created equal. Furthermore, it stood in sharp contrast to long-established principles of what is known as the rule of law, that is, that no one is above the law and that the law must be applied fairly to all those who are subject to it. Its effectiveness, and indeed its very existence, depends on the reciprocity of
expectations and trust in one’s fellow citizens to respect those same principles and, by implication, to obey the law (Bingham 2010).

Among slaveholding peers, this notion of reciprocity may have been present, but enslaved people – regarded as objects in law, not as persons – had no such expectations, and hence there could be no reciprocity. Why would enslaved people put their trust in the very laws that had legitimized their enslavement?

**Enter the Underground Railroad**

The Underground Railroad was a loose, clandestine network of thousands of African Americans – both enslaved and free – and their white allies, who were motivated to work together for the express purpose of assisting enslaved people out of bondage. Fergus Bordewich described them like this: “Except for their beards and bonnets they might be us, except for one great and dramatic difference. For a few hours each week or month, they burst the bonds of their ordinariness, taking risks that we can scarcely imagine. They became radicals, lawbreakers, trespassing the dangerous boundaries of race, and undertaking sacrifices that make us wonder if we would do the same” (Bordewich 2005), a challenge that continues to resonate today. Their work was underpinned by a racial, religious, and political radicalism that preceded the better known civil rights movement of the 1960s by over 100 years.

For the most part, this radicalism manifested itself as nothing more and nothing less than simple acts of hospitality: giving food, providing or arranging shelter and clothing, loaning or giving a little money if they had it to spare, ferrying fugitive slaves across a river or lake, and pointing the way or perhaps escorting a person to the next “safe” farm or settlement. What made it such dangerous work is that from the late 1700s onward, none of these seemingly ordinary activities could be undertaken without risk of an entirely different kind: the risk of social ostracism, financial penalty, imprisonment, physical injury, or even death (Still 1872; Bordewich 2005).

These risks were exacerbated by two Fugitive Slave Acts, the first of which in 1793 made it illegal to aid or abet fugitive slaves. The second, in 1850, also criminalized the refusal to assist federal officials in the recapture of fugitive slaves. The penalties were harsh: those who were caught were subjected to heavy fines or imprisonment or both. The very language of the Fugitive Slave Acts attempted to “brand” those who defied them. The word “fugitive” conjures up images of people on the run from the threat of arrest, prosecution, or conviction for the crimes they have committed, in other words, running away from justice. Although enslaved African Americans were running away, it was from the injustice of chattel slavery, toward justice, that is, toward a place where they could claim their rights as human beings. Today, they would be regarded as refugees or asylum seekers. The paradox is that they were indeed running from the law. Regarded as chattel property, they had stolen themselves (Hartman 1997). So it was that justice and the law meant different things.

Most abolitionists did not seek to break the law. Since the movement’s earliest days, its adherents sought primarily to work within the law in an attempt to change it,
through writing, publishing, campaigning, giving public lectures, petitioning, running for public office, and supporting those who did. These activities were not without risks of their own. The history of American abolitionism, informed by memoires of those most involved in the movement, is peppered with examples of printing presses being destroyed, homes vandalized, tarring and feathering, social ostracism, name-calling and other forms of harassment, physical injury, and imprisonment (Siebert 1898; Jeffreys 2008). By contrast, the radicalism displayed by participants of the Underground Railroad rested on the fact that helping fugitive slaves meant committing oneself to the active, conscious defiance of the law. It meant being a deliberate law breaker.

The illegal nature of Underground Railroad activities meant that secrecy was crucial, particularly where its black participants were concerned as the law afforded them little if any protection, even within the free states. Because of this, it was deemed safest if Underground Railroad participants had little if any knowledge of goings-on beyond their immediate locale, with contacts often limited to sympathizers in the next settlement or farm. Ironically, their very activities were often camouflaged by a coded language of commodity: those involved were called “conductors,” “agents,” and “stationmasters,” while fleeing slaves were often referred to as “goods,” “parcels,” “shipments,” and “deliveries” (Siebert 1898).

Although the participants in the Underground Railroad were already criminalized, they persisted regardless. As can be seen elsewhere in this volume, today’s highly profitable but illegal traffic in human beings depends on luring free but vulnerable people, often through deception or fraud, into bondage (International Labor Office 2014; Walk Free Foundation 2014). The Underground Railroad example turns that notion of trafficking upside down, as it involved assisting already-enslaved people who, by their own volition, were escaping from bondage toward the hope of freedom. This was grassroots anti-slavery activism writ large, and it explains why the Underground Railroad’s activities can be regarded as “reverse-trafficking.”

As it happened, the 1850 Fugitive Slave Act backfired spectacularly. It galvanized anti-slavery sentiments and sympathies and spurred abolitionist action to new heights in cities and towns throughout the northern states.

After slavery was legally abolished after the end of the Civil War, the Underground Railroad as a network ceased to have a function. Its activities, having been shrouded in secrecy, soon became the stuff of myth and legend. Its best known people such as Harriet Tubman – known as the Moses of her people – would become the subject of fictionalized treatments and the stuff of children’s story books.

As for abolitionism in the wider sense, its success was perhaps debatable. Slavery had indeed been officially abolished in law, so in that sense abolitionism was successful. In terms of numbers, Tom Calarco estimates that through the combined efforts of the Underground Railroad participants, perhaps as many as 100,000 African Americans were assisted (Calarco 2008). However, in terms of the material conditions of millions of former slaves, the fight for racial equality had been seen by many abolitionists as a separate issue and that battle had not yet been won. Although after the Civil War many abolitionists devoted their energies toward other kinds of progressive social reform, few of them – few of the white abolitionists, that
is – carried on the fight for racial equality with the same intensity and determination that had characterized their fight against the institution of slavery (Jeffrey 2008).

**Part 2: Aftermaths – Sidestepping Blame**

**Sidestepping Blame**

The word “aftermath” has two meanings. The first and best known refers to a consequence – especially the consequence of a disaster or misfortune, or the period of time following such a disaster. However, its other meaning has been all but forgotten. Aftermath (from the Old English word *maeth*, meaning “a mowing”) also means the second crop of grass from land that has already been mowed. After the havoc and devastation of the Civil War, what kind of aftermath would emerge in the peace that should have followed? What kind of crop could grow from the deep taproots of slavery, roots that the northern victors thought had been severed for once and for all by the horrors of the Civil War and the passage of Constitutional amendments guaranteeing the civil and political rights of black Americans?

What happened was this: the premature end of a short-lived postwar reconstruction program gave way to more virulent, overt forms of racism that quickly took enslavement’s place. Such overt racism was supported by pseudoscientific notions of white supremacy, which rapidly took hold not only among former slaveholders but among noted academics of the day, as well as the vast majority of white southerners who had *never* owned slaves. It was buttressed by oppressive state and local laws, collectively known as Jim Crow (Woodward 1957), and by the sheer terror and trauma of widespread lynching (Equal Justice Initiative 2015b).

In due course, slavery itself would be regarded as an embarrassment, something to forget, for the United States to “get over.” Although race relations remained volatile, slavery itself was considered a thing of the past. It was time to close the door on it, time to move on, and time for national recovery.

Recovery was a longtime coming and, as some argue, it has still not been fully achieved. One of the first to state this view was the Harvard-educated black sociologist Dr. W. E. B. Du Bois, who in 1935 stated “The price of the disaster of slavery and civil war was the necessity of . . . overthrowing a slave economy and establishing upon it an industry primarily for the profit of the workers. It was this price which in the end America refused to pay and today suffers for that refusal” (Du Bois 1935).

In 2009, over 150 years after the end of the Civil War, the House of Representatives and the Senate issued separate resolutions offering apologies for slavery and Jim Crow. These are, respectively, H. Res. 194, July 19, 2008, and S. Con. Res. 26, June 19, 2009. The House resolution “expresses its commitment to rectify the lingering consequences of the misdeeds committed against African Americans under slavery and Jim Crow and to stop the occurrence of human rights violations in the future.” By contrast, the Senate resolution stops short of saying that the government of the United States should commit itself to these aims. Instead, it calls on “the people of the United States to work toward eliminating racial
prejudices, injustices, and discrimination from society.” The entire onus for this endeavor – and by implication, the blame for any lingering injustice – is placed squarely on “the people,” that is, everyone and no one. Neither of the resolutions make reference to the ongoing benefits that so many people, mainly well-to-do whites, accrued as a direct result of slavery, Jim Crow, and decades of ongoing racial discrimination. Furthermore, the Senate resolution makes no connection between slavery and Jim Crow and human rights violations, either past or present. Nor does it provide any scope, or indeed hope, for any type of future financial settlement or reparations. In any case, the two resolutions were never amalgamated or signed by the President, and thus they did not carry the weight of a formal state apology.

This, however, should not be surprising. A little over a decade earlier, the 1998 Congressional Act that established the National Park Service’s National Underground Railroad Network to Freedom program – formed to commemorate and interpret the Underground Railroad – made some astounding claims: “The Underground Railroad, which flourished from the end of the eighteenth century to the end of the Civil War, was one of the most significant expressions of the American civil rights movement during its evolution over more than three centuries” and “The Underground Railroad bridged the divides of race, religion, sectional differences, and nationality; spanned State lines and international borders; and joined the American ideals of liberty and freedom expressed in the Declaration of Independence and the Constitution to the extraordinary actions of the ordinary men and women working in common purpose to free a people.” Later sections of the Act refer to the Underground Railroad’s “relevance in fostering the spirit of racial harmony and national recognition.”

These claims are astounding because they made no reference whatsoever to the role of the Constitution in legitimizing slavery or the then-illegality of the Underground Railroad’s activities. Nor did they make reference to the years of legitimized racial segregation, oppression, and public lynchings or to the mass incarceration of disproportionately high numbers of black Americans that started soon after the Civil War (Blackmon 2012) and which today is still going on (Alexander 2010; Salaka 2014). The claims also failed to mention that the Civil Rights Act of 1875 – the last civil rights bill to be signed into law until 1957 – was declared unconstitutional in 1883 by the United States Supreme Court. This deplorable judgment, together with the notorious Plessy v Ferguson “separate-but-equal” case of 1896, made it possible for harsh, repressive Jim Crow laws to take root and flourish throughout the post-Reconstruction period, continuing until the 1960s. Therefore, the implication that the American civil rights movement “evolved” over three centuries, as though it had taken place seamlessly, without interruption and without resistance, was grossly misleading.

In the years immediately following the end of World War II, organizations campaigning for equality for African Americans such as the National Association for the Advancement of Colored People (the NAACP) recognized that mere civil rights – that is, the legal and political rights afforded by the post-Civil War Constitutional amendments – would achieve little in terms of affording equality of
opportunity. They decided that only the broader remit of *human* rights would have the language and philosophical power to address the education, health, housing, and economic inequalities that African Americans had endured for so long (Anderson 2003). The tragedy is that although the United States had been a driving force behind the creation of the United Nations and the drafting of the Universal Declaration of Human Rights, it was an unwilling signatory to the Declaration, endorsing it only after reassurances that the Declaration would have no legal force (Blackburn 2011).

The relationship between civil rights and human rights soon became even more complicated. During the McCarthy era of the 1950s, the very notion of human rights and the United Nations “became synonymous with the Kremlin and the Soviet-led subversion of American democracy.” In other words, the fight for racial equality as a human rights issue would be branded as *un-American*. This forced the NAACP to retreat to the more narrow vision of civil rights, a retreat that had lasting repercussions on the lives of many African Americans (Anderson 2003). It also exposed the rhetorical emptiness behind the United States’ much vaunted claim to have entered the World Wars to help “make the world safe for democracy.” There are echoes here of the emptiness of the Declaration of Independence’s claim that all men were created equal, the assertion of self-evidence having been found wanting by the fact of slavery.

**The Problem with Heroes**

It is important to stress that the courage and tenacity of the people of the Underground Railroad are not in question here. Many of them put their very lives on the line in order to support and assist fugitive slaves in their escape to freedom. Its participants – both black and white – suffered not only social censure but physical injury, imprisonment, torture, and even death as a direct result of their actions. The problem is that despite the care and attention that twenty-first century scholars are taking to examine the tensions between freedom and unfreedom and exposing the contradictions referred to earlier, the National Park Service’s Network to Freedom program may – perhaps unintentionally – be obscuring the collective national responsibility for America’s slaveholding past and its lingering aftermaths. It seems to be casting a mantle of moral goodness over that unholy, unruly past, personified by the people of the Underground Railroad. After all, why would the general public not want to identify with those who risked their lives in the cause of others’ freedom? With people now perceived as national heroes?

The current focus on uncovering the stories of the Underground Railroad’s “heroes,” and the glossing-over of slavery’s taproots deep in American history, could together result in diverting attention from those seldom-examined aspects of the American psyche that enabled slavery and Jim Crow to prevail for so long. There are grounds for these concerns within the Southern Poverty Law Center’s (SPLC) 2014 report on the state of modern civil rights teaching in the United States. The report states that there is only minimal mention of slavery and its integral part in US history. More surprisingly, however, mention of slavery barely featured in the
SPLC’s scoring criteria (Southern Poverty Law Center 2014). This is difficult to understand because the centuries-old histories of American slavery and Jim Crow, together with their awful, unresolved aftermatts, are precisely why there needed to be a modern civil rights movement in the first place. Today, the interlinked struggles for racial equality, racial justice, and – as can be seen in this volume – the abolition of modern-day slavery remain incomplete.

There is an understandable reluctance to associate law with slaveholding and indeed to associate the proverbial law-abiding citizen of today with the slaveholding lawmakers of American history, including its revered founders. George Washington is remembered as the father of the country, not as the Virginia planter who failed to manumit a single slave during his lifetime. Thomas Jefferson is remembered as the man who drafted the Declaration of Independence, not as the Virginia planter who wrote that blacks were inferior to whites in mind and body (Jefferson 1787) and who fathered several children by one of his female slaves. America’s slaveholding past is thus seen as an unfortunate stain on its history that many people would prefer to forget (Levy 2005).

What seems to be at work here is a kind of moral torpor that Meister likens to *acedia*, originally a monastic term that referred to the slowness to perform penitential tasks (Meister 2011). In other words, a person – or country – might have issued an apology for having done something, or having failed to do something, but has not taken the necessary next step of making amends for whatever deed prompted the need for the apology in the first place. As mentioned earlier, a formal state apology – the first step in the process – is still awaited.

At national level, this kind of abstraction translates into the presence of a blind spot: it is the inability to recognize that disadvantage is not the fault of disadvantaged people themselves. Rather, it is the result of decades of systemic, institutional failure. The blind spot stems from an unwillingness to recognize or perceive – especially in a country that prides itself on progress – that failure has happened at all. This unwillingness to acknowledge failure, to anticipate its possibility, or to plan for it is coupled with a stubborn reluctance to go beyond making an apology which, despite its symbolic value, makes no difference to people’s material circumstances. It also smacks of what Ignatieff refers to as American “exceptionalism,” that is, the application of double standards. On the one hand, in the mid-twentieth century, the United States displayed exceptional leadership in promoting human rights standards in other countries. On the other hand it resisted, and continues to resist, complying with those same human rights standards at home, failing also to align its foreign policy with those standards (Ignatieff 2005).

This combination of factors can result in the distrust of law itself. Unless people are able to believe that if they act in accordance with the law they will be protected by it and to trust that those who are charged with implementing the law do so fairly and equitably, then the rule of law as we understand it today is under threat.

Related to this concern is that the valorization of those who successfully escaped their bondage, and those who assisted them in their escapes, casts on them a mantle of eliteness (Hartman 1997). It fails to acknowledge the courage and resilience of those millions of enslaved people who did not or could not escape, including those
who repeatedly “stole away” without having permanently gained their freedom. It is exactly this kind of determined moral courage that is required if one is to continue resisting the worst effects of psychological trauma of enslavement against all the odds and to maintain one’s dignity as a human being, in the face of every inconceivable indignity day after day, year after year (Kauffman 2002). It is exactly this kind of courage that today largely goes unmentioned, unnoticed, uncelebrated, and unsung.

**In Conclusion: Discomforting Parallels and Unintended Consequences**

Unlike the activists of the Underground Railroad, the anti-slavery human rights activists of today are supported in their work by a range of internationally ratified United Nations declarations, conventions, and resolutions, including a specific Declaration on Human Rights Defenders (The full title of this declaration is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, adopted by United Nations General Assembly Resolution 53/144, December 09, 1998). Despite the law now being on their side, this is cold comfort if an activist is arbitrarily thrown into prison with no access to a lawyer. The risks that today’s activists face are in fact little changed from those faced by nineteenth-century anti-slavery abolitionists, working in defiance of that unholy, unruly rule of slaveholder law. Evidence comes from Margaret Sekaggya, until 2014 the special rapporteur on human rights defenders, and her report on the situation of these courageous men and women. According to her report, human rights defenders have been subjected to “killings, attacks, disappearance, abduction, torture, and [other forms of] ill-treatment,” sometimes involving “the abusive use of legal frameworks against them and the criminalization of their work.” Much of this harm is perpetrated by “State actors, including Government officials, State security forces and the judiciary” (Sekaggya 2011). The same concerns are echoed in her successor Michael Forst’s report of December 2014.

Today’s anti-slavery activists also face methods of harassment and intimidation unimaginable to the activists of the Underground Railroad. As well as the risks to life and limb already mentioned, they are also faced with tirades of shocking verbal abuse and death threats delivered directly to their computers, tablets, and mobile phones, the anonymous perpetrators out of sight in the dark corners of the Internet.

As for civil rights activism within the United States, the Equal Justice Initiative has reported a worrying trend: since the election of the United States’ first black president in 2008, there has been an increase in resistance to civil rights and an increase in anti-civil rights rhetoric in America. This suggests that “many anti-civil rights activists have seized the narrative that racial justice is no longer a legitimate social goal,” going so far as to say that such efforts are “actually anti-white measures that promote inequality” (Equal Justice Initiative 2015a). This is not confined to rhetoric: the Southern Poverty Law Center reports an exponential growth in the
number of extremist, racist hate groups springing up across the United States. It is hard
not to conclude that decades of hard-won progress are gradually being chipped away.

This is an uncomfortable question to ask, but could it be that ostensibly “color-
blind” “post-racial” criminal justice policies are no more “color-blind” or “post-
racial” or indeed “unintentional” than the earlier slaveholder and Jim Crow laws
were? Could they be symptomatic of a new, increasingly overt version of white
supremacy which, until relatively recently, dared not speak its name? Tim Wise
thinks so: he refers to the election of President Obama as a “shape-shifting of racism”
which is making it more difficult than ever to address ongoing racial bias in the
United States (Wise 2010).

The Equal Justice Initiative has attempted to turn the tide on growing racial hostility
through a local, Alabama-based project that places commemorative roadside markers
at the sites of lynchings and slave markets. Their project aims to help break the silence
to which so many incidents of historical violence are consigned and, ideally, to open
the door to constructive dialogue, by which that hard-won progress can continue.
These examples of grass-roots activism contrast sharply with policy at national level,
where there seems instead to be a tendency to close off such dialogue. This indicates
the rejection of the notion that racism is, or ever has been, a problem.

Hopefully, the Equal Justice Initiative’s roadside markers will be allowed to tell
their stories, and hopefully they will escape the fate of the plaque identifying the
home of noted Underground Railroad operator the Reverend John Rankin and his
family. The plaque, typical of those marking historic sites, states that Rankin’s home
served as an Underground Railroad station from 1828 to 1863. Unusually, Reverend
Rankin made no secret of his anti-slavery activities. His home in Ripley, Ohio, was
situated high on a bluff overlooking the Ohio River. He regularly lit a beacon that
shone its light across to the slave state of Kentucky, serving as both an open
invitation to fugitives and a visible gesture of defiance to slaveholders, and slave-
holder law.

The plaque marking the Rankin family’s home, however, gives cause for exactly
the above-mentioned concerns. A photograph of the plaque published in 2008
revealed that it had been perforated by some 43 bullet holes (Marc 2008).

Cross-References

▶ Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating
Modern-Day Slavery and Human Trafficking

References


# International Legislation on White Slavery and Anti-trafficking in the Early Twentieth Century

Laura Lammasniemi

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## Abstract

The chapter focuses on the emergence of international legislation against trafficking in the early twentieth century, focusing on the years between 1904 and 1949. The chapter will introduce key legal measures adopted during that time but focus on the enactment of the International Agreement for the Suppression of the “White Slave Traffic” 1904 and the International Convention for the Suppression of the White Slave Traffic 1910. These measures, unlike modern anti-trafficking legal standards that recognize more comprehensive forms of exploitation, focused solely on recruitment for prostitution and the exploitation of prostitution. The chapter argues that the early-twentieth-century legal framework was mostly a result of civil society action in the field and that the framework enabled the control of immigration and emigration of young women. The chapter will further show how the terminology changed from “white slavery” to a more neutral “traffic” with the League of Nations. Despite this change, immigration

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control and nationalism continued to underline much of the rhetoric even after the League of Nations took over the legal framework in 1921.

Keywords
History of trafficking · White slavery · International law · League of Nations · Immigration control · Civil society associations

Introduction

This chapter discusses the emergence of international law against trafficking from the early twentieth century to 1949 when the first UN convention against trafficking was enacted. In the early twentieth century, the terms “traffic” and “white slavery” were used interchangeably. This chapter uses mainly the term “white slavery” when talking about the phenomenon before the 1921 International Convention to Combat the Traffic in Women and Children and the term “traffic” afterward, for historical accuracy. While there are many distinct features about the early antiwhite slavery accords that will be discussed throughout the chapter, an important distinction needs to be drawn with the early accords and present-day legal standards. The early accords focused solely on exploitation in prostitution, while the more modern ones aim at fighting against trafficking in persons as connected with multiple forms of exploitation.

The chapter analyzes the early documents in chronological order to show the development of international law in the field. The chapter argues that the first international accords were introduced and enforced by civil society organizations, and hence understanding the cooperation between civil society organizations and state bodies is paramount in order to understand the anti-trafficking framework and legal standards more broadly. It further argues that the new accords enabled the control and restriction of women’s migration.

The period the chapter focuses upon was marked by divisions between different civil society organizations, mainly the women’s rights and vigilance ones, on the role and potential of law. The discussions on trafficking at the turn of the century and the language of the first accords also reveal highly polarized and at times repressive views on gender, sexuality, and migration. To analyze these tensions, the chapter will draw extensively from the archival collections of the International Bureau for the Suppression of the White Slave Traffic (International Bureau) and other organizations such as the International Abolitionist Federation. These archives hold records of meetings, conference papers, and drafts of international conventions. They also hold, for example, the first definition of trafficking in international law, which can be found in the minutes of the International Congress of the International Bureau in London in 1899.

The chapter begins by discussing background on the civil society organizations active at the time, before discussing the accords they created, namely, the International Agreement for the Suppression of the “White Slave Traffic” (1904 Agreement) and the International Convention for the Suppression of the White Slave Traffic 1910 (the 1910 Convention). It then focuses on the League of Nations’ action
in the field, both concerning legislative activity and the work of the League’s Traffic in Women and Children Committee. The final part of the chapter provides brief reflections on League of Nations and United Nations Conventions from 1921 to 1949 to demonstrate that there was a shift toward abolitionism, particularly in the aftermath of the Second World War.

The Vigilance Movement and the Origins of White Slavery Accords

In 1904, the first anti-trafficking international legislation, the International Agreement for the Suppression of the “White Slave Traffic” (1904 Agreement), came into force in the 22 participating states. The International Bureau and its then Secretary, WA Coote, were accredited by fellow civil society organizations with bringing about the Agreement and launching the first international measures against white slavery (More about International Bureau for the Suppression of the White Slave Traffic here http://www.lonsea.de/pub/org/192). Coote was praised in particular for his relentless campaigning in Europe against the white slave trade and for establishing the first international framework against white slavery. Praising Coote for the drafting of the 1904 Agreement, Gregory Maurice said the securing of the 1904 Agreement was the climax of the movement. He called Coote’s work and the remarkable manner in which he had brought the Agreement about one of the great romances of philanthropy.

The International Bureau, the organization at the heart of the accords, stemmed from a well-known British Christian vigilance organization, the National Vigilance Association (NVA). In Britain, the NVA was the dominant vigilance organization working to eradicate all forms of vice. The association was simultaneously lobbying for new criminal and immigration legislation to tackle a perceived rise in white slavery and to limit the number of foreign women working in prostitution (Lammasniemi 2017b). In the late nineteenth century, NVA became increasingly aware of the international aspects of white slavery and concerned over female emigration from and immigration into Britain. To cooperate with European counterparts more effectively and to raise awareness of white slavery on an international scale, the NVA established an international arm, the International Bureau.

The International Bureau quickly expanded both in membership and regarding countries within which it operated. Despite this, it remained rooted in the British vigilance movement. While the International Bureau had national committees worldwide, in its early years, the same personnel populated the British National Committee and the International Bureau’s highest body, the Congress of the International Bureau. Furthermore, those personnel were drawn from NVA members. The General Secretaries of the International Bureau, WA Coote and later FAR Sempkins, had also served initially as leaders of the NVA. The strong connection – both ideologically and pragmatically – between the British vigilance movement and the International Bureau is therefore undeniable.

It should be noted here that the International Bureau was not the only organization working in the field, but it was undoubtedly the most influential. Perhaps the best
known of the other organizations in the field is the International Abolitionist Federation, established by Josephine Butler in 1875. Both the International Bureau and the International Abolitionist Federation shared concern over vice and prostitution, but their definition and understanding of prostitution, and later white slavery, differed significantly. The International Abolitionist Federation was part of the women’s movement of the era, and they viewed the white slave trade as a women’s rights issue. For them, the figure of the prostitute became a vehicle to address all the inequalities and social wrongs against women (de Vries 2008). This is different from the International Bureau, which in their rhetoric made a distinction between the “innocent white slave” and “criminal prostitute.”

The organizations also had very different approaches toward the state. The International Abolitionist Federation advocated “anti-regulation abolitionism” and was against all forms of regulation of prostitution. The International Abolitionist Federation used the term “abolitionism” to describe their work against the state regulation of prostitution; however, this chapter uses the term “anti-regulation abolitionism/abolitionists” in order to distinguish it from the modern discourse whereby term “abolitionism” is used to describe attempts to abolish and prohibit prostitution.

Perhaps the most crucial difference between the International Abolitionist Federation and the International Bureau is that the International Abolitionist Federation viewed state regulation of prostitution as a way to control and degrade those working in prostitution and so their rhetoric is characterized by a deep distrust in the state. In turn, the International Bureau focused on the abolition of prostitution and vice often through regulation and cooperation with national police and officials, as we will see from the next part of the chapter.

**International Agreement for the Suppression of the “White Slave Traffic” and Its Enforcement**

The London Conference of the International Bureau in 1899 set in motion the drafting of international accords against white slavery. The 1899 conference and other International Congress conferences were organized by the International Bureau but were attended by the representatives from the leading moral-purity, abolitionist, and anti-regulationist groups, including the International Abolitionist Federation. These organizations could vote and propose resolutions; for example, the International Abolitionist Movement repeatedly and unsuccessfully tried to file a motion to abolish the regulation system in continental Europe.

In the first International Congress in 1899, an essential Resolution was adopted by the Congress that there should be an agreement between governments to tackle white slavery. The Resolution called for the criminalization of procurement of women and girls into prostitution as well as the establishment of international criminal investigations where white slave traffic was suspected. In addition, the Resolution called for further formal cooperation between civil society organizations who were to share, for example, “information as to the emigration of women under
suspicious circumstances.” It also called for each country’s delegates to collate a list of active associations in their countries who can fulfil roles in “protecting migrants” and to provide relevant state bodies in their respective countries with this list.

The resolution itself is striking or telling. It shows that the International Bureau intended to focus on law reform campaigning in the international arena mainly and as such embraced and sought cooperation with the states in which they operated. Their claim to international lawmaking and lobbying is particularly notable as the international law concerning specific transnational crimes was still rare.

One of the critical aspects of the Resolution was its clear focus on border control; the Resolution envisaged that charitable and civil society organizations would take on the role of monitoring borders and female migrants. Before the Agreement came into force, the national committees of the International Bureau were already engaged in this task, without formal agreements with the state (Limoncelli 2010). The national committees monitored and reported back to the central International Bureau on levels of suspected traffic and prostitution through patrolling railway stations and ports where they greeted girls whom they suspected of being a white slave, or indeed a foreign prostitute. While the most oppressive aspects of the white slavery agreement, such as repatriation of foreign prostitutes, were not part of the early resolutions, even prior to the ratification of the 1904 Agreement, the national committees provided funds for the repatriation of foreign prostitutes and campaigned for their compulsory repatriation (International Congress 1899–1904). The port control remained an essential part of the International Bureau’s work even after the First World War when the League of Nations took over the enforcement of international legislation. Cities such as Buenos Aires, which were considered particularly sinful, were monitored closely, and all women who arrived in third-class coaches were interviewed on arrival as late as the 1930s by a member of the Argentinean National Committee to ascertain the purpose of their visit (Sempkins 1928).

The 1904 Agreement followed the Resolution set out by the International Bureau in 1899 to an extent. Importantly, it did not make provisions for the criminalization of procurement or create an offense of trafficking. Instead, the Agreement created some administrative measures and focused on repatriation of foreign women suspected of being prostitutes. The Agreement primarily made administrative provisions that aimed to enable cooperation between participating states by establishing central bureaus for the exchange of information and by sharing information regarding relevant domestic convictions.

The Agreement did little to create provisions for the protection of women but instead created a complete system for investigation and repatriation of foreign women suspected of prostitution. Under Article 2 of the Agreement, the member states were required to set up patrols at ports and railway stations to identify foreign women and girls who might be prostitutes. The port patrols focused their attention on foreign, working-class women and girls and interrogated them “judiciously to ascertain for what purpose they [have] come and where they intend staying” (Coote 1910).

Those who were identified as foreign prostitutes, or at risk of falling victim to white slavery, could be questioned under Article 3 to establish their identity and
nationality in order to provide for their repatriation to their country of origin. The provisions within the Agreement were enacted to target women and girls of a particular class and appearance in order to identify potential prostitutes at the entry points to the countries.

At the 1903 Conference on the Suppression of the White Slave Traffic, the NVA reported disappointment with the attempts to engage with, and repatriate, prostitutes and wrote that they did not have much luck in their operation in British ports. NVA officials said they had spoken to hundreds of foreign girls offering to “repatriate them, put them in touch with a lady in their respective countries, and to give them a’ fresh start in life, not one accepted our offer of help” (Vigilance Record 1903). The girls had instead, much to the disappointment of the patrols, “announced their intention of staying here until they are turned out” of the country (ibid.).

The level of cooperation with other organizations and implementation of the assistance provisions varied greatly between different countries. For instance, the Spanish National Committee reported having offered 20 asylum places to the more than 200 women they had stopped between the years of 1904 and 1906. The British National Committee made no such provision and instead allocated their funds to the repatriation of foreign prostitutes (International Congress 1906).

The International Convention for the Suppression of the White Slave Traffic 1910

The Agreement was followed in 1910 by the International Convention for the Suppression of the White Slave Traffic, ratified by the majority of European countries and which built on the existing Agreement (1910 Convention). In a notable divergence from the Agreement, the 1910 Convention created a basis for criminal prosecution for those suspected of being in breach of the Convention, thereby creating the first international definition for the offense of trafficking. Article 1 of the 1910 Convention states:

> Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with the consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

The complex definition under Article 1 of the 1910 Convention included the three elements of trafficking often identified today: the act, the means, and the purpose. Furthermore, it dispensed with the consent of the victim if an element of coercion or deceit was present even for women over the age of 21. Notably, in the absence of coercion or deceit, Article 1 only applied to girls of 21 years of age and younger as defined in an additional protocol. The Final Protocol defines the age limit with Articles 1–2 as 21 and below; however, it allows states to make their legislation on age limit and provisions against procuring women of any age, provided they be applied equally to all. The following Articles guided internal implementation and created provisions for the nation-states to create similar criminal offenses.
in domestic law. Article 3 obliges the member states to create an equivalent punishable offense in domestic law, and Articles 5–6 provide for extradition procedures. The International Abolitionist Federation argued against the age limit and for outlawing all forms of procurement but were defeated in their aims (Doezema 2010). The victim of white slavery was always represented as someone innocent, young, and naïve; the age limit of 21 can be seen as reflective of that representation.

De-racializing the White Slave Trade: The League of Nations’ Action on Trafficking

The concepts of nationality and race in all their complexities were constructed and utilized differently by various organizations in the field but were integral to the 1904 Agreement and the 1910 Convention. Women’s rights organizations advocated abolitionist policies across racial and national lines, stopped using the term “white slavery” at the start of the century in official correspondence, and instead adopted the term “traffic.” In 1910, the White Slavery Committee of the International Council of Women officially changed its name and terminology from white slavery into “traffic in women” (Abolitionist Federation, 3AMS/E/01-02). The International Bureau, however, resisted the name change from the “International Bureau for the Suppression of the White Slave Trade” into “Suppression of Trafficking.” There were numerous proposals “to include women of all races and colours” in the remit of their operation, but the International Bureau rejected these proposals and claimed the time was not right. Beyond the refusal to acknowledge the trade in nonwhite women, the nationalism ran deep within the organization.

Race was both explicit and implied in the white slavery discourse. In the legal context, biological and nationalistic aspects of “whiteness” were highlighted as the international white slavery accords did not apply in most colonies. Most countries had entered reservations on the agreements’ applicability in the colonies so women from colonies could not be “white slaves” for the law (Limoncelli 2010; Legg 2009, 2012b, 2013).

It would be wrong, however, to state that whiteness was only construed in biological and explicit terms in the discourse. The term “whiteness” was rooted beyond race, in class, nationality, and perceived purity. Many of the vigilance campaigners viewed prostitution as demeaning and de-whitening. For example, in campaigning materials such as the NVA book In the Grip of the White Slave Trader (1911), stories of English prostitutes who had nonwhite clients or boyfriends were told with particular horror and disdain. The whiteness in the white slavery discourse was more than a term of biology; it was a way to determine purity.

Officially, the term “white slavery” was replaced with racially neutral “traffic” in international law and in terms of the International Bureau’s action only in 1921, when the League of Nations took over the regulation and passed the 1921 International Convention to Combat the Traffic in Women and Children (International Bureau, 4/NVA S107-134).
According to Article 23(c) of the League of Nations Covenant, the League was to have “general supervision over the execution of all agreements with regard to the traffic in women and children,” but no general guidelines were issued as to how this consolidation was to take place or what the specific powers of the League of Nations were. The main function of the 1921 Convention was to amplify and strengthen the 1904 Agreement and the 1910 Convention discussed in the previous section (ibid). Replacing the loaded term “white slavery” with the more neutral term “traffic” marks a shift to a more nuanced understanding of trafficking, and as Stephen Legg has argued, the League of Nations thereby played a key role in “de-racializing the ‘white slave trade’ rhetoric” (Legg 2012b).

The League of Nations also established the Traffic in Women and Children Committee of League Nations (the Committee) (see Hengley 2010). The Committee conferences became the main forum for debating issues around trafficking in the international sphere. Although the Committee had no legislative power, it advised the League Assembly and was able to propose legislation and reforms to the Assembly (Pliley 2010). From the minutes of the Committee meetings and debates, it became evident that state parties were promoting their interests, often shaped by the postwar sentiment of nationalism.

The early years of the League of Nations’ work on trafficking were marred by oppressive proposals from the member states that were often aimed at controlling immigration of women suspected of prostitution. Limoncelli (2010) has argued that the era after the establishment of the League of Nations was marked by attempts to nationalize prostitution – in contrast to prewar white slavery agreements that aimed at international cooperation to curtail it. After the war, xenophobia had reached its peak, and this is also evident in the League of Nations’ action in the field of trafficking. Measures were taken at international level and, in member countries under the premise of “traffic in women,” were primarily aimed at restricting the movement of women rather than protecting women. Exploitation of female migrants, working in prostitution or not, was rarely addressed as anti-immigration agenda took center stage. There were moderate voices and women’s rights voices, but these organizations did not have the same platform that they did before the war. The International Abolitionist Federation (3AMS/E/05-06) was still calling for protection and putting forward resolutions for the abolition of state-regulated brothels, but these were refuted one by one.

While the Traffic in Women and Children Committee was established to tackle trafficking in women, from the beginning, prohibitionist and nationalistic voices dominated the Committee. Already in the second session of the Traffic in Women and Children Committee in 1923, Poland put forward a proposal for the prohibition of foreign-born women in state-regulated brothels (Traffic in Women Committee 1931). The proposal was heavily supported by the International Bureau and some Christian civil society organizations but opposed by France and women’s rights organizations. In the words of Avril de Sainte-Croix, “the proposal, which was so contrary to feminine dignity, had so many practical objections that it was worthless” (Limoncelli 2010, p. 80).

Paulina Luisi, Uruguay’s State Representative and pioneer for women’s rights in Uruguay, highlighted the irrationality of such a proposal as it would give powers of
deportation arising from an activity that is not a crime in the first place. She vigorously contested the proposal on the grounds that it was nothing more than “nationalizing prostitution” (Traffic in Women and Children Committee 1932). The much-debated proposal was, however, a way to push more restrictive policies into the agenda. The prohibition of foreign women in state-regulated brothels was approved, and, shortly afterward, a proposal was made for the compulsory expatriation of foreign prostitutes. This became another hotly debated issue and one that kept returning to the Committee, despite being defeated in the first debates.

The compulsory repatriation proposal had the backing of the International Bureau, who had a prominent position within the Committee. Although the proposal was again defeated, the International Bureau continued to advocate for the repatriation of foreign-born prostitutes in the years to come. Still, in the annual conference in 1930, it passed a resolution urging the governments not to delay “the repatriation of women who are leading a life of prostitution” and called for penalties for all women who return after repatriation (International Bureau 1930). The International Bureau (1930) furthermore advocated for more restrictive immigration policies and, in memoranda submitted to the Committee for discussion, included a proposal to ban entry of working-class foreign women to other member states:

considering that the importance of attainment and prevention of a high standard of morality overrides any objection to action being taken against any particular class of either sex.

The proposal was vigorously contested by many, including de Sainte-Croix, who argued that “illegal and exceptional measures cannot form the basis of a high standard of morality” (ibid). Luisi furthermore argued that not only would the Bureau’s proposal do nothing to fight traffic, but it would also seriously infringe the freedom of travel for all women (Traffic in Women and Children Committee 1932).

Jessica Pliley (2010) has argued that in the early years of the League of Nations, anti-regulation abolitionist feminists influenced the League of Nations’ agenda. However, after influential feminists such as Dame Rachel Crowdy resigned from their posts toward the end of the 1920s, feminist voices were muted, and policies became ever more paternalistic (Pliley 2010). Already in 1925, after the debate on compulsory repatriation of foreign-born prostitutes in the Traffic in Women and Children Committee, Paulina Luisi, critical of the direction of the Committee, “wondered whether the task of the Committee was to defend the society against prostitutes” (League of Nations 1925).

**International Law After 1921: Toward Abolitionism**

The 1921 League of Nations Convention was followed by further League of Nations anti-trafficking conventions in 1933 and 1937. These conventions pushed the international law in a more abolitionist direction by dispensing with consent, but they were not groundbreaking legal documents. The final international Convention in the field, until the Palermo Protocol, was the 1949 United Nations Convention for
the Suppression of the Traffic in Women and Exploitation of the Prostitution of Others. The 1949 Convention took an abolitionist position, in its preamble, stating:

trafficking and the accompanying evil of the traffic in persons for prostitution are incompatible with the dignity and worth of the human persons and endanger the welfare of the individual, the family, and the community.

Under Article 1, traffic is defined in the Convention as procuring, enticing, leading away, “for prostitution, another person, even with the consent of that person.” Subsequent Articles outlaw managing brothels and renting a property for prostitution. The 1949 Convention, therefore, construes trafficking far more broadly than the early documents and enshrines an abolitionist position.

The 1949 Convention was enacted in the aftermath of the Second World War and the abolitionism within must be viewed within this complex context. During the First World War, exceptional measures were adopted in countries such as Great Britain to deal with the perceived threat of prostitution, and associated venereal disease, that it posed to national security, the health of families, and the moral fiber of communities (Lammasniemi 2017a). Many of these measures were repeated during the Second World War; and the Convention must be viewed in the postwar, anti-prostitution climate (Doezema 2010, p. 112). While the 1949 Convention notes a radical departure from existing international law by a de facto requirement for signatories to criminalize prostitution in their domestic law, the Convention proved too controversial. Most countries never ratified the Convention, and so it had little impact (Limoncelli 2010, p. 11).

Conclusion

The international accords of 1904 and 1910 were paradoxical; they were passed under women’s rights rhetoric, yet no real provisions for the assistance of women were made. Furthermore, they were deeply conflicted concerning legal standards. While all the White Slave Traffic Agreements and Conventions focused on the recruitment and transportation of women for immoral purposes and the issue of prostitution, prostitution itself was considered a matter of national jurisdiction.

The white slavery accords are essential for some reasons. Firstly, they demonstrate the formalization of the role of the vigilance and charitable organizations. Secondly, they were necessary for creating measures to control the migration of women where none existed previously. The agreements created a complex administrative system that allowed the vigilance associations – in their new official function – to monitor points of entry into the country, to interrogate foreign women they suspected were prostitutes, and ultimately to deport them. The private lives of women who were suspected of prostitution were subjected to monitoring and surveillance, and many faced deportation from the countries they had emigrated to. The agreements can, therefore, be seen not only in the context of a rise in international law but also in the context of a rise in immigration regulation.
Cross-References

- Concepts of Slavery in the United States 1865–1914
- Historical Evolution of the International Legal Responses to the Trafficking of Children: A Critique

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The trafficking of children has received extensive attention from both academic and political arenas in recent years, yet this growing phenomenon remains a relatively new area of international law (Gallagher, The international law of human trafficking, Cambridge University Press, 2010). Human trafficking has both a long legal and political history, distinguishing it from many contemporary international legal issues (Gallagher, The international law of human trafficking, Cambridge University Press, 2010). Despite this history the term “trafficking” was not defined by international law until the adoption of the Optional Protocol to the UN Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2000.
This chapter will illustrate the origins of child trafficking within international law and identify an evolution in understanding of the phenomenon over the course of the last century. Through research in the League of Nations archives, Geneva, this chapter illustrates how a historical perspective enhances understanding of contemporary legal responses to child trafficking. The chapter undertakes a critical analysis of child trafficking within the context of international law, demonstrating the parallels with the White Slavery Conventions of the early twentieth century and the contemporary legal framework.

**Keywords**

Child trafficking · League of Nations · Exploitation · United Nations · Prostitution · “White Slave Traffic”

**Introduction**

The Optional Protocol to the UN Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereafter, the Trafficking Protocol), established the first international legal definition of human trafficking through Article 3 (Gallagher 2010). However, human trafficking has both a long legal and political history, distinguishing it from many contemporary international legal issues (Gallagher 2010).

This chapter demonstrates the origins of what is today classed as child trafficking, specifically charting the development of the international legal regulation of child trafficking and the international legal architecture that has been implemented over the last century to tackle the phenomenon. The analysis examines the emergence of child trafficking within the legislative sphere of the League of Nations (LoN) through the twenty-first-century legislation of the United Nations (UN).

This chapter draws comparisons between the contemporary legal framework and their historical counterparts. While the ideological parallels between contemporary human trafficking and historical fears of “white slavery” of women and girls have been critiqued (Doezema 2010; Limoncelli 2010), this chapter charts the ideological, discursive, and legal developments, contextualized by a comprehensive overview and analysis of the legal origins of child trafficking within the international legal framework through the utilization of research within the League of Nations archives, Geneva (Lammasniemi 2017: 65).

To understand the legal structure implemented, the chapter will address the issues of what constitutes childhood and children’s rights, before the analysis divides into two distinct sections. The first section addresses the emergence of child trafficking in the early twentieth century and during the era of the League of Nations (1919–1946). The rise of awareness of child trafficking is identified through engagement with policy and regulation of the phenomenon through the “White Slavery Conventions” of the early twentieth century and the legislative sphere of the League of Nations. The analysis focuses primarily upon the International Convention to Suppress the
Traffic in Women and Children 1921 and references made in the Summary of Annual Reports 1927 and 1928.

The second section of the chapter addresses child trafficking and the United Nations (1945–present day) through a critique and comparison of the contemporary legal framework, that is, the Convention on the Rights of the Child 1989 (CRC), the Optional Protocol on the sale of children 2000 (OPSC), and the Trafficking Protocol 2000.

The chapter is thus not limited purely upon the legal regulation of child trafficking but engages with the ideological, discursive, legal, and policy developments to tackle the phenomenon over the course of a century.

**Childhood and Children’s Rights**

Preceding an analysis of the historical origins of the international law of child trafficking, it is essential to address the concepts of childhood and children’s rights. The concept of childhood is an interdisciplinary one, drawing upon historical, psychological, sociological, and social policy perspectives (Buck 2014, Chap. 1: Childhood and Children’s Rights, pp. 1–39). This chapter critiques the implementation of international law to eradicate child trafficking; therefore the overview provided will refer predominately to the international legal development of the child and childhood.

The definition of children is intrinsically linked with the development of the powerful protectionist discourse that continues to surround children today. Prior to the creation of the current international legal system, the League of Nations (1919–1946) was an integral feature of the international legal order in the early twentieth century. The League demonstrated an interest in children, particularly in protecting and providing welfare services for children (Buck 2014). The League created a Committee for the Protection of Children in 1919 and adopted the Declaration on the Rights of the Child in 1924. (The Geneva Declaration of the Rights of the Child was adopted 26 September 1924.) Although not legally binding, the Declaration exemplifies how the children were constructed as a passive object of concern, rather than as an active subject capable of asserting their own rights against others. The paternalistic nature of the Declaration is clear and provides a stark contrast to the central ethos of the Convention on the Rights of the Child 1989 (hereafter, the CRC) that sought to recognize children as autonomous.

It has been asserted that a critical source of vulnerability for children originates from their lack of agency, both in fact and under law (Gallagher 2010, 284). The legal definition of a child is enshrined by Article 1 of the CRC as “a child means every human being below the age of 18 years unless the law applicable to the child, majority is attained earlier.” The CRC filled a void, providing an international agreement upon the definition of childhood. However, the concept of childhood is contested by some, with the African Union recently explicitly enshrining a higher standard through the African Children’s Charter, within which childhood is extended to 18 without any references to the age of majority. (Article 2: Definition of the child. http://www.achpr.org/instruments/child/. Accessed May 2018.)
The Historical Origins of Child Trafficking

The significance of the “White Slave Traffic” is twofold; firstly, it provides the origins of both the societal perception of “human trafficking” and the contemporary legal definition (Allain 2017). Secondly, it provides an insight into how fears of the sexual slavery of women and children manifested in the adoption of several international agreements. This chapter will locate the origins of these fears, through the League of Nations archives, examining the ideological, discursive, and legal developments of child trafficking, rather than addressing the issues of their effects.

The Trafficking of Children: The Twentieth Century and the Era of the League of Nations

The International Legal Regulation of “White Slavery”


The chapter will focus primarily upon the Suppression of the Traffic in Women and Children 1921 and will not address the 1933 Convention as it excludes children from its parameters, focusing on “women of full age.” The 1921 Convention sought to intensify and reinforce the 1904 agreement and 1910 convention, after representatives of 34 nations met in Geneva to determine the extent of compliance with the 2 treaties (Knepper 2013). It is assumed that the “White Slave Traffic” Conventions of 1904 and 1910 were not developed with the intention of excluding children from their reach, but prima facie the primary issue was the traffic of “white slaves.” The explicit reference to “white slaves” limits the application to white children only, providing a clear distinction between those deemed worthy of protection and those
who are not. Both the 1904 and 1910 Conventions refer specifically within the Articles to girls, notably excluding men and boys from their reach. (1904 Convention term girl/s used eight times, 1910 Convention used seven times.) The 1904 Convention, for instance, references girl(s) on eight occasions, while the 1910 Convention makes seven references. The 1921 Convention, by comparison, provides no direct references to girls or boys but refers only to children. The 1921 Convention explicitly mentions children on five occasions through Articles 2, 6, and 7, reflecting a significant shift toward inclusiveness, capturing all children regardless of age, class, gender, race, and ethnicity.

The term “White Slave Traffic” is objectionable for several of reasons (Allain 2017), most notably for the implicit racism afforded through the exclusion of non-whites. However, the instruments remain crucial to understanding emerging fears of “the traffic” generally. Concerns about the “white slave trade” rested upon the fear or assumption that vulnerable and naive women and young girls were tricked or kidnapped to then be forced into prostitution. These “white slavery” narratives often involved the abduction of European women for prostitution in Africa, South America, or the “Orient” by “foreigners” (Kempadoo et al. 2012). Within the Summary of Annual Reports from member states, colonies, possessions, protectorates, and mandated territories on the “traffic in women and children” to the Secretariat of the League of Nations in 1927, explicit references to “European Children” by the Gilbert and Ellice Islands (British Protectorate) and the “traffic of European children” by Cochin China (French Colony) can be found. These references exemplify the implied focus upon the race of children identified as trafficked or exploited for immoral purposes. Moreover, this provides evidence to support the perspective that the issue of race was both explicit and implied in the “white slavery” narrative (Lammasniemi 2017). The 1921 Convention reflected a palpable shift from the racially motivated language of its predecessors and specifically identified “women and children” in its title rather than “white slaves.”

The Trafficking of Children and the League of Nations

International Conference on Traffic in Women and Children 1921

Into the League of Nations era, the International Conference on Traffic in Women and Children 1921 (hereafter, the Conference) had a specific agenda: to eradicate the traffic of women and children for the purposes of sexual exploitation. The Conference primarily focused upon administration and organization, through establishing the Rules of Procedure, the Appointment of Committee of Organization, and a report on the replies received to a Questionnaire that addressed the “traffic of women and children.” The Conference records illustrate that the phrase “white slaves” was replaced by references to “women,” with the delegate from Great Britain recommending that the word “white” should be omitted from the title of International Agreements. (Conference on Traffic in Women and Children, Daily Bulletin No III. July 2, 1923, third meeting 10 am. WIN_20180301_14_54_58_Pro.jpg.) This shift was justified as it was deemed more “exact and adequate,” providing
clarification that “it is, of course, only a change in form.” (League of Nations Records of the International Conference on Traffic in Women and Children (meetings held from June 30 to July 5, 1921), Geneva 11.) The phrase “traffic in women and children” was therefore adopted to replace “white slave traffic” within international documents (Knepper 2013). This shift was institutionalized by the publication of a worldwide trafficking study in 1927 commissioned by the League. This global inquiry into the traffic of women proved to be controversial, and the subsequent report contained significant distortions (Knepper 2013). Although an important enquiry, the Report of the Special Body of Experts on the Traffic in Women established the conceptual language for the study of international crime throughout the twentieth century (Knepper 2013). It falls outside of the scope of this chapter due to the focus of the inquiry upon women.

The Conference is noteworthy due to the explicit reference to the “Traffic in Children.” Whether this shift in language reflects a genuine departure in focus away from the dramatic narrative of “white slavery” (Doezema 2010) within legal, political, and societal arenas is subject to debate. The justification for the inclusion of “Traffic in Children” was that it was deemed necessary, in light of the “new and terrible facts” about the trafficking of children that were revealed by the Congresses held in Brussels, 1912, and London, 1913 (Ibid.). Furthermore, the conference proceedings stipulate that “in this respect, also, the time has come for protective action” (Ibid.). The Conference clearly demonstrates concerns and subsequent action that arose in response to the Congresses held in both Brussels and London, indicative of the Eurocentric focus and moral concerns fueling the development of instruments to address the exploitation of women and children for immoral purposes.

The Conference also raised a link between the traffic of women and children and the trade in indecent or obscene publications, through the identification of an intrinsic link between the two, with obscene publications perceived as a driving force behind trafficking of women and children (Ibid.: 28). This link is one of three identified linkages or explanations for the growth of child trafficking established by the activities of the League at the time. The second link is between the legal age of marriage and child trafficking, with the third attributing links between the traffic in opium and child trafficking. Each of these linkages will be addressed separately in the first part of this chapter, with the impact and legacy of these links to be explored in the second section that addresses contemporary child trafficking.

An outcome of the Conference was a meeting held to specifically address “child traffic” with international measures to control the traffic, especially within colonies and dependencies of states referred to (Ibid.: 1). The Vice President of the Committee asserted that child trafficking “is a very large and difficult question, perhaps more difficult than it would at first seem,” advocating the creation of a Committee to report back to the conference (Ibid.: 72). This demonstrates a shift away from the rhetoric of “white slavery” and falls into line with the League of Nations broader concerns of protecting children. This shift could be attributed to the realities of the world after the Great War, which led to a growing recognition of the perceived vulnerabilities and subsequent need to protect children. However, this growing desire to protect children was not inclusive enough to afford equal levels of protection to all children, regardless of their class, gender, and race.
The International Convention for the Suppression of Traffic in Women and Children 1921

The 1921 Convention was signed on September 20, 1920, in Geneva by 33 states, 22 of which did not belong to the League of Nations. (Albania, Australia, Austria, Belgium, Brazil, British Empire, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Estonia, Germany, Greece, Hungary, India, Italy, Japan, Latvia, Lithuania, Netherlands, New Zealand, Norway, Persia, Poland and Danzig, Portugal, Romania, Siam, Union of South Africa, Sweden and Switzerland. League of Nations (1922: 6).) Of the four conventions passed between 1904 and 1933, only the International Convention for the Suppression of the Traffic in Women and Children 1921 specifically mentioned children within the title. The significance of this is not purely superficial but reflective of the period. As demonstrated above, the 1921 Convention signaled a shift from the preambles of the 1904 and 1910 Conventions and can therefore be seen to provide a demarcation from the perception that trafficking only involves white women and girls. The impact that this conceptual shift had upon children will now be analyzed.

The significance of the 1921 Convention with regard to children is twofold. Firstly, Article 2 states that:

> The High Contracting Parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes.

The Convention thus adopts a broad and inclusive approach to the “traffic in children,” acknowledging that any child can be trafficked, regardless of class, gender, and race. However, as will be detailed later in this chapter, these significant interwoven issues were largely absent in responses to questionnaires in the annual reports on the “traffic in women and children.” Secondly, Article 5 raised the age limit of protection from 20 to “21 completed years of age.” (Article 5 International Convention for the Suppression of the Traffic in Women and Children 1921.) This increase is explained by reference to the protection of the morality of young girls and fears of “wanton men” (Kempadoo et al. 2012). The anti-slavery accord had an age limit for seduction set at 21, implying that protection is strongest for girls than women. Despite this increase by Article 5, reservations were submitted by states such as Burma, India, the Italian Colonies, Iraq, and Thailand. All five submitted reservations only to Article 5, with both Burma and India stipulating that the age of 16 was preferable. Iraq and Thailand did not specify a different age within the context of Article 5, simply submitting a reservation. The reservations of both the Italian Colonies and Thailand explicitly stated that the reservation was only applicable to a specific section of society, namely, “native women” of the Italian Colonies and “nationals of Thailand.” These reservations based upon race and ethnicity provide an insight into how unequal levels of protection were afforded to nonwhite populations, indicating that “native” or “indigenous” populations were explicitly considered of lesser value. This rhetoric is a continuance of the “White Slavery” Conventions, and, regardless of the explicit move toward the inclusivity of all women and children by the 1921 Convention, the application of law and policy in certain states was determined by race.
The full extent of the impact of these reservations upon the ideology and policies adhered to within each of the identified state parties is yet to be uncovered. However, the Summary of Reports of 1927 Questionnaire responses, from Burma and Iraq, provide revealing insights. Burma advocated that “no system of adopting, pawning or bartering of children for immoral purposes exists,” while Iraq stipulated that “no special measures [are] considered necessary, police throughout country as part of normal functions protect children from exploitation” (League of Nations 1929).

The League of Nations identified a link between the legal age of marriage and the traffic of children (Committee 1928: 5). In 1928, the Traffic in Women and Children Committee and the Child Welfare Committee consulted the “experts’ report” and replies from governments and concluded that “fixing the age of consent and the age of marriage at too early an age is apt to encourage the traffic and to promote the corruption of the young” (Ibid.: 6). The morally laden, protectionist ideology is clear. However, even with good intentions, unintentional damage, such as unequal access to rights or protection based upon the race, class, and gender of children, can be a consequence.

The specific reference to marriage and trafficking demonstrates the wider concerns that trafficking did not manifest only as the “White Slave Conventions” would suggest. The Traffic in Women and Children Committee and the Child Welfare Committee both classified child trafficking within a broader conceptual framework than the legacy of the “White Slave Trade” allows. The Committees recognized the exclusiveness of the “white slavery” and adopted a more expansive umbrella of the “traffic in women and children.”

The wording of Article 6 implies that exploitation outside of the state of origin was considered more serious. Article 6 prescribes that the contracting parties have regulations “as are required to ensure the protection of women and children seeking employment in another country.” It is unclear why regulations to protect women and children are deemed more important when the employment is outside of their native state. Protective mechanisms should be deemed as important regardless of where a child or adolescent is seeking employment; however, there is a clear assumption that those who are perceived as vulnerable, such as children, should not migrate.

**The League of Nations Registry Files 1919–1927**
The League of Nations Registry files 1919–1927 (12/114/114 12/647/647 12/35389/647636) demonstrate that child trafficking was not a primary concern at the time and that the focus upon prostitution remained paramount. This is illustrated by the 1927 inquiry conducted by the League, which focused purely upon the traffic of women for prostitution, noting that “no complete figures [are] available, but reliable information obtained...justifies the belief that a traffic of considerable dimensions is being carried on” (confirm reference pp. 355–356). The inquiry was the first worldwide study (Material was gathered from 28 countries across Europe, the Mediterranean, the America but no Scandinavia. See further Paul Knepper (2013).) of human trafficking, distorted by the fact that researchers used a definition of “traffic in women” to suit the policy-making agenda of the era (Knepper 2013). That agenda embodied the eradication of prostitution and endorsed the idea of
protection and rescue. The focus remained primarily upon the “White Slave Traffic/Trade” (see further Knepper, P. International Crime in the 20th Century: The League of Nations Era, 1919–1939, 2011). The issue that arises is whether this observation differs from the reports afforded by the religious and charitable organizations that are presented to the Committee for Traffic in Women and Children.

Specific references to “child trafficking” within the Summary of Annual Reports upon the Traffic in Women and Children from 1927 and 1928 are entirely absent. This lack of specific references to child trafficking as a standalone issue demonstrates that considerations of child trafficking lacked a strong evidential base. This further highlights the interwoven nature of the phenomenon of trafficking with other issues of humanitarian concern. The below table demonstrates the lack of explicit references to child trafficking within the non-digitized League of Nations Registry Files (Table 1).

The primary focus is clearly upon “White Slave Traffic” or the “Traffic of women and children,” with the former references on 29 occasions and the latter 23. Moreover, 16 references to “White Slave Traffic/Trade” are identified in 1920 alone, with 8 in the following year, highlighting that the preoccupation with “white slavery” peaked in 1920. Prior to the adoption of the 1921 Convention, which moved away from the language of “white slaves” to focus upon the “traffic of women and children.” The overwhelming emphasis upon the traffic of women and girls for immoral purposes is indicative that fears of sexual slavery remained a constant companion to the development of trafficking as an international issue of concern. Merging women and children into a category of vulnerability infantilizes women and amplifies the idea that those who are classified as vulnerable should not migrate (Sanghera 2012).

The files further identify a link between the trafficking of women and children and the trafficking of opium, further evidencing that the phenomenon of child trafficking was, at the time of the “White Slavery Conventions,” not a primary issue of concern. As detailed above, the trafficking of women and children was often linked or attributed to three issues: the traffic in obscene publications, the legal age of marriage, and the traffic in opium, together forming a powerful conceptual paradigm of protectionism, morality, and criminality.

### Table 1
League of Nations Registry Files 1919–1927 (12/114/114 12/647/647 12/35389/647636)

<table>
<thead>
<tr>
<th>Year</th>
<th>References to “White Slave Traffic/Trade”</th>
<th>References to “Traffic in Women and Children”</th>
<th>References to “Traffic in Women and Children and Traffic in Opium and other dangerous goods”</th>
<th>References to “child trafficking,” “child traffic,” or “trafficking in children”</th>
</tr>
</thead>
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</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>23</td>
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</tr>
</tbody>
</table>
Traffic in Women and Children Summary of Annual Reports 1927 and 1928: State Responses to Question 8

The Summary of Annual Reports of 1927 and 1928 have been selected for focus here as 1927 marked the 5th year since the 1921 Convention entered into force and preceded the outcome of the League’s 1927 inquiry into trafficking. The reports contain several questions, with Question 8 alone explicitly addressing children:

In addition to any information given in reply to previous questions, please state whether any other measures have been taken to protect children from exploitation for immoral purposes, especially where any system of adopting, pawning or bartering of children exists.

The question focuses upon protecting children from exploitation for immoral purposes, explicitly referring to systems of adopting, pawning, or bartering of children. The question fails to articulate the sale of children, attempting to include this under the umbrella-like term “pawning or bartering.” The focus is upon immoral purposes, whether that be for prostitution or sexual exploitation through child pornography or “obscene publications.” The phrase “exploitation for immoral purposes” is indicative of the need to classify harms or identify specific types of exploitation that are worse than others.

There are several notable responses to Question 8, the most revealing being from the French Colony of Cochin China and the British state of Siam. Within the Summary of Annual Reports for 1927 prepared for the Secretariat, it was stated that within Cochin China (French Colony from 1862 to 1954), the traffic of European children is unknown within the colony; however there are Chinese organizations in operation that recruit native women, girls, and boys for clandestine shipping to China (League of Nations 1929: 23). The response further stipulated that the girls were sold for the purposes of prostitution, while boys on the other hand were sold to childless families (League of Nations 1929: 26). The language adopted draws a clear distinction between native women, girls, and boys and “European children,” with the latter afforded higher levels of protection by the international community.

Siam asserted that no additional measures were taken for the protection of children; however police discovered four separate cases in 1927 of four Chinese boys stolen in China and brought to Siam to be sold (League of Nations 1929: 25). The purpose for which those boys were to be sold is omitted from the report, and no further elaboration is provided. The reason why a child had been taken or the exploitation that was suffered appears to be less important than the issue of illegal movement across national borders. These two examples provide a revealing insight into what would later evolve to be known as “child trafficking.” Both examples identify children of both genders trafficked across national borders for distinct reasons. Both responses highlighted that the traffic of “European children” was not an issue, identifying scenarios of child trafficking that fell outside the traditional parameters of “white sexual slavery.” The responses indicate that the focus upon “white slave traffic” or the loss of innocence of adolescent girls deflected from recognition of boys who were trafficked not for the exploitation of immoral purposes. The primary focus remained on young, white girls trafficked to be morally
corrupted. Another significant inclusion is the specific reference to “Chinese organizations,” implying organized criminal activity and providing justification for increased criminal justice mechanisms such as increases in police, law, and involvement of the courts.

The Trafficking of Children and the United Nations

The issue of child trafficking has received increasing attention in recent years. This chapter has demonstrated the historical foundations of the issue through a critique of the policy and legal regulation adopted by the League of Nations. The focus of the second part of this chapter now considers child trafficking in the age of the United Nations (UN), identifying parallels between contemporary and historical responses.

The position of children within the current international legal framework can be located through instruments such as the UN Convention on the Rights of the Child and its three Optional Protocols: the Optional Protocol on Children in Armed Conflict (OPAC), the Optional Protocol on the Sale of Children (OPSC), and the Optional Protocol on a Communication Procedure. (Optional Protocol on Armed Conflict; State Party 167; Signatory 12; No Action 18; Optional Protocol Sale of Children State Party 174; Signatory 9; No Action 15 and the Optional Protocol on a communications procedure; State Party 37; Signatory 22; No Action; 139. http://indicators.ohchr.org/. Accessed 28 March 2018.) In addition to this legal framework that specifically exists to both empower and protect children sits the Optional Protocol to the UN Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. (Signatories; 117; Parties; 173. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en. Accessed 28 March 2018.) Together they form the contemporary legal framework to address child trafficking. (The focus of this chapter is upon the treaty-based responses to child trafficking and therefore will not address the non-treaty aspects of the international legal framework: customary law, jus cogens, soft law, or UN Special mechanisms such as Special Rapporteurs or the International Labour Organisation (ILO).)

The Convention on the Rights of the Child (CRC) 1989

recognizing the child as an active “subject” of international law who can not only be a holder of rights but also participate in crucial decision-making (Buck 2014). The CRC provides a stark contrast to the League of Nations’ Declaration of 1924 which failed to recognize the child as more than a passive object. The perspective of the 1924 shows the societal perception of children as lacking both agency and self-determination.

The age of majority has been enshrined in the contemporary world through Article 1 of the CRC at 18 years. The potential impact of the 3-year difference in age between the 1921 Traffic in Women and Children Convention and the CRC has often been overlooked. Theories of childhood do not adequately provide an explanation as to why the age limit was initially set at 20 and then increased to 21, while within the contemporary policy of the UN, “youth” are classified between 15 and 24.

The significance of the Convention with regard to trafficking is that it is the only contemporary international human rights treaty to refer explicitly to trafficking apart from the Convention on the elimination of discrimination against women (Article 6, CEDAW). The special rapporteur on trafficking indicates that the CRC is the main reference for the trafficking of children. (UN Human Rights. Office of the High Commissioner, International Standards Accessed March 2018.) Under Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
- The inducement or coercion of a child to engage in any unlawful sexual activity;
- The exploitative use of children in prostitution or other unlawful sexual practices;
- The exploitative use of children in pornographic performances and materials.

The definition of Article 34 fails to explicitly reference the traffic of children, with the focus instead on unlawful sexual activity and exploitative practices. This focus echoes the League of Nations concerns of children exploited for immoral purposes, as demonstrated through the response to Question 8 in the 1927 and 1928 reports. The Article further provides a contemporary link between child trafficking and production of pornographic materials. The League expressed concerns about the connection between the traffic of children and the traffic in obscene publications, identifying them as drivers for each other. This perception appears to have consistently remained. Article 34 fails to provide any clarification as to how a state is supposed to protect children from sexual exploitation. This simply means that state parties undertake to protect children (regardless of class, gender, or race) from all forms of sexual exploitation and abuse.

Article 35 states that “States Parties shall establish all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” An importance of Article 35 is that it is the first international provision prohibiting the trafficking in children for the purposes of adoption, demonstrated earlier in the chapter to have been identified as an issue by the League.

The major flaw of the CRC is its failure to provide an authoritative definition of the terms “abduction,” “sale,” and “trafficking.” A consequence of this is that the
exact scope and applicability of Article 35 is brought into question, despite its relatively clear incorporation of the obligations upon state parties. These obligations go beyond requiring the states party to punish offenders after the trafficking has occurred but also to prevent trafficking from occurring, creating obligations with a horizontal effect (Humbert 2009).

The comprehensive framework provided by the CRC for the protection of the rights, dignity of children, and empowerment should be considered as a tool for understanding and responding to trafficking and related exploitation of children (Gallagher 2010). One of the major strengths of the CRC is its ability to be used as a framework for understanding and measuring child trafficking and related commercial sexual exploitation of children in the broadest possible context. (“Children and Prostitution: How can we measure the Commercial Sexual Exploitation of Children? A literature review and annotated bibliography” (UNICEF, 2nd Edition), 1996.) The issue that arises here is the perception that commercial sexual exploitation is synonymous with trafficking, adhering to the rhetoric of white sexual slavery from the early twentieth century and the focus of the League upon the traffic of women for prostitution through the 1927 inquiry.

The Committee on the Rights of the Child, established by the CRC, regularly raises the issue of trafficking. However, the Committee predominately focuses upon trafficking for the purposes of sexual exploitation, mirroring the activities of the Committee of Traffic in Women and Children 1921. Their historical counterpart focused upon trafficking for “immoral purposes” and ultimately the preservation of virtue and unwavering belief in the morally laden business of rescue. The Committee has often pronounced on trafficking-related issues in its concluding observations on state parties reports, stating that trafficking and child prostitution directly engage both Articles 34 and 35 of the CRC. The distinction drawn between the explicit references to “any exploitative practice” in the CRC is clear, as the 1921 Convention did not incorporate such an inclusive definition.


Through the preamble, the OPSC stated that the international community was:


The OPSC thus identified child trafficking for the sale of children, child prostitution, and child pornography as issues of pressing concern contrary to the move away from

**Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2000**

Article 3 of the Optional Protocol (to the UN Convention against Transnational Organized Crime Convention) to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children 2000 (hereafter, the Trafficking Protocol) defines human trafficking as:

(a) “Trafficking in persons” shall mean 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under 18 years of age.

Article 3 (a) therefore establishes the three separate elements to the definition, (i) the action, (ii) the means, and (iii) the purpose or exploitation. The idea of “traffic for immoral purposes” from the League of Nations era resonates with the Trafficking Protocol, which explicitly refers to the “purpose of exploitation” prior to defining qualifying types of exploitation. The significance of this identification is that it sheds light upon the origins of contemporary responses to human trafficking generally, through illustrating the need to identify the worst forms of exploitation or “exploitation for immoral purposes.” The language has evolved, but the ideology behind it has not, and that is of vital importance when charting the development of child trafficking within international law. Moreover, while the Protocol asserts at length what is classified as exploitation, adoption and forced marriage are excluded. As has been demonstrated, the League of Nations identified links between lowering the legal age of marriage and an increase in child trafficking, while trafficking for the purposes of adoption was an issue specifically raised by some responses to e-questionnaires submitted to the Traffic in Women and Children Committee in 1927.
The defining characteristics of human trafficking are the act of transferring a person using threat, fraud, force, or coercion for exploitation. The focus upon “Traffic in Women and Children” from the League of Nations era has continued almost a century later through to the Trafficking Protocol. However, within the contemporary world, attempts to distinguish between women and children have been made. The phrase “especially women and children” in the Protocol accentuates the need for special protection; therefore, a clear link between the titles of the 1921 Convention and Trafficking Protocol can be established. The Protocol provides no specific section directly addressing children alone or clarification as to how children shall be specifically afforded additional protection due to their “vulnerability.” Whether this vulnerability is assumed, perceived, or essential for the child can only be discovered when the way the child has been constructed within the trafficking framework critiqued.

**Children and the Trafficking Protocol**

International law recognizes a distinction between children and adults. Within the context of human trafficking, this is reflected by the need for a different response (Gallagher 2010). The UN Trafficking Principles and Guidelines assert that:

> The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs. (UN Trafficking Principles and Guidelines. Guideline 8: Special measures for the protection and support of child victims of trafficking, Addendum to the report of the UN High Commissioner for Human Rights (E/2002/68/Add. 1), 10.)

This quote provides an insight into how the image of the “trafficked child” has been constructed. It further demonstrates the powerful protectionist discourse that dominates contemporary discussions about children. The discourse of human trafficking inadvertently strips children of their autonomy, justified by a powerful morally loaded and protectionist stance. The omission of the mean element is significant as it removes the agency of the child to make decisions about their own lives. The issue of consent and coercive or controlling behavior within the context of children has been the focus of legislative measures in recent years. The omission of the mean element through Article 3 of the Trafficking Protocol 2000 is illustrative of how all those under the age of 18 are classified as lacking agency. The issue of consent is not isolated to contemporary discussions of child trafficking but falls outside of the remit of this chapter (Samuel 2012).

The language used by the Trafficking Protocol illustrates direct links to the “White Slavery Conventions” of the early twentieth century. Terms such as “fraud,” “threats,” “abuse of authority,” and “violence” were initially adopted in the 1910 Convention (Allain 2017). Those terms coupled with the “method” and
“purpose” of the Convention constitute the three elements of contemporary trafficking. The ideology is clear from both historical and contemporary responses to human trafficking; those that do migrate ought to be prevented or rescued. The justification for this often involves reference to the concept of “in the child’s best interests.” The idea that they require protection abroad enforces the fear that the perpetrators of the exploitation were foreign. This serves as a deflection from the complicity of states allowing factors that drive migration to flourish and is mirrored through today’s response to human trafficking.

Article 3(c) states that children are considered victims “once they are recruited, transported, harboured or received for the purposes of exploitation.” Therefore, through the Protocol, only those children who undergo the “recruitment process” can be considered trafficking victims. The offense of child trafficking may be established irrespective of the use of coercion or deceit, usually required as elements of the crime when the victims are adults. (Article 3 (a) and (c) Trafficking Protocol 2000.) This gives weight to the perceived vulnerabilities of the child and provides an insight into the construction of the child within the human trafficking framework. In the case of children, no evidence or element of coercion is required for them to be identified as trafficking victims as they are perceived to be vulnerable and unable to offer informed consent to be trafficked.

**Conclusion**

The issue of protecting children is one that has a long history, which the League of Nations’ aspirations to protect and provide welfare services for children in the post Great War era are illustrative of. The vulnerability of children is a recurring issue throughout the period under review, with a source of vulnerability for children arising from their lack of full agency, both in reality and under law. The protectionist discourse is driven largely by moral concerns; however the contemporary legal responses to the trafficking of children have not significantly evolved in terms of how it is understood and recognized under international law.

Terms as morally and politically loaded as “modern slavery” or “child trafficking” invoke a powerful emotive response, and due to this power, they are offered a level of unquestioned supremacy. Numerous charities have been established and have joined forces to combat “modern slavery,” yet there is little agreement among any of these key players as to what constitutes the trafficking of children and what does not. Reflecting upon the legal responses to “White Slavery” at the beginning of the twentieth century illustrates not only the origins of what is classified as child trafficking today but provides an insight into how limited the developments have been over the past century.

This chapter has sought to chart and analyze the development of historical and contemporary legal responses to child trafficking. It has demonstrated that despite superficial changes in terminology, the parallels between historical and contemporary understanding of the phenomenon are striking and that the ideologically driven aspirations of selective protectionism remain constant. The continued focus of the
international community on young, white girls trafficked to be morally corrupted remains one of the most powerful images of the Western pantheon.

Cross-References

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- International Legislation on White Slavery and Anti-trafficking in the Early Twentieth Century
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Human Trafficking in Canada as a Historical Continuation of the 1980s and 1990s Panics over Youth in Sex Trade

Katrin Roots

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Abstract

The United Nations (UN) reconceptualization of human trafficking as a transnational organized crime of pressing urgency through the Trafficking Protocol (2000) provided an enormous boost to the urgency surrounding the issue of trafficking. In the domestic context, in Canada, however, the issue has become embedded with various pre-existing concerns, most notably child sexual exploitation and youth in the sex trade, which can be traced to the panics that emerged in the 1980s and 1990s around youth involvement in the sex trade, marked by the release of the Badgley Report in 1984. Since then, young people in the sex trade have been seen as victims to be protected rather than criminals to be punished (Bittle, From villain to victim: secure care and young women in prostitution. In: Balfour G, Comack E (eds) Criminalizing women: gender and (in)justice in neoliberal times. Fernwood Publishings, Halifax, p 195, 2006). This chapter focuses on the ways in which anti-trafficking discourses and frontline practices of criminal justice actors in Canada borrow from concerns over sexual exploitation of children and particularly the 1980s and 1990s panics over youth in the sex trade. In historically preceded ways, these concerns are used to target the sex trade under the guise of “saving the children” from sexual abuse and maintain a

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targeted focus on young black men as “pimps” and exploiters. This adaptation of knowledge, tools, logics, and discourses of the 1980s and 1990s into the current anti-trafficking efforts has enabled the reconceptualization of previous procuring cases as human trafficking.

**Keywords**
Youth in sex trade · Child sexual exploitation · Badgley Report · Crime making · Local anti-trafficking police · “White slavery” · Trafficking Protocol

**Introduction**

Following Canada’s ratification of the UN *Trafficking Protocol* in 2002, significant efforts have been put forth to demonstrate Canada’s commitment to combating this issue (Millar et al. 2017; Millar and O’Doherty 2015; Kaye 2017; Kaye and Hastie 2015; Kaye et al. 2014; DeShalit and Roots 2016; Roots 2013). Among other things, these efforts include the establishment of anti-trafficking laws, which through various amendments have broadened the definition of trafficking to allow a wide range of criminal acts to be captured by the umbrella term “trafficking.” At the level of enforcement and prosecution, anti-trafficking efforts in Canada have been focused on targeting the sex trade. While prior to Canada’s ratification of the UN *Trafficking Protocol* (2000), sex work was seen as a fairly marginal social problem, the introduction of trafficking as a new and menacing form of child sexual exploitation and a threat to Canada’s young and vulnerable women and girls enabled renewed targeting of the sex trade under the guise of protectionism. Yet, concerns around the sexual exploitation of children are not new and among other examples have historical precedence in near identical campaigns to regulate the sexuality of young women at the turn of the twentieth century through the “white slavery” panics (Doezema 2000, 2001, 2010; Donovan 2006; Cordasco 1981; Lammasniemi 2017) and the 1980s and 1990s panics around youth engagement in the sex trade (Brock 1998, 103; Bittle 2006; Jeffrey and MacDonald 2006; Smith 2000). The current chapter explores the connections between the current anti-trafficking efforts and the pre-existing and historical issues and suggests that the meaning of human trafficking in Canada is shaped, at least in part through these linkages. The first part of the chapter explores the ways in which constructions of youth in the sex trade as “exploited” victims – a key focus during the 1980s and 1990s youth sex work panics and “white slavery” panics at the turn of the twentieth century – have been taken up in similar ways during current anti-trafficking efforts. The second part of the chapter investigates how the police strategy of targeting young, racialized men as “pimps” and exploiters of youth in the sex trade during the 1980s and 1990s has similarly been employed in ongoing anti-trafficking efforts.

The themes of this chapter arise out of an empirical study on contemporary anti-trafficking criminal justice and legal efforts in Canada. (The research was collected for my doctoral dissertation, see (Roots 2018).) The study included an analysis of
123 court informations/indictments from the province of Ontario in Canada; sentencing decisions in trafficking cases across Canada; 8 full and 3 partial trafficking trial transcripts and/or audio recordings; 15 interviews with municipal police, provincial Crown and defense attorneys, and judges; detailed analysis of Canada’s quickly evolving laws; Parliament of Canada debates on bills related to human trafficking laws and efforts; and media coverage of the issue of trafficking between 2005 and June 2016. The empirical data from this research is placed in the context of and made sense of through the work of scholars looking at historically relevant issues of “white slavery” and child sexual exploitation and specifically the panics over youth involvement in sex work panics that took hold in Canada during the 1980s and 1990s.

Historical Predecessors: “White Slavery” and Concerns over Youth in Sex Work

Contemporary anti-trafficking efforts can be traced back to the turn of the twentieth-century concerns over “white slavery” (Doezema 2000, 2001, 2010; Gallagher 2010; Walkowitz 1980; Bullough and Bullough 1987; Lammasniemi 2017). “White slavery” panics emerged at the end of the nineteenth century in England over concerns that white women and girls are being forced to work in brothels across Europe against their will. While evidence to support these panics was scant, they have had an enormous and continued impact, partly through the establishment of international “white slavery” laws beginning with The International Agreement for the Suppression of the White Slave Trade in 1904 (Doezema 1998, 2000, 2001, 2010; Gallagher 2010; Cordasco 1981; McLaren 1990; Valverde 2008; Donovan 2006; Bullough and Bullough 1987; Walkowitz 1980). Since then, there have been five other international conventions targeting “white slavery,” later named “human trafficking,” including the current Trafficking Protocol (2000). (These include The International Convention for the Suppression of the White Slave Traffic in 1910; International Convention for the Suppression of the Traffic in Women and Children in 1921; The International Convention for the Suppression of the Traffic in Women of Full Age in 1933; and The Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others in 1949.)

In addition to the influence of “white slavery” discourses, the issue of domestic trafficking in Canada has also developed within the framework of child sexual exploitation and particularly in relation to the sex trade, where the age of the labelled victim often becomes the central focus. (According to Canadian law, a person must be at least 16 years old in order to consent to sexual activity. Sexual activity is considered to be exploitative if it takes place between a person who is 16 or 17 years old and a partner who is either: (a) in a position of authority over them, (b) is relied on by the young person for care or support, or (c) if the relationship between the young person and the partner is exploitative (Department of Justice 2017). Youth sex work is also categorized as child sexual exploitation.) This focus on the youth of the trafficking victim is a part of the continuation of, what Bumiller calls, “the child abuse revolution,” dating back to the 1980s (2008, 8). In Canada, this “child abuse
revolution” was notably marked by the establishment of the Special Committee on Sexual Offences Against Children and Youths, also known as the Badgley Committee, which formed in 1981. The committee was tasked by the Canadian government to look into the issue of sexual offenses against children and youths and provide recommendations “for the protection of young persons from sexual abuse and exploitation” (Brock 1998, 102; Bittle 2013). Among other things, the Badgley Report (1984) put in motion a shift toward the reconceptualization of youth engagement in sex work as a form of sexual exploitation. In this way, youth involvement in sex trade went from a marginal social problem to “a central manifestation of the sexual abuse of children” [emphasis original] (Brock 1998, 102). With it, the Badgley Report (1984) led to the “growing perception that young prostitutes should be treated as victims in need of assistance and ‘distinct from being treated as offenders’” (Bittle 2006, 195). While the intended focus of panics over youth involvement in the sex trade was the protection of exploited youth and children forced into the sex trade against their will, these panics gave law enforcement the green light to increase the policing and criminalization of the sex trade (Jeffrey and MacDonald 2006; Smith 2000; Brock 1998).

These very same paternalistic discourses, which formed as a part of a larger concern over child sexuality in the 1980s and 1990s and during the “white slavery” campaigns at the turn of the twentieth century, are also at work in the contemporary anti-trafficking strategies. The prevalence of concerns over child sexual exploitation and sex work are evident in legislative debates, police interviews, and media coverage on trafficking. For instance, in one parliamentary debate, one Member of Parliament (MP) claimed: “we must not forget that almost 50% of victims [of trafficking] are minors” (House of Commons, Nov 26, 2013, Bill C-452). This generous estimate is brought even higher by an interviewed anti-trafficking police officer who noted that “the girls that we deal with, first, most of them are very young” and further that “I can honestly say that 60–70% of the girls we deal with are under the age of eighteen.” These estimates are also frequently accompanied by categorization of young people as minors or children, which, as Deborah Brock points out, collapses important distinctions between children and young people.

Indeed, as scholars have noted, western definitions of childhood have often been criticized for neglecting to take into account variances cross-culturally, generationally, but also based on gender and variations between children and youths of different ages, in effect allowing for the capacity of 18-year-olds to be equated with that of 12-year-olds (Brock 1998, 103; Buck 2014; Dauda 2010). The result, according to Claudia Dauda, “is an essentialized concept of childhood that encompasses a variety of experiences from infancy to adolescence, or youth, and is often universalized and globalized; at the same time, it marginalizes and silences the actual experience of childhood” (2010, 228). Sexuality, in this context is seen as exclusively an adult terrain. Therefore, if it is awakened in children, it is always through external sources and seen as quite dangerous (Dauda 2010). And so, as Dauda explains, “childhood sexuality is not only endangered, needing protection against external harm, but also dangerous, posing a threat to the broader social order and in need of control” (Dauda 2010, 229). The control and protection of childhood
sexuality in the context of fears around human trafficking is entrusted in the hands of specialized anti-trafficking police units that have formed within municipal police forces across Canada.

**Policing Trafficking**

At the time of writing in 2018, there are specialized anti-trafficking teams in Toronto, Peel Region, York Region, Durham Region, Ottawa, Winnipeg, Calgary, and London, while other municipal police forces, such as Vancouver and Edmonton, house them in their Vice Units.

These local policing units play an important role in anti-trafficking efforts, as they have been responsible for the vast majority of trafficking charges in Canada (Roots 2018). As one defense attorney I interviewed contends:

now that they have specialized police departments or teams for police forces who are only investigating human trafficking...you’re going to see more human trafficking charges. That’s the biggest reason that you weren’t seeing it before. It’s cause the police weren’t looking for it.

Similarly, in response to a question about why there might be an increase in human trafficking arrests in recent years, one Crown attorney attributes it to, “the establishment of a squad, not only in Toronto and the GTA [Greater Toronto Area], like they’re in York Region and other regions...the advent of that is helpful.”

In addition to increasing the numbers of trafficking charges, these local police units also play an important role in shaping the meaning of human trafficking and understandings around who is a trafficker and who is a victim. As Richard Ericson observes, the police are at the forefront of producing definitions of crime. In carrying out their obligations, Ericson notes that the police make events into crime and individuals into criminals (9) and “are given organizational capacity to produce particular levels of crime and to produce particular types of crime to the relative exclusion of others” (1983, 7). This was captured by officers’ comments regarding lack of knowledge on trafficking when the specialized anti-trafficking units were initially formed. According to one member of anti-trafficking policing unit interviewed for the study, when he was initially joined, “there was nothing [in terms of knowledge on the offence]. I was like, this is fucking terrible, no one knows what’s going on here. We’ve come a long way.” There was also “no formal training on human trafficking. There was none.” To learn about the issue, this member of anti-trafficking police read “reports, studies, blogs, internet stuff. Everything I could. ‘Pimping’ books, breaking down hip hop culture, listening to lyrics, understanding what they’re saying. Realizing that it’s [knowledge on human trafficking] embedded in popular culture today.” He went on to note:

I didn’t know nothing about it [human trafficking]. So I read a book...”Somebody’s Daughter”...that book takes place in the early 90s, late 80s. It’s basically about the Toronto,
Halifax pimping ring back then...I read that book that he [referring to his superior] read, and thought, holy, this stuff is happening from back then and we’re not doing anything about it? So, I went almost immediately, and we started changing the way we did things. [emphasis added]

As such, the knowledge gap that existed at the outset was filled with historical “knowledge” from 1980s and 1990s “pimping” issues and stereotyped understandings of “pimping” circulating in popular culture. *Somebody’s Daughter: Inside the Toronto/Halifax Pimping Ring*(1996), the book used by the anti-trafficking policing unit to learn about human trafficking, was written by journalist Phonse Jessome. As Jeffrey and MacDonald describe it:

the book highlights the violence of the pimps by fictionalizing parts of the story and creating some characters to make the storyline more readable (and dramatic). Fact blends with fiction throughout to create a melodramatic story of innocent victims and evil predators. (2006, 160)

According to one sex worker interviewed by Jeffrey and MacDonald, the book “presented a lopsided view of prostitution and, in the end, such an approach fails to address the real issues” (2006, 160). And so, rather than learning about trafficking from evidence-based research, police knowledge around trafficking stems, at least in part, from a sensationalist and partly fictionalized portrayal of historical concerns over sex work. Yet, despite the troubling source, police formation of knowledge on human trafficking from a book on 1980s and 1990s panics over youth involvement in the sex trade provides strong evidence to suggest that knowledge on human trafficking in Canada as well as police tactics, strategies, and tools employed are simply resurgences of historical concerns over youth in the sex trade. Due to the impact of Jessome’s book in shaping police “knowledge” on human trafficking and while acknowledging the problems with it, the arguments made in this paper will nonetheless rely on it. This is to demonstrate the information that exists on the 1980s and 1990s panics and to explore the ways in which it compares to current domestic understandings of human trafficking.

The development of anti-trafficking policing units in itself is preceded by the specialized task forces that emerged in 1990 in Halifax, Montréal, and Toronto in order to “assess the extent of juvenile prostitution in their cities and to devise programs that would encourage young prostitutes to abandon the sex trade” (Government of Canada 2003: City Task Forces and By-Laws). As Jeffrey and MacDonald write, despite disagreement by sex workers, it was police insistence that “pimping” was a significant issue and so led to the creation of a specialized task force aimed at dealing with the issue (2006, 117). Analogous to the current anti-trafficking efforts (DeShalit et al. 2014), generous funding was allocated to the operation of these specialized police teams and led to many more patrol officers being hired to police sex workers (Brock 1998, 94). According to Deborah Brock, in 1988 alone the city of Toronto spent $6.3 million on policing sex work under the guise of protectionism (1998, 94). Many more arrests of sex workers, clients, and “pimps” took place than in previous years, and specialized squads conducted street sweeps resulting in the arrest of hundreds of people in one night. As Brock notes, a
three-night sweep in November of 1987 led to the arrest of 442 sex worker customers (1998, 90). While this was one notable example of targeted enforcement by police, these tactics were common during this time and were justified largely through the perceived need to protect young people from sex work.

**Protection and Criminalization**

Despite the evolution of tactics, police in anti-trafficking units maintain that their strategies, tactics, and tools are novel. One of the ways they carve out this position is by pointing to their shifted approach from criminalization to protectionism as a new way of dealing with the sex work, “pimping,” and trafficking. Take, for instance, the comment of a member of anti-trafficking policing unit: “at the end of the day, people still think a hooker is a hooker. They do!...and that’s why we need experts to tell them.” The comments suggest that sex workers should not be criminalized per se, but rather protected. This is seen as a new approach that now also requires the input of expert police officers. Similar views were conveyed by another member of the anti-trafficking policing unit, who noted: “I needed them [police officers] to see, not look at a girl that’s a prostitute but look at her as a potential victim. Not look at charging her, but look at who is responsible for controlling her.” As the police officer explained, the decision to hire officers to work in the specialized squads was dependent on their ability to see youth in the sex trade as victims, rather than offenders. Yet, this paternalistic position around sex work is not new and is given particular urgency through a focus on the youth of the potential or labelled victim. As Jessome writes in the context of the 1980s and 1990s concerns over youth in the sex trade: “the key to their growing success was a dramatic change of attitude...the new approach had police targeting the pimping rings instead of their youthful victims” (1996, 7). As such, local anti-trafficking police, just as anti-“pimping” task forces had in the 1980s and 1990s, are framing their efforts as a part of “a new and approved approach.”

In an effort to rescue and protect victims, police have turned their attention to targeting traffickers. In contrast with internationally prevalent understandings of traffickers as being a part of Eastern European and Asian transnational criminal organizations, the primary target in Canada has become the prototypical black “pimp” – a figure easily resurrected and redeployed as part of Canada’s anti-trafficking efforts (Roots 2018; Bernstein 2012). This is made possible by the combined effect of Canada’s trafficking laws, which focus the definition of trafficking on the term “exploitation,” thus enabling its conflation with the offence of procuring (s. 212(1) of CCC) (Roots 2013, 2018; see also Chuang 2014). It is further supported by the fluid understanding of the stereotyped term “pimp,” which enables the construction of various scenarios as “pimping” (Jeffrey and MacDonald 2006, 117). Thus, as Jeffrey and MacDonald contend, if evidence for one scenario is absent, other scenarios are employed to justify continued targeting of the sex trade (2006, 118). The “pimp,” according to Anita Kalunta-Crumpton, is a racialized, classed, and gendered image that reinforces the stereotypical popular mythology of
black men in connection with black sexuality and crime (1998, 567, see also Jeffrey and MacDonald 2006). As Patricia Hill Collins observes, “the controlling image of Black men as criminals or as deviant beings encapsulates this perception of Black men as inherently violent and/or hypersexual” (2004, 158).

This focus on young black men in anti-trafficking efforts is seen most notably through the visual portrayal of accused in trafficking cases reported on by the media. Many individuals charged with human trafficking offenses are paraded in newspapers with screaming titles, such as “Taylor Dagg, 23, wanted for human trafficking in Ottawa” (CBC News 2014b) and “Toronto police arrest 4 men in human trafficking probe involving teen victims” (The Canadian Press 2018). These news reports, which bring together race, class and gender based fears of (white) young women being victimized by black men, declare accused as “human traffickers” through visual portrayals – often in the form of a mug shot – and accompanied by an unverified description of the terrible things they have done. As Finn points out, a police mug shot, which permeates people’s daily lives through newspapers, “is an image that is taken to indicate criminality” (2009, 1). Therefore, publishing a mug shot of an accused confirms their guilt even before the charges are substantiated (Finn 2009, xviii). This is particularly noteworthy since pictures, in contrast with other forms of visual representation, are taken to be more objective, despite the fact that they are as cultural as they are natural (Finn 2009, xii). Consequently, the visual portrayal of the accused through mug shots contributes to the confirmation of the accused as “human trafficker,” despite the fact that the charges, at that point, have not been proven in court.

The targeting of young black men via the anti-trafficking agenda was also confirmed by criminal justice actors interviewed for my study. For instance, as one Crown attorney contends, traffickers are “youngish, they are in their 20s generally, some are involved in gangs, the majority of the people, if not all. There’s ones who’s not – they’re black – young black males has been – from my experience” [sic]. Similarly, a defense attorney asserts:

my understanding when I first read about the anticipated legislations dealing with human trafficking was basically to help people who are being moved into our country and tricked and manipulated and coerced into the sex industry whether it would be dancing to escort to prostitution. But what I really find is minority males who break off with dancers. Those are the ones I find end up being charged all the time. [emphasis added]

In the 1980s and 1990s, panics over youth involvement in the sex trade led to similar targeting of young black men as “pimps” (Brock 1998; Jeffrey and MacDonald 2006; Smith 2000). As a task force representative from Tanya Smith’s study revealed, while the decisions of police were not racially motivated, “it was true that black men were mostly arrested because of their involvement in the Toronto prostitution ring” (2000, 58). Deborah Brock provides additional examples of this racialized criminalization from the 1980s and 90s, such as for instance, a 1987 Toronto Sun article entitled “Teen Hookers ‘White Slaves’. Cops Report Runaways Tortured” (1998, 123). These same references to “white slavery” picked up by the
newspaper were also made by a member of the Metro Police Juvenile Task Force (ibid.). A few days prior to the publication of this article, the now former Toronto Deputy Chief William McCormack was also recorded saying that “the real culprits behind this [youth involvement in the sex trade] are the ‘white slavers’ and those are the people we would like to see completely eradicated” (as cited in Brock 1998, 123). As Brock writes, the reference to “white slavery” by the Deputy Chief created a direct link between the crisis over youth involvement in the sex trade and the racialized scenarios disseminated during the “white slavery” panics at the turn of the twentieth century where narratives of white women preyed upon by racialized men were used to create a moralized panic (1998, 123; see also Doezema 2010; Lammasniemi 2017). Jeffrey and MacDonald explain that, “the story of evil pimping rings and innocent children was much more interesting to the public than was the earlier, careful Children’s Aid Society Reporting, which linked youth prostitution to abusive parents, runaways and homelessness” (2006, 158).

As such, the prevalent narrative of domestic human trafficking in Canada follows the now very familiar storyline of a young, white girl or woman being victimized by a black “pimp.” This has been seen during the “white slavery” panics at the turn of the twentieth century (Doezema 2010; Valverde 2008; Donovan 2006; Lammasniemi 2017) and the panics over youth involvement in the sex trade of the 1980s and 1990s in Canada (Jeffrey and MacDonald 2006; Brock 1998). The storyline gains further emotive power through emphasis on the violent behavior of young black men labelled as “pimps” and “traffickers” toward the victims. Women and girls’ victimization at the hands of “pimps” draw on a particularly disturbing image of violence and brutality exhibited against the innocent and vulnerable (see also Doezema 2010; Bumiller 2008; Valverde 2008). As Kristin Bumiller observes, the anti-sexual violence agenda, which anti-trafficking efforts are a continuation of, is reinforced through stories of “sadistic violence” exhibited against women and sensationalized by the media (2008, 8). This is demonstrated in what was called a “sex-trafficking series” published by the Toronto Star in 2015. The series describes victims as “beaten, branded with their pimp’s name, and bought and sold across Ontario,” having “a grisly red scar wrapping around her right ankle from an attack last year that severed her Achilles tendon and left her foot ‘just hanging there,’” being burned with cigarettes, “beaten black and blue, starved” until they service a certain number of men and having guns put against their heads or shoved inside their mouths (Toronto Star 2015b). According to a different article from the same series in the Toronto Star, “some of the girls are beaten by pimps, whipped with coat hangers heated up on a stove, punched, choked, burned and forced to sleep naked at the foot of the bed like dogs” [emphasis added] (Toronto Star 2015c).

A reading of these news stories on sex trafficking, alongside an analysis of media coverage of the 1980s and 1990s panics over youth involvement in the sex trade by Jeffrey and MacDonald (2006) and Brock (1998), reveals undeniable parallels. Stories of youth involvement in the sex trade from the 1980s and 1990s include sensationalized headlines such as “Former prostitute has scars all over,” “Yarmouth warned about pimps,” “Threats, abuse forced girls into prostitution,” and “Young
women were sex slaves,” which as she notes “allow us to be privy to tales of recruitment, coat-hanger beatings and physical and emotional scars that will never heal, all because of the evil activity of the pimps in Nova Scotia” (Smith 2000, 55). Notably, Jeffrey and MacDonald discuss a newspaper article from 1992 where a police officer describes the “hanger beatings,” noting that “the hanger is placed on a stove burner and then applied to various parts of the girls’ bodies” [emphasis added] (2006, 159). The nearly identical descriptions of the heated coat hanger scenario described in the 2015 Toronto Star article on sex trafficking above and the 1992 article on “pimping” rings in Halifax, Nova Scotia, captures the parallels in the media focus almost too well.

At the same time as the violence of the accused against the victim is seen as a defining feature of human trafficking, offenders are also constructed as employing subtle approaches to lure and manipulate their victims – one of these is the “Romeo tactics.” As one police officer described it:

Pimps...will approach a girl and the way they do it, how they will shower her with gifts, that’s the process of procurement. ....and all of a sudden, boom! Now you’re going to work for me. It goes from that starting point of, I’m going to be your boyfriend, I’m going to shower you with gifts, and it ends when they say, now you’re going to work for me. So it’s not just the act of you’re going to work for me, it starts way before that.

Another police officer noted that the “Romeo tactics” is, “where they get the girls to fall in love with them and from that position they exploit their affection to transition them to working in the sex industry.” That such romancing is a form of manipulation is explained by a third officer as follows: “he doesn’t have to tell you he’s going to kick your ass or beat you, he just has to romance you, do whatever, manipulate you.” Relying on this grooming tactic allows Crowns and police to make the argument that the complainant was lured and forced into their situation, not physically, but through false promises of love, thus turning otherwise mundane behaviors into recruitment tactics.

The dangers of the “Romeo tactics” are also disseminated in the media. For instance, a Toronto Star article which covers an interview with an accused human trafficker describes it as follows:

'lt begins with the boyfriend stage, he says, where pimps prey on vulnerable girls and pretend to be in love. .....But, he added, it's an illusion because 'there's no love in the sex trade'. The next stage is the 'sale' where the pimp starts to manipulate the girl into thinking prostitution is an easy way for them to make fast money so they can start to build a future together... 'and, she'll do it. Why? Cause you just sold her a dream'. (Toronto Star 2015c)

This recruitment tactic is once again depicted as a new development in the “pimping” world. This is seen in a Toronto Star article on human trafficking, where a mother whose daughter was forced into the sex trade by her boyfriend is quoted as saying, “we never knew about boyfriend pimps” (Toronto Star 2015b). Yet, similar depictions of boyfriend “pimps” as a new development can also be evidenced during the 1980s and 1990s panics over youth involvement in the sex trade when the
police focus remained on Nova Scotia and, in particular, the “street gang” North Preston’s Finest. This shift from violence to more subtle tactics is also captured in the writing of Phonse Jessome:

Violence had been touted as the key to pimp’s success. Today it is seen as a weakness. The Game is played for money and the players adjust to rule changes quickly. If beating girls means going to jail, then beating girls is not a smart man’s way to play. One jailed pimp recently joked about this trend, saying his colleagues now had to buy ice-cream cones for their girls to keep them happy. (1996, 14)

Contemporary police depictions of traffickers’ recruitment tactics as new and more dangerous due to their subtlety, while borrowing from strategies used during the 1980s and 1990s panics over youth involvement in the sex trade, is one way in which human trafficking is being reconceptualized at the national level to take on a more commonplace and mundane meaning.

These narratives are made even more terrifying through the association of human trafficking with organized crime. As Anne Gallagher (2010) notes, international anti-trafficking efforts have shifted from a human rights framework emphasizing the protection of women and children to a focus on challenging organized crime. This was achieved by making the *Trafficking Protocol (2000)* a part of the *Convention against Transnational Organized Crime (2000)*, which explicitly links organized crime and human trafficking at the international level. According to John Ferguson, the *Trafficking Protocol (2000)*, which is governed by *The Convention against Transnational Organized Crime*:

was presented to the international community as a new tool, an internationally sanctioned instrument for governments to use in their fight against the threat of rapidly expanding transnational organized crime groups that were believed to be profiting from the formed movement of, and abusive exploitation of, enslaved people across national boundaries. (2012, 68)

Indeed, some police officers within anti-trafficking units interviewed for my study went to great lengths to demonstrate the connection of organized crime to human trafficking. As one such police officer explained:

My background was heavily organized crime based at the time, so bringing that into these types of investigations...At the time the vice guys were taking down massage parlours, bawdy houses, and all the girls were being charged. They were charging the girls working in the massage parlours, girls were being charged with prostitution offences and they weren’t having any success arresting convicting pimps, they hadn’t laid a single human trafficking charge. So, I came and started seeing how they did things and applied my experience and realized that intelligence wise we were lacking intelligence to what was really happening.

The officer’s suggestion that his experience with organized crime enabled him to make the necessary changes in the organization’s anti-trafficking efforts to successfully identify, arrest, and charge suspected human traffickers shows the extent to which organized crime is seen as an important component of trafficking by police.
officers. The extent of this belief was captured by the comments of another officer who estimated the extent of organized crime involvement in trafficking activities to be at 85–90%, noting that:

You have the one offs. Guys that are entrepreneurs, who think they can make money doing it. The majority of the guys that we deal with are gang members.

While this position rests upon and promotes a view of human trafficking and organized crime as closely and dangerously linked, the connection is not as well established as these representations suggest (see Kapur 2005; Kempadoo 2005; Bruckert and Parent 2004; Roots 2013; Aradau 2008; Millar and O’Doherty 2015). As summed up by Jyoti Sanghera in her study of trafficking discourses, “in view of the overall paucity of evidence on the issue of trafficking globally, it is nearly impossible to make a claim that trafficking is entirely or even largely a problem of organized crime” (2005, 15). And yet, the lack of empirical support does not erase organized crime from the equation. Instead, as Anna Pratt (2014) explains, organized crime has become loosely defined and includes violent street crimes, gun crimes, and sex work by smaller, decentralized criminal groups.

This fluid understanding of organized crime has, in Canada, led to the adaptation of the word “street gang,” alongside or in place of the term “organized crime.” In effect, threats posed by “street gangs,” who may or may not be well organized, are seen as existing on a continuum of organized crime. This is captured by a comment of one Crown attorney who describes those involved in trafficking activities as:

either officially gang related or there’s a group, like, they’re passed [women] on from one to another sometimes. Even though it may not be like the Crips or the Bloods, in some cases it is, but a group of individuals who are involved in it together and passing girls among each other, so officially and unofficially gangs, I guess.

The overriding efforts to connect organized crime with human trafficking are also seen through reference to “street gangs” at the level of law enforcement. For instance, according to information provided by Criminal Intelligence Service Canada (CISC) to the Standing Committee of Justice and Human Rights, “trafficking is done through organized crime networks. …street gangs facilitate the recruitment, control, movement and exploitation of Canadian-born females in the domestic sex trade” (Canada’s House of Commons 2012, 11). The link between small-scale criminality and transnational organized crime syndicates is further drawn by Canada’s federal policing agency, the Royal Canadian Mounted Police (RCMP), which states that:

The involvement of transnational organized crime groups in human trafficking is part of a growing global trend. Human trafficking generates huge profits for criminal organizations, which often have operations extending from the source to the destination countries. These transnational crime networks also utilize smaller, decentralized criminal groups that may specialize in recruiting, transporting or harbouring victims. [emphasis added] (RCMP 2014)
Thus the RCMP views “street gangs” as the middle man between victims and transnational organized crime groups.

Parliamentarians are also unclear in their understanding of the relationship between organized crime and “street gangs.” For instance, in debates over Bill C-452, which proposed consecutive sentencing for human trafficking convictions and the removal of proceeds of crime from the accused, one Member of Parliament argued that “street gangs” have become central in human trafficking efforts in Canada. Yet, the MP later diminishes the role of “street gangs” suggesting that “there’s a lot of talk about street gangs, but transnational criminal organizations are very involved in human trafficking, whether it be international or national” (House of Commons, April 29, 2013, Bill C-452). The fluid and interchangeable uses of the terms “street gang” and organized crime demonstrate the continuation of organized crime in loosely defined ways, enabling it to take on new forms.

Similar efforts to construct links to organized crime through the use of the term “street gang” can be traced to the 1980s and 1990s panics over youth involvement in the sex trade. During this time, the police maintained that organized crime was controlling the sex trade, therefore conflating sex trade with drug trafficking and other criminal activities (Brock 1998, 52). In particular, as Brock observes, the danger to young sex workers in the 1980s and 1990s was traced to “gangs” of black “pimps” operating out of Dartmouth, a small town in Nova Scotia (1998, 125). According to Smith, stories of disappeared women and girls were used by the media at that time to suggest that “a gang of North Preston’s black men had developed an elaborate network within which vicious means were being used to maintain these girls in positions of fear subservience and danger” (2000, 75). Evidence to the continuation of this within current anti-trafficking efforts is captured by newspaper titles such as Notoriously violent N.S. gang recruiting women, girls and pimping them out in Ontario: police (National Post 2016), North Preston’s Fine gang funnels girls to Ontario for prostitution (CBC News 2014a), and North Preston’s Finest: sex trafficking from Halifax to Toronto (CBC News 2015), all of which describe the lengthy and violent history of North Preston’s Finest in running sex work operations across Canada. In effect then, drawing out these parallels enables us to see the ways in which contemporary conceptualizations of human trafficking have been shaped through historical precedence, rather than constituting a new emerging threats.

Conclusion

This chapter has explored the ways in which anti-trafficking efforts in Canada have been shaped by historical precedence set by the “white slavery” panics that took place at the turn of the twentieth century and more notably by the 1980s and 1990s panics over youth involvement in sex trade in Canada. The paper drew out numerous existing parallels between the two historical concerns and the contemporary anti-trafficking efforts including the protectionist approach toward victims of trafficking, focus on youth of the victim, narratives of grooming and violence, as well as constructions of organized rings of black “pimps” as exploiting the innocence
and vulnerability of young, white children in Canada. By doing so, the paper demonstrated that contemporary understandings of human trafficking, its key components and actors, and efforts to combat it are shaped by the deployment of this historical precedence by local law enforcement, legal, and lawmaking actors. These troublingly close parallels challenge assertions that human trafficking is a new threat emerging in response to a globalized world and point to a need to pay closer attention to the quality of and process of making criminal cases into human trafficking (Gallagher and Surtees 2012).

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Portugal and Human Trafficking (1822–2018)

Victor Pereira

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Abstract

Despite its relatively small territory and the stability of its borders since the thirteenth century, the Portuguese State has never been able to fully appropriate the “monopoly of the legitimate means of movement” and did not possess the infrastructural power (in Michael Mann’s formulation) – compliant agents and efficient instruments – to control the mobility of the population. As a consequence, many Portuguese emigrated illegally. Among the four million Portuguese who left their country between 1822 and 1974, many of them did it illegally, without any passport, with a fake passport or by lying about their age or employment. The aim of this chapter is to analyze both discourse and practices related to human trafficking in Portugal in the modern era, from 1822 and the independence of Brazil up to today. We will first see why the Portuguese elite presented, since the 1830s, emigration to Brazil as a white slave traffic. Then we

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will analyze the different ambiguities of the clandestine emigration during the dictatorship of the New State (1933–1974). Finally, in epilogue, we will see the mutations of irregular migrations in a country transformed by democratization and Europeanization.

Despite its relatively small territory and the stability of its borders since the thirteenth century, the Portuguese State has never been able to fully appropriate the “monopoly of the legitimate means of movement” (Torpey 2000, 1–2) and did not possess the infrastructural power (in Michael Mann’s formulation) – compliant agents and efficient instruments – to control the mobility of the population (Mann 1984). As a consequence, many Portuguese emigrated illegally. Among the four million Portuguese who left their country between 1822 and 1974, many of them did it illegally, without any passport, with a fake passport or by lying about their age or employment. From 1855 to 1910, Maria Ioannis Baganha (1991) estimates that, depending on the time periods, between 5% and 15% of all emigration were illegal. In some regions, such as the Azores islands (Amorim 1993), irregular emigration seemed to be much more important, but, by definition, historians can hardly measure precisely the flows that tried to escape from States’ control. Numbers were higher during the New State dictatorship (1933–1974) which tried to prevent the popular classes from leaving the country. Almost 2/3 of the 900,000 Portuguese who emigrated to France between 1957 and 1974 did it irregularly (Pereira 2012).

As early as the nineteenth century, illegal emigration was constructed as a “public problem” by some of the Portuguese elites who wanted to control the mobility of the population (Pereira 2013). Newspapers and politicians blurred the lines between “human trafficking” and “human smuggling.” Illegal emigration was often defined as “human trafficking.” Migrants were always represented as gullible, devoid of critical sense, and ready to chase after the false promises of recruiters, traffickers, emigration agents, or unscrupulous smugglers who, motivated by profit alone, artificially spawned emigration. These middlemen – operating either legally or illegally – were turned into convenient scapegoats. They were to blame for emigration in order to hide the many factors that could explain the massive levels of departures: misery, social inequality, lack of freedom, and rigid social hierarchies. Depicting migrants’ future employers as potential exploiters, by denouncing the “white slave traffic,” Portuguese leaders sought to legitimize government initiatives that restricted departures.

In this chapter, my aim is to analyze both discourse and practices related to human trafficking in Portugal in the modern era, from 1822 and the independence of Brazil up to today. For this period, it is essential to keep in mind three factors. First, up to the 1980s, Portugal was mainly a country of departure. So, discourse and practices related to human trafficking mainly concerned Portuguese migrants abroad. In the 1980s, Portugal became a country of immigration (despite the persistence of emigration, which in fact never abated), and human traffic also affected foreigners in this country. Secondly, up to 1975, Portugal was an Empire in which human traffic and forced labor were pivotal elements (Clarence-Smith 1979; Cleveland 2015; Jerónimo 2015). Portugal was the first European kingdom to enslave or to trade directly slaves in sub-Saharan Africa in 1441, short-circuiting North African slave traders (Mendes 2008). Portugal was also the main European power to be involved
in the Atlantic slave trade between the sixteenth century and the nineteenth century. Brazil, the main Portuguese colony, received four million African slaves, the third of all the Atlantic slave trade (Dorigny and Gainot 2006). It should be noted that the Portuguese government prohibited the entry of new slaves in the mainland in 1761. In 1773 a free birth law allowed the children of a female slave to be free. Nevertheless, the enforcement of this law was difficult and many slave owners ended up keeping their slaves (Caldeira 2017). In addition, Portugal was one of the last colonial power to abolish the slave trade (1836) and slavery (1878) in its Empire. Furthermore, the main purpose of these bans was to please Great Britain, which had diplomatic and economic power over Portugal and championed the abolition of the slave trade and, afterward, of slavery.

In practice, the slave trade followed, irregularly, until the 1860s, and covert slavery remained in the Portuguese Empire until the 1960s. Consequently, although we are going to focus on the metropolitan case, we cannot understand speeches on human trafficking, a so-called white slavery held since the 1830s in Portugal, without taking into account the existence of slavery in the Portuguese Empire and the conflicts that this phenomenon provoked between Lisbon and London. Denouncing an alleged white slavery, the Portuguese elites wanted to hide their role in the slave trade and the maintenance of slavery practices in its African territories. It was also a way to save the “national honor [that] was at stake” (Marques 2006, 181) because of the slave trade. Portuguese elites wanted to express that Portugal was a European country, while the other European powers considered it as archaic and against the Enlightenment values.

Finally, it is necessary to recall that democracy and the right to come and go freely have not really been guaranteed in Portugal before 1974. Until then, the various regimes have tried to reduce the departures, which has caused the existence of an important illegal migratory flow. It is therefore necessary to be cautious about public discourse and the legislation that has blurred the distinction between illegal immigration and human trafficking in order to justify the measures which prevented Portuguese to move abroad. This was particularly the case for women whose rights have been greatly reduced in order to, allegedly, protect them from prostitution networks.

We will proceed in a chronological order. We will first see why the Portuguese elite presented, since the 1830s, emigration to Brazil as a white slave traffic. Then we will analyze the different ambiguities of the clandestine emigration during the dictatorship of the New State (1933–1974). Finally, in epilogue, we will see the mutations of irregular migrations in a country transformed by democratization and Europeanization.

How the Denunciation of Human Trafficking Legitimated Colonialism and Restrictions to Freedom of Movement

A Rhetoric of Reaction and Colonial Project

The independence of Brazil in 1822 did not cut off the migratory flow linking the metropolis and its ex-colony that existed since the seventeenth century (Godinho 1978; Rowland 1998). Portuguese emigration, up until the 1950s, was mostly to
Brazil, with networks linking the Portuguese countryside, particularly in the north of the country, and the former colony. Emigration was part of the peasants’ strategies to maintain their properties, to give opportunities to some of their children, and to obtain some capital thanks to remittances. Emigration was a key factor for the reproduction of the central and northern Portuguese rural society composed by small and medium landowners (Silva 1998).

Even if this migratory flow had positive effects in a backward rural country, part of the elites tried to refrain it. Employers – large- and medium-sized agricultural landowners – and a segment of the political leadership deplored the departures and believed there was not enough labor force in Portugal (Pereira 1981). Mercantilist viewpoints were still dominant among employers and the political elite: authorities wanted to retain an abundant workforce in order to maintain wages low (Foucault 2004, 70–71). Emigration was described as catastrophic: allegedly, young men fled the countryside where only the women, children, and elder people remained. Emigration was also depicted as both an illusion and a mistake, a trap which only the naïve would ever step into. However, this reactionary rhetoric – in the sense given to this term by Albert Hirschman (1991) – grounded on the notions of the perverse, futile, and risky nature of emigration, elided the misery prevalent in Portugal at the time, misery caused, in part, by an excess of population that the elites wanted to maintain.

Furthermore, after the independence of Brazil, Portuguese governments entertained the project of creating “new Brazils” in Africa (Alexandre 2000). Thus, wherever labor force excess existed in the mainland, people should head toward colonies (mainly Angola and Mozambique) rather than Brazil. Hence emigration to countries outside of the Empire was considered as undermining it, diverting settlers from colonizing Portuguese territories, developing their economies, “civilizing the indigenous,” and defending national sovereignty. These statements were repeated over and over between the 1830s and 1974 (Castelo 2007).

To support this thesis, numerous – and often hyperbolic – statements suggested that the Portuguese in Brazil were nothing but a replacement of African slaves, reduced to the status of “white slaves,” thus disgracing the home country and its international reputation. In the 1830s, even if the departures were reduced – there is no reliable data on the waves in the 1830s, but an inquiry on emigration made in 1843 showed that the phenomenon was far from being massive (Sousa 1999) – some public discourses define emigration as disastrous and equate it to “white slavery.” During the nineteenth century, the parliamentary debates, the press, and the few books dedicated to emigration show a succession of dramas linked to emigration. A multitude of misfortunes would await those who headed toward Brazil, British Guiana, or the West Indies. According to these narratives, most often based on secondhand materials, migrants traveled in deplorable conditions, worse than in slave trade boats: piled up, malnourished, without any comfort, and sometimes constrained to work during the journey. The Portuguese (and Brazilian) press regularly mentions overloaded boats landing in Brazil or migrants who had died during the trip, sometimes thrown overboard.

Once in Brazil, the Portuguese who had not paid for their trip were negotiated by certain captains. These migrants had to work for a number of years to settle their
debts. They were sometimes employed in agriculture, working with slaves and also being abused. Based on Portuguese official reports, Caroline Brettell wrote that “those who went to the Brazilian fazendas (plantations) were badly fed, treated like slaves and punished like dogs” (Brettell 2003, 12). Throughout the nineteenth century, Portuguese consuls in Brazil warned Lisbon, occasionally doing so in hyperbolic terms, that Portuguese migrants were sometimes reduced to slaves by “service contracts” (Alves 1993), forms of indentured labor (Stanziani 2014), that stipulated that they had to work a certain number of years to pay back their trip.

Although they are one of the main sources for historians, descriptions of emigration by diplomats should not be taken literally. Full of miserabilism, these actors use expressions and rhetoric that often tend to obscure rather than describe reality. These descriptions most often hide the capacity of migrants to act, their strategies, and the migratory chains that structure their mobility (Borges 2009). While it is true that many migrants suffered various dominations and abuses during their journeys and in the countries they joined, they were more likely to emigrate within a migratory chain based on family links.

**White Slave Trade Against Black Slave Trade?**

João Pedro Marques points out that “mid-nineteenth-century Portugal has always written more about white slavery than about the trafficking of African slaves” (Marques 1999, 342). In fact, on the one hand, Portuguese elites wanted to hide the survival of the slave trade and slavery, and on the other hand they wanted to refrain emigration. Consequently, political discourse on Portuguese in America generalized the abuses suffered by a minority to all emigrants.

Furthermore, the accusation of white slavery practiced in Brazil hides the relations of domination that existed in Portugal. With very few exceptions, regarding the fate of soldiers or fishermen subject to ship owners, the expression of white slavery is not used for workers who remained in Portugal. While in the industrializing countries, the term “slavery” and the comparison between proletarians and slaves were used to highlight the deterioration of the living and working conditions of workers subjected to exhausting workloads and discipline (Grenouilleau 2014), in Portugal this argument can rarely be seen in parliamentary debates. It is true that industrialization was still marginal at that time in Portugal, but “social panics” do not really depend on the magnitude of a phenomenon to exist. Emigration to Brazil was deplored and considered massive in the 1830s when departures were still reduced and only reached its magnitude in the 1910s (Newitt 2015).

The sale of children or the subjugation imposed on domestic servants by their employers, denounced in the Brazilian context, existed at the time in Portugal (Sousa 1999; Brasão 2013).

We cannot understand the frequent early use of the expression “white slave” in Portugal without taking into account the conflicts between Lisbon and London around the slave trade. Since 1807, Britain had repeatedly tried to coerce Portugal to abolish the slave trade. Through the Palmerston Bill (1839), the British
government arrogated itself the right to intercept Portuguese ships suspected of carrying slaves and to judge their captains. This decision, considered an attack against national sovereignty, profoundly influenced the Portuguese elite (Marques 2006). It revealed the diminished power of the country and suggested that Portugal, refusing to effectively ban the “infamous traffic,” was a nation that refused the values of the Enlightenment, progress, and civilization, by protecting the barbaric slave trade. The Palmerston Bill flamed hostility against Britain, already strong since the 1810s and British intervention during the Napoleonic Wars. In 1842, to restore its honor, Portugal signed an agreement with Great Britain to effectively repress the slave trade. In spite of this, the slave trade continued until the 1860s and, in a disguised way, between the territories of the Portuguese Empire until the 1960s.

The denunciation of white slavery allowed Portuguese political elites to place the country on the side of those who fight against what appears from now on as an intolerable phenomenon.

One of the first denunciations of white slavery in the Chamber of Deputies was made in April 1839 by Almeida Garrett, a writer and liberal politician. He is the author, accredited by Portuguese historians, of the preamble to the 1836 decree which seemingly banned the slave trade while presenting African colonies as a new Eldorado that would allow Portugal to be prosperous again. Almeida Garrett denounced emigration as “the first evil that castigates the Azores” and equates it to “white slavery trade.” Then, he invented the history of an alleged fight against the slave trade in Portugal and said that:

and here [the Parliament], where voices have risen so high against the black slavery, we will not consent to the protection of this other so scandalous slavery which, if it is different from the other slavery, is none the less more abominable, because it deals with beings more civilized than the others [Africans]. (Speech of Almeida Garrett at the Chamber of Deputies, Session of March 24, 1839, 215)

In his book called The Sounds of Silence, João Pedro Marques stressed that very few voices criticized slavery and slave trade in Portugal. Abolitionism was mainly the consequence of London’s pressure in the nineteenth century. In consequence, Almeida Garrett strongly exaggerated when he stated the voices that rose against the black slavery. In the case of the Azorean islands, slave trade was banned in 1832 (Caldeira 2017) – only 7 years before Almeida Garrett’s speech. Garret’s discourse implies a racist hierarchy that was used by the colonial powers at the end of the nineteenth century to legitimize their domination: Europeans have the burden to civilize the allegedly non-civilized.

Almeida Garrett’s rhetoric was repeated during the following decades. The denunciation of white slavery makes it possible to construct the illusion of a Portugal having abolished, out of its own free will, the slave trade, to certify the European belonging of Portugal (while certain Europeans leaders doubted it) and to affirm the inferiority of the Africans whom the Portuguese must govern in order to civilize them.
Protect Emigrants or Curtail the Right of Movement?

Overstating irregular emigration and the abuses suffered by emigrants had another objective: legitimizing a legislation that tried to refrain what became a right of all citizens, the right to freely leave one’s country. After the Liberal Revolution of 1820 and after the definitive break with absolutism in 1834, Portuguese rulers had to deal with a major contradiction. In 1834, the liberal principles seemed to have prevailed in Portugal. The 1826 Constitutional Charter, in effect from 1826 to 1828, from 1834 to 1836, and, finally, from 1842 to 1910, was granted by Dom Pedro IV (also Dom Pedro I in Brazil), the heir to the Portuguese crown and Emperor of Brazil. The Charter established the right to emigration: § 5 of article 145 guarantees that “anyone can remain in, or leave, the Kingdom, as they see fit, taking their possessions with them; as long as the due police procedures are followed, and no harm is caused to others.” This article was part of the liberal ideas, one natural right proclaimed during the “exit revolution,” as Aristide Zolberg (2007) called it. However, Dom Pedro did not really pretend to allow the Portuguese to leave their country freely. In fact, this article was only the translation of one article of the Constitution of the Brazilian Empire of 1824. The Emperor Dom Pedro wanted to encourage the arrival of white immigrants in Brazil and thus put forward this liberal principle, which was supposed to favor the arrival of European settlers.

Although the right to emigrate was included in the constitutional text of 1826, the majority of the Portuguese political class did not intend to respect Dom Pedro’s constitutional legacy and let the population circulate as it wished, preferring to keep an abundant workforce and to promote the colonization of African territories.

As Alan Dowty asserted, governments that do not want to respect the right of movement of their population argue “that controls on movement are in the best interest of the individuals themselves, whatever their own opinion of the matter” (Dowty 1987, 9). In Portugal, during the nineteenth century, several laws on passports, on the activities of emigration agents, or on ships transporting emigrants were published (Pereira 2013). Unlike many European countries (Torpey 2000), the passport was not abolished in Portugal, and all emigrants were required to have one. Governments presented the passport not as an obstacle to emigration – which it was – but rather as a guarantee for emigrants, subject as they were to various forms of exploitation. Emigration should be restricted – by way of legislation, regulatory devices, or administrative practices – for the emigrants’ own good. For the political elites, emigrants could not defend themselves alone, and, sometimes, they were even ready to voluntarily enslave themselves, accepting forms of indentured labor. Moreover, the idea that the Portuguese were ready to enslave themselves legitimated the restrictions on citizenship that were imposed throughout the nineteenth century. Only free men could be citizens, and, as a result, individuals willing to lose their freedom could not be citizens and vote (Ramos 2007).

The rhetoric of protection enabled the government to bypass constitutional limits. For the government, it was not a case of curtailing the right to emigration. It was, instead, a way of safeguarding the well-being of emigrants and, more generally, of
the population as a whole. While it is true that nineteenth-century emigrants were the victims of various forms of exploitation, the chief goal of the State’s actions was not their protection. Even the Commissioner of the Special Emigration police – organization created in 1896 for the purpose of fighting against illegal departures – recognized the contradiction of the Portuguese emigration policy:

the passport, a document that should serve as a protection and guarantee for all the country’s subjects abroad, has become a pretext for the exacting of an extremely burdensome tax, all the more revolting since it mostly falls on destitute individuals, as emigrants tend to be. Suffice it to recall that in no country in Europe, regardless of the regime to which the departure of national citizens is placed under, do the fiscal demands on this matter amount to even half of what is asked in Portugal. (Report of the General Commissioner of Emigration Police sent to the Secretary General of the Home office, 16 August 1905, Arquivo Nacional da Torre do Tombo, Ministério do Reino/Direcção-Geral da Administração Política e Civil, lot 5405, box 13).

Paradoxically, Portuguese authorities fueled a phenomenon – irregular and clandestine emigration – they pretended to fight, maintaining a legislation and regulation that contributed to boost departures without passports or with fake passports.

**Dictatorship, Clandestine Emigrants, and Smugglers**

**Emigration as a Threat**

In 1926, a military coup leads to the instauration of a dictatorship, the New State (Estado Novo) which is institutionalized in 1933. The New State is the regime, from 1834 onward, in which the right to emigration is least respected and in which legislation and practice concerning emigration movements are the most restrictive ones (Pereira 2013). In what constitutes a clear sign of the restrictions on the freedom of emigration, matters related to international mobility are gradually passed onto the hands of the political police forces (Ribeiro 1995). The issue of mobility is tied to that of subversion. Those who wish to leave Portugal or enter its territory are perceived as potential threats to order.

This animus toward emigration, however, did not prevent its numbers from reaching their highest point toward the end of the 1960s and in the early 1970s – 1970 being the peak year, with 183,205 people leaving, mainly illegally, the country.

In the beginning of the 1960s, France became the main destination and attracted more and more emigrants. This migration flow constituted a real problem for the dictatorship. Between 1957 and 1974, 900,000 Portuguese emigrated to France, about 10% of the population. Among them, 550,000 emigrated irregularly.

The dictatorship led by António de Oliveira Salazar considered Portuguese emigration to France as a political, economic, and military threat. The regime was scared that the Portuguese living in France would gain a political consciousness and would become communists. The only time Salazar mentioned publicly emigration to France, he stressed his fear. In 1964, the dictator confessed to a French newspaper
that “our great concern is that, especially in the Parisian suburbs where they are very badly accommodated, the Portuguese workers are handled by the Communist Party. The communists are the only ones taking care of them, facilitating their hiring and the formalities that their legal stay entails. They publish newspapers in Portuguese language. Thus a dreadful communist infiltration takes place” (L’Aurore, 9 October 1964, 11).

Also, according to the regime, emigration was a political problem because middle and large landowners wanted the State to prevent departures. Yet, these landowners represented an important support for the regime, in a country where 40% of the population still worked in agriculture in 1960. Finally, emigration was also a threat toward the Portuguese Empire in Africa. In 1961, colonial wars began in Africa. All young Portuguese males were called up for this colonial war. So, according to the dictatorship, emigration was hindering this military mobilization.

**The Paths of Clandestine Emigration**

For the Portuguese who wished to go to France, the best way was to leave the country illegally. Illegal emigration was often faster, safer, and cheaper than legal emigration. Emigration was not entirely prohibited, but a plethora of decrees and regulations had been enacted in order to restrict legal departures (Pereira 2012) and the administration was kafkaesque. Indeed, to apply for an emigration passport involved lengthy administrative procedures and many forms to fill. It could also be expensive because it was often necessary to pay bribes to bureaucrats. Sometimes passports were not given before more than a year of procedure. The legal emigration was often humiliating because the applicant had to ask for the support of a patron: the administrative process of passports’ concession was based on patronage, like many administrative matters in Portuguese rural society (Cutileiro 1971).

On the contrary, illegal migration was faster and less intimidating and did not require to fill dozens of forms. The oral contract proposed by recruiters and smugglers was easier to understand. Smugglers offered a clear commitment: a sum of money for the journey from one village to a specific place in France. These procedures reduced the uncertainties of emigration. It was part of a network of acquaintanceship and trust. Many migrants left to join their relatives abroad, relatives who welcomed them, accommodated them, and helped them in their first steps into an unknown country. Illegal immigration put the migrant in the center of a migration chain, while legal emigration, through employment contracts, often reduced migrants to a mere workforce, isolating them from their families and their relationships.

However, the relationship between candidates for illegal emigration and smugglers came with ambiguities and power relations. Authorities and newspapers, censured and controlled by the dictatorship, presented smugglers as scapegoats, and their action was assimilated to that of modern slavers. Authorities repeated that smugglers were only guided by profit without any scruple and that they abandoned their “clients” in the middle of the mountains, after robbing all their goods. Clandestine migrants were erected as victims and not as actors because it
allowed the dictatorship to hide their agency and the political dimension of their departure. Again, as in the nineteenth century, illegal emigration and human trafficking were blurred. This migration wave was often defined as “a new modality of white slavery.” This rhetoric allowed the State to claim the duty to protect emigrants from smugglers, but the smugglers were not all tricksters as the propaganda of the dictatorship claimed. They were no heroes either (Pereira 2010). Their main purpose was not to release Portuguese from dictatorship and poverty, unlike what some of them claimed (Morais 2007). The smugglers were paid for the service they delivered and they took advantage of the contradictions of the emigration policy.

Despite the dictatorship’s will to reduce them to victims, the migrants were not as weak as the authorities claimed. To reduce the risks linked to the clandestine journey, a contract was often made between smugglers and illegal immigrants. If the migrants were arrested and if they did not denounce the smugglers to the police, the next time smugglers would not charge them, and they would provide them their services for free. A system had been established and achieved what Adam Seligman (2001) calls the “confidence”: a relation based “on the ability to impose sanctions and the knowledge that one’s partner to an interaction also knows that sanctions will be imposed if he or she fails to live up to the terms of an agreement” (Seligman 2001, 39). Before leaving, the emigrants only paid half the cost of the trip. They used to give to their families half of a picture: their own portrait. And they kept the other half with them, during their travel. If they succeeded and made it to France, they would send to their families half of the picture they kept. Receiving the piece of the picture, their family knew they had to pay what was left of the smuggler’s retribution. Migrants had other means to be sure that smugglers would not cheat them: they could denounce them to the police or they could deter other would-be emigrants to employ their services. The “reputation” was an essential capital for smugglers. Those considered unreliable would lose opportunities. The smuggler who would deceive migrants would not be able to stay in this business for a long time: he would surely get himself denounced to the political police by the deceived migrants or even by other smugglers who wanted to protect their reputation (Pereira 2014).

Smoke and Mirrors

If 550,000 Portuguese left illegally, it was not only the result of a failure of the Portuguese State, unable to control its borders. Illegal emigration was a central point in a strategy whose goal was to conciliate economic development and the support of the declining rural and conservative elites. As we have seen, traditionally, landowners and other notables asked the State to stop emigration. In order to maintain their support, the government enacted a plethora of decrees and regulations to restrict legal and illegal departures (Pereira 2012). A few months after the Angolan’s revolt, in February 1961, a decree-law told that clandestine emigration was henceforth a crime and not a simple offense any more. The authorities also championed various press campaigns against smugglers, presenting them as evil and ensuring the will of the political police to jail them.
But inside the dictatorship, some individuals defended that the economy should be opened up to Western Europe and liberalized (Andresen 2007). For some of these reformists, economic growth was a way to legitimate the dictatorship. Emigration was a piece of the modernist strategy. The exit of low or unskilled workers permitted the increase of the productivity and the mechanization of the economic structures. The emigration also channeled foreign capital through remittances, remittances essential for the modernization of the economy and also for buying weapons (mainly from France and from Germany) for the colonial wars.

If Salazar had several reformists in his governments, until the end of the 1960s, he kept prudent economy policies that did not cause trouble with the conservative currents (Rosas 2012). The emigration policy of Salazar’s government was a game of “smoke and mirrors” (Massey et al. 2003). To use Michel Foucault’s expression, the dictatorship led a “differential management of illegalities” (Foucault 1975): “to perpetuate itself,” the dictatorship tolerated “spaces where the law can be ignored or violated” (Fischer and Spire 2009, 8).

The Salazarist government only tried to avoid the problems that emigration could carry and to get as many benefits (political, economical, etc.) as it could take. Illegal migration minimized the political risks of the migration in France and slowed down the separation between the emigrants and Portugal. Illegal migration selected and weakened the migrants. The goal of the emigration’s legislation and of the low supervising of the borders was not to stop all illegal emigration. Above all, it was to force the migrants to contract the services offered by recruiters and smugglers and to endure a physically hard trip. This modality of migration consequently restricted the departures to the healthy men. Until the mid-1960s, illegal migrants had to endure a long and dangerous trip: they had to cross the Portugal-Spain border and then the whole of Spain; they had to hide in trucks or in cars, to walk at night, and then, finally, to cross the border between Spain and France, often in the mountainous area of the Pyrenees (Goienetxe 2017). Few women or children could complete the illegal journey toward France. This caused family separations, which was one of the main goals of the authorities. The government wanted to separate the families for two reasons. First, in France, the migrants were men, alone, who emigrated in order to send money to their families and to invest in Portugal. The separation of the families was a key for the dictatorship to continue channeling remittance flow. Secondly, migrants feared that they could not return back home to visit their relatives and friends if they were denounced as communists. Many migrants thought that the Portuguese political police was present in France and had a powerful network of informers. Therefore, the majority of migrants stayed far from trade unions, political parties, or any protest.

Nevertheless, this strategy was not always efficient and was disrupted in 1964–1965. In April 1964, the French government decided that Portuguese who enter France illegally could be, later, regularized. It was an encouragement for many Portuguese who knew they could find an employment even if they had entered France illegally. Then, in 1965, Spanish authorities also decided to tolerate the transit of Portuguese illegal immigrants and did not chase them anymore. In fact, until 1965, the Portuguese political police mainly relied on the action of the Spanish
police who chased Portuguese illegal migrants who had no passport, put them in jail, judged them, and expelled them to Portugal (Pereira 2008). Until 1965, the whole Spaniard territory was a border for Portuguese illegal migrants. This surveillance, even if it were not very efficient because Spanish policemen were often lazy and corrupted, perfectly suited the Portuguese dictatorship that handed responsibilities over his neighboring country, without warning him. Firstly, the Spanish police was doing the task that the Portuguese police should have done: arrest illegal migrants. In consequence, the political police did not need to send more policemen to the borders and continued to fight against its main targets: the opposition and anticolonial militants. Secondly, the Spanish police was making it difficult for the Portuguese peasants to emigrate. Therefore, only men could emigrate and they ran into debts to pay the smugglers networks.

After 1965, illegal emigration became less dangerous and cheaper. At the end of the 1960s, the emigration flow to France increased considerably, and the proportion of women and children became larger.

In 1968, the successor of Salazar, Marcelo Caetano, changed the emigration policy that was now connected with the modernization policy and liberalized. Illegal emigration was no longer a crime and amnesties for the illegal migrants were granted. Nevertheless, as a consequence of the continuation of the colonial wars, the emigration was not liberalized as in the democracies. If Portugal did not need its peasants anymore, it needed soldiers. Illegal migration continued in a large proportion, but migrants did not need to risk their lives anymore to enter France.

Epilogue: Human Trafficking, Democracy, and Europeanization

With the Carnation Revolution in 1974, for the first time, all Portuguese could emigrate as they wished. The leaders of the Portuguese democracy promise to build a country where it will not be necessary to leave. Emigration becomes linked with dictatorship and the colonial wars and seems to belong in the past. Nevertheless, after 1974, the migratory flow did not dry up. Nor did illegality because many immigration countries closed their border in 1973–1974, after the economic crisis (Laurens 2009). Migratory flows also were more diversified: France did not receive the majority of emigrants as between 1961 and 1974. The Portuguese went also to Luxembourg, Switzerland, Great Britain, or Spain.

In the 1980 and early 1990s, many Portuguese worked abroad illegally, but not as victims of human trafficking. Before Portugal’s entry into the CEE (1986), the end of the transition period for the free circulation (1992) and later when it became part of the Schengen space (1995), many Portuguese worked illegally in France and other European countries.

This illegal work is part of the uncertainties linked to the European construction and the establishment of the free movement of workers as well as the freedom to provide services in the European Union. One of the first cases concerning the debate – which is still very keen today within the European Union – on posted workers thus involved a Portuguese company, subcontractor of French companies working on the construction of a railway line in France. The French authorities considered that it was
an illegal introduction of immigrant workers. These workers entered France as tourists but established a salaried activity there, without obtaining the necessary authorizations. In addition, they were paid according to Portuguese standards, well below the French minimum wage. The Portuguese company – *Rush Portuguesa* – considered that its activity was legal, acting within the freedom to provide services. The European Court of Justice, seized by the Portuguese company, sided with *Rush Portuguesa* (Blanpain 2008, 350). However, the vagueness around the situation of the Portuguese posted workers still persisted for some years. In 1996, the European directive on posted workers (96/71/EC) subsequently established a legal framework, setting in particular the obligation to respect the minimum wage established in the country of establishment.

Despite this directive, some Portuguese workers have been abused while working abroad: non-respect of working conditions, hours working well above those fixed by law, salaries lower than the minimum wage of the country where they worked, exaggerated cost of a sometimes precarious accommodation, etc. The media – mainly Portuguese – have repeatedly reported situations of human trafficking: in 2007, 2011, or 2016, Portuguese newspapers referred that several Portuguese workers engaged in Spain, in agriculture mainly, were forced to work long hours and were not free of their movement.

But, as for the nineteenth century, these cases – sometimes presented as “new slavery” by the press or trade unions – seem rather isolated and should not be exaggerated. In 2015, Portuguese authorities have identified ten Portuguese victims of human trafficking abroad (Observatório do Tráfico de Seres Humanos/Ministério da Administração Interna 2017, 18). In fact, Portuguese emigrants often join relatives who help them to find housing and work. Although the construction sector and the opacity of subcontracting favor certain abuses, workers who go to work as posted workers benefit from better pay conditions than if they stayed in Portugal (Monteiro and Queirós 2016).

The democratization, the Europeanization, and the economic growth of Portugal has also favored the development of immigration in the country, a transition that is also observed in Spain and Italy. In 2009, Portugal had about 450,000 foreigners. A large proportion of immigrants come first from former African colonies (Cape Verde primarily) and then, since the 1990s, from Brazil (Marques et al. 2005). Inserted into the former imperial migration area (Cahen and Morier-Genoud 2012), these migrations are very rarely part of human trafficking networks. For example, several agreements signed between Brazil and Portugal since the 1970s allow Brazilians to come to Portugal without any travel visa. So, most of the migrants from the former colony came legally in Portugal. But most of them remained illegally ( overstayers), until a regularization process led by Portuguese authorities (as in 1992, 1996, and 2001, for instance).

For other migration waves from Eastern Europe (especially in the 1990s and 2000s), the Indian Peninsula, or China, some studies mention human trafficking (Peixoto 2009) but do not always separate clearly smuggling and human trafficking. Peixoto showed that in Eastern European countries, migrants, many of them with high level of education, bought “migration package” including a short-term tourist visa, travel arrangements, and a contact person in Portugal. But “smuggling” cases very often became ‘trafficking’ ones, since elements of the networks operating in
well-defined areas on the territory were responsible for extorting immigrants” (Peixoto 2009, 193). Nevertheless, these illegal migrants benefited from the tolerance of the Portuguese authorities, especially in the 1990s and early 2000s, in a period of strong economic growth, low unemployment, and construction of many infrastructures (Lisbon World Exposition in 1998, etc.).

The various international reports concerning human trafficking do not consider Portugal to be particularly concerned. For example, the statistical data published by Eurostat only mention 20 registered victims coming into contact with the authorities between 2010 and 2012. A lot less than Spain with 1964 cases in the same period. The percentage of identified and presumed victims of human trafficking is only 0.2 per 100,000 inhabitants, one of the lowest in Europe (Eurostat 2013). Portuguese reports also indicate that human trafficking is far from being a massive phenomenon in the country. In 2015, there were 108 victims of human trafficking in Portugal.

One might think that these reduced data are the consequence of the weak commitment of the Portuguese authorities in the fight against the human trafficking. But that does not seem to be the case. Indeed, like other Western countries, Portugal has undertaken fight against human trafficking. Portugal adopted the Palermo Protocol in 2004 and clarified its human trafficking legislation with two laws dating from 2007. A national plan to prevent and combat trafficking in human beings was launched in 2007 (until 2010), and an Observatory on Trafficking in Human Beings (Observatório do Tráfico de Seres Humanos), under the authority of the Ministry of the Interior (Home office), was created in 2008. The goal of this observatory was “to fight the opacity which characterizes the trafficking in human beings phenomenon and thus, through a better understanding” (http://www.otsh.mai.gov.pt/en/InPortugal/Pages/default.aspx). Two other national plans against trafficking in human beings were adopted (2011–2013, 2014–2017).

Unlike other Southern European countries (Spain, Italy, Greece), currently, Portugal is only marginally a transit country for irregular migration from Africa or Asia. Its seacoasts are not turned toward these continents from where populations try to flee wars or dictatorships or seek to get a better life. Nevertheless, Portugal is sometimes a place of passage for South American, African, or Asian populations seeking to live in Europe. After the regularization of their administrative situation in Portugal, some of these migrants go to another European country. Portugal only represents for part of these migrants a gateway to the Schengen area. Moreover, the economic crisis that has affected the country since 2008 has reduced the attractiveness of Portugal and has led to the departure of some migrants (Brazilians returning to their country, migrants trying their luck in another European country). And because of the significant rise in unemployment, thousands of Portuguese have also chosen to emigrate. Portugal thus remains both a country of emigration and immigration, a singularity that attests its “semi-peripheral” position in the world system (Santos 1993). This “semi-peripheral” position is a singularity that we have seen in the field of human trafficking. Until the nineteenth century (and even the twentieth century), the Portuguese authorities were responsible for massive human trafficking, mainly in Africa. And, in the same time, a considerable part of the Portuguese who left the country did it illegally, in search of a better life elsewhere.
References


The Nebulous Definition of Slavery: Legal Versus Sociological Definitions of Slavery

Silvia Scarpa

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Abstract
The aim of this chapter is to clarify the contours of the definition of slavery. Special attention is placed in understanding the blurred lines between the international legal definitions of slavery and of other exploitative practices, including the practices labeled as similar to slavery, as well as servitude and forced labor, and their relationship with trafficking in persons. A distinction is subsequently made between the international legal definition contained in the 1926 Slavery Convention adopted by the League of Nations and sociological ones developed by various scholars such as K. Bales, O. Patterson, and A. Honoré. Elements included in these definitions are analyzed and discussed in light of the 1926 definition of slavery. In this respect, the recent reorientation of international attention toward (forms of) contemporary, modern, or modern-day slavery is discussed, thus concluding that it offers a way to avoid careful scrutiny on whether exploitative practices fit the 1926 legal definition of slavery.

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The International Law on Slavery

While prohibitions of slavery have been introduced by every country in the world in the last three centuries, this social phenomenon in all its multiple manifestations has been practiced for thousands of years in the majority of the civilizations in human history (Hellie 2018), with major differences existing among the various systems of slavery (Quirk 2008). However, the abolitionist ideal that gained momentum in the eighteenth century and that shaped the international efforts aimed at eliminating the practice was initially aimed at – and, therefore, shaped on – eliminating the brutality of the Transatlantic Slave Trade that flourished from the sixteenth to the nineteenth century and involved between 10 and 12 million enslaved Africans that were transported to the Americas.

A Declaration on the slave trade adopted during the Congress of Vienna of 1815 represents the first international condemnation in this field. It was only a century later, however, that reference to the suppression of both slavery and the slave trade was made by the 1919 Treaty of St-Germain-en-Laye. Then, after World War I, the League of Nations promoted the adoption on 25 September 1926 of the Slavery Convention, the treaty that contains the first and only international definition of slavery in international treaty law. Well before the affirmation of the international protection of human rights – a concept that only emerged after the end of World War II – the fight against slavery and the slave trade propagated the idea of equal dignity and the intolerability of different individual statuses or treatments based on law or customs.

However, the prohibition of slavery was also to be subsequently included in international human rights; humanitarian, criminal, and human trafficking law instruments; as well as the international law of the sea. Article 4 of the 1948 Universal Declaration of Human Rights contains the first reference to slavery in international human rights law, which was, however, to be followed by an inclusion in treaties adopted both at the universal and regional and subregional level. The former include Article 8 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW); and among the latter ones, there are Article 4 of the 1950 European Convention on Human Rights (ECHR), Article 5 of the 2000 Charter of Fundamental Rights of the European Union, Article 5 of the 1981 Banjul African Charter on Human and People’s Rights, Article 6 of the 1969 American Convention on Human Rights, and Article 10 of the 2004 Arab Charter on Human Rights.

As regards international humanitarian law, the prohibition of slavery was firstly introduced in the 1863 Lieber Code. In the context of non-international armed conflicts, Art. 4.(2). (f) of the 1977 Additional Protocol II to the 1949 Geneva
Conventions of 12 August 1949 on the Protection of Victims of Non-International Armed Conflicts prohibits slavery and the slave trade in all their forms against persons who do not take a direct part or who have ceased to take part in hostilities. Curiously, the Geneva Conventions and Protocol I on international armed conflicts do not contain a prohibition of slavery and the slave trade. However, the recent study on customary international humanitarian law drafted by the International Committee of the Red Cross (ICRC) includes a reference to slavery and the slave trade in all their forms in its Rule 94.

In addition to this, slavery figures among the forms of exploitation specified in the definition of trafficking in persons provided by Article 3. (a) of the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (CTOC), Article 4 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and Article 2.(3) of Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims. The connection between the concepts of slavery and the one of human trafficking has certainly reinvigorated the interest in clarifying the contours of the definition of the former practice. In addition to this, the most important treaty in the field of the law of the sea, namely, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), prohibits at Article 99 the transportation of slaves on board any ship flying the flag of a State Party and claims that slaves taking refuge on board any ship are ipso facto freed and at Article 110 guarantees a right of hot visit on the high seas when there is “reasonable ground for suspecting that [...] the ship is engaged in the slave trade.”

While the term “slavery” is generally used in international slavery and human trafficking law, as well as in international human rights, in humanitarian law, and in the law of the sea, the concept of “enslavement” is instead used in international criminal law. According to Article 7 of the Rome Statute of the International Criminal Court (ICC), if enslavement is committed as part of an intentional widespread or systematic attack directed against the civilian population, it constitutes a crime against humanity. The latter provision also defines enslavement in the same way in which slavery is defined in the 1926 Slavery Convention, with the inclusion of a reference to trafficking as the process that might lead toward enslavement. The latter practice is also specifically included among the acts constituting crimes against humanity in the statutes of some ad hoc tribunals, such as the 1945 Charter of the International Military Tribunal of Nuremberg (Article 6.c), the 1946 Charter of the International Military Tribunal for the Far East (Article 5.c), and the 1993 and 1994 Statutes of the International Criminal Tribunal for Ex-Yugoslavia and Rwanda (Articles 5.c and 3.c), the 2000 Statute of the Special Court for Sierra Leone (Article 2.c) and the 2003 UN-Cambodia Agreement Concerning the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (Article 9).

Overall, the prohibitions of slavery and the slave trade in times of both peace and war are unanimously considered to be customary rules of international law, and they have also attained the level of peremptory norms of international law (jus cogens rules), as recognized by international bodies (Human Rights Committee 1994; International
Law Commission (1963) and scholars (Bassiouni 1991, 1999; Cassese 2005; Lenzerini 2000; Scarpa 2008). Moreover, the International Court of Justice (ICJ) in the 1970 Barcelona Traction Case considered the prohibition of slavery as an obligation erga omnes. No attempt has been made so far “to investigate whether or not the 1926 slavery definition fundamentally corresponds and is applicable to the jus cogens rule of international law that prohibits slavery. The contours of such a peremptory norm prohibiting slavery are in fact determined by two elements, that have so far not been accurately investigated: the diuturnitas and the opinio iuris sive necessitatis. The second controversial issue pertains to understanding whether or not the interpretation of slavery’s legal definition under both treaty law and jus cogens law fully overlap and if not, clarifying the eventual differences” (Scarpa 2018: 18).

Despite all these achievements, the international law on slavery still faces many challenges, including those related to the interpretation of the definition of slavery included in the 1926 Slavery Convention: the blurred lines between slavery and other exploitative practices, including the practices similar to slavery, servitude, and forced labor, and its relationship with trafficking in persons. In this respect, the reorientation of international attention toward (forms of) contemporary, modern, or modern-day slavery has to a great extent avoided a deeper look at the definitional boundaries of the practice of slavery and has allowed dealing with serious exploitative practices without carefully verifying whether they fit the 1926 definition of slavery (Scarpa 2018).

The Legal Definition of Slavery Included in the 1926 Slavery Convention

According to Article 1.(1) of the 1926 Slavery Convention slavery is: “[T]he status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.” This definition was considered as being “accurate” and “adequate” by the 1951 Report of the ad hoc Committee on Slavery of the United Nations (1951:59), and, for this reason, it was also subsequently included in Article 1 (1) of the 1926 Slavery Convention as amended by the 1953 Protocol and in Article 7. (a) of the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

However, a controversial issue with reference to slavery concerns the way in which the 1926 definition is to be interpreted. Scholars generally agree that the definition of slavery included in Article 1.(1) of the 1926 Slavery Convention applies not only to de jure slavery but also to the de facto one, thus justifying the reference in the text to both statuses and conditions of individuals (Lenzerini 2000; Allain 2009a). However, disagreement exists on whether such definition of slavery covers all or only some of the contemporary exploitative practices that exist today in the world. In this respect, it is worth emphasizing first of all that Article 2 requires States Parties to progressively abolish slavery “in all its forms” and that the first Report of the Temporary Slavery Commission appointed by the Council of the League of
Nations to study the matter included many de facto practices, considered as “analogous to slavery” (Scarpa 2008).

The core element of the definition is the reference to the “powers attaching to the right of ownership.” In this respect, Lenzerini (2000) claims that:

The right to ownership is traditionally composed of two powers that the owner is entitled to exercise over his/her property: 1) the power to dispose (which include the right to alienate) and 2) the power to enjoy (which includes the right to exclude others from enjoying). Thus when Article 1 of the 1926 Convention indicates “the powers attaching to the right of ownership” this is a clear reference to these powers. In addition, the locution “any or all of the [se] powers”, implies that the definition in point covers not only situations where a perfect right of ownership exists, but also those human relationships characterised by the exercise by one person over another of only one of the two powers that compose the right of ownership itself.

The concept of property that rests at the basis of the 1926 definition of slavery can then be interpreted by making reference to the Code Napoléon, which constitutes the legal basis of many modern civil codes. Therefore, according to Lenzerini (2000) as long as any of the two abovementioned powers attaching to the right of ownership are exercised over an individual, the definition of slavery contained in the 1926 Slavery Convention is broad enough to cover contemporary practices such as serfdom, forced labor, bonded labor/debt bondage, the exploitation of migrant workers, trafficking in persons, forced prostitution and sexual slavery, forced marriages and the sale of wives, child labor and child servitude, apartheid, colonialism, trafficking in human organs, and incest. All these exploitative practices had been taken into consideration during its 30 years of activity by the United Nations Working Group on Contemporary Forms of Slavery (UNWGCFS) – a group appointed in 1974 within the Sub-Commission on Prevention of Discrimination and Protection of Minorities (from 1999 known as the Sub-Commission on Promotion and Protection of Human Rights) that ceased to exist in 2006, when the Human Rights Council decided to substitute it with a Special Rapporteur on Contemporary Forms of Slavery. Their consideration by the UNWGCFS had, however, generated considerable debate among academics in this field.

The 1926 definition of slavery is also analyzed in the important report entitled “Abolishing Slavery and its Contemporary Forms” commissioned by the UNWGCFS to Weissbrodt and Anti-Slavery International (2002). While recognizing that the definition of slavery had caused great “controversy since the beginning of the abolition process,” the Weissbrodt and Anti-Slavery International’s Report recognizes that a broad interpretation of the definition of slavery, including “all social injustices or human rights violations” would be meaningless and affect the effectiveness of the fight against slavery. Therefore, the Report indicates three criteria that should inform the analysis of the practices, so as to be able to assess whether they constitute slavery or not. These three criteria are:

i. The degree of restriction of the individual’s inherent right to freedom of movement

ii. The degree of control of the individual’s personal belongings
iii. The existence of informed consent and a full understanding of the nature of the relationship between the parties

On these premises, the Weissbrodt and Anti-Slavery International’s Report concludes that some practices taken into consideration by the UNWGCFS do not fall within the category of slavery: this is, for instance, the case of incest, considered as a serious violation of children’s rights but not a form of slavery, or of the phenomenon of mail-order brides that, nonetheless, has to be scrutinized to avoid the possibility of severe forms of exploitation or abuse of women who might find themselves in a situation of vulnerability. As regards apartheid and colonialism, the Report underlines that they “may not fall within the ambit of the international conventions abolishing slavery.”

Allain (2009a) criticizes the conclusions reached by the Weissbrodt and Anti-Slavery International’s Report affirming that the Report contains “an interpretation of the term” slavery “as being so all-encompassing as to render it meaningless in law.” While Lenzerini makes reference to the Napoleon Code, Allain – as well as, previously, Lassen (1988) – uses the Roman law concept of *dominica potestas* and takes into consideration a 1953 Memorandum of the United Nations Secretary-General, enumerating the following six different characteristics:

i. The individual of servile status may be made the object of a purchase.

ii. The master may use the individual of servile status, and in particular his capacity to work, in an absolute manner, without any restriction other than that which might be expressly provided by law.

iii. The products of labor of the individual of servile status become the property of the master without any compensation commensurate to the value of the labor.

iv. The ownership of the individual of servile status can be transferred to another person.

v. The servile status is permanent, that is to say, it cannot be terminated by the will of the individual subject to it.

vi. The servile status is transmitted ipso facto to descendants of the individual having such status (Secretary General of the United Nations 1953).

Such characteristics do not have to be cumulatively fulfilled, but when one or more of them are to be found in a relationship among individuals, the indicia of slavery are manifested (Allain 2009a). While Allain dedicated much of his work to studying the Slavery Convention’s drafting history, his methodology fails when he refers only to Articles 31–32 on the interpretation of treaties included in the 1969 Vienna Convention on the Law of Treaties. According to Article 4 of the Vienna Convention, the treaty and its rules cannot be interpreted retroactively and they bind only its States Parties (Scarpa 2018).

International courts have also recently contributed to the debate on the interpretation of the 1926 definition of slavery. The first fundamental analysis of the 1926 definition of slavery was conducted in 2001 by the International Criminal Tribunal for Ex-Yugoslavia (ICTY) in the *Kuranac* case, followed in 2008 by the Court of
Justice of the Economic Community of West African States (ECOWAS) with *Hadijatou Mani Koroua v. Niger*. The European Court of Human Rights (ECtHR) has, however, been the most productive tribunal with a series of judgments, including *Siliadin v. France* of 2005, in which the Court interprets restrictively the concept of slavery, making reference to legal ownership and *M. and Others v. Italy and Bulgaria* of 2012, in which it revisited and broadened its initial approach.

Finally, it is worth mentioning the 2012 *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* that were unanimously adopted by some renowned experts in this field as a way to offer guidance on the interpretation of the 1926 definition of slavery. The Guidelines offer some hints aimed at reducing the vagueness of the 1926 slavery definition, including the reference to control, a final aim of exploitation for the offense, and the deprivation of liberty (Guideline 2) and the indeterminate duration of the practice in the eyes of person subjected to it (Guideline 3). While some of the mentioned elements had already been taken into consideration by the Weissbrodt and Anti-Slavery International’s Report, the fact that the offense of subjection to slavery is connected with the intent of exploitation raises doubts since this reading of the 1926 slavery definition adds an element that is not included in the original text of the 1926 definition (Scarpa 2014).

Therefore, while various attempts have been made in clarifying the *contours* of the nebulous definition of slavery included in the 1926 Slavery Convention, a certain inconsistency in the approach adopted by scholars and international tribunals is visible, with also some attempts aimed at proposing very broad interpretations of the concept. In this respect, the fact that the concept of slavery relies on the idea of property rights borrowed from civil law transferred into criminal law contributes to these interpretative problems and issues. However, the risk of dilution of the concept of slavery is also to be taken into consideration, keeping in mind that there is a need for a well-defined and strictly interpreted offense of slavery under penal law (Decaux 2009).

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**The Blurred Boundaries Between the Legal Definitions of Slavery, the Practices Similar to Slavery, Servitude, and Forced Labor**

In 1956, the United Nations adopted a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. According to Article 1 of the Supplementary Convention, States Parties shall adopt measures aimed at abolishing “progressively and as soon as possible” the statuses or conditions of debt bondage, servitude, and some institutions and practices affecting women and children. Debt bondage – or bonded labor, as it is known in Asian countries – is defined by that provision as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.” In practice, persons in debt bondage repay a loan with services, whose length, value, and nature have not been specified, performed by the debtor or by another person. Serfdom is instead defined as
“the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.” Finally, Article 1. (c) and (d) of the 1956 Supplementary Convention is aimed at abolishing:

(c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person.

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

The prohibition of the two statuses and conditions similar to slavery – namely, debt bondage and serfdom – and of the two institutions and practices similar to slavery affecting women and children included in the 1956 Supplementary Convention is to be considered as an addition to the ones included in the 1926 Slavery Convention (Scarpa 2008). However, no clarification is included in the text of the treaty detailing the legal boundaries existing among these various legal concepts and the one of slavery. Article 1 of the 1956 Supplementary Convention only clarifies that they are to be abolished “whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention,” thus confirming that they overlap, without describing the contours of these additional statuses, conditions, institutions, and practices.

The term servitude and its relationship with the concept of slavery also deserve a careful look. While in fact the Preamble of the 1956 Supplementary Convention mentions the prohibitions of slavery and servitude included in Article 4 of the Universal Declaration of Human Rights (UDHR), Article 7. (b) of the same treaty only defines the concept of the “servile status” of a person, making reference to debt bondage, serfdom, and the institutions and practices affecting women and children. Moreover, no international treaty defines the term “servitude,” even if the latter is widely used in international human rights conventions, including, at the universal level, Article 8.2 ICCPR and Article 11.1 ICMW and, at the regional level, Article 4.1 ECHR, Article 5.1 of the Charter of Fundamental Rights of the European Union, Article 6 of the 1969 American Convention on Human Rights – only prohibiting involuntary servitude though – and Article 10.1 of the 2004 Arab Charter on Human Rights. It is interesting to note that during the drafting process of the Universal Declaration of Human Rights, the Commission on Human Rights had recommended the addition of the adjective involuntary as a way to better qualify the term servitude. However, this proposal was not accepted by the third Committee of the General Assembly of the United Nations, as it was believed that it was necessary to eliminate servitude whether it was voluntary or not and to avoid offering to masters the possibility of arguing that their victims had accepted such a condition in a voluntary way.
However, the contours of such a concept and its relationship with the one of slavery remain vague. For instance, Nowak (2005) concludes that the Travaux Préparatoires of the ICCPR clarify that slavery has to be intended in its traditional sense, as implying the “destruction of one’s juridical personality,” while servitude had to be associated with “dominance and degradation.” Allain (2009b) argues instead that the absence of a clear reference to servitude in the 1956 Supplementary Convention is due to the unwillingness of negotiating States to “go as far as the Universal Declaration of Human Rights” in prohibiting servitude and that the latter concept only corresponds with the four institutions and practices prohibited by the 1956 Supplementary Convention. Finally, a jurisprudential interpretation comes from the European Court of Human Rights that in Siliadin v. France defined servitude as being “an obligation to provide one’s services that is imposed by the use of coercion, and is to be linked with the concept of ‘slavery’,” thus determining a gradation between the two practices.

Another complex relationship is the one between the concepts of slavery and forced or compulsory labor. Forced or compulsory labor, as defined by Article 2.(1) of the International Labour Organization (ILO) Convention n. 29 concerning Forced or Compulsory Labour adopted in 1930 and Article 1.(3) of the Forced Labour Protocol adopted in 2014, is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” The original main aim of the ILO Convention n. 29 was to fight against forced or compulsory labor imposed by States, and in that respect, the reference to a “penalty” was more easily understandable; however, Article 4.(1) adds that States Parties shall not permit the imposition of forced or compulsory labor “for the benefit of private individuals, companies or associations.”

The ILO further clarifies that this definition of forced or compulsory labor contains two main elements, namely, the menace of a penalty and the involuntariness. The interpretation provided by the ILO of these two elements has recently seen an evolution and a better specification. The menace of a penalty was originally associated by this international organization with psychological or physical coercion and the involuntariness with the idea that individuals “perform some work that they would otherwise not have accepted to perform at the prevailing conditions” (Belser et al. 2005). More recently, the ILO proposed to interpret the terms menace of a penalty as including:

penal sanctions and various forms of direct or indirect coercion, such as physical violence psychological threats or the non-payment of wages. The “penalty” may also consist of a loss of rights or privileges (such as promotion, transfer, or access to new employment). (ILO 2016)

Moreover, in interpreting the term involuntariness, the ILO (2016) currently focuses on the freedom of workers to enter into a working relationship with “free and informed consent” and the associated right to freely decide to leave that employment whenever they feel it is appropriate.

As clarified supra, in its jurisprudence, the European Court of Human Rights has proposed a gradation approach to explain the relationship existing within Article 4
ECHR between slavery and servitude and it has extended it to forced or compulsory labour too. Therefore, forced or compulsory labor is the entry point for violations of such provision, servitude implies an obligation to provide services under a situation of coercion – thus positioning it in between forced or compulsory labor and slavery – and the latter is the most abusive practice among the three.

The Sociological Definitions of Slavery

Paralleling the legal debate on the 1926 definition of slavery, sociologists and anthropologists have examined the issue of contemporary, modern, or modern-day slavery and have proposed multiple definitions based on the characteristics of the practices identified through their fieldwork. Among the scholars that dedicated much work to studying and defining slavery in its contemporary forms, Kevin Bales figures prominently. He adopted a first definition of slavery in 1999, and he, subsequently, amended it in 2012 (Bales 2012). The first definition proposed by Bales stated that “Slavery is the total control of one person by another for the purpose of economic exploitation” and a slave is “a person held by violence or the threat of violence for economic exploitation” (2012). The reference to total control in the definition is misleading, since one could speculate on the situation of those slaves who maintain, at least partial agency. Moreover, the concept of violence is vague, since no explanation is provided on whether physical, psychological, sexual, or other forms of violence are also included. Finally, the recognition that slavery is only connected with economic exploitation leaves out of the definition all those cases in which the slaveholder has other aims.

Therefore, Bales amended this first definition in 2012 to better clarify some of these elements, so that slavery is:

the control of one person (the slave) by another (the slaveholder or slaveholders). This control transfers agency, freedom of movement, access to the body, and labor and its product and benefits to the slaveholder. The control is supported and exercised through violence and its threat. The aim of this control is primarily economic exploitation, but may include sexual use or psychological benefit.

This definition broadens the scope of the concept of slavery while keeping a fundamental connection between the practice and violence (or its threat) and an important – albeit not absolute – focus on economic exploitation. If compared with the 1926 legal definition of slavery, it looks interesting to note how Bales substitutes the concept of ownership (and associated rights) with the one of control, thus avoiding the (legal) discussions based on the boundaries of the civil law concept of property and on its associated rights, its use in the framework of a relationship between individuals, and the distinction between de jure and de facto situations. Nonetheless, the concepts of violence and of its threat remain undefined and it is unclear whether cases meeting all the other definitional requirements but lacking any or all of these two ones would still meet the minimum threshold for being
labelling as slavery by Bales. Moreover, the concept of psychological benefit would have also required further explanation.

However, there are also other sociological definitions of slavery that focus on other characteristics. For instance, in his book entitled Slavery as Social Death: A Comparative Study, Orlando Patterson defines slavery as “the permanent, violent domination of natally alienated and generally dishonoured persons” (1982). This definition would apply well to many societies of the past in which slaves were born into a condition of slavery and who would have a lesser status within the society. Moreover, Bales and Patterson agree that violence might play a central role in the relationship between masters and slaves. The concept of dishonor used by Patterson remained, however, hardly explained.

Patterson subsequently amended its definition stating that slavery is the “violent, corporeal possession of socially isolated and parasitically degraded persons” (2012). In referring to possession, Patterson relies on a concept that is very similar to the one of ownership (and associated rights) included in the 1926 legal definition but, as Bales, avoids the legal implications of property rights. The reference to isolation and degradation included into this latter definition are then further clarifying the condition in which the slaves are, according to Patterson, held.

Finally, Anthony Honoré defines a slave as a “person who, in fact, though not in law, is subordinate to an unlimited extent to another person or groups of persons [. . .] and who lacks access to state or other institutions that can remedy his or her inferior status” (2012). This definition is centered on the factual inferiority of the victim, even if in making reference to an unlimited subordination, it would raise the same concerns already manifested before for the reference to total control by Bales. Moreover, it also includes a reference to the lack of access to remedy. The latter element would, however, be hardly reconcilable with the existence of law enforcement and judicial institutions to which victims can generally refer their situations.

The concepts of contemporary forms of slavery, contemporary slavery, modern slavery, and, finally, modern-day slavery are positioned in a grey area between the legal and sociological definitions and they are nowadays frequently used by many relevant global governance actors. These include, inter alia, international organizations (IOs), states, sui generis entities such as the Holy See, non-governmental organizations (NGOs), informal groups and networks, as well as scholars and media agencies. However, the concept of contemporary forms of slavery – as well as similar ones – remains undefined in international law; as stated elsewhere, “the issue is relevant not only in semantic terms, but also from a legal and a political perspective” (Scarpa 2018: 9). However, reference to (forms of) contemporary, modern, or modern-day slavery as umbrella concepts, allow to avoid careful scrutiny of the uncertain legal boundaries under international law of the exploitative practices mentioned in this study, as well as to transcend considerations about the eventual inclusion of these exploitative practices into the concept of slavery, as defined in the 1926 Slavery Convention (Scarpa 2018). Some scholars; international organizations, including in particular the United Nations; States – such as inter alia the United States and the United Kingdom – and other global governance actors use them exactly in this way (Scarpa 2018). A better understanding of the contours of the
concept of contemporary forms of slavery and of similar ones and the promotion of a coherent shared legal and policy framework is, therefore, of paramount importance.

**Conclusion**

The various interpretations of the legal definition of slavery included in the 1926 Slavery Convention, the blurred boundaries between the legal concept of slavery and the ones of the practices similar to slavery, servitude and forced or compulsory labour, the sociological frameworks developed by some leading scholars and the re-orientation of the debate by global governance actors in terms of contemporary (forms of) slavery show the complexity of the issues discussed in this study. It is fully believed that the way forward in this field includes as a preliminary first step a re-consideration of the interpretation of the international legal definition of slavery through a much-needed analysis of the two elements that constitute customary rules of international law, namely the existence of a consistent and coherent practice (*diuturnitas*) shared by most States in the world and the corresponding *opinio iuris sive necessitatis*. Unfortunately, the only commendable study in this area that consistently followed such a path dates back to the 1990s. Its author, A. Yasmine Rassam (1998–1999) recognized that the evidence of *opinio iuris* and States’ practice that emerged from an analysis of their behavior led to contradicting conclusions as to the boundaries of slavery’s definition in customary international law. Accordingly, she resolved this ambiguity by employing principles of non-discrimination on the basis of gender and increased participation by traditionally disadvantaged groups to the benefit of international legal discourse. For this reason, according to Rassam, the customary rule of international law prohibiting slavery should be evolved so as to include sex trafficking, forced prostitution, debt bondage, forced labour and the exploitation of immigrant domestic workers. Rassam recognised, though, that such an inclusion should not be considered as a “panacea for these looming global problems”; these should instead primarily be fought by enacting (and we believe, properly implementing) relevant domestic legislation, providing another chance to generate respect for the human rights of individuals belonging to these vulnerable categories (Scarpa 2018). In a more recent study, Anne T. Gallagher (2010: 190-191) concludes that the customary prohibition of slavery has undergone changes, which might according to the author “potentially include contemporary forms of exploitation such as debt bondage and trafficking.” However, as stated elsewhere, “Gallagher not clarify whether or not she took into consideration the relevant elements of customary rules of international law (namely *diuturnitas* and *opinio iuris sive necessitatis* of States) in reaching this conclusion” (Scarpa 2018: 19–20). Therefore, it is believed that “a new study on the interpretation of the *jus cogens* rule of international law prohibiting slavery is needed, at least for two reasons: firstly, there have been major legal developments since the 1990s (in particular, adoption of the UN Trafficking Protocol, the ICC Statute and the ILO Convention on the Worst Forms of Child Labour) and secondly, the conclusions from Rassam’s study were not only descriptive of the legal standards eventually
existing at that time, but also prescriptive in detailing what the law ought to be” (Scarpa 2018: 20). Moreover, since research on the blurred boundaries among the international legal concepts of slavery, the practices similar to slavery – namely debt bondage, serfdom, and the institutions and practices affecting women and children – servitude, forced labour, child labour, the worst forms of child labour and trafficking in persons is limited, the new study should also bring light into these areas. Finally, a conceptual clarification on the use of the concept of contemporary (forms of) slavery – or similar ones – by global governance actors is necessary as a way to guarantee a much needed concerted global action.

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Part II

Explanations and Methods of Inquiry
Interest in measuring the extent of human trafficking victimization has grown as the public has become more concerned about the problem. In the wake of legislation criminalizing human trafficking acts, mandating government responses, and allocating funding to anti-trafficking efforts, evidence about the nature and scale of the problem is needed to guide such efforts. Despite attempts to develop robust methodologies to study human trafficking, few reliable measures exist. This chapter examines the strengths and limitations of methodologies that have been employed to measure the scope and nature of human trafficking victimization globally and locally.

**Keywords**
Human trafficking · Measurement · Methodology · Multiple system estimation · Capture-recapture · Estimation
Despite dramatic increases in public attention and responses from governmental and nongovernmental organizations to the problem of human trafficking in the past two decades, it has proven difficult to reliably measure the nature or scale of trafficking in persons locally, nationally, or globally (Merry 2016; Zhang 2012). Estimates of the prevalence of human trafficking suffer from numerous definitional, operational, and methodological limitations that undermine their utility and result in wide-ranging estimates of the problem (Tyldum and Brunoiskis 2005). Estimation efforts have variously utilized non-systematic and incomplete data taken from open-source information (e.g., news reports), police and court records, and victim service case files. Most estimates focus on measuring the number of victims as opposed to measuring the phenomenon of trafficking in persons including perpetrators, networks, or cases. At best, these data represent responses to human trafficking as opposed to the phenomenon itself. Despite the limitations of existing measures, reliable and valid estimates of the prevalence of human trafficking are critical to helping us understand the magnitude of the problem, who is at risk for trafficking, and the types of social conditions that breed trafficking crimes (David 2017). Additionally, we must be able to measure the number of human trafficking victims and prevalence of human trafficking operations in order to design adequate service programs and assess the efficacy of efforts to interdict or prevent the problem.

In this chapter we discuss the challenges of measuring trafficking in persons and explore four broad approaches to estimating the prevalence of human trafficking. These include (1) capture-recapture methodologies using open-source information, (2) multiple system estimation procedures utilizing administrative records, (3) field-based research utilizing chain referral sampling methodologies to identify victims in local communities, and (4) the use of online domain data and network approaches. For each methodology, we describe the basic principles of the approach and provide examples of its use. We conclude with some summary comments on the future of measuring trafficking in persons. Understanding the challenges of measuring human trafficking and the strengths and limitations of various approaches will inform service providers, policymakers, and other stakeholders as they develop the most appropriate responses to human trafficking problems and monitor the effectiveness of these efforts.

Challenges to Measuring Trafficking in Persons

There are a number of reasons why it has proven difficult to measure the extent and nature of trafficking in persons. First, the definition of the acts that constitute trafficking in persons is not universally agreed upon. The basic parameters of trafficking laid out by the United Nations and adopted by over 150 countries (United Nations Office on Drugs and Crime 2016) are generally premised on a definition of trafficking that includes commercial sex or labor propagated through force, fraud, or coercion. However, individual countries and states within countries have adopted different definitions of the scope of activities that constitute trafficking in persons crimes. For example, some US states define nearly all commercial sex that involves
third-party facilitation as human trafficking (e.g., Massachusetts, Minnesota), while most others necessitate clear evidence of force, fraud, or coercion despite third-party facilitation (National Conference of State Legislatures nd). The range of activities that are counted as human trafficking also varies across context. Some counties include organ trafficking, child pornography, debt bondage, or forced marriage in their definitions of trafficking in persons, but others do not (Bales 2017). It is also difficult to distinguish trafficking in persons from conditions that do not result from trafficking operations (e.g., exploitative labor circumstances where there was not a clear recruitment/transportation by means of force, fraud, and coercion), yet there was an “act of treating someone with substantial unfairness in order to benefit from their work” (see Campana and Varese 2016: 93; see also Munro 2008). Different interpretations of what constitutes trafficking, exploitation, or both make consistent measurement difficult (Bales 2017). The lack of clarity in law and policy about the definition of trafficking in persons undermines efforts to measure the phenomenon because measurement necessitates precision in identifying the objects that are to be counted. Therefore, efforts to estimate the scope of trafficking in persons do not align when researchers begin with different definitions of the problem. A working definition of trafficking in persons among scholars and government officials is critical, because without it, attempts to measure the problem may be critiqued and dismissed.

Second, trafficking in persons is also difficult to measure because victims of this crime are often hidden and do not come to the attention of officials who might be expected to record and classify their experiences. Although the problem of measuring undetected victims of crime is not new to criminologists, human trafficking presents particular challenges because perpetrators purposefully hide victims from official detection among groups of workers who may not be exploited. Additionally, identification is challenging because victims commonly do not seek help for a variety of reasons. They may not self-identify as victims, fear the police, and/or are suffering from the effects of prolonged trauma that make outreaching to service providers or law enforcement more difficult (Hopper 2004). As a result, the entities that we traditionally depend upon to count crimes and crime victims (e.g., police, social service agencies, victim service providers) may not encounter a large number of persons who would be classified as victims of human trafficking.

Even when officials do come into contact with human trafficking victims, they may not be recognized. Reasons for under-identification are numerous. For example, research on police identification of human trafficking confirms that law enforcement officials have limited knowledge about human trafficking crimes (Farrell et al. 2010; Newton et al. 2008; Wilson et al. 2006). Therefore, law enforcement faces significant challenges identifying human trafficking and distinguishing it from other crimes (Farrell et al. 2014, 2016; Owens et al. 2014) and lacks procedures necessary to ensure effective investigations (Farrell and Pfeffer 2014; Gallagher and Holmes 2008; Verhoeven and Van Gestel 2011; Van der Watt and van der Westhuizens 2017). Similarly, victim service providers lack validated screening tools, training, and guidance necessary to help guide their identification of human trafficking victims among clients they serve (Macy and Graham 2012).
When law enforcement, victim service, or other government or nongovernmental organizations do not come into contact with and fail to successfully identify victims of human trafficking, there is good reason to believe that human trafficking cases are misrepresented in official data sources. For example, in the USA, human trafficking offenses were only added to the national crime reporting program in 2013 (FBI 2014), and state compliance with reporting of these crimes has been uneven and slow (Farrell and Reichert 2017). Many social service providers do not have the capacity to keep records on victims they serve, or the record-keeping systems that do exist do not include fields that accurately capture human trafficking victimization. Even when information that identifies human trafficking victims is included in official record-keeping systems, there are often challenges accessing that information due to concerns about confidentiality and a lack of agreement about standards for data sharing (Clawson et al. 2006).

Finally, victims of human trafficking commonly do not self-identify as such. The public lacks information about the nature of sex and labor trafficking victimization, and as a result, people who experience these crimes often do not recognize themselves as trafficked persons (Owens et al. 2014). Methodologies of measurement that seek to identify underreported victimization such as self-reported victimization surveys (e.g., US National Crime Victimization Survey) depend on victims to self-identify and may be undermined by the inability of people to recognize their experiences as constituting human trafficking victimization.

**Estimation Strategies Using Open-Source Information and Capture-Recapture Principles**

Capture-recapture approaches have been widely used to estimate the prevalence of trafficking in persons globally and within countries (e.g., see Belser et al. 2005). Primarily used in wildlife research where it is impossible to observe all members of a population (e.g., fish in a pond), capture-recapture methods seek to derive populations by taking independent samples of a population and identifying how likely it is that a member of the population will be reidentified upon additional sampling. The capture-recapture approach has been used by social scientists interested in studying hidden people or groups of people by using independent records or recording systems, for example, in relation to domestic violence, immigrant populations, or forecasting disease studies (see, e.g., Bishop et al. 2007; Chao et al. 2001; Van der Heijden et al. 2012). By linking individuals who are identified in each of the lists (or by two independent recorders), researchers can estimate the number of individuals that are never identified or do not appear in either register or list. Capture-recapture approaches to estimation are based on a number of important assumptions. First, the population being studied cannot change during measurement. In the example of fish in a pond, no fish can leave the pond or die, and no new fish can be born. Subjects must have an equal chance of being captured each time (or appearing on each list), and researchers must be able to accurately match subjects caught in each catching attempt. Finally, the likelihood of being caught each time
must be independent of the likelihood of being caught at other times (being on one list does not affect your chance of being on another list). While some of these assumptions are flexible or could be addressed with variations on the method, many of the assumptions are particularly hard to meet in the context of human trafficking. For example, a closed population is unlikely considering the rotation of victims in many trafficking operations, and an equal chance of being captured each time is questionable when agencies have distinct priority setting and focus on a different group of victims (see, for a discussion of these challenges, Van der Heijden et al. 2015).

Capture-recapture approaches have been used by researchers to estimate the likelihood of subjects appearing in open-source information as recorded by two independent observers. For example, early estimates of human trafficking in the USA were developed by teams of researchers who coded open-source information to provide a number of different estimates on the scope of human trafficking. One of the first estimates produced by Richard (1999) was developed by independent teams of recorders coding information cases of human trafficking (or individual human trafficking victims) in intelligence reports, law enforcement data, and news clippings about trafficking cases in the USA and internationally. The Richard report suggested over 50,000 people were trafficked in the USA and 800,000–900,000 people were estimated to be trafficked across borders globally each year (for a detailed description of the methodology, see Kutnick et al. 2007). Numerous methodological problems and a lack of transparency about the way estimates were derived raised questions about the reliability of these early open-source estimates. The US and global prevalence estimates were revised numerous times, subject to significant critique, and eventually the US government stopped using estimates of human trafficking prevalence in its official publications (see GAO 2006).

Other organizations and scholars developed global estimates of prevalence by using capture-recapture approaches with open-source information. For example, the ILO has produced a number of global estimates of forced labor (including sex and labor trafficking) (ILO 2012, 2016). In 2016 the ILO estimated that roughly 40 million people globally were victims of human trafficking including 25 million victims of forced labor (including sex and labor trafficking) and 15 million victims of forced marriage. The 2016 ILO methodology included multiple methodologies including survey data from respondents in 48 countries and data from IOM on assisted human trafficking victim (ILO 2016). The use of multiple methods reflects limitations identified in earlier ILO prevalence estimation procedures, most notably a capture-recapture methodology for identifying victims of human trafficking that appears in open-source information. In the 2012 ILO report, 5491 reported cases of forced labor were found in the capture-recapture exercise; 4069 were found only once; and 1422 were found multiple times, resulting in a global estimate of nearly 21 million victims. In the most recent 2016 report, the ILO suggests that the earlier 2012 estimate based on capture-recapture methods underestimated the number of

1The principle of capture-recapture is not, however, to have two independent observers but to have two independent chances to be included in the population samples.
forced labor victims because cases of forced labor often did not appear in open-source information (ILO 2016).

Estimates that project victimization based on limited publicly available information have been criticized for relying newspaper accounts or reports from agencies that have identified victims of trafficking (see Gallagher 2017). Data quality issues and definitional challenges, discussed earlier in the chapter, are exacerbated when researchers attempt to use open-source data about identified victims, since the recognition of victims depends on the definitions applied by practitioners in the field and identified victims may have very different characteristics and experiences than victims who are not identified in open-source information. In addition, identifying information about individuals is required to make correct linkages across the different captures, yet this may be difficult to obtain for hidden or hard-to-reach populations (see Van der Heijden et al. 2015).

### Multiple System Estimation

Multiple system estimation (MSE) is a methodology building on capture-recapture approaches that has received recent attention by scholars and government officials seeking better estimates of human trafficking (Cruyff et al. 2017). MSE applies core principles of capture-recapture methods to administrative data from multiple sources to predict population sizes. The basic assumption of MSE is that concurrent lists of persons in a hidden population taken from multiple sources in a community can be compared to identify how often particular persons are identified across more than one list. MSE methods are used to estimate an unknown population based on the probability of an individual being included on any one set of lists or a combination of lists, including not being captured on any of the available lists. Unlike capture-recapture approaches utilizing open-source information, MSE methods rely on traditionally closed administrative records, believed to be more reliably representing agency “catches” of individuals being studied. MSE has been utilized by researchers attempting to measure the prevalence of other human rights violations (Lum, Price, Guberek, and Ball 2010) and deaths in conflict (Ball et al. 2003; Manrique-Vallier et al. 2013). Recently MSE methods have been utilized by researchers in the UK (Bales et al. 2015) and the Netherlands (Cruyff et al. 2017) to estimate human trafficking victimization in each a county.

A preliminary step in MSE is stratifying lists and pooling individuals across stratified lists. MSE relies on the analysis of inclusion patterns to estimate the probability of an individual not being on any of the lists. Poisson log-linear models are fitted to the data to identify the number of cases occurring on any particular combination of lists. The resulting analyses provide an overall estimate of the size of the total population of human trafficking victims along with a measure of the error and confidence intervals for that population.

While MSE is a promising methodology, there are limitations to this approach. First, like capture-recapture, MSE assumes that victims or perpetrators would have equal probability of being captured on any of the potential lists, though the use of
multiple lists makes the assumption of non-independence more flexible. Additionally, the capture must be independent, that is, being captured on one list does not change the probability of being captured on another list. Since these assumptions may be violated in the case of human trafficking victims and perpetrators, additional care must be taken to account for list dependence and unequal catchability. Researchers in the Netherlands determined that it was critical to include covariates such as age and type of exploitation in the MSE models as this information allowed researchers to control for differences in the likelihood of being captured on different lists and produced different estimates than models without covariate information (Cruyff et al. 2017). In addition to potential measurement problems, reliable data to support MSE may not exist in many communities. Primarily, officials who keep administrative records (e.g., law enforcement, social service agencies) may not accurately report information on those human trafficking victims they do identify through traditional case management or records management systems. Finally, even when agencies identify and accurately report information about human trafficking victims, they may be unwilling to share list information with researchers due to confidentiality concerns. MSE analysis in the UK and the Netherlands was based on data collected through National Referral Mechanism sources. MSE methodologies may also be utilized in contexts where information about victims that is to be compared is housed in separate, disconnected record-keeping systems such as victim service records, police reports, or social service agency case files. In these situations, researchers must develop mechanisms to ensure confidentiality of victim information for the purposes of list comparison.

Local Surveys or Field Observations

Due to the limitations of open-source and official data in estimating hidden or hard to reach populations, some scholars have employed field observations or country and/or region surveys to identify the prevalence of victimization among populations’ sources. Local surveys have the benefit of capturing information directly from people who may be affected by human trafficking, but they are time and resource intensive and often are limited to smaller geographic areas.

One of the simplest forms of local surveys is the integration of questions about human trafficking victimization (or vulnerability to victimization) into large-scale national public surveys. The Walk Free Foundation partnered with the Gallup World Poll to ask members of the public about the degree to which they have been personally affected by human trafficking (e.g., they were trafficked, or members of their immediate family were or are trafficked). To date, Walk Free and Gallup have surveyed respondents in 25 countries about human trafficking victimization (Global Slavery Index 2016). The Gallup survey data has been used by Walk Free researchers to inform county-level prevalence estimates. In their most recent version of the index, Walk Free estimates that there are 45.8 million people in some form of modern slavery worldwide (Global Slavery Index 2016). Data for the Walk Free estimate come from the general population surveys in 25 countries. Because survey
data are not available for most countries, researchers at the Walk Free Foundation extrapolated the prevalence of human trafficking for countries without surveys. Extrapolation was based on matching countries without surveys similarity to countries with survey data across 24 measures representing social health and economic rights, personal security, and refugee populations and conflict (Global Slavery Index 2016).

Although the Global Slavery Index attempts to creatively utilize local survey data to inform global estimates, standard national survey sample sizes of a 1–2000 respondents in a single county are generally too small to meaningfully detect rare events such as human trafficking. This problem is exacerbated in countries where human trafficking is rare. The result is that prevalence estimates utilizing survey data include large margins of error and do not allow researchers to draw reliable conclusions about the prevalence of victimization in a county or to compare prevalence across counties (Gallagher 2017). Additionally, survey household methodologies are often limited to populations of victims who have been “freed” and are less likely to access individuals who are currently in a situation where they are victimized.

Other researchers have utilized targeted surveys in a particular locality to collect information from people selected for inclusion in the survey based on their personal risk factors or on a recommendation by someone in their social network who is a known victim. Local surveys allow researchers to reach victims in their “natural environment” and gain access to hard-to-reach, hidden populations. For example, in 2011, Steinfatt and Baker hired moto-cycle drivers to help researchers identify thousands of commercial sex venues in Cambodia. By working with deeply embedded informants, researchers were able to gain access to individuals selling sex who operated in a variety of known and lesser known commercial sex venues. Steinfatt and Baker then interviewed commercial sex operators and those selling sex about the nature of their experiences, including vulnerability to human trafficking to estimate the prevalence of sex trafficking in Cambodia. They estimated the number of actual sex trafficking victims to be close to 3000 – a degree of prevalence substantially lower than those reported by nongovernment and government organizations in Cambodia (Steinfatt and Baker 2011).

Chain referral sampling methods or respondent-driven sampling has been used to identify human trafficking victims in a number of defined geographic areas. This method is a variation of snowball sampling, designed to overcome the limitations of volunteerism, biased referral methods, and homophily among the referred sample. Originally developed by Heckathorn (1997, 2002) to study injection drug users, respondent-driven sampling (RDS) utilizes a series of statistical parameters to inform the chain referral sampling methods. RDS methods rely on identifying “seeds” within a hidden population. Seeds represent people who have particular experiences and networks that facilitates connecting researchers to individuals who have experienced the phenomenon under study. Respondents receive an incentive to participate in an interview and receive further compensation for each referral that successfully completes an interview. Referrals from each seed are limited, and weights are applied to each respondent on the basis of the size and reach of his or her social network. The statistical parameters that guide the chain referral sampling
within RDS allow researchers to derive estimates back to the population. Researchers have used respondent-driven sampling methods to study other hidden populations, such as women and children in street prostitution (Tyldum and Brunovskis 2005; Curtis et al. 2008), drug users (Heckathorn 1997), and the homeless (Williams and Cheal 2002). Utilizing chain referral methods, Zhang et al. (2014) surveyed over 800 undocumented migrant workers in San Diego, California, and estimated that roughly 30% of the undocumented migrant workers in San Diego were victims of labor trafficking. Zhang’s research also shed light on the nature of labor trafficking in San Diego, where the highest rates of labor trafficking occurred in construction and janitorial services and that undocumented immigration status was the most important variable in a person’s risk for trafficking.

However, like all research methods, respondent-driven sampling and other chain referral approaches have limitations. Even when researchers are able to locate traditionally hidden populations, participants may not be in a position to disclose victimization. Victims of human trafficking may be under the control of another person, and admitting to exploitation and victimization could lead to retaliation from their trafficker (Brunovskis and Surtees 2015). Fear, shame, or financial necessity may also prevent participants from revealing victimization and may skew data toward a more conservative estimate. Furthermore, even with the support of “insider informants” or “seeds” who are trusted within their social network, it is likely that hidden populations exist that are unknown to researchers and the subject community. For example, given the social stigma around child abuse and exploitation, some informants may be reluctant to refer researchers to subjects working in brothels where very young girls are being exploited. Similarly, subjects may avoid referring others in their social network when they fear this gets them into trouble. In this way informants may selectively choose which sites they bring outsiders to or who gets referred. Due to the resources needed to saturate communities being studied, RDS samples are limited and may not be generalizable. For instance, farmworkers in San Diego may be able to provide researchers with valuable information about trafficking in the local agriculture industry, but their experiences may differ from exploited agricultural workers in other parts of the country or victims of other forms of labor exploitation, domestic service, hospitality, or restaurants or construction industries. Finally, RDS methodologies limit estimates to relatively small geographic units and must be replicated across multiple locations to develop national or global estimates of human trafficking prevalence (Zhang 2012).

**Using Online Domain Data and Network Information to Measure Human Trafficking**

The Internet has become an essential part of most people’s daily routines, yet online domains can also serve as platforms for emerging cybercrimes and can facilitate crimes that occur in physical space like human trafficking. It may seem tempting to believe that Internet-facilitated crimes are even more difficult to detect than crimes occurring in physical space. The multijurisdictional context of the Internet
complicates the prosecution of perpetrators (Levi and Wall 2004; Newman and Clarke 2003; Wall 2007; Yar 2005), and these online interactions give criminals an informational advantage in addition to access to a potential new field of distanced victims, clients, and other offenders (Wall 2007). The Internet simultaneously offers a wide array of possibilities to detect crimes, especially when the crime in question depends on a broad public engagement and is therefore more likely to be facilitated with publicly accessible online domains rather than the dark web, as seems to be the case with sex trafficking. Considering the difficulties of accessing reliable information about human trafficking victimization through publicly available sources, government records and key stakeholders, research that engages buyers, facilitators, and other community members who are connected to human trafficking and have information about the problem is of great potential value (Zhang 2009). The use of online domain data and network information are two innovative mechanisms to access such information.

The Internet facilitates human trafficking through the online recruitment of victims and promotion of labor or sexual services (Latonero et al. 2011; Mendel and Sharapov 2016). Additionally, open-access online domains make illicit behaviors accessible to a broad range of individuals that may facilitate crime while not explicitly taking part in the coordination of illicit acts. For example, recent work has elucidated how sexually oriented forums and review boards engage clients across a wide geographic span in commercial sex and sex trafficking (Blevins and Holt 2009; Holt et al. 2008; Holt 2010). Research has also alluded to a potential problem of labor exploitation in emerging online markets like driving apps, online shopping, or on-demand online labor services where there is a limited monitoring and where consumers seek for the best products against lowest prices (Sundararajan 2016).

With the Internet being of central importance to human trafficking activities (Latonero et al. 2011; Mendel and Sharapov 2016), an affordable and valuable source of data to detect and systematically measure the problem presents itself. Scholars have begun to call for the use of machine learning techniques, data mining, information retrieval, information integration, and natural language technologies to automatically compile and correlate information from open Internet sources with the aim to discern human trafficking patterns (Konrad et al. 2017). A recent study by Dubrawski et al. (2015) compares the merits of various analytical techniques to identify sex trafficking in online domain data. The study points to the relevance of automated text extraction that searches for keywords indicative of sex trafficking as provided by law enforcement or other experts, combined with classification algorithms that extract other structural text features from the advertisements and can isolate the most likely trafficking ads. Other studies, too, have applied automated text analyses to identify commercial sex and sex trafficking across a large number of online classifieds (e.g., Ibanez and Suthers 2014; Portnoff et al. 2017).

Online domain data have also proven to be helpful to estimate demand for sexual services. For example, Bouche and Crotty (2017) utilized data from an online review board about erotic massage businesses combined with a physical camera monitoring of massage establishments to estimate a total demand for commercial sex in these venues in Houston, Texas.
Furthermore, studies utilizing online domain data have also begun to measure the online networks underlying human trafficking. Examining online networks is important because “technology is reconfiguring many of the networks that underpin many aspects of human trafficking” (Thakor and Boyd 2013: 280). Through applying network analytical techniques to online domain data, a few studies expose how trafficking operations are connected to each other through shared ownership of brothels, multiple sex providers, or shared clientele networks when clients are “shopping around” at different places and are recommended places through online classifieds and review boards (Ibanez 2015).

Examining the networks underlying human trafficking promotes a more comprehensive understanding of the nature and scale of the problem for three reasons. First, through network analysis, the structure of the relationships and interactions between all trafficking actors can be measured, and the flow of goods, money, or information through these connections can be exposed (Konrad et al. 2017). Examining the structures of networks can also point to the most critical trafficking actors that need to be addressed with appropriate criminal justice or anti-trafficking responses (see, e.g., Campana 2015).

Second, network techniques can be utilized to expose individuals that have not formally been identified as victims or offenders but may be at increased risk to be involved in trafficking operations due to a similarity with or social proximity to existing victims or offenders. Utilizing so-called link-prediction techniques, the probability that a tie between individuals exists as a function of network characteristics (e.g., social proximity) and individual-level attributes can be predicted. As shown in prior research on different crime types, these techniques help obtain a more complete picture of criminal networks based on partial knowledge of offenders and known co-offending networks (Berlusconi et al. 2016; Liben-Nowell and Kleinberg 2007). Recent work by Konrad et al. (2017) points to link-prediction techniques as holding great promise to measure the nature and scale of human trafficking that has proven to be difficult to address with traditional estimation methods.

Third, networks comprised of both criminal and noncriminal participants can give insight into the nesting of human trafficking in larger social and economic contexts. As was mentioned in another chapter of this edition, individuals and businesses in a legitimate context may be connected to human trafficking activity through regular social and economic ties and, as such, can maintain a market or social structure that allows for human trafficking to persist (De Vries, Jose, and Farrell, this edition). Researchers have quantified networks comprised of criminals and noncriminals to create an understanding of the nesting of crime in a broader legitimate surrounding for other crimes such as organized crime or gang violence (Smith and Papachristos 2016; Malm et al. 2010).

The Way Forward in Measuring Human Trafficking?

There have been significant advances in the methodologies employed to understand the scope and nature of human trafficking. Researchers have offered sound and meaningful critique of many of the early efforts to simplistically utilize publicly
available information about victims and cases to develop national or global estimates. Efforts to characterize human trafficking victimization based on thin and unreliable sources of information have similarly been met with pushback from scholars (see Weitzer 2014 for review of critiques). Researchers are developing innovative techniques to analyze existing data, and efforts are underway to developed new sources of data. There are a number of important steps that can improve our ability to measure the nature and scope of human trafficking in the future.

First, government officials and agencies serving human trafficking victims in a variety of capacities must commit to improving administrative data. This includes integration of human trafficking into existing records management systems and the development of standardized definitions of human trafficking to guide identification and reporting. The potential promise of multiple system estimation techniques to provide regularized local or regional human trafficking estimates depends on high-quality administrative data.

Second, funding is needed to support labor- and time-intensive studies utilizing local surveys and chain referral sampling within targeted populations. These efforts will likely provide the richest information about the nature and characteristics of human trafficking victimization across specific venues and contexts. Most importantly, it requires a shift in our focus from solely relying on official data and traditional methods to including new data and methods, such as information from digital domains. These local studies not only provide baseline information about how and under what conditions people experience sex and labor trafficking, but they could be triangulated with information from administrative records or digital domains to learn about areas of under-identification.

Third, new sources of data should be continually explored as the nature of trafficking in persons crimes evolves. The shift toward new data and methods can address some of the difficulties associated with existing official data and helps to discern human trafficking trends at scale. Nonetheless, these types of data and associated techniques do not come without challenges. For example, not all trafficking may be represented online, data can be sparse or inaccurate, and missing information on individuals and organizations in networks poses challenges to understand the structure of trafficking operations (see, for more challenges, Campana 2015; Dubrawski et al. 2015; Konrad et al. 2017). Therefore, future research should explore how online domain and network data can be corroborated with information obtained from other sources.

Finally, collaboration is key to advancing our understanding about human trafficking. Collaborative efforts among researchers to share methodological techniques without ego is needed and will ensure we learn from each other’s missteps. Willingness to share information is also needed from practitioners in the field. Collaboration has been central to efforts to combat human trafficking through task forces and joint investigations. Researchers need mechanisms to access traditionally confidential information in order to test models, identify potential RDS seeds, and measure the degree of under-identification that may exist in official records. Such collaboration requires long-term commitment from researchers to partner with public and private entities that interface with human trafficking victims, the
negotiation of data sharing and confidentiality protocols, and the willingness of researchers to, where possible and appropriate, provide information that will inform and advance the mission of anti-trafficking practice.

References


The UNODC *Global Report* on Trafficking in Persons: An Aspirational Tool with Great Potential

Vanessa Bouché and Madeleine Bailey

**Abstract**

The Global Report on Trafficking in Persons, published by the United Nations Office on Drugs and Crime (UNODC), is an assessment of the patterns and flows of trafficking in persons, based on country-level data from about 130 countries across the world. This chapter will examine the Global Report’s methodology and discuss the advantages and disadvantages of analyzing trafficking crime by using likely cases of human trafficking and victims as the units of analysis. It will also look at the results presented in the past editions of the report, as well as how the quality and quantity of the data available has changed over time. The question of the global magnitude of the trafficking crime and possible ways of estimating the number of trafficking victims will also be examined.

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Introduction

The United Nations Office on Drugs and Crime (UNODC) publishes periodic reports to assess the human trafficking problem globally. Four official (and one unofficial) reports have been published, each based on survey data collected by UNODC from about 130 countries. This data is compiled into an exhaustive report that contains both cross-country and regional analyses of human trafficking. Given its data-driven approach, the Global Report has potential to provide accurate insight into the scope of the human trafficking problem. The Global Report has already uncovered some important information about human trafficking criminalization worldwide and has attempted to identify other patterns in human trafficking with limited success (Gallager 2011). In this chapter, we analyze the report’s methodology and provide recommendations to enhance data quality and impact.

Background on UNODC Global Report on Human Trafficking

In 2006, the UNODC conducted its first study on the global response to the crime of human trafficking. The study was based on content analysis of open-source information collected from 113 sources reporting trafficking cases from 1996 to 2003. Data sources included international organizations (32%), governmental institutions (27%), research institutes (18%), national governmental organizations (18%), and media (5%). The study’s “Foreword” acknowledges the limitations of the data set, recognizes that the report does not provide a “reliable global overview,” and aspires to “present more and better information in the future.” The 2006 report was a precursor to future reports, which take a very different methodological approach.

The 2009 Global Report was based on data collected from a survey distributed to 155 countries and territories, as well as open-source information. The survey used for the 2009 Global Report consisted of 50 questions, few of which yielded data appropriate for cross-country analysis because of the significant item nonresponse rate given the lack of detailed data kept by most countries on human trafficking patterns. Ten researchers assigned to different UNODC field offices collected the data for the countries in their geographic region. Data collection was divided into three main categories: (1) state anti-trafficking legislation; (2) criminal justice data on investigations, arrests, prosecutions, and convictions; and (3) victim services information. The Introduction and methodological note recognize that the report provides merely a “preliminary snapshot” with “potential to become much more.” The 2009 Global Report begins with an overview that provides analysis of global trafficking flows, national legislation, and criminal justice responses. This is followed by a section on country profiles with more detailed information on each country.
The 2012 *Global Report* was the first to be published in response to the 2010 United Nations Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293 2010). This action plan stressed the importance of obtaining more research, data, and analysis about global human trafficking. Both the 2012 and 2014 reports were very similar to the 2009 report, beginning with a global overview and then delving into country profiles. The major difference is that the research team significantly revised the questionnaire, decreasing the number of questions and the level of specificity. In 2016, the fourth *Global Report* was published, and it offers a similar analysis of global trends in trafficking based on survey data and open-source information. The survey retained the same basic format as that used for data collection in the 2014 report, but added a question to disaggregate the type of human trafficking by sex of the victim.

The next report will be released in 2018 and will be organized similar to previous reports. However, the research team continues to improve the questionnaire with each iteration. The survey for this report added an additional question regarding age of the victim and will provide analysis examining victim age by the type of human trafficking. It also removed a question in the 2016 survey that asked about the value of assets seized by human traffickers since it did not yield reliable results.

The UNODC *Global Report on Trafficking in Persons* is a platform that has generated some important insights into global trafficking patterns (Gallager 2011). The following analysis discusses methodological strengths and weaknesses of the most recent report and potential changes to the report that would yield a more integrated and effective data set for analysis.

### 2016 UNODC *Global Report* Methodology

#### Strengths

The 2016 *Global Report* successfully obtained survey data from 136 countries, which is no small feat. Perhaps the strongest aspect of the report, however, is the analysis of state legislative responses to human trafficking. Since legislative tracking is available in the public domain, this data is valid and reliable (UNODC Global Report 2016a). Also, in addition to legislative tracking in the public domain, the questionnaire asks what section of the country’s criminal code addresses human trafficking. Cross-referencing the survey results regarding legislative responses with the legislative tracking yields highly reliable results with significant policy implications.

One implication is that the report provides a UN-administered metric to gauge compliance with international law on human trafficking, a metric notably missing from the current international regime (King 2008). One of the binding provisions for signatories of the Palermo Protocol is the requirement to criminalize human trafficking, and the 2016 *Global Report* reveals that compliance is on the rise. The number of countries criminalizing trafficking as defined by the Palermo Protocol increased from 33 in 2003 (18%) to 158 in 2016 (88%). A second implication is that
the report allows for a definitional analysis of human trafficking, examining the extent to which country definitions of the crime comport with the definition of human trafficking set forth in the Palermo Protocol. The 2016 Global Report finds that about 90% of countries have adopted the Palermo Protocol definition of human trafficking.

Another strength of the 2016 Global Report is that it provides useful insight into movement patterns – generally identifying source, destination, and transit countries. This is a good starting point for UN member states to shape policy initiatives that address trafficking effectively in light of their countries’ placement in the human supply chain. This information is also generally available in the public domain, so it is not subject to considerable self-reporting bias.

Although the Global Report has elevated the quality and scope of information available on global human trafficking, there are a few areas the report can improve (Gallager 2011). These are discussed in detail in the following section.

**Weaknesses**

The 2016 Global Report is transparent about the limitations of the data collection (UNODC Global Report 2016a). In a brief methodological note near the beginning of the report, the authors explain that data on detected cases cannot adequately estimate the scope of human trafficking because of the problems inherent in observing and accurately recording illicit activity. Below, we provide a more detailed analysis of the limitations of this type of data.

**Detected Cases as a Unit of Analysis**

The UNODC Global Report’s analysis is based on detected cases of human trafficking. This is problematic for a few reasons (UNODC Global Report 2016a). First, different countries have different capacities to assess human trafficking within their borders (King 2008). For example, countries with mostly rural populations or underfunded or underdeveloped law enforcement infrastructure are likely to detect and report less cases of human trafficking on average than states with sophisticated criminal justice systems. Additionally, reporting incentives change from country to country, and in some states incentive structures may create an environment that impedes accurate reporting on human trafficking. Finally, definitions of human trafficking in the criminal code may differ from country to country, and even those countries with similar definitions or those with definitions consistent with the Palermo Protocol may use these definitions differently. This can result in widely varying numbers of detected human trafficking cases from country to country.

However, given the time, personnel, and budgetary constraints, detected cases of human trafficking may be the most viable unit of analysis for current research on human trafficking (UNODC 2016a). The analysis below highlights some of the issues with survey research on detected cases of trafficking and provides suggestions for mitigating these threats to maximize data quality. It also explores some alternative or supplementary data collection methods.
Self-Reporting Bias
The data used for the UNODC Global Report is collected from a questionnaire distributed to governments and from open-source information. Questionnaire self-reporting is subject to self-reporting bias, which may harm the quality of the data (Rosenman et al. 2011). The 2016 Global Report recognizes this in its “Annex” section on Methodology and Data Coverage. It also highlights precautionary measures taken to standardize the data set for measures used in cross-country comparisons. Nevertheless, self-reporting bias is a serious issue that may arise at three stages of the data collection process: (1) the actor/event stage, (2) the observer/agent stage, and (3) the state/principal stage (Ling 2014). Each of these represents stages of data transfer that trace the movement of data from beginning to its final destination, the Global Report. At each point, a new actor has an opportunity to perceive the data incorrectly or infuse it with his or her own personal bias. This section follows the data from its point of capture at the instance of trafficking to the collection by an observer to its reporting and analyzes the factors that may harm data quality along the way with an eye toward developing mitigation techniques to improve future reports.

The first stage is the actor/event stage. In this stage, the actor (the trafficker) causes the events that violate international law. Here, bias arises based on the observability of the event by law enforcement or other relevant first responders (Ling 2014). Observability of an event can vary, but small-scale events may be less likely to be detected than large-scale ones. Applied to examination of human trafficking cases, this can mean a variety of trafficking cases slip through the cracks (King 2011). For example, small-scale, highly unsophisticated human trafficking (like a family member selling a child out of the household for drugs) may go undetected more often than human trafficking that occurs in a well-established brothel. And on the alternate end of the spectrum, criminal syndicates may perpetrate trafficking crimes that go virtually undetected because of their sophisticated trade-craft. Other things that may impact observability are victim and observer characteristics (Ling 2014). For example, victims often do not self-identify out of fear of retaliation from their traffickers or out of unwillingness to relive painful experiences through court testimony or a detailed victim account. Additionally, observers, such as law enforcement, may be influenced by cultural and social mores, perhaps viewing certain instances of trafficking as benign because of their prevalence and acceptance in the community.

This means that within a country, bias in stage 1 may impact the ability of the data set to depict the reality of trafficking crimes perpetrated. Countries with higher rates of easily observable human trafficking appear to have higher rates of human trafficking overall, which may not be the case. This makes it extremely difficult to conduct accurate cross-country comparisons using self-reported data. Because of socioeconomic factors and infrastructural differences that make certain states more disposed to certain types of crime than others, this form of bias cannot be eliminated from a cross-country data set of detected human trafficking cases. However, with the proper cautionary notes in the reported data, a consumer can at least be aware of the potential for this form of bias and the likelihood that a certain country or region is especially susceptible to it.
The second stage is the **observer/agent stage**. In this stage, an observer aware of an event evaluates whether an event meets the reporting criteria, decides whether to report, and then submits the report (Ling 2014). The quality of data in this stage is impacted by (a) agent reporting incentives, (b) clarity of the reporting criteria, (c) effectiveness of the reporting channels, and (d) agent perception of the principal’s ability to detect an inaccurate report.

First, agent reporting incentives can either explicitly or implicitly inform an agent’s ability to accurately report data. An agent’s understanding of and knowledge about human trafficking influences whether or not she/he views a case as reportable. But other reporting incentives also come into play (King 2011). For example, a law enforcement agent may have an overreporting incentive to demonstrate his or her agency is tough on crime. Or a nonprofit may have an underreporting incentive to demonstrate to potential donors the positive impact the organization is making in the community. Bribery, corruption, and complicity may also impact the willingness of a law enforcement official to report a trafficking instance. In other words, there are countless ways agent reporting incentives may bias data at the observer/agent stage (Tyldum 2005).

The second potential self-reporting bias at the observer/agent stage is clarity on what to report as a human trafficking case, especially given the multiple definitions of human trafficking that are utilized by international bodies, nongovernmental organizations, and states. For example, some countries do not differentiate between human trafficking and smuggling – thereby encompassing in trafficking estimates the number of individuals who use services of smugglers to migrate (Jahic 2005). When different definitions of trafficking are used by different agencies, counts of human trafficking cases and victims will be inconsistent. Some may be based only on known cases receiving certain types of assistance (e.g., persons in voluntary assisted return programs or those that enter trafficking victim shelters), while others may be based on victims testifying in criminal cases. Additionally, what justifies a report may vary by country or even by reporting agent.

Third, the effectiveness of reporting channels may also vary significantly and bias the data at this stage (Ling 2014, 11). Countries with more sophisticated data reporting infrastructure, including digitized record keeping and computerized data portals, ease the burden of reporting. This may result in more crimes being reported relative to less technologically sophisticated countries or localities, once again biasing the reported data. Finally, agent perception of the principal’s ability to detect an inaccurate report may impact data collection accuracy at this stage. This means an agent may suppress or inflate event counts due to what he believes the principal needs to understand the data set.

In the third stage, the **state/principal stage**, the state (or principal) receives reports submitted by agents, evaluates these reports, and decides what reports to submit to the data-collecting body (the UNODC). The causes of reporting bias at the state level are essentially similar to the observer/agent level: reporting incentives, ability to detect inaccurate reporting by the agent, clarity of criteria, and reporting effectiveness. However, the reporting incentives here are different. The state may
wish to underreport the crime so as to not deter foreign investment, tourism, or otherwise jeopardize its international image. On the other hand, the state may report numbers that signal they are tough on the crime so as to deter other criminals and gain positive reputational benefits from the international community.

In sum, although there are countless ways bias can enter the survey data utilized by the UNODC, an understanding of precisely where data quality is harmed can inform effective changes to the survey (Biemer 2003). Despite budget and time constraints, there are questions and commentary that can be added to the existing survey, and disclaimers that can be added to the published report, that will allow the reader to more accurately interpret the results. The following analysis discusses potential amendments.

Potential Amendments

Minimizing the Effects of Self-Reporting Bias

Despite the limitations of self-reported data, it is imperative to “mitigate its effects when possible, and to assess its impact when mitigation is not possible” (Ling 2014, 22). The following section examines options to mitigate the effects of self-reporting bias at each of the stages in which it may enter.

In stage 1, the actor event stage, bias mostly stems from the observability of events. Non-detection of relevant events induces the bias. It would be nearly impossible to eliminate observability bias at this stage, so the next best option is to control for the effects, which would be very difficult since its impact on the data is unknown and arguably unknowable. Thus, to address observability bias, the report must alert the reader to instances where the bias may be particularly high. Although the 2016 Global Report gives a cautionary note in its “Global Overview” section, it does not alert the reader to instances throughout the report where observability bias may be higher in a certain region or state on average than in other states. This improvement would allow readers to better understand and interpret the data presented.

In stages 2 and 3, the observer/agent stage and the state/principal stage, the most significant improvements can be made by the UNODC in “clarity of reporting data.” There are a few questions on the 2016 questionnaire that are likely to produce unreliable data given the lack of clarity in the question wording. Different people completing the survey in different countries may interpret the questions very differently. For example, question 2 asks for the number of persons brought into “formal contact with the police and/or criminal justice system,” defining “formal contact” as “suspected, arrested, or cautioned.” With no objective definition of formal contact, the data collected from this question is likely to unreliable. It would be clearer to use one objective measure of formal contact, such as the number of people arrested, to obtain the most reliable data. Each question should be scrutinized to ensure that the wording is simple, objective, and applicable across different country contexts and criminal justice systems and reporting infrastructures.
Non-survey Data Supplements

The 2016 Global Report suggests that multiple systems estimation (“MSE”) is the aspirational methodology for future data collection. MSE would reduce observability bias in the data set by extrapolating from known cases of human trafficking to estimate the unreported number of trafficking victims. MSE measures the overlap between different victim lists and estimates the percentage of victims that go undetected from the lists. This amount of non-detection is used to extrapolate a number of total undetected victims in the measured population, which roughly captures the “shadow number” of victims that go undetected in the current examination of detected cases.

MSE has been piloted successfully to measure other types of illicit crimes, and it has been applied in the context of human trafficking on smaller scales to answer narrower research questions. It has been used to estimate demand for prostitution in Oslo (Cruff et al. 2017), casualties of human rights violations in Peru (Lum et al. 2012), intravenous drug users in Scotland (Hay and McKeeganey 1996), demand for prostitution in 15 different US cities (Roe-Sepowitz et al. 2016), homeless people (Fisher et al. 1993), and victims of domestic violence (Oosterlee et al. 2009). Also, the International Labour Organization has used MSE for its global estimates of numbers of persons in forced labor (ILO 2006).

In addition to using MSE as a methodological enhancement, the Global Report could also supplement survey data with qualitative data (Goździak 2008). This mixed-method approach gives insight to cultural and social influences affecting trafficking that may not be reflected in pure quantitative data. The various reports have attempted to compensate for the scarcity of quantitative data in certain regions by collecting qualitative data from UN peacekeeping operations and mission reports from UN Special Rapporteurs. Qualitative data provides a degree of nuance and insight that often is forgotten in the process of quantitative data collection. Thus, qualitative data could be leveraged as a supplement beyond only those regions with sparse data. For example, the UNODC’s Human Trafficking Knowledge Portal includes a case law database with about 1500 human trafficking cases across over 100 jurisdictions globally. This case law data can be leveraged by the Global Report to provide examples and context for as many countries as possible.

In addition, the UNODC could supplement its data set by collaborating with other NGOs and IGOs that collect trafficking data. For example, the Counter-Trafficking Data Collaborative developed by the International Labour Organization (ILO) and Polaris Project collects data on 62 different variables that capture information on victim profiles and the human trafficking event itself. The current data set includes this information for “over 47,000 victims of at least 43 different nationalities, exploited in at least 52 countries” (CTDC Data Codebook 2017). This database, although nascent, could provide valuable insights into victim profiles or at least serve as a launching pad for more in-depth research or case study analysis of certain types of victims.

Another potential data source is satellite imagery to identify trafficking hubs (Boyd et al. 2018). This technology has been used to identify brick kilns in India’s “Brick Belt,” and this data is used with a multiplier of estimated average forced labor
victims in kilns to develop a rough estimate of the total number of trafficking victims in the Brick Belt. Although this data is likely not easily transferrable to estimating other forms of trafficking (brick kilns have a distinct shape and thus are readily visible on high resolution satellite data), the data gathered from this study could be used to cross-check reported numbers of trafficked laborers in some Southeast Asian countries or to develop a case study of a particular type of trafficking in a country.

Walk Free Foundation’s Global Slavery Index uses survey methodology to measure prevalence of human trafficking globally. Rather than surveying state bodies (as the Global Report does), the Global Slavery Index is based on public opinion surveys. They have contracted with Gallup International to field 25 surveys, interviewing more than 28,000 respondents in 52 different languages. The Global Report should consider how to measure its estimates against those produced by the Global Slavery Index.

Data Presentation

Purpose Statement
The 2016 Global Report, although narrated in relatively accessible language, is more than 120 pages of charts and graphs, broken down by region. The data are extensive and relatively dense, yet formatted in a user-friendly manner, utilizing colorful graphics to present data and intermittent artwork. The disclaimers about reporting methodology and data quality are contained in an “Appendix” instead of embedded in the text of the report itself. This format lacks the technical detail on data analysis likely to be sought by an academic research scholar, but is still too technical for a casual consumer or antihuman trafficking advocate. Without a purpose statement opening the 2016 Global Report, the intended consumer of the report’s information is unclear.

The “Introduction” and “Preface” of the 2016 Global Report both imply that the report’s purpose is to define the contours of the global human trafficking problem as a step toward eradicating it. It states that “to have tangible success against the criminals, to sever the money supplies, to entertain joint operations and mutual legal assistance, we must first understand the texture and the shape of this global challenge. The Global Report does exactly this” (UNODC 2016a, 1). However, in its “Global Overview” section, the report also states that, in light of the limitations of the data, it “does not use these data to estimate the size of the [trafficking] phenomenon, nor to conduct cross-country comparisons in terms of the severity of the trafficking” (UNODC 2016a, 39). This statement is somewhat at odds with the statements in the Introduction and Preface, which imply that the report’s purpose is to measure and then combat trafficking, and is also at odds with the section on “Patterns of Trafficking in Persons,” which compares data from multiple countries to analyze trends.

A clearly defined purpose statement should identify both the intended uses of the data and the intended audience. The publication is in response to the General Assembly Resolution directing the UNODC to research the global effects of human trafficking (A/RES/64/293 2010). But a purpose statement for the report
would serve to provide clarity to the researchers and consumers of the product. For example, if the purpose of the report is to accurately define the contours of the human trafficking problem, the survey should be revised to minimize self-reporting bias (in ways previously discussed), the report should provide disclaimers when data is less accurate, and the report should provide cross-country analysis so that the consumer knows that the data is aimed at presenting a (albeit incomplete) picture of the global reality of human trafficking. On the other hand, if the purpose is simply to assess the capacity of states to detect trafficking within their borders, the report could continue using a simple survey and omit disclaimers about data quality.

**Potential for Dual Functionality**

Although the current *Global Report* does not have a “naming-and-shaming” purpose or function, such an element could be a low-cost, valuable addition. Currently, there is no UN-administered compliance report to assess the success of states implementing the Palermo Protocol. The US Trafficking in Persons Report (TIP Report) fills a similar function by ranking countries by compliance with international standards on combatting human trafficking and instituting unilateral sanctions against noncompliant states.

The contribution of the TIP Report to global consensus building on the issue of human trafficking is indisputable. The author of one of the seminal studies on international anti-trafficking efforts herself noted (despite her criticisms of the US influence in this area) that she directly observed multiple instances of positive policy change while working with member states of the Association of Southeast Asian Nations from 2003 to 2010. She noted, “the open threat of a negative grade in the U.S. TIP Report provided the impetus for major reform initiatives, including the criminalization of trafficking, decriminalization of victims, changes in penalty structure for trafficking...and the opening of shelters” (Gallagher 2010, 485). Based on movements of countries within the TIP Report ranks, it seems that more and more countries have come into compliance with international law since the institution of the ranking system. Since the enactment of the US anti-trafficking law, the Trafficking Victims Protection Act, in 2000 that mandated the annual publication of the TIP Report, the number of countries at Tier 1 (full compliance) has more than doubled (Tiefenbrun 2007). There has also been a steady increase in the number of countries at Tier 2 and a corresponding decrease in the number of Tier 3 countries – from 23 in 2001 to 12 in 2006 – due to measures taken by foreign governments to comply with the minimum standards.

If the UNODC report adopted a similar naming-and-shaming element in its *Global Report*, it could fill a gap in the international compliance regime for antihuman trafficking efforts. This would add teeth to the human rights regime undergirding international law on human trafficking, creating the potential for serious reputational consequences for noncompliant states. The addition of a naming-and-shaming mechanism would strengthen the Palermo Protocol and would have a lasting effect on anti-trafficking policy that is more likely to be internalized by state parties to the Palermo Protocol. Practically, this would not considerably change the current form of the *Global Report*. The addition could
merely be a section highlighting noncompliant states and states that have come into full compliance with the Palermo Protocol. Or it could consist of an annex with a more extensive ranking system similar to that of the TIP Report, classifying countries into tiers based on the degree of compliance with international standards. This addition could be a highly valuable use of “scorecard diplomacy” with the potential to spur member states toward developing anti-trafficking institutional infrastructure, a result that has been seen in response to the TIP Report (Gallagher 2010). In fact, in many countries, the TIP Report has led to the establishment or improvement of anti-trafficking institutions such as judge and law enforcement training, victim shelters, and increased trafficking prosecutions and convictions (Kelley 2017). The international anti-money laundering compliance regime – the Financial Action Task Force (FAFT) – has used similar scorecard diplomacy backed up by multilateral, G7 sanctions with considerable success. Some scholars have suggested the UNODC follow suit (Bravo 2011). Before sanctions are imposed by the FAFT for non-compliance, states are encouraged to open a dialogue with the institution, and it provides advice and technical cooperation to aid the country in implementing domestic anti-money laundering measures. A similar, UNODC-administered “scorecard” could raise the stakes for the development of domestic anti-trafficking measures while ensuring states have a resource for informed, guided policy-making. Notably, a UNODC compliance mechanism within the Global Report could also serve as a “check” on the US TIP Report, which has faced some criticism for being politically motivated (Chuang 2005).

One possible problem with the proposed addition is its potential to increase survey non-responsiveness. Institutional theorists argue that the choice of conformity or resistance to institutional pressures is a strategic choice affected by organizational interests, such as efficiency or acquisition of resources (Oliver 1991). These interests may cause institutions to conceal nonconformity with international norms, responding symbolically and buffering themselves from international attention. A state may alternatively reject institutional norms or expectations in defiance of institutional pressures altogether, or they may even adopt an aggressive posture toward institutional agents and attempt to manipulate or actively exert their sovereignty over international institutional pressures. These possibilities will have to be weighed against the considerable value of adding a ranking system to the UNODC’s Global Report. Of course this change would likely need to emanate from the General Assembly, as the current report’s purpose is centered around the directive of the 2010 General Assembly Resolution to measure and assess the scope of the trafficking problem.

**Conclusion**

The Global Report is an important and ambitious project that endeavors to provide a data-driven understanding of the global human trafficking problem (Gallager 2011). A few methodological limitations impede it from being as impactful as it could be. With a few low-cost modifications – including a clearly defined purpose and target audience, simplified survey language, collaboration with other NGOs and IGOs that
are doing similar work, and the addition of more qualitative data from the UNODC case law database – the report could become invaluable to the global community in its efforts to end human trafficking. Finally, the UNODC should consider the opportunity for dual functionality of the report so that it would not only measure and assess the scope of the global human trafficking problem but also spur the international community toward internalizing antihuman trafficking norms.

Cross-References

- Criminal Justice System Responses to Human Trafficking
- Measuring Trafficking in Persons Better: Problems and Prospects
- The Nebulous Definition of Slavery: Legal Versus Sociological Definitions of Slavery
- Using Law Enforcement Data in Trafficking Research

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**Further Reading**


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Ethical Considerations for Studying Human Trafficking

Tania E. DoCarmo

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Abstract

This chapter outlines ethical considerations for doing research on human trafficking. It presents ethical challenges not only for interacting with and studying the experiences of trafficked persons and their communities but also for describing, explaining, and presenting trafficking as a social problem more generally. An ethical approach to trafficking research includes giving considerable thought to how a study is designed, ethically negotiating access to respondents, being honest about how the researcher’s social position and emotional reactions to respondents in the field will impact findings, and being diligent about recognizing ethical conundrums as they arise. The chapter begins with how researchers might consider the ethical implications of their research design, negotiate access, and address their positionality. It then turns to practical suggestions for trauma-informed and culturally sensitive data collection, in addition to guidelines for ethically representing and disseminating findings.

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J. Winterdyk, J. Jones (eds.), The Palgrave International Handbook of Human Trafficking, https://doi.org/10.1007/978-3-319-63058-8_8
Human trafficking research shapes how policymakers, practitioners, and civil society understand it as a contemporary social problem. This chapter identifies challenges for researching trafficking with a focus on ethical considerations—not only while engaging with trafficked persons or other respondents but also for describing, explaining, and presenting trafficking as a social problem more generally. In addition to being transparent about the difficulty of estimating trafficking’s prevalence (see chapter “Measuring Trafficking in Persons Better: Problems and Prospects” by J. Van Dijk), trafficking researchers have a responsibility to evaluate whether their methods reproduce oversimplified or inaccurate trafficking narratives (see chapter “Using Law Enforcement Data in Trafficking Research” by E. Cockbain, K. Bowers and L. Vernon) and to safeguard the well-being of their respondents and affected populations.

Researching human trafficking raises the same ethical questions that exist in all empirical research, regardless of who or what is being studied. But as is recognized by others studying disadvantaged populations, research on trafficking raises additional ethical considerations about how to study seemingly vulnerable populations such as children, prisoners, and displaced persons (see e.g., Bosworth and Kellezi 2016; Aldridge 2017; Sutton 2017). Furthermore, because research on trafficking intersects with culturally “sensitive” domains including gender, sexuality, sex work, criminality, and legal status, this can make study participation uncomfortable or risky. The impact research has on respondents and ensuring they are given their own voice should be constantly evaluated (Brennan 2005; Brunovskis and Surtees 2010).

Though research about trafficking has increased in recent years, this does not necessarily ensure a deeper understanding of why trafficking occurs, how it impacts affected populations, or how the issue should be addressed. A large number of studies on trafficking show selection bias, and omit important details about sampling procedures, the limitations of their data, and draw from unsubstantiated claims (Zhang 2009; Brunovskis and Surtees 2010). Trafficking research can be substantially improved by carefully considering how to ethically access trafficked persons and their communities and by being increasingly mindful about how and to what effect findings are presented, both for those who participated in the study and those affected by counter-trafficking policy and practice more broadly (Morrow and Boyden 2014; Waldram 2015).

**Methods and Research Design**

This section considers the ethical implications of how researchers make decisions about their research design. Social constructions, research paradigms, and prominent theories can drastically influence how and why researchers study problems, who they include as respondents, the kind of questions they ask, and the methods they use.
Biases and assumptions about what trafficking is, how it works, and who it affects may appear in a research design early on (Flick 2007; Brunovskis and Surtees 2010). Regardless of intentions or experience, researchers have a responsibility to critically analyze their biases and assumptions from the beginning, keeping them in mind as they develop research questions, plan their methods, and conduct fieldwork. Factors such as funding, access, time, and methodological expertise tend to have an impact on how studies are designed and cannot always be ignored. Nonetheless, researchers should ask themselves the following questions early in the design process:

- **What assumptions am I making about how, why, and to whom trafficking occurs?** How human trafficking is constructed by policy, mass media, and research deeply impacts assumptions about what it looks like, how it works, who it affects, and why. Thus, researchers may begin their studies with stereotypes about the people they will encounter and preconceived notions about what trafficked persons have experienced (Zimmerman and Watts 2003). Too often, these ideas are fueled by sensationalist media coverage of exceptional cases and are biased or based on faulty evidence (Zhang 2009; Houston-Kolnik et al. 2017). For this reason, researchers should consider how their assumptions might impact their research design and whether these are evidence-based. What assumptions are being made about the race, age, class, or gender of trafficked persons? What are the researcher’s expectations about what trafficked persons want, what justice looks like, or how they make sense of what happened to them? Regardless of methodology or orientation, researchers should recognize their assumptions, ensure their study is not dependent on faulty depictions, and consider how they might challenge assumptions about trafficking rather than reproduce them (see Cwikel and Hoban 2005).

- **Who will I involve in the research design?** The stakeholders involved in research design will ultimately play a vital role in the types of questions being asked, how the data is used, and for whom it will be useful. Academically trained researchers have substantial training in methods and the analytic skills needed to design and conduct rigorous research, and may be well versed in academic theory. However, they may not be experts on the community they study or how their research can be useful beyond scholarly theory building. Community organizations and trafficked persons, on the other hand, though they may not have rigorous research training, have a long-term interest in the community and often bring unique perspectives to the study that scholars would otherwise fail to consider. Researchers should give strong consideration to whose interests are being privileged in their design and how the study might be improved to benefit the community (see UNIAP 2008).

- **Have I designated enough time, resources, and funding to collect and analyze my data ethically and accurately?** Funding a study on trafficking can be timely and costly, perhaps even more so when incorporating strong ethical guidelines. Researching disadvantaged populations requires cultural- and trauma-informed sensitivity (Brennan 2005), and there is always a strong possibility studies will be faced with time delays and complications leading to costly but necessary adjustments. Moving forward with
a study without the knowledge and resources to carry it out ethically is potentially harmful, both to respondents and to the study’s overall validity. For this reason, researchers should carefully consider the feasibility of whether they can carry out their proposed research design in an *ethical* way using the limited time and resources available to them.

For example, interviewing trafficked persons one after another in a location available to the researcher for limited cost may be a practical and cost-effective interviewing strategy. However, this approach may make respondents less comfortable than if their interview was conducted over multiple, shorter visits at a location they choose themselves (preferences vary). Similarly, asking a colleague, respondent family member, or neighbor to translate during interviews may be more convenient and less costly than hiring a professional, but the latter better ensures the interview is translated accurately and remains confidential.

*– Is my study intended to be representative of a certain group? What perspectives are being privileged?*

As is the case with any study, researchers must make decisions about who to include in their study and why (Flick 2007). Sometimes these decisions may unintentionally contribute to selection bias if not considered carefully. Existing studies on trafficked persons often overgeneralize or make assumptions about specific types of experiences; this should be avoided (Tyldum and Brunovskis 2005; Brunovskis and Surtees 2010; Weitzer 2014). Studies of trafficked persons who are receiving services or have been counted in a government database, for example, cannot be said to be representative of all trafficked persons because not all victims seek assistance nor are all types of trafficking cases equally identified by law enforcement or service providers (Farrell and Pfeffer 2014).

Trafficked persons are not a homogeneous group; their experiences vary according to multiple factors, and findings may differ depending on whether they are interviewed during, immediately after, or many years following their trafficking experience (Brunovskis and Surtees 2010). If conducting in-depth interviews with young women who experience sexual exploitation on the streets of an urban European city, for example, these findings should not be used to generalize the experiences of trafficked persons who are older, aren’t female, have received services, live somewhere else, or have experienced exploitation in a different way. This does not mean that studies need to be all inclusive but that researchers should be fully transparent about exactly which aspect of trafficking their sample represents, who it does not represent, and how this impacts their conclusions.

*– Must my data come directly from trafficked persons? If not, how might this limit survivors’ ability to share their own points of view?*

Collecting data directly from trafficked persons often seems like the most straightforward strategy for research on trafficking, but it is important to consider whether doing so is necessary for every study. There are limits to studying trafficking exclusively through individual victim interviews, which come with their own ethical conundrums related to accessibility, safety, and risk of stigmatization or re-traumatization (Brunovskis and Surtees 2010). It is essential
Trafficked persons have the opportunity to share their own points of view, but they should not be required to carry the burden of answering research questions if this poses risks or if the questions under study can be answered in another way. Therefore, unless a study is specifically interested in the trafficked persons’ own perspectives, it may not require in-depth interviews with trafficked persons themselves. Researchers should consider alternative options, such as gathering information from gatekeepers, documents, or existing data sets. While these data points do not speak to the perspective of trafficked persons, they can provide valid information useful for analyzing trafficking patterns, counter-trafficking efforts, and policy responses.

**Negotiating Access**

Though often overlooked, negotiating access is as an essential aspect of ethical research planning (Doykos et al. 2014; Jefferson 2015; Monahan and Fisher 2015). Once a research plan is established, the first step to conducting fieldwork is to acquire access. Establishing contacts and gaining site permission can be time-consuming, stressful and may require creative problem-solving. The effort that goes in to building rapport with respondents and communities is critical and should not be treated as a mere “check box” of study design. Gaining access often requires negotiating with “gatekeepers” – community leaders, officials, social service providers, parents/guardians, or others – who are already in the community and have access to potential respondents of interest (Monahan and Fisher 2015). It is essential there be a plan for negotiating access prior to entering the field that includes recognizing potential barriers and how to ethically overcome them. The following questions should be considered:

- **Who are the gatekeepers at my research site? How do I plan to interact with them?**

  Gatekeepers can be instrumental for enabling access and providing guidance about how to communicate with unfamiliar or hard to reach groups (Thorburn 2017). Who the gatekeepers are will depend on the site. For studies on trafficked and exploited populations, this may include people complicit in trafficking activities, such as recruitment agencies, employers, corrupt officials, smugglers, or it may consist of community stakeholders, local leaders, social service providers, legal professionals, health care workers, or law enforcement. In the case of children, gatekeepers may be a non-complicit or unknowing parent or guardian.

  Once contact and trust are established, gatekeepers may be happy to share their expertise and help navigate local dynamics. Without the help of a gatekeeper, blindly walking into a site or situation where suspected trafficking occurs and starting to ask questions may initially seem harmless (or courageous) to an outsider but potentially puts the research team and potential respondents at risk of unnecessary harm. Unless the researcher has already built relationships in the field, gained the trust of key gatekeepers, and gained an appreciative
understanding for how they might be perceived by the community, it is unlikely they will be able to predict or discern potential risks on their own or access and properly analyze the in-depth information they are looking for.

Building trust with gatekeepers can be a frustrating process. Scholars studying trafficking often face difficulties “getting passed” gatekeepers who restrict access to clients, children, detainees, and community members (see e.g., Ahsan 2009; Brunovskis and Surtees 2010; Thorburn 2017). Under these circumstances, researchers may perceive gatekeepers as a hindrance, becoming frustrated or suspicious when gatekeepers are overprotective or uncooperative. Traffickers, employers, law enforcement, or migration officials may restrict access because they are suspicious of outsiders, concerned about what respondents might say, or see the proposed study as irrelevant to their own interests. But researchers should bear in mind that simply because a gatekeeper is guarded or protective does not mean they do not have a reasonable justification for doing so (see Brennan 2005; Brunovskis and Surtees 2010). When access is being sought with trafficked persons after they’ve recently left an exploitative situation, for example, social service providers, advocates, and family members may be cautious and protective of them for good reason, particularly if the researcher is unknown to them or they have had negative experiences with requests in the past.

As reports about human trafficking increase in the media, gatekeepers are often overwhelmed with requests for access to clients and concerned about protecting respondents from additional exploitation, harm, or secondary trauma (Brennan 2005). Indeed, those who work with trafficked persons often recognize that it can be tiresome and overwhelming for their clients to participate in interviews over and over again, whether with researchers, journalists, law enforcement or in court (see Chap. 15, “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal,” by R. Dhungel). Therefore, even when researchers have good intentions and see themselves as objective and trustworthy professionals, this does not mean gatekeepers will (or should) automatically trust them. From the perspective of the gatekeeper, it is the researcher who is an outsider and worthy of suspicion.

Participation in a study can be time and labor intensive and may not always result in direct benefits. For this reason, it’s important to begin building trust with gatekeepers early on, open lines of communication, and come up with creative ways to ensure a study is beneficial to all involved. Taking the time to meet with gatekeepers to discuss the project and answer their questions is a good first step. If working with a formal organization, it may be helpful to prepare a summary of the study ahead of time that includes a formal request for cooperation, an outline of what is expected, and steps the researcher will take to ensure respondents benefit from the process (see Brunovskis and Surtees 2010).

- What are the risks and benefits of working with gatekeepers (or not)? What limitations might I face in the process?

Though it is helpful, collaborating with gatekeepers can also be fraught with ethical and methodological challenges (Reeves 2010). For example, gatekeepers may offer to provide access to clients or the community only if the researcher
assists them with some kind of service through reciprocity. While there are potential benefits to this arrangement, there are also risks, including ethical ambiguities about informed versus coerced consent, unclear lines about what counts or does not count as research, and issues with censorship (Monahan and Fisher 2015). Another common dilemma is that gatekeepers may restrict access or place restrictions on the types of questions the researcher is allowed to ask in order to protect respondents from intrusive requests they believe are harmful. In restricted situations such as these, it can be difficult to negotiate a balance between respecting the gatekeeper’s concern about protecting respondents from harm and the respondent’s right to speak about matters affecting their own lives on their own terms (Ahsan 2009; Burgess-Proctor 2015).

Power dynamics between gatekeepers and potential respondents can also complicate recruitment and informed consent procedures. In situations where gatekeepers agree to present study information to potential respondents on behalf of the research team (e.g., to protect clients’ privacy), researchers have little control over how study information will be filtered through the perspective of the gatekeepers and whether this has a direct influence on whether respondents participate. While conducting multiple studies among trafficked persons in Europe, for example, Brunovskis and Surtees (2010) successfully negotiated with gatekeepers, but some agencies appeared to only pass study information to their “successful cases,” neglecting to do so for clients who were struggling or considered “unsuccessful.” Ultimately, this type of filtering contributes to selection bias.

Even when gatekeepers are clear with potential respondents that it is their choice whether or not to participate in a study, there may also be power dynamics affecting respondents’ choices in more subtle or inadvertent ways. Some respondents may fear that by participating in a study, they are pleasing or displeasing the very people they rely on for basic services. Similar barriers may occur when seeking access to youth whose parents are not aware their child was exploited (Thorburn 2017) or when collaborating with gatekeepers complicit in exploitation (e.g., recruitment agencies, factory owners). Just as recruiting respondents through a social service agency may only produce trafficked persons who represent “successful cases,” interviewing those in places of exploitation may be biased toward only including trafficked persons with freer conditions, who are under less control, or have less to fear (Brunovskis and Surtees 2010).

What expectations do I have about the type of data my site will provide? Is it possible to ethically access the data I need to answer my research questions? If not, what compromises am I willing to make?

Researchers should consider exactly what kind of data they need to systematically answer their research questions, whether they can gain access to a site that can actually provide that data, and whether it is possible to do so ethically.

The ideal study for a researcher interested in the effect of trafficking on family dynamics, for example, might be to observe a survivor and their family while the researcher stays in their home or community (not unusual for social scientists studying families). But this may not be ethical or possible if trafficked persons they encounter feel it is too intrusive, family members are not aware of their
trafficking experience, doing so is culturally inappropriate or overly conspicuous, or potentially contributes to stress or additional stigma. Similarly, while a researcher may wish to interview trafficked persons one-on-one without their case manager or counselor present to ensure respondents can speak freely, a gatekeeping organization may insist this is inappropriate out of concern for re-traumatization and refuse to negotiate. Researchers should be prepared to decide how willing they are to adjust their expectations and how this may affect who they gain access to and who they do not.

Is there anything I don’t want gatekeepers or respondents to know about my research? What are the ethical implications of withholding this information? There may be circumstances in which researchers want to conceal their study objectives or researcher status from the community they are studying. Formally, these issues are often addressed to some extent by university or academic ethics committees (e.g., Institutional Review Boards), but controversy remains over whether deceiving respondents could ever be fully ethical even if the research is socially important (Monahan and Fisher 2015). Furthermore, ethics committees do not typically regulate more subtle and nuanced ways in which research objectives are obscured from gatekeepers or study participants, and how this might affect respondents or long-term access to the community once the researcher has left.

Perhaps most common is when researchers do not want to make their political or personal views known to respondents who have a different perspective than they do – out of fear that this will disrupt rapport or how truthfully respondents answer their questions. Trafficking is not a politically neutral topic and is closely related to a number of politicized issues such as prostitution, migration, sexuality, and labor rights. While maintaining neutrality is generally positive for seeking unbiased results, difficulty may arise if respondents or gatekeepers ask researchers outright about their political opinions or are suspicious of a study and inquire to know what the researchers’ hypotheses or intentions are (e.g., see Bosworth and Kellezi 2016). A similar dilemma may arise if respondents or gatekeepers assume the researcher holds the same or different opinions as they do even when this is not the case.

What ethical obligations do researchers have to correct them? Is it ethical to only make opinions known to those who agree? What will happen if/when respondents later read the study and discover the researcher was not forthcoming about their position?

Answers to these questions are never easy and may not reveal themselves until a study is already underway. Researchers and study teams should be prepared and consider exactly what information should not be disclosed, why, and how they will address it if it arises. Rather than coming up with a response in the moment, study teams can develop scripts of responses they feel are appropriate. While some researchers are adamant that under no circumstances should researchers be untruthful, others work on strategies for doing their best to minimize obscurity while pursuing data that is otherwise unavailable (see Monahan and Fisher 2015).
What is my action plan for ensuring my own safety and emotional well-being? What about those who assist me?

With so much attention given to protecting the well-being of study respondents, researchers may not give enough thought to how they will keep themselves and those they work with safe. Regardless of a study’s site or location, researchers should be proactive and undertake a risk assessment as part of their overall research design, not only considering their own safety but that of research assistants, translators, and host organizations. Considerations might include conducting interviews in pairs or in public places (when possible) and carrying a mobile device for sending texts upon arrival and departure from a site (Dickson-Swift 2017).

Emotional impact is inherent to the research process (Kleinman and Copp 1993). Not only does research on trafficking cover sensitive topics, but data collection and analysis can be emotionally exhausting as more and more respondents entrust the researcher with their own emotional experiences and later when these accounts are revisited for analysis (Jewkes 2011; Piancanten 2015; Sloan and Wright 2015). Such intense emotions can cause distress and in some cases may make respondents feel uncomfortable if researchers’ emotions become clear during data collection (Bosworth and Kellezi 2016). For these reasons, it is crucial for researchers to acknowledge this reality early on, so they are not caught by surprise. Guidelines to help with this process include debriefing regularly with supervisors or colleagues, arranging for emotional support from a qualified professional, establishing a way to maintain boundaries between researcher and participants, and creating space for “stepping away” from the intensity of research when major challenges arise (see Sloan and Wright 2015; Dickson-Swift 2017).

The Researcher’s Position

Researchers should recognize how their own positionality – that is, their experiences, gender, age, sexuality, ethnicity, social class, and so on – will shape their interactions, impact the lives of their respondents, and affect interpretation and presentation of their data (Manohar et al. 2017). Reflexivity, ongoing consideration of one’s personal or political position in connection to the issue they study, is equally important. This does not mean focusing so much on the researcher’s journey of discovery that this sacrifices opportunities to understand respondents’ points of view but to consider how the researcher can overcome assumptions or misgivings caused by their interactions (Cobb and Hoang 2015).

Regardless of whether doing research on trafficking in one’s own community or one across the world, being reflexive about the dynamics of positionality helps researchers avoid invalid generalizations, recognize their limitations, and conduct more accurate, transparent, and ethically grounded work (Jewkes 2011). Researchers should consider the following types of questions:
What beliefs and feelings do I have about my study’s target population? What do I feel conflicted about and why?

In order to gain insight into potential moments of discomfort or miscommunication, researchers should be honest with themselves about their opinions, biases, beliefs, and emotions related to their study topic, the population they are studying, and how they see themselves in relation to their respondents (Gillies and Alldred 2012; Seal 2017). For trafficking research this may include opinions about gender roles, undocumented migration, child labor, or sex work.

No one, regardless of status, is immune from bias (Guillemin and Gillam 2004; Doykos et al. 2014). Ambiguity and mixed feelings during research are common, especially when topics are sensitive or controversial. Biases do not have to be clearly positive or negative; they may include whether the researcher feels conflicted or uneasy about their topic or setting. Such feelings and attitudes are often shaped by one’s socialization, political allegiance, religion, gender, sexualitv, ethnicity, social class, and age rather than individual attitudes. It is not wrong to have feelings nor is it possible to necessarily get rid of them. Rather, researchers should reflect on and acknowledge their feelings and biases in order to identify how they might be triggered and how they may ultimately influence respondents and the research process (Manohar et al. 2017).

How might similarities and differences with respondents impact objectivity? How might my positionality impact power relations and what respondents expect from me?

Too often, researchers do not give their positionality in the field enough ongoing attention, or they focus too much on more obvious differences with respondents (e.g., race, ethnicity, or religion) while ignoring more nuanced ones. Researchers are expected to be neutral but nonetheless carry multiple identities which have the potential to create power dynamics with respondents. Similarity and difference with respondents across these identities can affect participants’ consent, expectations, and overall rapport, whether intentional or not. If left unexamined, these may contribute to reproducing inequality or reporting inaccurate findings (Burgess-Proctor 2015). With this in mind, researchers should reflect on how their similarities and differences impact the social worlds of their respondents, how this potentially affects study dynamics and adjust as needed.

Considering similarity with respondents can be just as important as considering obvious differences. That is, “insider” status in a community is typically understood as positive but also comes with challenges (Staples 2001). Whereas power dynamics due to gender or racial differences may be obvious (e.g., male researcher interviewing a female about sexuality) or economic differences might lead respondents to think researchers have the power to help their situation (e.g., remove them from an exploitative workplace, provide legal services), similarities between researcher and respondent can equally contribute to unspoken expectations of camaraderie, or to anxiety about judgment. For example, female respondents may have particular expectations about the political position or ideology of a female researcher (Seal 2017) or worry about what a female researcher thinks about her gendered behaviors (e.g., sexual promiscuity, expectations of motherhood). Similarly, respondents of the same religion may assume the researcher will
only report findings about their religious practices in a positive light, or respondents from the same neighborhood as the researcher may have concerns about confidentiality. Of course, identities are multidimensional; a Latina researcher who lives in Los Angeles, for example, though ethnically and/or racially similar to other Latina respondents might in some ways be seen as an “insider” but should also consider dynamics of her “outsider” positionality across boundaries of class, level of education, or nationality – whether the study takes place across town or in another country. The point of considering positionality is not to attempt to eliminate difference or similarity but to consider how these impact the study process and to reduce unspoken expectations to the greatest extent possible.

Do I plan to maintain my observer status? What is my plan of action if I feel obligated to intervene in a difficult situation? Am I aware of the potential consequences any intervention might have on my respondents?

Human trafficking researchers may find themselves in difficult, uncomfortable, or tense situations, including witnessing illegal acts, interviewing respondents who are distressed, and observing situations where respondents or community members appear to be in harm’s way. Indeed, situations such as these have ethical and perhaps legal implications. Thus, researchers should have a thorough plan of action and a working relationship with local service providers or other resources for when situations such as these present themselves. The extent to which a researcher chooses to maintain objectivity or intervene in circumstances is ethically complex (see e.g., Zimbardo 1973; Guillemin and Gillam 2004), but researchers should at the very least refer to their discipline’s code of ethics for guidance.

Regardless of one’s position about if or when to intervene, human trafficking researchers should be extremely cautious about staging any kind of “rescue” operation, particularly without the consent of the victim(s) involved. It is important to be prepared to provide emergency assistance if requested, but for a multitude of contextual reasons, this may not involve the type of intervention the researcher assumes is best. Indeed, failing to respect a respondent’s position on whether intervention is desired or necessary, regardless of the researcher’s intentions, can leave them in worse situations than before (Zimmerman and Watts 2003). When in doubt, find local resources to help assess the situation. It is essential to respect local service providers’ assessment of difficult situations and viable assistance options, even when these options seem dissatisfying to the researcher. Overstepping boundaries, such as contacting authorities when asked not to do so, or disregarding the input of local actors, can create distrust between those who work and live in the community on a daily basis and compromise opportunities for future interventions (Brunovskis and Surtees 2010).

Data Collection

When the time comes to collect data, researchers should be prepared to do so in a way that is trauma-informed and culturally sensitive. This section outlines considerations for engaging in ethical data collection beyond ethics committee
requirements, thinking through the practicalities of how and where data collection takes place, informed consent, following through on promises of privacy and confidentiality, and how to leave the field once data collection is complete.

**What does informed consent look like in this context? How can I best avoid overburdening respondents or unintentionally coercing them to participate?**

Researchers are generally required by ethics committees to establish procedures for informed consent among their respondents. This typically includes providing respondents with written information about the study, potential risks for participating, and getting verbal or written consent before collecting any data. Though these formal procedures have a long history and were established to ensure research participants are not coerced into sharing information, their implementation is often minimal at best (Guillemin and Gillam 2004; Sin 2005). Thus, regardless of ethic committee requirements, researchers should carefully consider what consent looks like and the types of incentives being offered, whether explicitly or not. If respondents will have access to medical care through a health-related study but would otherwise not have access to health services, for example, this may unintentionally coerce respondents to participate in a study they feel uncomfortable about, just so they can receive healthcare. In this situation, the study team might consider providing medical care to all potential respondents, regardless of whether they choose to participate in the study (see Reiter 2017).

Ensuring informed consent requires ongoing diligence and should go beyond written or verbal consent given at first meeting. This does not mean assuming respondents are always under distress, do not want to participate if they show emotion, or cannot make their own decision about participating due to traumatization (Zimmerman and Watts 2003; Brunovskis and Surtees 2010). Indeed, traumatized or disadvantaged respondents may want to share their point of view and experiences even when it is emotional or difficult (Newman and Kaloupek 2004; Burgess-Proctor 2015). Rather, it means being mindful about power differentials and paying appropriate attention to what respondents are hoping to get out of their participation (Newton 2017), checking in about any concerns at every meeting, and reminding them they do not have to answer a question if it appears they are hesitant to do so. In some cases it may also be appropriate to remind participants about what you can and cannot provide, so it remains clear you do not have the power, resources, or expertise to help them with their problems.

**How can I best ensure respondents’ privacy and confidentiality?**

Studies about sensitive topics often promise privacy and confidentiality as a way to protect respondents from potential harms. This is usually essential for trafficked persons who may be ostracized or face additional stigma for speaking about their views and experiences. Ethics committees will typically assist with minimal procedures to maintain respondents’ confidentiality, but researchers should take additional precautions to ensure any risk of identification or harmful exposure is properly mitigated. Notions of “privacy” are often a rare commodity in non-Western contexts and may need to be rigorously negotiated.
In terms of safeguarding data, researchers should only promise to do what they can. Be specific with respondents about how data will be safeguarded and protected, but be cautious about promising that their identification will never be known unless research procedures are put into place to ensure this is possible (i.e., absolutely no record of their involvement). If possible, consider not collecting any identifying demographic information and refer to respondents only by their aliases, including in study records (offer participants the opportunity to choose their own). If audio recordings or other records will be used for analysis, researchers should be diligent in backing up, encrypting, and otherwise preventing the theft of their data.

– If conducting research in a community or language other than my own, what steps am I taking to ensure cultural sensitivity and avoid cross-cultural miscommunication?

Whether a topic or research question is sensitive or uncomfortable depends on social and cultural norms, and differences from the study teams’ cultural expectations may not be immediately obvious (Thorburn 2017). Many cultures, for example, discourage open discussion of sex, particularly with strangers. For this reason, it is important to pursue relationships with local hosts, gatekeepers, or research assistants to help recognize potential cultural barriers and how to ethically overcome them. Topics to discuss might include proper dress for the research team and local norms regarding stigma, politics, displays of emotion, individualism/collectivism, age, gender relations, and sexuality.

Finding a professional interpreter or translator who is familiar with the general cultural context is also essential, but it is important to consider how “close” the translator is to the studied population. If the interpreter or translator is too close (e.g., lives in the community), respondents may be concerned about privacy even if the translator is professional and agrees to keep data confidential. If the translator is too culturally distant from the community, they may not understand local cultural or linguistic nuances essential to proper translation. Interpreters and translators should be vetted and interviewed prior to collecting data to ensure they are willing to sign a confidentiality agreement and understand what informed consent and confidentiality mean in practice so they can properly translate these concepts to potential respondents and there is no misunderstanding about what information they need to keep confidential. This is also a good time to see whether they demonstrate professionalism and sensitivity about the study topic, to ensure there are no major conflicts of interest (i.e., they have no stake in the study’s results) and to get a sense of their language fluency in both the researcher’s and the respondents’ languages. If possible, have a backup translator who is already vetted in case one backs out or is unable to work.

To avoid confusion, translation and interpretation should occur in the first person (i.e., direct translation rather than “he said he felt happy because. . .”). It is also a good idea to provide interpreters with a list of instructions or questions the study team will use during interactions with respondents as well as any other uncommon terms that will be used (e.g., human trafficking) ahead of time to ensure they are fully prepared. They should be instructed and reminded to tell the
study team immediately if a respondent suggests they are uncomfortable or no longer want to participate, and once the study begins, debriefings should be scheduled on a regular basis to discuss how things are going and address any cultural or linguistic conundrums.

How does my data collection strategy incorporate a trauma-informed approach? A trauma-informed approach to social research recognizes that respondents who have experienced significant adversity in child- or adulthood may have beliefs, problems, or behaviors that are symptomatic of their experiences, and incorporates safety, trust, collaboration, choice, and empowerment into its methodology (see e.g., Levenson 2017). If interacting with or collecting data from trafficked persons and their communities, study teams can be sensitive to trauma by carefully considering where data collection will take place and who will be present, taking extra steps to preserve anonymity, offering separate confidential crisis counseling, and taking time to build rapport with respondents even if this is costly or inconvenient.

When at all possible, interviews and interactions should occur in a location chosen by the respondent. Use common sense. If respondents were possibly sexually exploited in hotel rooms, conducting interviews at a hotel should not be a viable option. Whereas some participants may want to meet at home or in a public location, others might be worried about their family or neighbors hearing or seeing them. Others might be concerned about inability to travel to a meeting place due to lack of money, time, work, the distance involved, or lack of childcare. If respondents seem unsure, provide them with multiple options and, if possible, offer solutions to their concerns (e.g., paying for their transportation).

Building trust tends to take time, but feel free to ask what would make participation more comfortable. If respondents fear being misunderstood or misquoted, offer to send them a recording of the interview or conversation. To facilitate openness, comfort, and a sense of safety, Thorburn (2017) recommends three strategies: allowing participants to pace the interview by letting them be in control over what order to go in and how much time to spend on different questions, incorporating nonjudgmental questioning by not assuming whether the respondent experienced something positively or negatively, and maintaining a therapeutic presence by reflecting back emotions, validating experiences, and challenging narratives of self-blame.

Finally, researchers should consider whether all of their questions are necessary and in whose interest they are being asked. If questions in a study are intrusive, does the aim of the study warrant this and why? When questions are being asked merely out of personal curiosity rather than empirical analysis, they should be omitted.

What is my plan for leaving the field? Just as important as negotiating access to the field is planning for how to exit (Sloan and Wright 2015; Delamont 2016; Thorburn 2017). This is particularly important for ethnographic or ongoing studies where researchers have spent regular time in the field or have asked their respondents about sensitive topics (Reeves 2010). At the very least, it is important to execute an exit plan that includes
informing respondents, gatekeepers, and others that the study is complete (UNIAP 2008). In some circumstances this may not seem necessary, but researchers should give considerable thought to whether respondents have gotten used to their presence or have expectations of additional contact. Researchers should also consider whether they want to provide their contact information to respondents, whether they want to maintain contact with them after the study is over, and how they will respond if respondents contact them unexpectedly or are in need of assistance. Whatever the researcher decides, they should communicate this and follow through on any promises.

**Representation**

This final section outlines questions about representing and disseminating research once data collection is finished, including how the researcher plans to share findings with participants and how their conclusions might impact those affected by trafficking policy more broadly.

- **How and when do I plan to share my findings with respondents, if at all?**
  Early in the research planning process, it is important to carefully evaluate if, how, and when findings will be shared with the individuals, communities, and gatekeepers who contributed. Whereas some researchers are adamant that participants should have the opportunity to provide feedback on findings before they are published, others insist this puts an unnecessary burden on the respondent and/or compromises a study’s validity (see Cooper 2008; Aldridge 2017). Considering that many trafficked persons have little power or status to challenge research findings and few opportunities to express their views, it is important to consider both the benefits and challenges of seeking respondent feedback, as well as potential consequences. Either way, it is important to make a steadfast decision about this early on because though it may be easy to make promises on the field, researchers may regret this later on and/or fail to follow through.

  If not shared prior to publication, researchers should strongly consider making plans to make the completed study accessible, at the very least, to those who participated. In doing so, they should be mindful of how their depiction of respondents and stated conclusions will be received and how they might handle negative feedback from participants who are unhappy, frustrated, or disappointed about how they were portrayed. This can be a difficult and uncomfortable process but should not be left unaddressed, particularly with individuals with whom there is a significant power differential. If there is concern about legibility of the study or that respondents might misunderstand its conclusions, the researcher can consider providing the final product along with a presentation or workshop geared specifically to their respondent audience.

- **How might my findings impact those affected by trafficking policy?**
  Usually, researchers do not have complete control over how their findings are interpreted by government agencies, political institutions, mass media, or civil
society. Nonetheless, given that trafficking is often sensationalized in the media and trafficking research could benefit from more empirical- and evidence-based evaluation, researchers must give early and careful consideration to how their findings might impact disadvantaged populations and those affected by trafficking policy more broadly. How questions are asked, the types of questions asked, tone of writing, how quotes are interpreted, how trafficked persons are portrayed, and how the media depicts a study’s conclusions all have the potential to contribute to society’s underlying understandings of the trafficking experience, trafficked persons, sexually exploited persons, and migrants in general, which ultimately impacts the well-being of these populations (e.g., see Cwikel and Hoban 2005, Coutin and Vogel 2016). This does not mean always representing respondents and disadvantaged populations in a positive light or in allegiance with the researcher’s own political views. Rather, it means giving considerable thought to how research subjects are being represented in the study, whether depictions are representative of all or only a few respondents, and whether findings are situated within wider contexts of social inequality beyond respondents’ individual situations (see Seal 2017).

**Conclusion**

An ethical approach to trafficking research includes giving considerable thought to how a study is designed, how to appropriately negotiate access to respondents, being honest about how the researcher’s position and emotional reactions on the field will impact findings, and being diligent about recognizing ethical conundrums as they arise. Whereas much of the general guidance on ethics in research is focused on how it is undertaken during the data collection stage, it is important researchers also consider ethical questions related to gaining access, leaving the field, the extent to which they can truthfully generalize their respondents’ experiences, and the implications of how findings are presented, both for those who participated in the study directly and for those affected by counter-trafficking policy, practice, media coverage, and public opinion more broadly.

**Cross-References**

- Measuring Trafficking in Persons Better: Problems and Prospects
- “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal
- Using Law Enforcement Data in Trafficking Research

**References**


Abstract
There has been little examination of sex trafficking as a form of non-state torture in the anti-trafficking field. Furthermore, very few scholarly treatises acknowledge the overlap between these two phenomena, let alone assess these connections in depth. As a result, trafficking survivors sometimes receive suboptimal care. In many cases of sex trafficking, the psychological and physiological abuses that survivors of human trafficking endure can fall within the clinical spectrum of non-state torture trauma. This chapter will discuss the intersection of trafficking and torture and highlight the psychological and physical constellation of symptoms that reveal trafficking as an identifiable form of torture trauma. It will argue that strengthening the awareness of the connection between trafficking and torture trauma will increase the diagnostic accuracy of mental health profiles in survivors of trafficking and improve the profiles’ utility in shaping appropriate care. This awareness will also help establish a universal standard of care for survivors.
of trafficking that includes recognized methods for the treatment of torture trauma. A universal standard of care increases empathy and understanding for survivors’ psychological states and helps care providers recognize the ways that survivors’ complex behaviors are shaped by traumatic stress. This acknowledgment increases diagnostic clarity and disrupts victim-blaming perceptions that could otherwise impair the judgment of personnel who provide support in a multidisciplinary team context, such as clinicians, social workers, law enforcers, and legal professionals. This acknowledgment can also empower supporting professionals such as clinicians, case managers, community advocates, and social workers to create more complete clinical profiles for survivors, devise more effective treatment protocols, and improve the prospects for effective legal reparation for survivors.

**Keywords**

Non-state torture · Torture · Standard of victim care · Victim blaming · International standards · Undue influence · Trauma bond

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**International Human Rights Law Regarding Torture**

Increasingly, practitioners who work with victims and survivors of human trafficking are recognizing that the level of psychological and physical abuse found to have been inflicted upon survivors may qualify as non-state torture. This recognition reflects the fact that the legal definition of torture in human rights law differs from the term’s usage in the media and from its interpretation in the general public’s understanding. The definition of torture under human rights law, in one of the United Nations’ proclamations regarding its Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT 1984), is broken down into several key elements: (a) the nature of the act; (b) the intention of the perpetrator; (c) the involvement of state, public, or government officials; and (d) severe infliction of mental or physical pain or suffering. The definition of torture from the UNCAT year is as follows:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (UNCAT 1984)

Accordingly, this definition refers to the involvement of a public official or someone of an official capacity in inflicting severe, intentional physical or mental
pain or suffering for the purposes of achieving a specific result from the victim, such as obtaining a confession, delivering punishment, enforcing power and compliance, or creating intimidation and fear, to name a few such intentions (APT 2014). The UNCAT definition holds that torture, when conducted by a private individual, cannot be condoned unless there is the involvement of a public or governmental official (APT 2014; OSCE 2013). However, the Committee Against Torture (CAT), which monitors the implementation of the UNCAT, further clarified that where private individuals inflict torture, if the state fails to intercept, disrupt, or take appropriate actions to prevent such acts of torture or to prosecute private individuals for committing such an act, this, means that the state is complicit in the torture. The committee highlighted this aspect of its mandate specifically in reference to any state’s recognized failure to prevent domestic violence, rape, genital mutilation, human trafficking, and gender-based violence (CAT General Comment No. 2, §18 2008). Globally, legislation is shifting in the direction of recognizing that gender-based violence should be included in the topic of torture, and countries such as Argentina, Brazil, and Uganda have incorporated legislation condemning acts of torture committed by private individuals. Failure on the part of a state in preventing such acts also enhances the potential of this type of danger continuing, as well as communicating to perpetrators that they can operate with impunity (see ▶ Chap. 28, “Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications”)

However, the international community acknowledges the differences between torture that is perpetrated outside of the traditional definition of torture and that which is imposed upon political prisoners or detainees in custody of a state, and CAT seeks to broaden the overall definition of torture (Edwards 2006; McGregor 2014; OSCE 2013). Aside from this consideration, the traditional definition of torture as discussed above has received vast criticism and has been considered, in regard to women victims, to be minimizing, marginalizing, and lacking in gender sensitivity (Edwards 2006). This criticism has prompted feminist scholars such as Edwards (2006) to call for a “feminization” of the definition of torture and to do so mindfully, so as not to hyper-focus on the sex/gender of a victim, as that may be just one of many factors present in a situation involving torture (Edwards 2006). These scholars enjoin leaders and policy makers to balance their consideration of all factors and to create case-by-case considerations in examining the criminality of cases of torture, since torture is unique and complex and occurs in a multitude of diverse situations (Edwards 2006; McGregor 2014). From the definition’s lack of gender-neutral language – exemplified in phrasing such as the use of the word “him” in referencing the victim in the definition of torture – the current definition excluded an array of human rights violations inflicted upon women and children in non-state situations. Many such victims of those violations bear the deep physical and psychological scars of torture such as their subjection to human trafficking itself, gender-based violence, rape, honor killings, female genital mutilation, forced abortions, violence against pregnant women, reproductive coercion, domestic
violence, and stoning, to name a few of the horrors suffered and to reflect the importance of broadening the definition for inclusion of these many complex manifestations of torture (Edwards 2006; McGregor 2014; OSCE 2013; Kalra and Bhugra 2013). The CAT reports indicate in that regard that torture and other forms of ill treatment can happen in a variety of contexts that range from inpatient residential institutions to medical institutions, as well as educational institutions (Ingelse and United Nations 2001), to name a few (APT and Center for Justice and International Law 2008).

The Nexus of Human Trafficking and Torture: Tactics of Coercion, Abuse, and Torture Used by Traffickers

The methodologies, dehumanization process, and undue influence tactics of traffickers who exert manipulative and/or coercive power and control over a victim parallel and mirror the behavioral patterns of the torturer. The aims of both are systematically to shatter and break down the victims’ cohesive sense of self, continuity, and worldview and to create a fragmentation of identity in their victims. Through their self-instituted power and use of psychological and physical torture in their grooming and reinforcement processes, traffickers seek to create and enforce powerlessness and helplessness that result in concomitant elements of compliance and control within the victims they exploit for profit. This is one of the key elements of coercion.

Psychologist Alfred Biderman’s work on coercive methods for eliciting individual compliance (1957), in which he documented and researched tactics of psychological torture and coercion used to obtain forced confessions of US Airforce airmen who were prisoners of war during the Korean War, powerfully parallel the tactics used by traffickers. Biderman outlines general methods utilized by torturers, as demonstrated in the chart below. The first three rows come from his original work, to which the author adds a fourth column, “Traffickers’ Tactics,” to demonstrate the similarities of methods of the torturer used by the trafficker. The examples listed in the “Traffickers’ Tactics” category are not an exhaustive list but demonstrate a few of many parallels. These methods may be used by one or more traffickers to one or more victims at the same time. Of the eight methods outlined by Biderman, most are interdependent and reinforced by other methods listed as follows.
### Bidderman’s Chart of Coercive Methods – Supplemented with Trafficker

<table>
<thead>
<tr>
<th>General Method</th>
<th>Effects (Purpose)</th>
<th>Variants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Isolation</td>
<td>• Deprives victim of all social support of his ability to resist</td>
<td>Complete solitary confinement, Complete isolation, Semi-isolation, Group isolation</td>
</tr>
<tr>
<td></td>
<td>• Develops an intense concern with self</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Makes victim dependent on interrogator</td>
<td></td>
</tr>
<tr>
<td>Traffickers Tactics:</td>
<td>By isolating victim from friends and family, trafficker can eliminate agendas that may compete with that of the trafficker. This initially may be done in several ways and is not limited to physical environment, such as living situation or work setting, psychologically, through attacking self-esteem, self-worth, and creating polarization of worldview; or initially, through a fraudulent financial relationship, friendship, or job.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Trafficker may use economic abuse of power through control of finances to create dependency on trafficker, or through withholding money or providing little to no pay for victim. • Through isolation, trafficker can begin to reshape victim’s perceptions and reactions to abuse inflicted by trafficker, further normalizing the experience of interpersonal violence.</td>
<td></td>
</tr>
<tr>
<td>2. Manipulation of perception</td>
<td>• Fixes attention upon immediate predicament; fosters introspection</td>
<td>Physical isolation, Darkness or bright light, Baren environment, Restricted movement, Monotonous food</td>
</tr>
<tr>
<td></td>
<td>• Eliminate stimuli competing with those controlled by captor</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Frustrates all actions not consistent with compliance</td>
<td></td>
</tr>
<tr>
<td>Traffickers Tactics:</td>
<td>Trafficker shames and blames victim for abuse that victim is experiencing as well as any negative circumstances occurring in victim’s life. This often creates shame, depression, anxiety, and emotional isolation for the victim.</td>
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<tr>
<td></td>
<td>• Through isolation, traffickers can control a victim’s perceptions and emotions which can shape and induce compliance to align with trafficker’s motives of exploitation, power, control, and profit. • Traffickers attempt to create dependency on them, through control of finances, or situations that align with the trafficker’s agenda.</td>
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<td></td>
<td>• Through control of food intake, victim is unable to eat due to fear of negative consequences.</td>
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<td></td>
<td>• Traffickers may completely eliminate and/or control food intake for psychological conditioning and/or control of victim. Demands and criticizes victim’s body image to erode self-esteem. Restricts food intake as a form of punishment.</td>
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</tr>
<tr>
<td>3. Induced debilitation; exhaustion</td>
<td>• Weakens mental and physical ability to resist</td>
<td>Semi-starvation, Exposure, Exploitation of wounds; Induced Illness; Sleep deprivation, Prolonged constriction, Prolonged interrogation of forced writing, Over-exertion</td>
</tr>
<tr>
<td>Traffickers Tactics:</td>
<td>Requires victim to meet high quotas or unrealistic demands of tasks or duties, by which victim must work for extensive hours or days.</td>
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<tr>
<td></td>
<td>• Through isolation, traffickers can control a victim’s perceptions and emotions which can shape and induce compliance to align with trafficker’s motives of exploitation, power, control, and profit.</td>
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<tr>
<td></td>
<td>• Requires victim to work extensive number of hours with little to no pay, regardless of illness or physical ailments. • Traffickers may completely eliminate and/or control food intake for psychological conditioning and/or control of victim.</td>
<td></td>
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<tr>
<td>4. Threats</td>
<td>• Cultivate anxiety and despair</td>
<td>Threats of death, Threats of non-repatriation, Threats of endless isolation and interrogation, Threats of violence, Threats against family, Mysterious changes of treatment</td>
</tr>
<tr>
<td>Traffickers Tactics:</td>
<td>Makes threats of violence to victim, victim’s loved ones, friends, or peers if specific quotas, actions or duties are not completed in accordance with rules set by traffickers.</td>
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<td></td>
<td>• Threats may be intermittent and inconsistent to heighten hyperarousal, confusion, fear, and compliance within victim.</td>
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<tr>
<td>5. Occasional indulgence</td>
<td>• Provides positive motivation for compliance</td>
<td>Occasional favors, Fluctuation of interrogations, promises, Reward for partial compliance, Prolonging starvation</td>
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<tr>
<td></td>
<td>• Hinders adjustment to deprivation</td>
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<tr>
<td>Traffickers Tactics:</td>
<td>After severe beating or bouts of violence, shows an act of kindness towards victim, which can strengthen/reinforce a victim’s traumatic bond to the trafficker. Traffickers must do this consistently and intermittently to keep victim in a state of hyperarousal and confusion.</td>
<td></td>
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<tr>
<td>6. Demonstrating omnipotence and Omnipresence</td>
<td>• Suggests futility of resistance</td>
<td>Confrontations, Pretending cooperation takes for granted, demonstrating complete control over victim’s life</td>
</tr>
<tr>
<td>Traffickers Tactics:</td>
<td>• Traffickers claim to be watching victim at all times and will find out if anything is ever done behind trafficker’s “back”. • Traffickers may be working with corrupt government officials, in which victim has seen or has been purchased by, for example, police, therefore reinforcing the message to the victim that they cannot ever leave or defy trafficker’s orders, as traffickers works with the authorities.</td>
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<tr>
<td>7. Degradation</td>
<td>• Makes costs of resistance appear more damaging to self-esteem than captivity</td>
<td>Personal hygiene prevented, Filthy infestations, Surroundings, Demanding punishments, Insults and taunts, Dental neglect</td>
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<td></td>
<td>• Reduces prisoner to animal level conditions</td>
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<tr>
<td>Traffickers Tactics:</td>
<td>Puts the victim in compromising situations, such as revenge-style pornography, filming it, and threatening to send it to loved ones. •贝hesting, humiliating, spoiling on, verbally and physically assaulting, victim in front of others.</td>
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<tr>
<td>8. Enforcing trivial demands</td>
<td>• Develops habit of compliance</td>
<td>Forced writing, Enforcement of minute rules</td>
</tr>
<tr>
<td>Traffickers Tactics:</td>
<td>Inflicts severe beating or physical violence as a result of something minor or trivial and/or lack of compliance with unreasonable rules.</td>
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Symptomology of Trafficking and Torture Observed in Its Victims

Victims of trafficking experience non-state torture that ranges in kind from sexual, physical, and psychological violence to a combination of all of those inflictions. Populations documented to have experienced the impact of trafficking and torture trauma range widely from refugees of war trauma who are sexually exploited in forced migration settings to survivors of commercial sexual exploitation and forced labor, both domestically and internationally. Additionally, those experiencing gender-based violence – among other forms of abuse – are similar to survivors of torture, as trafficked persons come from every walk of life and do not present with a specific profile. In subsequent entries herein, an overview of symptoms documented in this author’s clinical research, findings, and direct work with victims of torture and trafficking as well as with scholarly research and findings by global experts will be discussed and highlighted. This is by no means an exhaustive list but an overview of the many traumas that can impede a survivor’s day-to-day functioning and ability to effectively cope, heal, and societally reintegrate.

Victims of trafficking, in ways similar to that of victims of torture in reported studies (Hemmings et al. 2016), have been documented having to endure consistent and intense levels of physical violence. Many of the physically violent tactics of traffickers as referenced in the chart above are intended to create fear and enforce compliance. Trafficked persons also report experiencing an immense amount of violence from the buyers. Both perpetrators (buyer and trafficker) are responsible for the range of abuse and trauma. Trafficking victims experience an array of physical stressors and psychological violence, methods to induce humiliation, hopelessness, and helplessness.

Some but not all of the experiences reported by victims of trafficking and torture include the following:

- Physical stressors, such as traumatic brain injury from having their heads slammed against various objects, branding, scarification, tattooing, and burns (OSCE 2013)
- Contusions or lacerations due to blunt force trauma such as being beaten with a rod or baseball bat, sharp force injuries such as stab wounds and cuts, mutilation to sensitive body parts such as the genitals, dental injuries such as extraction of teeth, and maxillofacial damage from blows to the facial area
- Being raped, infliction of STIs as a result of sexual violence, tearing of the anus due to anal rape, manual strangulation or ligature strangulation (Funk and Schuppel 2003), suffocation, and asphyxiation
- Restricted movement and/or placing of a victim in a stressful position for a long period of time, such as being bound or locked in a small space for extended periods
- Being subjected to mock executions, removal of body parts such as fingers or toes, as well as sensitive body parts such as the kidneys and vital organs
- Threat of death to self and loved ones and witnessing torture and abuse of others
• Reproductive injuries, such as forced abortions and/or complications from prior abortions that were inadequately performed (Cooper et al. 2009), and nerve injuries resulting in chronic pain and other complications.

Also, research has examined the need for comprehensive protocols and assessment of the potential development of cancer as a consequence of human trafficking. Due to multifactorial issues from violence related injuries, adverse childhood experiences, genital and dental injuries to exposure to noxious and or narcotic substances (Moynihan and Olive 2014). It is important to note that the physical signs of torture may not always be present on the body of a survivor, as many survivors may have experienced years of beating, violence, and blows to the body that did not penetrate the skin or left bruises that healed, instead of permanent scars. If this is the case, it does not make the extent of torture the survivor experienced any less severe, nor does it indicate that torture was not present in their experience (United Nations 1999).

Trafficking survivors express a range of mental health sequelae as a result of the physical torture and violent coercive methodologies inflicted by traffickers. Survivors of trafficking experience cognitive, emotional, relational, as well as neurobiological adverse effects as a result of the trauma during the trafficking. Some survivors exhibit complex trauma-type symptoms as a result of the consistent trauma and abuse they have experienced during the trafficking. Pioneering traumatologist Judith Herman (2015) proposed a new diagnosis, complex trauma, to fully capture the severity and psychological harm of prolonged, repeated trauma that victims of trafficking or torture, war refugees, genocide survivors, survivors of ethnic cleansing, victims of combat trauma, prisoners of war, and long-term victims of domestic violence and child abuse experience. Complex trauma is classified as a chronic experience of interpersonal trauma that is premeditated and inflicted or caused by other humans and in which the victim experiences prolonged and repeated severe abuse.

Further understanding of trauma can be a powerful and honoring lens to respect the interpersonal experience of survivors of trafficking and protective behaviors that may be judged as “uncooperative” or “difficult.” It is imperative that all practitioners working with survivors of trafficking be familiar with symptoms of trauma, specifically complex trauma.

Traumatologist Christine Courtois (2008) made the following observations based on her extensive work in the area of complex post-traumatic stress disorder (CPTSD) which appears in the following domains that can further illuminate the experience and behaviors of survivors of trafficking and torture:

1. Difficulty with emotional regulation, from suicidal ideation and thoughts of self-harm, suppressed or explosive anger, feelings of chronic depression and sadness, impulsivity, and difficulty communicating feelings and needs.

2. Alteration of consciousness, such as reliving or dissociating from traumatic events, impaired auditory/visual/perceptual and memory-related functions, and fluctuation of mood from numbness to hypersensitivity and feeling overwhelmed.
3. Alterations of self-perception, in which the survivor believes and feels estranged, different, and disconnected from other human beings and experiences an immense amount of shame, helplessness, guilt, and belief that they are permanently damaged by the trauma.

4. Distorted perception of the perpetrator, in which they attribute complete power to the perpetrator and are heavily preoccupied with the relationship to the perpetrator, whether through thoughts of revenge or internalization of the perpetrator’s beliefs.

5. An alteration in relationships and connections with people, such as difficulty in entrusting people as advocates or resources, possibly leading to self-isolation, feeling unable to trust the motives and intentions of people, and inability to discern that other people can be caring and not harmful.


7. Alterations in their system of meaning, such as despair and hopelessness in connecting or finding individuals that honor and understand the scope of the experiences they have suffered.

Expression of traumatic symptoms may be culturally bound or cross culturally expressed, and the categories of complex PTSD are a guiding framework that may present differently in every survivor that practitioners engage. A general competency and understanding of trauma and how it presents and affects your domain of protection or advocacy as a practitioner should be a requirement and standard for working with trafficked persons. It is also incredibly important to be mindful of pathologizing survivors of trafficking as only traumatized and not acknowledging or engaging their resiliency and strengths.

**Optimizing Care for Victims of Trafficking: Utilizing Field-Based Standards and Guiding Principles**

Currently, there is a lack of continuity and consensus on how recovered victims of trafficking are cared for, and practitioners do not currently operate from a universal or standardized model of care. Promising practices may be understood through trainings and regional awareness campaigns; however, these are only selectively and inconsistently applied to various victim situations. There is a serious lack of thorough, consistent, culturally sound, multidisciplinary engagement, treatment, and long-term support for survivors of trafficking in psychological, medical, judicial, and legal systems, as well as research tools and indicators that use empirical evidence and validated screening tools to evaluate the effectiveness of psychological interventions used with survivors (Hemmings et al. 2016) (see Chap. 41, “Health and Social Service-Based Human Trafficking Response Models”).

It is recommended that a comprehensive medical, clinical, legal framework that includes guiding principles and standards for medical, psychological, and legal systems be established for survivors of trafficking akin to the work that has been accomplished for survivors of torture. Such a framework could provide guidelines.
for mental health, medical examination/documentation, legal treatment, and legislative standards related to survivors of torture. This can be a promising standard to norm the care for survivors of trafficking, given the level of skill, trauma knowledge, and sensitivity especially needed in the medical and clinical care for survivors of torture. The establishment of an international working group to highlight the understanding that trafficking is a form of torture could utilize, yet tailor, specific components that address situationally specific needs of survivors of trafficking to create consensus for universal standards of care and intervention.

The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a United Nations document that establishes standards and specific guidelines on conducting effective legal and medical documentation and investigations into torture and ill treatment. This can be an excellent guiding framework for capturing the clinical and medical-legal needs and scope of documentation needed for victims of trafficking. The document encourages multidisciplinary, culturally intelligent collaboration in a trauma-focused way to reduce the traumatization to survivors of torture. It helps guide the practitioner to capture a thorough overview of survivor’s experiences, medical and mental health histories, current presenting symptoms and medical and clinical complications, guidelines for processes and procedures of a medical exam, legal interview, psychological/neuropsychological evaluations, clinical case formulation, ethics, and many more important domains needed for consideration in articulating a comprehensive and actionable multidisciplinary plan for the legal protection and medical and mental health needs of survivors of trafficking. Utilizing torture trauma as a framework can greatly enhance the clinical treatment that is provided to victims and support not only a clinical profile but trauma-sensitive engagement. When a solid clinical narrative and trauma framework is established and additionally the lens of torture trauma is applied, it can be instrumental in helping practitioners navigate the complex reactions, behaviors, and needs more effectively. This can enable a greater experience of healing and restoration for the victim as well while helping practitioners to understand the effects and processes and procedures needed to augment their work in the protection, intervention, and stabilization of survivors of trafficking. Moreover, it may disrupt commonplace victim blaming, in which behaviors of survivors are not understood due to the lack of understanding of trauma and situationally specific indicators related to trafficking.

Numerous resources exist to further address the key foundational issues that are greatly lacking in the anti-trafficking field. These include global working groups, publications and comprehensive reports addressing needs of victims on aftercare, practitioner training, recommendations for judicial changes and adoption of counter trafficking legislation, and continued training and funding for law enforcement to combat trafficking in persons. Yet one of the key components, which is the success and restoration of victims by providing safe and specialized housing, is lacking. There exists a very small number of safe houses or aftercare facilities for the healing and restoration of victims of trafficking. No current research or inventories of shelters were found for 2018 in the United States; most reviews were conducted in 2012 and 2013. However, the alarming numbers of 2012 alone speak to the
current situation in the counter-trafficking field today. In 2012, the Polaris project conducted a national survey of anti-trafficking organizations providing shelter specifically designated for survivors of human trafficking and approximated that there were approximately 529 beds in agencies throughout the entire United States. In California, Orange County opened its first ever emergency shelter for victims of sex trafficking in August of 2018. Various states and countries have conducted surveys assessing the service providers and system response to trafficking. A report from the state of Virginia in 2012, based on a needs assessment survey of services available for victims of human trafficking, found that none of the responding agencies and/or programs had formal procedures and protocols in place to guide them on how to serve victims of trafficking. These numbers provide a snapshot of the continuing issues currently plaguing the anti-trafficking field and are indicative of the need for consensus among counter-trafficking practitioners on comprehensive standards of care for survivors of trafficking. Utilizing the framework of torture trauma, practitioners can begin to remediate and manage many of the issues and key gaps currently impeding the anti-trafficking movement in the domains of psychological treatment, legal advocacy, medical care, judicial procedures, and societal perceptions.

Cross-References

▶ Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation
▶ Family-Based Non-state Torturers Who Traffic Their Daughters: Praxis Principles and Healing Epiphanies
▶ Health and Social Service-Based Human Trafficking Response Models
▶ How to Effectively Approach and Calculate Restitution for a Victim of Human Trafficking
▶ Psychological Care and Support for the Survivors of Trafficking
▶ Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking
▶ Using Law Enforcement Data in Trafficking Research

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Further Reading


Abstract
This chapter addresses the concept of slavery, exploring its character and significance as a dark page in history, but also as a specifically criminological and zemiological problem, in the context of international law and human rights. By tracing the ambiguities of slavery in international law and international development, the harms associated with slavery are considered. Harms include both those statutorily proscribed and those that are not, but that can still be regarded as socially destructive. Traditionally, anti-slavery has been considered within the
parameters of abolition and criminalization. In this context, recently, anti-trafficking has emerged as a key issue in contemporary anti-slavery work. While valuable, anti-trafficking is shown to have significant limitations. It advances criminalization and stigmatization of the most vulnerable and further perpetuates harm. At the same time, it identifies structural conditions like poverty, vulnerability, and “unfreedom” of movement only to put them aside. Linked to exploitation, violence, and zemia, this chapter brings to the fore some crucial questions concerning the prospects of systemic theory in the investigation of slavery that highlight the root causes of slavery, primarily poverty and inequality. Therefore, the chapter counterposes an alternative approach in which the orienting target is not abolition of slavery but advancing structural changes against social harm.

Introduction

A common understanding of slavery defines slavery as the practice or system of “simply” owning slaves. This is often implied to mean that slavery is either a form of ownership over people or a form of exploitation over the conditions one works. Although, both these claims fail to fully grasp slavery, the language of slavery figures increasingly often in Western modern judicial reasoning, academic analysis, and media discourse. The underpinnings of slavery often relate to either crime or harm.

When considered through the lens of criminalization and crime, slavery was abolished internationally with the Anti-Slavery Convention 1926. Since the 1990s, however, slavery has been redefined through references to human trafficking. Conversely, trafficking is mentioned in contemporary rules on slavery (Gallagher 2010). For instance, references to slavery are included in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol 2000), and, vice versa, trafficking contributes to the definition of enslavement in Article 7(2)(c) of the Rome Statute of the International Criminal Court (ICC Statute) (November 15, 2000, GA Res. 55/25, Annex II, UNGAOR, 55th Sess., UN Doc. A/45/49 (Vol. I) (2001), entered into force Dec. 25, 2003; The Rome Statute of the International Criminal Court, 2187 UNTS 90, July 17, 1998, entered into force July 1, 2002). This ambivalent connection between slavery and trafficking has been diffused in national legislations and globally propagated as a particularly “heinous” type of crime (see, e.g., The Voice Of America 2017).

Yet, an understanding of slavery through the lens of harm allows us to go beyond the binary concept of criminal versus noncriminal acts and extends beyond strictly legal definitions. For the proponents of this approach, it makes little sense to address slavery by utilizing criminalization and crime control approaches while leaving intact a wide range of physical, economic, social, psychological, and cultural conditions that underpin human detriment and suffering. This is because crime control strategies may exacerbate harms without resolving the underlying social,
cultural, and economic conditions that perpetuate inequality and crime (Webber 2004; Tombs 2018; Hillyard and Tombs 2004). Though the term is often omitted, this approach is attuned to zemiology with social harm at its core.

Originating from the Ancient Greek word *zemia*, zemiology carries numerous connotations. Existing literature defines zemiology as the “study of harm” (Hillyard and Tombs 2004), while zemia also denotes, among other things, the study of loss or damage and injury as well as the study of various forms of punishment, when deviant and/or legal transgressions occur (Boukli and Kotzé 2018: 2–3). Critical scholars have therefore utilized zemiology to talk about structural violence, systemic conditions, and social injury. For them, capital accumulation depends on labor exploitation, made possible by the inequalities that arise from social divisions in their classist, racist, sexist, and ableist manifestations (see Fraser 2003; Fraser and Gordon 1994). The typical example of the subject of capitalism, for instance, is the rational utility maximizer who is free from social and natural restraints or external interferences and who “is sleepless, tireless, hyper-able, flexible and mobile, continuously enhancing one’s capacity to produce and consume” (Mladenov 2016: 1232). In turn, while capitalist exploitation and structural harms are the “inevitable consequence” of laissez-faire capitalism (Pemberton 2015), the typical focus of crime control agencies is on interpersonal violence and on individual responsibility. Against the grain of this normative position, zemiologists highlight the limitations of using criminalization as a means of addressing harms and shed light on exploitative structural features of capitalism. Applying this to slavery, the zemiological lens opens up the possibility of dealing with slavery, exploitation, and suffering as harms, conflicts, and injuries deserving mediation, arbitration, and structural remedies, rather than a mere crime control fix.

The twenty-first century has seen re-energized anti-slavery actions, and this development is also reflected in academic discussion of slavery. Slavery, using broad brushstrokes, has been described in four ways: firstly, as direct violation of international anti-slavery laws and directly linked to ownership and to chattel slavery (see Gallagher 2010; Chap. 3, “Concepts of Slavery in the United States 1865–1914”); secondly, as modern slavery and a direct violation of international anti-trafficking laws linked to transnational human trafficking and organized crime (see Segrave et al. 2009); thirdly, as “modern slavery” or “modern-day slavery” that marks the rise of contemporary abolition; finally, as an alarming attempt to depoliticize issues such as imperialism (see Kempadoo 2016), racism, and sexism, through sweeping measures that aim to criminalize migration and sex work (see Bernstein 2010). To this fourth point, critics have added that contemporary efforts to use the emotive term “modern slavery” rely on “rebranding human trafficking” using the less “legalistic” concept of modern slavery (Dottridge 2017; Beutin 2017). Ultimately, slavery is being directly linked to ownership, and using the terms modern slavery, slavery, as well as human trafficking interchangeably has stirred much controversy.

This chapter highlights the uneasy relationship between slavery and human trafficking within international law and international development from a zemiological standpoint. Following Julia O’Connell Davidson (2015), the analysis
shows that both international law and international development institutions inevitably take approaches that blur, rather than clarify, the lines between slavery and human trafficking. In doing so, anti-trafficking and anti-slavery have formed a united front pursuing anti-immigration policies and border control measures cracking down on “illegal migration” in order to arguably protect trafficking/modern slavery survivors. There is much discussion of inequality, injustice, discrimination, exclusion, poverty, and abuse in the context of this topic (see, e.g., European Commission n.d.; Anti-Slavery Commissioner 2016). There is also a great deal of talk about victims and survivors of slavery and/or human trafficking, vulnerable groups, marginalized communities, victims of special interest, and disempowered populations. However, this discourse is silent when it comes to the beneficiaries of increasing inequality, injustice, and suffering on a global scale. It merely recognizes victims and perpetrators of particular crimes but remains visionless when confronted with the systemic matrix of human exploitation, a reality that sustains a world increasingly saturated with inequality and injustice. That just 1% of the global population owns more wealth than the other 99% is much more than a slogan (Hardoon 2017).

The entry point toward investigating the above contradiction takes a genealogical perspective focused on discourses of slavery. Exploring the uneasy relationship of slavery and human trafficking in institutional discourse offers new insights into contemporary crimes and harms. By turning to international law and international development, the liminality and ruptures of slavery and trafficking are being considered in decisions of the European Court of Human Rights (ECtHR) and in the Sustainable Development Goals (SDGs) of the United Nations Development Goals. The concluding section suggests an alternative approach, the main target of which is advancing structural change against harm. This builds on several themes addressed in this Handbook (see ▶ Chaps. 4, “When Freeing the Slaves Was Illegal: “Reverse-Trafficking” and the Unholy, Unruly Rule of Law”, ▶ 9, “The Nebulous Definition of Slavery: Legal Versus Sociological Definitions of Slavery” and ▶ 79, “European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking”) and adds a comprehensive evaluation of the multiple harms involved without having to make a choice as to which harm is greater. Importantly, it means we do not need to choose between those harms we recognize and those we challenge but can instead think about different ways of addressing multiple harms, beyond recourse to criminalization and border control.

Genealogy

Genealogy can take various different meanings. In its history, “genealogy” is etymologically linked to the Greek word geneālogia, which stands for tracing descent and is indicative of tracing connections. For instance, in the everyday usage of the word, a genealogical tree charts the relationships and descent of an individual, their genes, and familial or group connections. Methodologically, family historians and genealogists have investigated past evidence in order to chart genealogical trees (see, e.g., Osborn 2017). By deploying systematic efforts including
searches in online catalogues, archives, collections, and databases, records emerge and are then carefully pieced together to gradually unearth family histories.

Influenced by this attachment to *genealogía*, in ethnography, the genealogical method is a procedure initiated by late nineteenth and early twentieth century ethnographers to identify social connections and lines of kinship. For instance, W.H.R. Rivers (1910) used genealogy to enhance the analysis of social organization by collecting systems of relationship and kinship through oral accounts of pedigrees. This method of collating oral accounts of pedigrees came to furnish the basis of the method, which was often used to discern a family tree from its mythical attendants. For contemporary ethnographers, however, the combination of genealogy and ethnography moves away from excavation work and deprivileges the supposed linear evolution of history as well as the idea that our past is broken down in small puzzle pieces. By extension, it also opposes the idea that as genealogists, we may be tasked to join these pieces back together. To the contrary, contemporary genealogy is oriented around disruptions, discontinuity, and critique (Mahon 1997), with a focus on bodies and their discursive reproductions. For instance, instead of piecing together the scientific knowledges about slavery and modern slavery, genealogy adopts a more nuanced approach: it reveals the contingent historical conditions of the expansion of immigration detention that make it possible to use anti-trafficking laws to obstruct humanitarian work (see Townsend 2017).

In critical theory, the genealogical approach has been used to confront ideas or practices that present themselves as universal and natural. This function of genealogy is closely linked to critique. Originating in the first generation of the Frankfurt School with critical theorists like Max Horkheimer (1895–1973), Theodor Adorno (1903–1969), and Herbert Marcuse (1898–1979), genealogy is an attempt to recognize that things, values, and events are constituted historically, discursively, and practically. Where critique is seen as an assessment of the current state of affairs, it is also linked to an examination of what is to be done to reach a desired state. In practical terms, it involves the use of dialectic, reason, and ethics as means to study the conditions under which people live (Budd 2008). In the field of epistemology, also grounded in critique, genealogy has come to be used as an investigative method, which offers an intrinsic critique of the present. Particularly in the works of Friedrich Nietzsche and Michel Foucault, genealogy provides the tools for uncovering the relationship between knowledge, power, and formation of subjectivities. For example, Foucault would ask, what type of citizens are being created by anti-immigration policies.

The genealogies of Nietzsche and Foucault assume that society is composed of contesting forces. Nietzsche refers to these contesting forces as will to power. Some of these forces represent an affirmative will to power while others a nihilistic will to power (Nietzsche 1967). Similarly, Foucault refers to these contesting social forces as power. This power is not necessarily the coercive sorts of laws that prohibit certain acts but a more constructive power – in that it constructs objects, subjects, and knowledge. For instance, Foucault’s biopower refers to the disciplinary effects embedded in social institutions like workplaces, schools, and armies and in the “productive” policies that aim to organize and control health, race, gender, size,
age, and other parameters concerning the utility of the population. Biopower also requires forces that resist it. Resistance does not halt biopower; resisting forces require biopower in order to be what they are (Evans 2012; Foucault 1978).

While some may assume that genealogy is a rather historical methodology, others have described genealogy as a kind of “abstractive practice” (Liz 2017). As an abstractive practice, the task is less to glue together the continuity of a certain practice and more to identify instances of a particular practice in order to make a wider judgment about the classification of these practices. For instance, in Discipline and Punish, Foucault presents the distinctively modern scientific-legal complex, from which the power to punish derives its bases, its justifications, and its rules. Specifically, Foucault orients our attention to the contingent and discontinuous nature of history, and he focuses on the technique of punishment by imprisonment in terms of the four main categories of archaeological analysis distinguished in The Archaeology of Knowledge. These are (i) prisoners as a new class of objects; (ii) the formation of concepts, such as the concept of the criminal character; (iii) modes of authority of the judge, of the parole board, and of the criminologist; and (iv) enunciative modalities or other lines of strategies (such as different ways of using solitude and work in the treatment of prisoners) (Foucault 1977 (1995), 1972 (2007): 44–78; Dean 1994). To these, Foucault adds (v) contradictions and oppositions not as secret principles to be revealed but as objects to be described. These categories are not mere linguistic expressions but underlie the power that changes the world (Gutting 2005: 45).

Foucault clarifies the orientation of genealogy by saying that it is a “history of the present” (Foucault 1977 (1995): 31). This history of the present in Discipline and Punish enables attention to the prison system, with all the political investments of the body, and its far-reaching technologies of power over the body in a closed architecture. So the focus is less on how past events unfolded and more on how, in its present form, punishment belongs to a political technology of the body.

As such, Foucault saw genealogy as a way to engage with “effects” beyond the mere description of transformations that take place (Deleuze 2004: 24). In this sense, a Foucauldian genealogy has often been described as a historical causal explanation that is “material, multiple, and corporeal” (Gutting 2005: 47). Foucault’s genealogies deconstruct, by showing their real origin, official meanings and evaluations involved in a society’s self-understanding. Therefore, to provide a genealogy is “to identify the accidents, the minute deviations – or, conversely, the complete reversals – the errors, the false appraisals, and the faulty calculations that give birth to those things that continue to exist and have value to us” (Foucault 1977 (1995): 146). The ultimate objective is not to introduce the question of origin. Genealogical critique will avoid the question of origin, say the origins of slavery. Instead, genealogy reveals the contingency of that which is said to be necessary.

Finally, Foucault’s genealogy evokes an intimate tie between knowledge, power, and resistance (see, e.g., Foucault 1977, 1980, 1981). This is crucial for our analysis of slavery, as Foucault’s basic insights sustain that changes in thought are not due to thought itself but due to the social forces that control and shape the behavior of individuals. In this sense, the twenty-first century outcries for a “second” abolition of
slavery in the context of international law and development emerges as a field of knowledge, a new object of inquiry, and a set of technologies and strategies. Further, for many, the genealogical project is immediately bound to freedom, as it is unfolded in four different theses in Foucault’s thought: (a) freedom and liberation are not the same thing, and, hence, they are not tautological; (b) freedom is a matter of concrete struggles for situated values, for instance, in anti-trafficking struggles freedom is linked to movement free of exploitation; (c) freedom is a historical contingency and, therefore, historically defined; and (d) there is not a necessary end point in the struggle for freedom (see Tamboukou 1999). Therefore, at the heart of genealogies of slavery lies the question of how freedom is being defined.

To engage with genealogies of slavery, in what follows we discern emerging narratives of ambiguity and rupture in international law and international development, specifically in the ways that slavery, trafficking, and modern slavery become intertwined. Within the emerging rather ambiguous liminal space between slavery and human trafficking in case law, policy, and academic literature, it would be misleading to assume that slavery had to mean more or less the same, whenever and wherever it was used. It would also be inaccurate to assume that harm has been central in discussions of slavery.

Case Law and Slavery Discourses

To trace the evolution of slavery in legal discourse through three distinct general periods, from classical antiquity to colonial transatlantic slavery trades and, finally, to contemporary modern slavery, is part of a larger forthcoming project. Here we only focus on contemporary modern slavery, in order to map out a couple of different yet overlapping genealogies. The first is the rise of statistical representations of slavery generated by IGOs, NGOs, and the US Department of Justice (TIP reports), which hailed with force in the late 1990s, and fueled narratives of grand scale victimization for illegalized migrants abused by precarious industries (e.g., ILO n.d.).

The second genealogy culminates with the emergence of new anti-trafficking legal frameworks, in the form of international law, such as the previously discussed Palermo Protocol (2000) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (European Trafficking Convention). The Palermo Protocol is the first human trafficking treaty that integrates the “three Ps” approach (prevention, prosecution, protection) as key aspects in the fight against slavery and human trafficking. However, it still reflects the predominance of a criminalization approach that principally focuses on prosecution, with the majority of provisions on victim protection not being mandatory (e.g., Boukli 2016; Milano 2017). In turn the European Trafficking Convention and the 2011 European Union Anti-Trafficking Directive adopt a more holistic “four Ps” approach (prevention, prosecution, protection, partnerships) aiming to balance often conflicting values and objectives.

The third genealogy then takes the form of the existing rather scarce case law on human trafficking and slavery. At the outset, the possibility of a judgment on a
trafficking case using anti-slavery arguments was not clear, since the European Convention of Human Rights (ECHR) does not include an express prohibition of human trafficking. As pointed out by critics, the European Court of Human Rights (ECtHR) finally decided to adjudicate trafficking cases through the application of its “living instrument” doctrine (see Milano 2017: 703). Particularly, below the focus turns to the ECtHR’s judgments of Siliadin v. France (2005), Rantsev v. Cyprus and Russia (2010), and L.E. v. Greece (2016). These are particularly important judgments because when considering the judgments of the ECtHR’s sister regional tribunals – the inter-American or the African human rights courts – only the former has established state responsibility on the basis of human trafficking in a single case (see Hacienda Brasil Verde Workers v. Brazil), while slavery, servitude, or forced labor cases have been examined and adjudicated. As such, it is fair to say that (1) human trafficking is too rarely exposed to judicial scrutiny in relation to the gravity and dimensions of the phenomenon, as evidenced by the fact that trafficking cases have been scarcely dealt with in the legal system; (2) cases of slavery have been more readily adjudicated as opposed to human trafficking; and (3) even when human trafficking cases are adjudicated, the main focus is on states’ obligations in relation to private actors’ abuses. Simultaneously, UN treaty bodies have never found a state responsible for violating the prohibition of human trafficking and the positive obligations it entails. From what follows, it becomes evident that through the ECHR and recent jurisprudence of the ECtHR particularly on ECHR Article 4, a rupture with previous judgments occurs in the liminal space where slavery and trafficking meet. In this context, ECHR Article 4 provides that “[n]o one shall be held in slavery or servitude” and that “[n]o one shall be required to perform forced or compulsory labour.” It is also established case law of the ECtHR that the positive obligations under ECHR Article 4 are absolute. ECHR Article 4(3) excludes from the ambit of the prohibition on forced or compulsory labor situations where the labor is carried out in the course of a prison sentence or conditional release, military service, any service “in case of an emergency or calamity threatening the life or well-being of the community,” or “any work or service which forms part of normal civic obligations” (Art. 4(3)).

**Siliadin v. France, No. 73316/01, ECtHR 2005-VII**

Starting with the ECtHR decision Siliadin v. France (2005), France was unanimously found in breach of the prohibition of slavery, servitude, and forced and compulsory labor under the ECHR, Article 4 “Prohibition of slavery and forced labour.” This constituted the first judgment delivered by the ECtHR relating to both slavery and potentially human trafficking, and the events of the case indeed attest to these elements. Ms. Siliadin was 15 years old when was brought from Togo to France to study. This was part of the initial agreement between Ms. Siliadin’s father and Ms. D, the person who took her to France. Ms. Siliadin was forced instead to employment as domestic servant in Ms. D’s private household. Her passport was
confiscated; she worked 15 h per day without a day off and without any payment for several years. Simultaneously, her plans to study did not come to fruition.

Before the ECtHR, Ms. Siliadin maintained that France was in breach of Article 4 of the ECHR for not having effective criminal legislation to prevent and combat slavery, servitude, and forced labor. While the above facts arguably fit a human trafficking case, the ECtHR took a different view (see Piotrowicz 2012; Milano 2017). Importantly, the ECtHR examined what conduct is prohibited under Article 4 of the ECHR, as well as what the scope of state’s positive obligations in relation to the conduct is. Regarding the former, Article 4 of the ECHR shows that in the event of an employment situation leading to grave abuse, slavery or servitude, and forced or compulsory labor, individuals can make a complaint. Following the definitions included in the 1930 Forced Labor Convention, the 1926 Slavery Convention, and the 1956 Supplementary Convention on the Abolition of Slavery, the ECtHR distinguished between slavery, servitude, and forced labor and proceeded to examine whether this case fell within one of these categories.

Specifically, following the 1926 Slavery Convention “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” This corresponds to the “classic” meaning of slavery as it was practiced for centuries. However, the ECtHR concluded that while the applicant/ Ms. Siliadin was clearly deprived of her personal autonomy, the evidence did not suggest that she was held in slavery in this “classic” sense. As a genuine right of legal ownership was not exercised over her thus reducing her to the status of an “object” (Siliadin, para 122). Instead, the ECtHR reached the decision that Ms. Siliadin was subjected to servitude and forced labor. In terms of the term “servitude,” the ECtHR concluded that “servitude” means an obligation to provide one’s services that is imposed by the use of coercion and is loosely linked to the concept of “slavery” described above. To determine this point, the Court considered that the applicant was a minor, an irregularized migrant, afraid of being arrested by the police, and therefore vulnerable, isolated, and with no means of living elsewhere than in the home of her employers.

While this decision was celebrated for its significance in proving the ECHR as a living instrument with an increasing relevance to labor rights (see, e.g., Mantouvalou 2006), it also drew some criticism with regard to the understanding of slavery. The criticism was based on the applicability of Article 4, arguing that the better approach would be to understand the prohibition of slavery as both de jure and de facto and therefore also making this judgment on the basis of slavery possible today (see, e.g., Milano 2017). The decision was further criticized on the adjudication of state’s positive obligations in relation to the conduct, as the ECtHR focused solely on the positive obligation to enact criminal law provisions. Arguably, this stance shows a preoccupation with slavery as a situation pertaining to a person’s legal status. As far as the substantive harms inflicted on the victim, such a stance fails to address issues such as victim protection, prevention, and restitution, as well as wider amends such as decriminalization of irregularized and exploited children, for the purposes of accessing education and services.
Following on from this, in *Rantsev v. Cyprus and Russia* (2010), the focus shifts from domestic servitude to labor exploitation and human trafficking. The Court was confronted with the issues of irregularized noncitizens in Cyprus being employed under “artiste” visas and work permits. This was the first judgment, in which the ECtHR focused explicitly on human trafficking. In this case, the applicant, Mr. Rantsev, the father of a Russian national, brought a complaint against Cyprus and Russia in the ECtHR in relation to the death of his 20-year-old daughter, Ms. Oxana Rantseva. Ms. Rantseva was a Russian national who entered Cyprus under an artiste visa and work permit to work in a cabaret, an arrangement that was “well known and commonly acknowledged” to be associated with sexual exploitation of foreign women coming to Cyprus mainly from the former states of the Soviet Union (*Rantsev*, paras 83–85). Upon attempting to escape, she was found by the manager of the cabaret, Mr. M.A., who took her to a police station in order to process her deportation. Upon arrival, Mr. M.A. explained that Ms. Rantseva had only recently arrived in Cyprus and had left her employment without warning and had also moved out of the accommodation provided to her. Mr. M.A. then handed her passport and other documents to the police officers. The police failed to investigate Ms. Rantseva’s possible subjection to trafficking for sexual exploitation but only checked whether her name was on a list of persons wanted by the police. On finding that she was not, they asked the cabaret manager to return and collect her. Subsequently, Mr. M.A. took Ms. Rantseva to the apartment of an employee of his. A few hours later, she was found dead on the street below the apartment, having fallen from the second floor of the building in “ambiguous and unexplained,” “strange circumstances” (*Rantsev*, paras 41, 51, 62, 234).

As part of his complaint, Mr. Rantsev argued that an effective investigation into the circumstances surrounding the death of his daughter should have included the persons or methods involved in the recruitment of Ms. Rantseva. Particularly, he claimed that Cyprus and Russia had violated their obligations under Article 2 of the ECHR to conduct an effective investigation into the circumstances of the victim’s death. He pointed to alleged contradictions between the autopsies of the Cypriot and the Russian authorities, and his requests to Cyprus through the relevant Russian authorities, for further investigation of apparent anomalies, were not followed up by the authorities. Part of his complaint also built on the fact that he was not informed of the progress of the case or of other remedies available to him.

In considering the case, the Court found that the adoption of the Palermo Protocol as well as of the European Trafficking Convention has demonstrated the increasing prevalence of human trafficking at international level and the need for measures to combat it. Further, the International Criminal Tribunal for the Former Yugoslavia’s judgment in *Kunarac* was brought to appraise the concept of slavery, in an effort to depart from the restrictive interpretation of slavery adopted in *Siliadin v. France*. In considering this context, the ECtHR established the incompatibility of human trafficking with the values of the ECHR and with the wider international legal norms. While this was a decisive step, it is important to consider how approaching
trafficking through slavery as a juridical concept entails an ambivalence toward addressing effectively the substantive harms inflicted.

Firstly, the ECtHR examined what conduct is prohibited under Article 4 of the ECHR and concluded that human trafficking falls within the realm of Article 4 of the ECHR, without offering any further guidance as to how this is the case. Rather vaguely, trafficking was described as based on the exercise of powers attached to “ownership,” which applies to chattel slavery and “to a different degree” to trafficking, as a contemporary form of slavery (see Rantsev, para 142). This however has been described as an “arbitrary limitation” (see Milano 2017: 706), since the Palermo Protocol and the European Trafﬁcking Convention deﬁne human trafﬁcking as a set of acts that include various forms of exploitation separate from and perhaps also including slavery.

Secondly, the ECtHR considered again what the scope of state’s positive obligations in relation to the conduct is. In this respect, the ECtHR ruled that the complaints about the states’ obligation under Articles 2, 4, and 5 were admissible. In explaining these obligations, the ECtHR implicitly referred to the “three Ps” approach (prevention, prosecution, protection), by asserting that States should be taking steps to identify people at real and immediate risk of being trafﬁcked. Accordingly, the Court considered the procedural elements in investigations of potential trafﬁcking and found that Cyprus was in breach of its obligations: Cyprus failed to adapt a framework that prevented the risk of human trafﬁcking and handed Ms. Rantseva back to her trafﬁckers, failed to enact criminal law provisions, and failed to enact an effective investigation into Ms. Rantseva’s death. In its decision the Court held that there has been a violation of Article 4 by Cyprus by not affording to Ms. Rantseva practical and effective protection against trafﬁcking and exploitation in general and by not taking the necessary measures to protect her. Simultaneously, the Court determined that there was no need to examine separately the alleged breach of Article 4 concerning the failure of Cypriot authorities to conduct an investigation. Therefore, effectively, the Court conﬂated the lines between protection and investigation (see also Ch. 79, “European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafﬁcking” by Stoyanova, V. in this volume).

Thirdly, the ECtHR also found a procedural violation of Article 4 by Russia, awarding 2,000 euros for nonpecuniary damages sustained by Mr. Rantsev due to the conduct of the Russian authorities but ruled that he was not entitled to other claims such as travel expenses, translations, or funeral costs, to obtain the necessary funds for which Mr. Rantsev had sold his home in Russia. Hence, the above three aspects of the Court’s decision arguably illustrate considerable limitations in acknowledging and addressing a range of substantive harms involved in human trafﬁcking.

**L.E. v. Greece, No. 71545/12, ECtHR 2016**

Finally, in *L. E. v. Greece*, the ECtHR makes a second attempt at distinguishing slavery and human trafﬁcking. To summarize the facts, Ms. L.E., a Nigerian woman born in 1982, entered Greece in June 2004 accompanied by Mr. K.A. He had
allegedly promised her that he would take her to Greece to work in bars and nightclubs in exchange for a pledge to pay him 40,000 euros. Upon arrival in Greece, Mr. K.A. confiscated her passport and forced her into prostitution for approximately 2 years. Eventually Ms. L.E. contacted Nea Zoi, a nongovernmental organization, which provides support to trafficked women. In July 2004 Ms. L.E. had applied for asylum but did not take a place that was reserved for her at a reception center for asylum seekers in June 2005. Subsequently, she was arrested for prostitution and immigration law violations. In that instance she was acquitted by the Court, but she was arrested again in March 2006 and then convicted at first instance and acquitted on appeal. In April 2006 an expulsion order was issued against her by the police, but this was suspended. In November 2006, Ms. L.E. was again arrested for prostitution, tried, and acquitted, but she was subsequently detained awaiting deportation, as she did not have a residence permit in Greece. While in police detention, Ms. L.E. lodged a criminal complaint against Mr. K.A. and his partner Ms. D.J., claiming that she was a victim of human trafficking and accused them of forcing her and two other Nigerian women into prostitution. The prosecutor dismissed her complaint and her claim that she had been a victim of human trafficking. Ms. L.E. applied for a reexamination of her complaint in January 2007, and this time the prosecutor brought criminal proceedings against Mr. K.A. and Ms. D.J. for the offense of human trafficking. Ms. D.J. was subsequently arrested and remanded in custody, but in 2012 a Court held that she was not an accomplice but another victim of Mr. K.A. The Greek authorities renewed Ms. L.E.’s residence permit until 2014.

The ECtHR was asked to consider the issues also presented in Rantsev, namely, the applicability and relevance of Article 4 to trafficking, as well as the scope of positive obligations arising by the general principles derived from Article 4. The ECtHR, however, merely reaffirmed that human trafficking falls under Article 4 of the ECHR without elaborating on the relation between slavery and human trafficking. As regards the positive obligations, the Court accepted that Articles 2, 3, and 4, enshrine the fundamental values of the democratic societies making up the Council of Europe and that, therefore, the scope of positive obligations should be expanded to grant further protections. Greece’s national legal framework (Article 351 of the Greek Criminal Code in line with the Palermo Protocol and the European Trafficking Convention) was found capable of providing Ms. L.E. with practical and effective protection. Nevertheless, the Court’s approach toward the assessment of the effectiveness of Greece’s legal and administrative framework relating to human trafficking has been criticized as very superficial and lacking in rigor (Stoyanova 2016). The Court failed to acknowledge that Ms. L.E. had been arrested several times prior to receiving any form of protection from the Greek authorities. On the other hand, the Court’s reaffirmation of the positive obligations of states under Article 4 of the ECHR and more specifically its view that a lack of promptness, several delays, as well as other procedural failings constitute a violation of Article 4 has been welcomed as a positive development given the scarcity of relevant case law. The ECtHR also held that in this case, there had been violations of Article 6§1 (due to failing to meet the “reasonable time” requirement) and Article 13 (for complaints about the length of proceedings). As a result, Greece was to pay Ms. L.E. €12,000 for nonpecuniary damages and €3,000 for costs and expenses.
When considering such cases, it is hard to escape the feeling that formal justice processes are just tinkering around the edges: the harms suffered by the victims remain substantively unaddressed. These cases also offer an urgent reminder that what we define as slavery encompasses other acts that have been normalized and naturalized, such as the everyday workings of the capitalist system. While there exists a sizeable arsenal of punitive measures, beyond these there is a lack of alternative solutions. When it comes to right entitlements, it is mostly in *Siliadin v. France* (para 49) where the Court refers to rights for domestic workers guaranteeing: the recognition of “domestic work in private households as ‘real work’, that is, to which full employment rights and social protection apply, including the minimum wage (where it exists), sickness and maternity pay as well as pension rights”; “the right to a legally enforceable contract of employment setting out minimum wages, maximum hours and responsibilities”; “the right to health insurance”; “the right for migrant domestic workers to an immigration status independent of any employer”; “the right to change employer and travel within the host country and between all countries of the European Union and the right to the recognition of qualifications, training and experience obtained in the home country.” However, overall there is a lack of continuity in addressing right entitlements and in putting them into action.

**SDGs and Slavery Discourses**

In the field of international development, spearheaded by the United Nations, consecutive frameworks, namely, the Millennium Development Goals (MDGs) (2000–2015) and the Sustainable Development Goals (SDGs) (2015–2030), have attempted to consolidate the agendas of development, climate change, equality, employment, and sustainability since the late 1990s. Soon after their conception in 2000, the MDGs became arguably the “yardstick” of development progress and a new development “paradigm” (Gabay 2012; Tiwari 2015: 314). Drawing attention to development that included both economic drivers but also noneconomic dimensions, such as health, education, and gender, the MDGs signaled a new aspirational era, through the echoing commitment to reduce poverty and address human deprivations. Perhaps unsurprisingly, the MDGs were described by the UN secretary-general as “the most successful global anti-poverty push in history” (UN 2013).

Against the backdrop of success, the MDGs were superseded by the post-2015 SDGs agenda. The latter was being conceived amidst acute financial uncertainties spanning over the last 10 years, predictions of spiralling inequalities, and poverty. For critics, the SDGs themselves attest to the timid accomplishments of the MDGs era while incorporating the core themes of poverty, education, health, and the remaining unmet targets in the post-2015 development discourse (see, e.g., Tiwari 2015). The SDGs were adopted at the UN Sustainable Development Summit of September 25, 2015, by the High-level Political Forum on Sustainable Development in the Resolution adopted by the General Assembly on September 25, 2015, 70/1 Transforming our world: the 2030 Agenda for Sustainable Development (A/Res/70/1). In principle, the SDGs offer a systematic agenda for global development between 2015 and 2030 grounded upon 17 Sustainable Development Goals.
While prior to the SDGs, there were piecemeal references to slavery and trafficking in international development and a lack of referencing of either slavery or trafficking in the MDGs (UN 2015 The Millennium Development Goals Report), the 2030 Agenda created an ambiguous, liminal space for the coexistence of slavery and trafficking under the same goal. This complimentary or arguably metonymic use of slavery for trafficking and vice versa has been intimated in various places. References to human trafficking are scattered throughout the 2030 Agenda, for instance, Goal 5.2 sustains that states should “[e]liminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.” Further, Goal 16.2 sets out that states should “[e]nd abuse, exploitation, trafficking and all forms of violence against and torture of children.” In its Declaration (para 27), human trafficking is linked to forced labor, since states should “eradicate forced labour and human trafficking and end child labour in all its forms.” While, redistribution of resources and sharing of wealth should also be part of addressing slavery and human trafficking: “[s]ustained, inclusive and sustainable economic growth is essential for prosperity. This will only be possible if wealth is shared and income inequality is addressed” (para 27).

Explicit references to the link between slavery and human trafficking as well as between slavery, human trafficking, forced labor, and child labor have been made via Goal 8. According to this, [states must] “[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.” Further, specifically through Goal 8.7, states should:

[t]ake immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

In this sense, the link between slavery and human trafficking has culminated in “transfers of meaning” (Nunberg 1995). Whereby, the discursive use of slavery presupposes a co-dependency with human trafficking. If the word “slavery” is then used in a transferred sense, it is possible to use the word to refer to disjointed sorts of things. This is not the same as the limited possibilities of substitution; the mechanisms are not trying to substitute “slavery” with “human trafficking” but to construe a new field of knowledge and study of inquiry, according to which slavery is transferred upon human trafficking and vice versa. This would serve a dual target: to either interdefine slavery and human trafficking by imposing some apparent sortal crossings between the two or to present that solutions to the one are densely metonymous to the solutions to the other.

In parallel with the legal cases examined earlier, arguably, the language of state responsibility has transpired in the SDGs’ attempts to predicate transfer. However, concerns have been raised about the actual push for state responsibility and accountability (e.g., Barry 2003; Young 2006). Particularly, in the repeated references to “consideration for national circumstances” and in vague obligations for
nongovernmental actors, a causal sense of responsibility is missing or at best “is hidden between the lines in paragraphs on poverty, debt and environmental issues” (Bexell and Jönsson 2017: 18). As such, critics have maintained that as with the MDGs, the SDGs have been masking root causes of the problems, while neglecting how power relations may impede accountability and real change.

**The UK, Slavery, and the SDGs**

As discussed above, the MDGs were inclusive of many key development issues, but not of human trafficking nor slavery. This changed with the SDG negotiations in 2015, and now slavery and human trafficking are mentioned in a number of the SDGs, most notably in 8.7. This significant change did not just happen on its own. There were protracted international negotiations as to what would be included and excluded from the final agreed version of the SDGs. A number of reasons could be attributed to this inclusion. Arguably that slavery is on the increase and that an effective coalition of interested parties has come together to influence its inclusion in the development agenda. Key players have been NGOs, the ILO, as well as some governments, such as the UK government.

Within the UK, discussions around linking modern slavery to poverty and inequality commenced in 2007, when the UK government, the International Labour Organization, as well as the NGO Anti-Slavery International (ASI) held a high-level cross-sector conference with the aim to connect the issues of “poverty, development and the elimination of slavery” (McQuade 2015). According to ASI, the decisive moment in forcing the idea of slavery onto the sustainable development agenda occurred in late 2013, at a conference called by Pope Francis in the Vatican. Adrian McQuade (2015), the director of ASI, recalls that this conference felt like a “last cast of the die” to get the issue of slavery onto the international development agenda:

> with the endorsement of the Pope something of a critical mass started to form around the issue with the British Government, particularly its Anti-Slavery Commissioner Kevin Hyland, Jeffrey Sachs, an adviser to the UN Secretary-General Ban Ki-moon, and others endorsing the idea.

Formally, the Modern Slavery Bill in the UK was first debated in June 2014. In its second reading, the then Home Secretary, Theresa May MP, clearly articulated its vision along the lines of “more arrests and more prosecutions”: “tackling modern slavery will require . . . a determined and focused law enforcement response” (House of Commons [8 July 2014, column 166]). Eventually, the parliament passed the Modern Slavery Act in 2015. The Act is focused on the criminalization of modern slavery and human trafficking and the establishment of the Anti-Slavery Commissioner whose role focuses on prevention of modern slavery offenses and identification of victims. These developments have been linked directly to the final stages of the SDG negotiations, as it was the work of the UK government [in addition to the
efforts of the UK, South Africa, and Argentina], the Vatican’s Pontifical Academy of Social Sciences, the “Santa Marta Group: Church and Law Enforcement Combating Modern Slavery,” and some of G77 governments that “Ending modern slavery and human trafficking” was accepted as an amendment and added into SDG 8 (Anti-Slavery Commissioner n.d.; Anti-Slavery Commissioner 2016).

While the UK government responded to and worked with interest groups to include human trafficking and anti-slavery targets in the SDGs, these goals and targets are up for interpretation by governments, and the SDGs are not legally binding instruments. So, while the UK government’s interpretation of the SDGs has been in line with enacting legislation and setting up the Anti-Slavery Commissioner, these measures do not focus on the causes of slavery and the links to poverty (the original reason for linking slavery to the SDGs) but on the criminalization of human trafficking and the blending of human trafficking with slavery.

**Conclusion**

From our investigation two key points become evident. Firstly, in recent decisions of the ECtHR and in the SDGs, the discursive use of slavery presupposes a contiguity with human trafficking. The word “slavery” is then used in a transferred sense, and, hence, it is possible to use the word to refer to disjointed meanings. This is not the same as the limited possibilities of substitution; the mechanisms are not trying to substitute “slavery” with “human trafficking” but to construe a new field of knowledge and study of inquiry, according to which slavery is transferred upon human trafficking and vice versa.

Secondly, while one may assume that merging slavery and human trafficking may shed light on structural causes, such as poverty, income inequality, injustice, discrimination, exclusion, (un)freedom of movement, (un)freedom from want, and a variety of harms related to unequal access to services that underpin both human trafficking and slavery, this is not the case. As the existent case law is concerned, the spotlight is on crime, crime control, and criminalization. Simultaneously, the available solutions of decriminalizing irregularized migrants and offering access to an indiscriminate regime of rights are being cast aside. As far as development is concerned, there is an undeniable gap between the purported targets and the measures used to achieve these targets.

As a result of the above, this chapter puts forward a different set of recommendations (see also Boukli and Renz 2018). It counterposes a zemiological approach, which focuses on the harms rather than the crimes. This would involve prioritizing the communities and the people involved in human trafficking rather than focusing on formal mechanisms that ostracize and criminalize survivors. This would also involve an evidence-based discussion of trafficking that may actually reduce harm by pointing to areas that require better legal protection to prevent victimization, better access to resources, and better support mechanisms to survive and overcome harm. The orienting target is not abolition as a legal/juridical model of anti-slavery but advancing structural changes against harm.
Cross-References

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“No More Interviews Please”: Experiences of Trafficking Survivors in Nepal

Rita Dhungel

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Abstract

The goals of the chapter are threefold: (1) to provide an overview of the study process/approaches that supported the context and development of survivors’ critical consciousness about their oppression, (2) explore socially constructed root causes related to reintegration, and (3) unpack what successful reintegration means to survivors. Despite academic, media, nongovernmental, and governmental interest and reports related to sex trafficking, comparatively little attention has been given to the adjustment experiences of survivors in their post-trafficking period. Additionally, the participatory approach of social justice research, supporting vulnerable populations to become more involved in an academic

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study, is still marginal. In an attempt to level these troughs, participatory action research was used to explore trafficking survivors’ common subjective experiences in their reintegration.

Introduction/Context

The trafficking of women for sexual exploitation is a serious global issue (Cree 2008; Dhungel 2017a, b, c; Huda 2006; Samarasinghe and Burton 2007; Winterdyk et al. 2012), requiring attention from national and international communities (Cameron and Newman 2008; Dhungel 2017d; Troubnikoff 2003). Sex trafficking continues to be globalized, and “Nepal is not exempt.” Indeed, Nepal is well-known as a source country for human trafficking in general and sex trafficking in particular, especially of women and children (Adhikari 2011; Chaulagain 2009; Parker 2011; Sharma 2014; US Department of State 2018). The 1950 treaty between Nepal and India, which established an open border between the two countries (Nepal India Treaty 1950), has unfortunately contributed to the growing numbers of women and children trafficked from Nepal to India (Richardson et al. 2009; Sharma 2014; Simkhada 2008). Furthermore, Frederick et al. (2010) identified the rise of new markets in destination countries beyond India – notably South Korea, Japan, Thailand, China, and countries of the Middle East – and an increase in trafficking for labor purposes, mainly in restaurants and massage parlors, which later turned into sex trafficking.

Nepal, a landlocked country in South Asia, bordered to the north by China and to the south, east, and west by India, is culturally, ethnically, and religiously diverse (National Census Report 2012). It spans an area of 147,181 square kilometers and has a population of approximately 27 million people. Nepal is divided into three geographical regions – the Southern Terai (plains), the Central Highland (hills), and High Himalayan Mountains (mountains) (Dhungel 2017d). About one-half of the population resides in the plains bordering India, with the remainder living in the hills and mountain regions (National Census Report 2012). The economy is dominated by agriculture; 66% of the total population is agro-based and contributes about 34.7% of the gross domestic product (http://www.doanepal.gov.np/). Tourism is the second largest industry in Nepal and is the source of foreign exchange and revenue generation.

Nepal is currently governed by the Constitution of Nepal, which came into effect on September 20, 2015, replacing the Interim Constitution of 2007 (The Constitution of Nepal 2015). According to the Constitution, “rights of gender and sexual minorities are protected with provisions of special laws and this clearly states that women shall have equal ancestral rights without any gender-based discrimination” (Section 18). The inclusion of women’s rights was not unique to this Constitution, as they were also codified in the Interim Constitution of 2007. However, studies have demonstrated that despite the Constitution’s guarantee of gender equality, women still, in practice, experience a subordinate position. Many women depend primarily upon the social and economic positions of their husbands and fathers, perpetuating a patriarchal paradigm that facilitates gender-based discriminatory practices in family,
society, and political realms (Chaulagain 2009; McNeill 2008). Aengst (2001) made the trenchant comment that “the lack of economic alternatives for girls and ingrained cultural beliefs regarding gender roles make young girls particularly vulnerable to trafficking” (p. 5).

This chapter, which explores the implications of the above, is based on information obtained from a community-based participatory action research initiative entitled “Reintegration of trafficking survivors in Nepal.” The chapter is organized into three main sections, with the first section outlining the participatory process of the study. The second section speaks to reintegration issues faced by trafficking survivors and looks at the existing reintegration model followed by a critical discussion of current anti-trafficking practices. The third portion concludes with an examination of how trafficking survivors define the term *successful* reintegration. The chapter concludes with a discussion of areas that need further academic, policy, and practice attention, specifically in Nepal, but which can also be applied more broadly.

**Praxis: Participatory Action Inquiry**

This section begins with an examination of participatory action research (PAR) and will then discuss how the study process evolved and helped co-researchers understand aspects of their own oppression. PAR is deeply rooted in the adult education movements of Latin America, largely due to the work of Brazilian educator Paulo Freire (Fals-Boarda 1987; Levine and Yeich 1992; Freire 1972). Freire fundamentally believed that critical reflection was important for both personal and social transformation (Maguire 1987; Selener 1997). Freire (1972) championed participatory and inclusive investigations that allow people to identify and analyze their own situations/issues in response to a broad range of oppression. PAR offers an opportunity for people (especially oppressed populations) to critically and collectively analyze existing social, political, and economic situations and act together to address immediate problems and advocate for social change. Boal (1979) suggested that the process of education for concretization encourages passive audiences to become active participants and make decisions for themselves with their transformative capacities, rather than watching as others not only make decisions for them but also act ostensibly on their behalf.

McTaggart (1991) argued “PAR begins small and is developed through the self-reflective spiral: a spiral of cycles of planning, acting (implementing plans), observing (systematically), reflecting and re-planning, further implementation, observing and reflecting” (p. 175). This dialogical process (praxis) promotes the growth of the critical consciousness of participants, empowering them and promoting personal and social transformation (Fals-Borda 1987; Maguire 1987; Park 1993; Reason and Bradbury 2006). The following paragraphs will provide an overview of the application of praxis in this study.

The eight female trafficking survivors, ranging in age from 23 to 37, were recognized as co-researchers in this collaborative study process. The women were born outside of Kathmandu, mainly in high-risk communities in rural areas for
trafficking, and were first trafficked from the ages of 7 to 25. Four survivors were married, and four of them had children. With respect to their faith, five were Hindus and three were Buddhists. All the women were currently employees of the anti-trafficking agency, Shakti Samuha.

The research process began when the researcher and the co-researchers met and discussed the study’s purpose and their respective roles in the process. Not surprisingly, some challenges were experienced especially when the women demonstrated their initial reluctance to participate in the study. This was because they were exhausted by sharing their stories on trafficking both with researchers or/and practitioners over a significant period of time. For example, one of the women asserted, *There are so many researchers... research on trafficking issues. We were often asked to share our experiences on trafficking with a focus on brothels, and this makes us feel angry. We absolutely do not want to be interviewed for or support... research.*

In responding to the women’s understandable concerns, the researcher conveyed a clear message that she would not ask them to talk about their experiences of being trafficked, as this is only one part of their story. By highlighting the important and essential roles of the co-researchers in this study, the researcher encouraged them to be leaders and take a key role in helping the study run smoothly. By using ice-breaking exercises, the researcher was able to create a welcoming, inclusive, and safe environment that made the women feel at ease. Essentially, when the women learned that the values and nature of the project would not only promote their autonomy and collective power but would also advance their personal and social transformation, they graciously agreed to support the project and play key roles in the collaborative journey. As the study progressed, their participation in critical dialogues and reflections on reintegration, through the use of transformative approaches such as photovoice, group meetings, and interviews with a variety of sector stakeholders, made them feel more empowered. The process also helped them critically understand their own oppression and develop and implement strategies to address issues associated with reintegration (Dhungel et al. 2019). The women were significantly involved in data analyses including coding, categorizing, and developing themes. Through praxis (action-reflection-action), the women performed street dramas, organized a press conference, and explored different advocacy strategies. For example, the group met with the Ministry of Women, Children, and Social Welfare to advocate for policy/program changes informed by the process. In summary, through praxis, the women were involved in identifying and understanding their own oppression and addressing issues through a number of transformative tools.

**Reintegration of Trafficking Survivors**

This section will outline how agencies and stakeholders working in anti-trafficking efforts perceive the term “successful” reintegration. A range of stakeholders, including the Government of Nepal, agencies, the media, lawyers, police officials, and the general public, shared key indicators used to measure the reintegration success of trafficking survivors (Fig. 1).
The majority of stakeholders reported that family acceptance was instrumental for successful reintegration. To be reunited with parents and siblings and to live with them in their communities is successful reintegration. Community acceptance was also suggested as another important indicator that stakeholders used to measure the success of reintegration. However, stakeholders expressed a belief that in most cases, a survivor while accepted by her family was rejected by her community. Without community acceptance, then a survivor’s reintegration was only partial and incomplete. According to stakeholders, a married survivor was perceived as a successfully socially reintegrated woman. Until a survivor gets married, she was not considered as reintegrated. Employers generally did not hire survivors, regardless of education, skills, and experience once their trafficked past came to their attention. According to stakeholders, employers were afraid that if they hired survivors, they would ruin the public image of their organizations, and thus survivors were expected to work mostly in restaurants and massage parlors. Despite this grim portrait of the reality, stakeholders generally expressed their support for the rights of survivors to live with respect and dignity. The stakeholders also suggested that government should provide free health services to survivors, and their social and economic futures should be

![Diagram](image-url)
secured by providing them with appropriate employment and education. They argued that the Nepalese Government had the primary responsibility (and mandate) to ensure that these changes occur. Stakeholders also highlighted that survivors were particularly suited to bring reintegration issues into a public forum, through storytelling, awareness raising campaigns, and multi-sectoral policy advocacy (Dhungel 2019).

The survivors critically identified and analyzed the systemic oppression that made their lives more susceptible to socioeconomic marginalization. These challenges are interlinked and mutually reinforcing (Dhungel 2017d). The key elements – discussed below – of this dynamic of oppression and marginalization are (1) gender oppression, (2) systemic enablers of oppressions, (3) sociocultural and religious exclusions, and (4) research, media, and publications.

**Gender Oppression**

Gender oppression is a compounding, serious, and multilayered factor faced by trafficking survivors in their reintegration process (Dhungel 2017d). Gender oppression in Nepal is deeply rooted and grounded in the values of “patriarchal paradigms” and is manifest in a number of structural dimensions, such as the “feminization of poverty.” For instance, many women are forced to live in poverty due to their lack of education and perceptions of their familial roles. Likewise, the values and power of women and men are still perceived differently in many ways, particularly in terms of constructions of notions of gender and sexuality. Societal norms, for example, encourage men to have multiple partners, while women are expected to be virgins at marriage and remain faithful thereafter. And, for survivors of trafficking, the general construct of sexually appropriate roles and behavior is compounded by continued exploitation. The fact that women were victims of sexual exploitation through trafficking is compounded by their subjugation to derogatory terms such as a “bhaalu,” a “randi,” and a “HIV ko Poko” on their return to Nepal. This represents an intersection of both gender and sexual oppression.

This multifaceted level of exploitation is made even more complex by the global institutionalization of the feminization of poverty. This greatly contributes to women’ and children’s vulnerability to sex trafficking and socioeconomic marginalization upon reintegration. To help counter this, progressive local non-governmental agencies, in collaboration with international nongovernmental organizations and the Government of Nepal, are supporting survivors in their reintegration by providing them with job opportunities based on their education and capabilities/skills. However, the provision of programs does not necessarily mean that social problems are adequately addressed. Although the women wanted to gain more formal education and build their knowledge and capacities in a field of their choosing, the programs offered tended to focus more on skills building and training in traditional areas such as knitting, sewing, and making jewelries, which have limited earning capacity and can perpetuate economic and social marginalization. In many cases, incomes were not sufficient to allow them full access
to resources, including higher secondary and post-secondary education, along with the development of knowledge/skills required for job and career advancement. In the words of one co-researcher:

\[\ldots\] The government and agencies claim that there was good enough support for survivors in that they were supporting us by providing jobs. But\ldots Does anyone know any survivors who are working with the Government? \ldots Do they have any mechanisms to hire us in their reintegration policies? Not even in peon [Survival] jobs. The term reintegration is only in policies, not in practice. \ldots It is very obvious, but no one admits this. The reality is we are expected to work in restaurants and massage parlors.

**Systemic Enablers of Oppressions**

In addition to gender-based oppression, there are key institutional barriers which do not support survivors in their reintegration, such as the absence of progressive reintegration laws and policies, the provision of burden of proof, and the protracted criminal judicial procedures. The Government of Nepal has not developed reintegration laws, and existing reintegration policies are neither progressive nor effective. To elaborate, upon return to Nepal, a survivor is taken to one of the eight rehabilitation centers but, unfortunately, cannot stay for more than 1 year. This period is not long enough, especially when a person is diagnosed with a chronic illness requiring more medical attention. Additionally, the study found that the government has a reintegration fund for trafficking survivors and that 50% of the fund should be distributed to trafficking survivors for personal growth and financial support; however, in practice the money rarely reaches them.

The study also identified that the manner in which trafficking survivors understood their reintegration experience was strongly affected by their perception that the state and community did not hold traffickers accountable. Survivors reported they did not feel *successfully* reintegrated until the specific traffickers who had betrayed and sold them in brothels were prosecuted and penalized. When a survivor returned, she could file a case against the trafficker who sold her. But most cases were dismissed because the survivors were unable to provide sufficient evidence to prove the person guilty. Survivors reported that, in some cases, traffickers had good connections with political leaders who used their connections to dismiss the case or ensure that the trafficker was found not guilty. Indeed, the Nepalese judicial system actively discourages the survivors’ pursuit of justice by placing too much burden of proof onto them. Equally importantly, survivors experience the challenge of lengthy judicial procedures, which has an impact on their current lives. One co-researcher shared:

*Seven years ago, I filed the case within one year of returning to Nepal and the court process is still going on. \ldots It was just last month, they called me when I was with my family at home and therefore I did not answer the phone. My family does not know anything about me and my case in the court. After an hour, they called me on my cell phone again and I was in the kitchen at that time and my husband answered the phone. He found that I was involved in a*
I became very nervous and told him I was supporting a trafficked woman in her case through my work, but he did not believe me and said he was going to find this out from other sources. I am feeling low every day, thinking what happens if he knows it was not someone else but that it was me dealing with the court. Then my family life will be destroyed. Every day I am living with this fear in my reintegration. My married life is not safe.

Sociocultural and Religious Exclusion

Religious faith and traditional cultural values play a strong role in Nepalese society. People tend to be adherents to Buddhist, Hindu, and other faiths, and participation in the respective rites and ceremonies is widely expected and valued. However, this study revealed that the survivors experienced religious exclusion, both externalized and internalized, which hindered reintegration. To be excluded from religious community and expression, for instance, can cause particular shame and hurt for many survivors. An experience that is supposed to bring comfort instead brings pain and ostracism. Religious exclusion enhances vulnerability to sociocultural marginalization and further humiliation. For example, one co-researcher lamented:

One of my neighbors had a religious ceremony and unmarried girls from the community were invited to worship at the ceremony and obviously, the girls should be virgins. . . The way they treated me was very offensive. When I was in line to be worshipped, they said very rudely that I did not deserve this honor as they did not regard me as an unmarried because I already lost my virginity by sleeping with several men in India. I was asked to get out of the line and I then came back to home with lots of tears.

Furthermore, many experienced social condemnation, silence, and exclusion which led survivors to isolate themselves from family and community as a way to avoid further humiliation and as an expression of their own internalized shame and oppression. It is reported that many survivors do not even want to attend religious and cultural activities/ceremonies in their home and/or community because they have grown up with societal norms that are still rigidly engrained in their mind. For instance, one woman shared:

It is a sin for women to sleep with multiple partners and those who misconduct the values they are impure and thus God does not want to see them in His door and their participations in such sacred ceremonies may bring some bad results for their families.

Research, Publications, and the Media

Trafficking survivors were made more vulnerable when researchers/scholars and the media approached them for interviews and asked them to share their personal stories on trafficking. This study found that none of the survivors wanted to participate in anything that would push them to recall and recount their past, especially when they
are trying to move on from their past. One participant expressed her sadness about the researchers who had previously interviewed her:

_The first time when I was asked for interviews by one of the doctoral students . . . During the interview I felt like I was again in the same place that I escaped from [became emotional] . . . because of the questions they asked me. I hate the interview. I don’t understand what they do with the information collected from us. I neither saw them coming back to us after their interviews nor sharing their reports with us . . . This is my request for all researchers please do not come to us for interviews that increases our vulnerability and obviously this does not support our reintegration._

Survivors reported that participation in interviews increased their psychosocial trauma which did not facilitate reintegration. They women suggested that they want to be involved in a collaborative research that provides them with opportunities to work with researchers and promote their own personal and professional growth, not to make their already fragile morale even more brittle. For example, one survivor noted that

_You know my self-esteem and the level of confidence are really high now because I am not sharing the horrible stories with anyone- why would I do that? I want to live in present not in the past . . . So no more interviews please. We really meant it._

It was identified that some survivors did not feel confident enough to decline interviews, as they were afraid of, or beholden to, their managers or agencies who had the connections with conventional researchers and the media. Indeed, power differences and coercion could play a significant role in pushing survivors to be a reluctant part of research and/or publications. The study found that while participating in interviews, survivors were often pressured into answering each question by probing, even if they did not feel comfortable or safe in responding. The women were not opposed to research and publications; however, they did not want to be interviewed simply for the sake of interviews, and their commodification in trafficking should not be further replicated by academic and media commodification.

While addressing issues of trafficking, Nepal is using a “3Ps” anti-trafficking intervention model: prevention, prosecution, and protection grounded on the (Victims of Trafficking and Violence Protection Act 2000). For the purpose of this chapter, this section will primarily assess the area of protection; however, a brief overview of the other two themes is provided, as the areas of “3Ps” overlap and interconnect. However, although the “3Ps” overlap and are equally important, the major focus of anti-trafficking efforts in Nepal is based on prevention.

Preventative initiatives are dominated by two major approaches: a prohibitionist approach and a rights-based approach. The prohibitionist approach emphasizes the use of mechanisms to monitor strangers in communities and women who are leaving their communities and crossing borders (Bohl 2010; Sharma 2014). A number of prohibitionist programs have been introduced, especially in at-risk communities and at points along the Nepal-India border. These programs include the formation of village surveillance committees and the creation of monitoring groups to watch out
for the well-being of women who either run away or leave their community and cross borders (Bohl 2010; Chen and Marcovici 2003; Evans and Bhattarai 2000; Sharma 2014; Subedi 2009). A rights-based approach, on the other hand, is rooted in a framework based on the standards and foundations of international human rights. This approach emphasizes awareness-raising campaigns, funding for schools, and poverty alleviation strategies, including both capacity-building and employment opportunities. Awareness programs are also targeted at a wide range of audiences and stakeholders including police officials, village development committee officials, community residents and family members, and especially in at-risk communities (Chaulagain 2009; Evans and Bhattarai 2000; US Department of State 2016). Non-formal community education, such as street theater, folk song and dance performances, and vocational training in prevention homes, has been helpful in developing a popular understanding of a rights-based approach (Frederick et al. 2010; Pearson 2004; Samarasinghe and Burton 2007, Shakti Samuha 2013).

In terms of prosecution, the Government of Nepal has developed a number of anti-trafficking strategies through the establishment of laws and policies based in the imperatives of a number of human rights instruments, such as the Trafficking in Persons (TIP) 2000 and Victims of Trafficking Protection Act 2000, and international conventions such as the South Asian Association of Regional Convention and Convention on the Elimination of All Forms of Discrimination Against Women. As noted, the Constitution of Nepal 2015 promotes the rights of children and women and prohibits the trafficking of human beings – be it for slavery, serfdom, or forced labor of any form – and makes it punishable by law. The Human Trafficking Control Act 1986 proclaims that those involved in selling a human being, taking someone to a foreign country with the intention to sell or force them into prostitution, are liable to a maximum punishment of 20 years imprisonment and a minimum of 5 years. Recognizing that rehabilitation and reintegration were not addressed, and victims were not entitled to file an appeal under the Act, a Human Trafficking and Transportation Control Act 2007 was introduced with the provision of funding for rehabilitation and reintegration. By providing compensation to survivors, which shall not be less than one-half of the fine levied as a punishment to offenders, the government has tried to be more progressive to combat trafficking (McNeill 2008). However, in practice, the application of the above laws is sorely limited. For instance, parents who take their daughters to India and later sell them for prostitution are not prosecuted for trafficking under the code (McNeill 2008). Furthermore, the Human Trafficking and Transportation Control Act 2007 only criminalizes those involved in the selling, and not the purchasing, of human beings.

Despite these efforts, critics have claimed that, for a variety of reasons, Nepal is not successful in actually implementing the laws, initiatives, and policies (Acharya 2008; Dhungel 2017d; Dhungel et al. 2019; Locke 2010; McNeill 2008; Sharma 2014). For example, Human Trafficking and Transportation Control Act 2007 fails to provide neither clear and agreed-upon definition of reintegration nor a comprehensive reintegration strategy. This ambiguity makes it difficult for NGOs to develop consistent and effective programs for the reintegration of trafficked women. Additionally, limited law enforcement, police corruption, and the presence of reciprocal links between traffickers and law-enforcement authorities can cause difficulties in
both investigation and prosecution. The lengthy time involving the process of the Nepali criminal justice system allows trafﬁckers to leave the jurisdiction or change their identity. As a result, many trafﬁcked women do not ﬁle a case against trafﬁckers, seeing it as a futile exercise. Lastly, due to inadequate funding, some NGOs report difﬁculties in supporting victims who do report their cases. Although most grants coming from foreign governments and INGOs often go directly to the government for anti-trafﬁcking initiatives, the money often does not reach those for whom it is intended, due to the various manifestations of corruption (Acharya 2008; Adhikari 2011; Bohl 2010; Cameron and Newman 2008; Chaulagain 2009; Fisher 2008; Locke 2010; Simkhada 2008; Subedi 2009).

However, while greater emphasis on prosecution in Nepal would facilitate some measure of justice for victims, a focus on protecting and supporting survivors is necessary for successful reintegration. The United Nations Ofﬁce on Drugs and Crime (UNODC) (2008) has claimed that “where preventing trafﬁcking and rescuing trafﬁcked victims is a difﬁcult job in itself, rehabilitating them is even more difﬁcult because victims of trafﬁcking are often treated as social outcasts and suspects even by members of their own family” (p. 131). To support trafﬁcking survivors and their needs in reintegration, a number of multipronged US services and programs have been developed. With the intent of supporting survivors in reintegration, a number of different programs and services are being offered, and they will be discussed in the following section.

**Rehabilitative Centers**

Most survivors after being rescued from brothels spend some time in rehabilitation centers, ﬁnanced by the government and INGOs (Adhikari 2011; Dhungel 2017d; GoN 2013; Hennink and Simkhada 2004; McNeill 2008; Samuha 2013). Rehabilitative centers play a signiﬁcant role in comprehensive efforts to address human trafﬁcking, especially of women and children (Dhungel 2017d). The goal of the centers is “to prepare victims, through psychosocial care, education, vocational training, and legal services, for their eventual reintegration into either their home community, if appropriate, or into a new community” (USAID 2009, p. 16). Since 2010, the Ministry of Women, Children, and Social Welfare has been offering ﬁnancial support to eight rehabilitation centers, which are being operated by NGOs, such as Maiti Nepal and Shakti Samuha (Dhungel 2017d). Locke (2010) reported that some centers allow parents of survivors under the age of 16 to visit the centers, and this provide an opportunity to assess the family’s income and the level of support they are willing and able to provide the child. Once the centers go through the process of family identiﬁcation, a report is submitted to the Women, Children, and Social Welfare Committee on whether the children can go home or not. Depending upon available resources, some NGOs ﬁrst visit and revisit survivors’ family and community to educate them about trafﬁcking situations, and convince them to accept the survivors, and make arrangements for them to return home with some ﬁnancial support to help them to be involved in some small livelihood activities such as animal husbandry or tailoring (Evans and Bhattarai 2000).
Counselling/Medical Care Services

Most trafficking survivors commonly experience severe physical and psychological trauma after being trafficked (Dhungel 2017d). By recognizing the need for psycho-social support and counselling, many rehabilitation centers provide support not only to help people recover from their trauma but also rebuild their self-confidence (Adhikari 2011; Chaulagain 2009; Dhungel 2017d; Sharma 2014). Tzvetkova (2002) suggested that “counselling centers provide a safe and supportive environment for survivors where they can share their experiences and receive non-judgmental support and understanding” (p. 62). Many centers have adopted a more holistic healing approach as a new integrative model of reintegration. This includes peer support, mentoring, and experiential therapies, such as dance and theater, play, and recreation (Adhikari 2011; The Asia Foundation 2005).

Educational and Vocational Training

Most trafficking survivors in centers are provided with literacy classes and vocational and skills building training to help promote economic independence and self-esteem. These include basic life skills development, such cooking and food preparation techniques, sewing and weaving, together with handicraft making (Buet et al. 2012; Chen and Marcovici 2003; Dhungel 2017d; Frederick 2005; GoN 2013; Samuha 2013; Sharma 2014). However, general training, based on vocational skills development (such as candle making, sewing, and knitting), offered at rehabilitation centers is identified as a significant obstacle to successful reintegration, as it does not provide survivors with the actual marketable skills necessary for sustainable economic independence (Chen and Marcovici 2003; Dhungel 2017d; Evans and Bhattarai 2000; Sharma 2014). Building upon this recognition, however, some NGOs have provided microloans to survivors so that they can run small businesses such as grocery shops and tea shops, with the aims of establishing independent and economically viable lives in their communities (Adhikari 2011; Shakti Samuha 2013).

Stigmatization Prevention

Women are often doubly victimized in the rehabilitation and reintegration process after returning from brothels. Trafficking survivors experience social exclusion and ostracism when they return to their previous communities (Dhungel 2017c, d). Therefore, efforts to prevent the stigma attached to trafficking survivors are essential. Recognizing the need to prevent this stigmatization, UN agencies and NGOs have reinforced the requirement that efforts addressing stigma be a core component of trafficking awareness-raising campaigns, with varying degrees of success at the grass roots, family, and community level (Dhungel 2017d). However, most awareness-raising programs are offered primarily to local populations through workshops, campaigns, and education, and not to government officials and attorneys, who also
need a more complete and critical understanding of gender discriminatory practices and the subjectively constructed experiences of trafficking survivors (McNeill 2008; Dhungel 2017d). These initiatives, well intentioned as they are, do not adequately address the multiple issues associated with reintegration. Furthermore, raising awareness through posters, flyers, and media is not always an effective prevention tool, especially for those girls and women who are uneducated, illiterate, and economically marginalized. Alternative and more interactive activities such as door knocking, community interactions, and street dramas could be promising practices to augment these approaches, particularly in rural areas.

In dealing with reintegration, the “victim-centered” approach such as counselling and vocational training seems to be predesigned and generalized under a one-size-fits-all model and does not adequately address the specific and subjective issues of reintegration. For instance, those who want professional training in areas such as health care and hotel management, as opposed to vocational training, are not provided with these opportunities. Once again, this limits future economic opportunities for the women and their families. Adhikari (2011) argued that “it is important for NGOs to strengthen their strategies to facilitate in economically empowering and independent living of the trafficked women returnees” (p. 83).

The limitations of anti-trafficking efforts highlighted the fact that survivors were still experiencing challenges in reintegration and did not feel they were successfully reintegrated into society. Indeed, the term “reintegration” is perceived differently by agencies working in anti-trafficking efforts, the government, and by survivors themselves. To elaborate, the programs and services discussed earlier are neither rights-based nor person-centered, and a one-size-fits-all model does not meet the aspirations of survivors as individuals. This is possibly one of the reasons that the US Department of State (US Department of State 2018) placed Nepal in the tier 2 rank of countries due to noncompliance with minimum standards of Trafficking in Persons protocol.

**Unpacking and Reconceptualizing Successful Reintegration**

The following section explores the term successful reintegration from the survivors’ standpoint and what that actually meant to them. In order to aggregate trafficking survivors’ insights on the meaning of successful reintegration in the same manner as shared in group and in individual interviews, the Onion method as an analytical tool was used. The Onion method has previously been used as a tool to understand the dynamics at play in context of conflict (Ardón n.d.; Best 2006; Prah and Yeboah 2011). The Onion method speaks to three layers of knowledge including needs (what we need), interest (what we want), and position (what we say what we want) (Conflict Analysis Tools n.d.; Prah and Yeboah 2011). The process is “based on a metaphor of an onion whose layers are gradually peeled back, first those that area readily visible, then the hidden protected inner section. This tool helps uncover the hidden elements that are at the core of resolving a conflict-people’s deeply felt needs” (Ardón n.d., p. 6).
The original terminology used for the layers to centralize the self-empowerment of the co-researchers was modified by the researcher (Dhungel 2017d). For instance, the “needs,” “interest,” and “position” layers were renamed “human rights,” “environment,” and “demands,” respectively. Figure 2 depicts how survivors themselves defined their reintegration. For example, the outer layer of the onion is labeled “demands,” and it refers to what survivors say they want in terms of the specifics

![Figure 2](image-url)  

**Fig. 2** A comprehensive analysis of successful reintegration, adapted from Dhungel 2017d, p. 338
of their reintegration. The middle layer, “environment,” refers to what the survivors wish to achieve in their reintegration. Finally, the core of the onion is labeled “human rights” to better express that these are elements women need to have in place in order to be fully reintegrated into the society and that these needs are congruent with basic inalienable human rights. Overall, these layers authentically reflect the inner strength and realities of trafficking survivors and clarify what successful reintegration actually means to them. Indeed, the Onion method captures the complexity of survivors’ experiences and clearly calls for change in an accessible way that can help others understand how they can support survivors in their pursuit of successful reintegration.

Reconceptualizing “Successful” Reintegration

While constructing successful reintegration, based on the Onion method, reintegration as defined by co-researchers was seen as:

Reintegration is a reconstructing phase of the post-incident period of trafficking. In this phase, trafficking survivors attempt to forget and wash away all the bad memories that they carry over from their journey, which range from childhood to adulthood (from village to India). Therefore, incidents of trafficking should be perceived as accidents. Accidents happen to people, and people can then recover from them and move on. These kinds of accidents should not stop survivors from moving forward and enjoying their lives. Sadly, this cruel society does not support survivors to forget what has happened to them and move on with their lives. For trafficking survivors, reintegration is an essence, a never-ending process, a feat that extends far beyond the programs and services offered to survivors. Reintegration of survivors is not limited to the social, economic, physical and psychologically well equipped. The term reintegration cannot be simply defined in one or two sentences. Therefore, it is important that the broadest reach of the public learn what successful reintegration means to survivors and what needs to be done for their reintegration.

Overall, then, an integrative definition of “successful” reintegration is as follows: Reintegration is a process and a state of being that promotes a survivor’s right to choose a community to live in and a livelihood based on her aspirations. Reintegration is a process that centralizes the engagement and leadership of a survivor in developing reintegration laws, policies, and programs. Reintegration is a position that secures a survivor’s right to live with respect and dignity. Reintegration is an entitlement of a survivor to be included socially, culturally, politically, and economically. Reintegration is a welcoming, safe, and an inclusive environment that provides a survivor opportunity to enjoy her life and free from being doubly victimized and violence and ongoing stigma.

Conclusion

Every person should be treated with respect and dignity. However, reintegration is intertwined with multilayered systems and expressions of social injustice, economic disparity, and gender violence, and the much-needed response must take all of these
unsavory dimensions into account. Therefore, it is essential to critically and bravely address the structural forces that challenge a rights-based, participatory, and transformative approach. This is a core element in the creation of a counter-hegemonic movement. It is also important to develop reintegration laws/policies grounded in the survivors’ experiences, with an emphasis on the effective implementation of both existing and new laws and policies. Finally, it is critical to focus on the aspirations of survivors and to develop programs based on the positivity of their aspirations and hopes instead of focusing solely on the deficits of need. While emphasizing practices and research, advancing advocacy and educational campaigns to raise awareness of reintegration issues is also a fundamental aspect of transformative social change. The creation of a positive and safe environment for survivors to live with respect and dignity is essential. Therefore, it is suggested that anti-oppressive practice and a community-based participatory research process are essential for the meaningful and effective engagement of survivors. Additionally, the point needs to be emphasized that researchers and the media must be aware of the fact that survivors are not interested in participating in research simply as objects or interesting facts and sharing their past which makes them doubly victimized. It is important for researchers and the media to develop interview guides – and an ethic – that promote the resiliency and personal transformation of survivors. Overall, it is critical for all parties and stakeholders, in their common humanity, to explore new and, potentially, liberatory and emancipatory ways to address the reintegration issues of survivors and promote the transformative imperative. In sum, social change requires active work and intervention at the individual, community, state, and policy level.

Moving forward, application of an emerging reintegration practice model is recommended to address the manifold issues experienced by trafficking survivors. The use of such a model could help the Government of Nepal and agencies better understand the need for coordination and collaboration with other parties, including survivors, their families, communities, and academia, and to clarify their roles and responsibilities in addressing the wide range of reintegration issues (Dhungel et al. 2019).

The model can be implemented at two different, yet interconnected and mutually influential, levels: the policy level and the practice/research level. The policy level focuses on the need to engage and involve different actors in developing national and international responses to trafficking and reintegration. It is fundamental, however, in this policy process to recognize survivors’ positions and lived experiences, to engage survivors and other stakeholders in the process of knowledge construction, and, flowing from this, to contribute to the development and implementation of much needed national and international laws and policies (Dhungel 2017d).

The practice and research level proposes the need to democratically engage a wide range of stakeholders, including practitioners, academia, and survivors, in the collective and generation of knowledge and implementing the policies/programs/framework that are collaboratively developed. In summary, all stakeholders and communities must come together as allies and work with survivors so that they can learn from their unique and powerful experiences and gain a critical understanding of how the cycle of intersectional oppression operates and endures, despite the
periodic attention of well-meaning “experts.” Overall, an evolving and tentative process of sustainable collaboration is an effective way to disrupt these cycles of injustice and build a new society that promotes the rights of survivors, holds traffickers to account, and decreases the opportunities for trafficking. It is a way to further the wonderful potential of our common humanity.

References


A Comprehensive Gender Framework to Evaluate Anti-trafficking Policies and Programs

Kim Anh Duong

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Abstract

Measuring the efforts of countries worldwide against human trafficking crime is a challenge. Recently, the most reliable assessment of responses to human trafficking of the countries worldwide is the Trafficking in Persons Report issued by the US Department of States. While the United States highlights the power of the Report with its credibility and accuracy that helps a lot of trafficking victims

Part 2, Explanations and Methods of Inquiry; or Part 4, Human Trafficking and Response Mechanism; or Part 5, Local/National/International Responses Mechanism; or Part 8 can be suitable too.

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enslaved around the word, it has also been criticized to be subjective and lacks measurable goals and associated indicators to evaluate the overall effectiveness of the countries’ efforts to combat human trafficking.

This chapter is written with an attempt to help the countries worldwide to have another way to evaluate the quality of their responses to human trafficking, especially that of anti-trafficking policies and programs. The paper presents a comprehensive anti-trafficking evaluation framework that consists of three layers: first is the technical evaluation of anti-trafficking interventions scenario and its impacts that lie in the 4-P evaluation (prevention, protection, prosecution, and partnerships); second is the gender-sensitive evaluation of anti-trafficking polices using three main gender-sensitive evaluation criteria including participation, empowerment, and accountability; and third is the analysis of gender construction of anti-trafficking policies. While technical evaluation has its own limitations in evaluating policy, this combined framework of both technical and gender dimensions will have to evaluate anti-trafficking policies from different angles to increase the countries’ capabilities to better tackle the transnational and organized crime like human trafficking.

**Keywords**

Human trafficking · Gender framework · Evaluation · Anti-trafficking policies · Programs

Human trafficking is one of the most tragic human rights issues of our time. It splinters families, distorts global markets, undermines the rule of law, and spurs other transnational criminal activity. It threatens public safety and national security. But worst of all, the crime robs human beings of their freedom and their dignity. That’s why we must pursue an end to the scourge of human trafficking (the foreword by Rex W. Tillerson – Secretary of State in the Trafficking in Persons Report of US Department of State – USDOS 2017).

The scale of human trafficking is atrocious. The silence that conceals this crime is disgraceful. We have to speak out because the victims are living in fear for their lives. We have to raise our voices for them. That means confronting the social and economic conditions that abet this crime. It means arresting the traffickers. And above all, it means protecting the victims (former United Nations Secretary General Ban Ki-moon, as cited in USDOS 2017).

**Introduction**

Human trafficking is a transnational organized crime and has become a matter of great importance for countries worldwide, not only because it is one of the fastest growing crimes – which one dehumanizes and erodes human dignity (Getu 2006; Truong 2014; Duong and Simon-Kumar 2017) – but also because it involves different countries, different regions, and different continents. Although primarily an issue of human rights, human trafficking is also a socioeconomic and political
issue that relates to gender and discrimination and gender inequality. The dramatic increase in human interactions throughout the globe and the improvement of transportation networks and technology in the process of globalization, international integration, and especially in the Fourth Industrial Revolution have also contributed to the expansion of human trafficking. In other words, human trafficking can be seen as a dark side of the development process.

Virtually no country is immune whether as a country of origin, as a destination country, or as a transit country for victims of human trafficking. Human trafficking is an issue of concern for every country (World Vision Australia 2012). Therefore, combating human trafficking has become a strong political commitment for many countries. In 2013, the 'Human Trafficking in Persons Report' of the US Department of State (hereafter called TIP Report) calls for the elimination of trafficking as a foreign policy priority and for countries worldwide to fight human trafficking wherever it exists (USDOS 2013).

Measuring the efforts of countries worldwide against human trafficking crime, however, is a challenge. Recently, the most reliable assessment of responses to human trafficking of the countries worldwide is the TIP Report issued annually by the US Department of State. While the United States highlights the power of the Report with its credibility and accuracy that helps a lot of trafficking victims enslaved around the world, it has also been criticized to be subjective and lack of measurable goals and associated indicators to evaluate the overall effectiveness of the countries’ efforts to combat human trafficking.

This chapter is written with an attempt to help the countries worldwide to find out an additional tool to evaluate the quality of their responses to human trafficking, especially that of anti-trafficking policies and programs. The paper presents a comprehensive anti-trafficking evaluation framework that consists of three layers: first is the technical evaluation of anti-trafficking interventions scenario and its impacts that lie in the 4-P evaluation (prevention, protection, prosecution, and partnerships); second is the gender-sensitive evaluation of anti-trafficking polices using three main gender-sensitive evaluation criteria including participation, empowerment, and accountability; and third is the analysis of gender construction of anti-trafficking policies. While technical evaluation has its own limitations in evaluating policy, this combined framework of both technical and gender dimensions will have to evaluate anti-trafficking policies from different angles to increase the countries’ capabilities to better tackle a transnational and organized crime like human trafficking.

The USDOS TIP Report and Measurement of National Anti-trafficking Efforts

It should be noted that the United States took the lead at the beginning of the twenty-first century in the fight against human trafficking with the efforts to compile annual Trafficking in Persons Report and the comprehensive anti-trafficking legislation known as the Trafficking Victims Protection Act of 2000 (the TVPA). The US
Department of State began monitoring trafficking in persons in 1994, when the issue began to be covered in the Department’s Annual Country Reports on Human Rights Practices. Originally, coverage focused on trafficking of women and girls for sexual purposes. Over the years, the understanding of the problem has broadened into different types of human trafficking.

Globally, the TIP Report of the US Department of State has been considered to be an official way to measure government efforts to address and ultimately eliminate human trafficking. Since its inception, it has become one of the most important ways the world judges the progress in the fight against human trafficking and a policy tool for international engagement to combat human trafficking. The report also analyzes the state of global slavery and ranking countries’ compliance with international humanitarian law. The first TIP Report was published in 2001. In the 2001 TIP Report, only 12 countries were named as Tier 1 countries. Forty-seven countries were listed under Tier 2, and 23 countries were placed in Tier 3. Sixteen years later, the scope of the 2017 TIP Report was more than double that of the 2001 TIP Report which provided narrative and ranking for 187 countries. Countries were placed into one of several tiers based on their respective governments’ level of effort to address human trafficking issue year-round, between April 1, 2016, and March 31 annually.

The TIP Report is a reflection of the US global leadership on human trafficking—a key human rights issue and the US principal diagnostic tool to assess government efforts across the three Ps of prosecution, protection, and prevention. The TIP Report is prepared using information from US embassies, government officials, non-governmental and international organizations, published reports, news articles, academic studies, research trips to every region of the world, and information submitted to the email address tipreport@state.gov. US missions overseas are dedicated to covering human trafficking issues year-round. Clearly, the United States assesses efforts of individual countries worldwide and imposes sanctions on those that do not fully comply with the minimum standards for the elimination of human trafficking set out in the Trafficking Victims Protection Act (TVPA) of 2000. It is clearly emphasized in the TVPA that the government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking and for the knowing commission of any act of a severe form of trafficking in persons and should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense. Also, the government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The US assessment and sanctions are outlined in the annual TIP Report. The US Department of State places each country in the TIP Report onto one of four tiers, as mandated by the TVPA. This placement is based not on the size of the country’s problem but on the extent of governments’ efforts to meet the TVPA’s minimum standards for the elimination of human trafficking, which are generally consistent with the Palermo Protocol. The four tiers are Tier 1, Tier 2, Tier 2 Watch List (Tier 2 WL), and Tier 3. The country’s tier ranking is based on the government’s efforts to combat trafficking as measured against the TVPA minimum standards and compared to its efforts in the preceding year. The 3-P paradigm of prosecution, protection, and prevention sections of each country narrative describes how a government has or has not addressed the relevant TVPA minimum standards, during the reporting period.
It should be noted that a country is assigned to *Tier 1* if it fully meets the TVPA’s minimum standards for the elimination of trafficking. *Tier 2* includes countries in which the government is not fully in compliance but is making significant effort to do so. A country is located in *Tier 2 Watch List* if it includes countries attempting to come into compliance (as in Tier 2) but where trafficking is high or increasing. *Tier 3* is countries where the government is not in compliance and is making no significant effort to become so.

A country is never finished and must not stop with the job of fighting human trafficking. It is because human trafficking can happen to anyone, anywhere, and anytime and look different each time. While Tier 1 is the highest ranking, it does not mean that a country has no human trafficking problem or that it is doing enough to address the problem. Rather, a Tier 1 ranking indicates that a government has acknowledged the existence of human trafficking, has made efforts to address the problem, and meets the TVPA’s minimum standards. Each year, governments need to demonstrate appreciable progress in combating trafficking to maintain a Tier 1 ranking. Indeed, Tier 1 represents a responsibility rather than a reprieve. No tier ranking is permanent (USDOS 2017). Every country, including the United States and those on Tier 1, can do more to improve the situation. All countries must maintain and continually increase efforts to combat trafficking. It should be noted that Tier 1 countries only meet the minimum standards to address trafficking, which is why the TIP Report offers recommendations for Tier 1 countries as well as others.

The 2017 TIP Report assesses anti-trafficking in 187 countries and territories, including the United States, and emphasizes the need to hold traffickers accountable and prosecute them. In all, there were 21 downgrades, meaning a country moved down a level, and 27 upgrades compared to the 2016 TIP Report ranking.

Figure 1 illustrates tier replacement issued by the United States in 2017 for efforts of countries worldwide to counter human trafficking. The TIP Report 2017 shows that there are still 23 countries in the world under Tier 3, which make very little or no effort to counter human trafficking. Thus, only 19.2 percent of countries have achieved well in combating human trafficking. Specifically, most of the countries in Tier 1 are developed countries and are also destination countries for human trafficking, while most of the countries in the other tiers are developing countries and also source countries of trafficking. Among the rest, there are countries that ignore, or are blind to, the issue, especially the countries in Tier 3. Combating human trafficking, therefore, is unequal and unfinished battle in different countries, and there is also a gross inequality globally in available resources and efforts put into countering the crime.

So, who are accountable for the US sanction against Tier 3 countries? Along with the embarrassment of being listed on Tier 3, such countries are open to sanction by the US government. If a country is downgraded to Tier 3, it will become subject to restrictions on US assistance. Pursuant to the TVPA, governments of countries on Tier 3 may be subject to certain restrictions on assistance, whereby the US President may determine not to provide US government non-humanitarian, non-trade-related foreign assistance. In addition, the President may determine to withhold funding for government official or employee participation in educational and cultural exchange programs for certain Tier 3 countries.
Further, according to USDOS (2017), consistent with the TVPA, the US President may also determine to instruct the US Executive Director of each multilateral development bank and the International Monetary Fund (IMF) to vote against and use his or her best efforts to deny any loans or other uses of the institutions’ funds to a designated Tier 3 country for most purposes. Alternatively, the US President may waive application of the foregoing restrictions upon a determination that the provision to a Tier 3 country of such assistance would promote the purposes of the TVPA or is otherwise in the national interest of the United States. The TVPA also authorizes the US President to waive funding restrictions if necessary to avoid significant adverse effects on vulnerable populations, including women and children.

**Fig. 1** Tier placements for 187 countries worldwide in 2017

Criticisms Around the TIP Report

The TIP Report – as a mandate of the TVPA 2000 – has received different criticisms around its ranking and tier classification, despite the fact that it has different benefits. The TIP Report is an opportunity for top-tier countries to exchange best practices and build collaboration and for lower-tier countries to be incentivized to improve their trafficking regulations. It is also a crucial tool of diplomatic engagement that has encouraged foreign governments to elevate their own anti-trafficking efforts.

In terms of the shortcomings, it is complicated and difficult to follow the guidelines outlines in the TVPA, if not nearly impossible, with developing countries and poor countries with high levels of corruption. However, surprisingly, in fact, even states with high corruption also rank high in terms of human trafficking
compliance (Pendley 2012). Also, it is feasible that corrupt officials allow and profit from human trafficking by ignoring the crime and being compensated by traffickers. People, therefore, believe that some countries have received unjustly high ranks due to their diplomatic relationships and trade deals with the United States.

In her paper, Pendley (2012) also analyzes that gender inequality and the level of education also contribute to a state’s level of compliance with the TVPA. While the TVPA acknowledged the low position of women’s status in the society is a reason for a burgeoning of the trafficking industry, there is a lack of compliance in fighting trafficking in males. Specifically, economic interests drive the compliance. She even criticizes that the United States picks and chooses which countries to sanction, ignoring those that are strategically important to the United States (Pendley 2012, p. 20). According to the TVPA, as mentioned earlier, the worst ranked countries are subject to non-humanitarian, nontrade-related foreign assistance sanctions from the United States. However, all unilateral economic sanctions by the United States are subject to presidential waiver “based on a finding that certain circumstances exist, such as improved human rights conditions, ‘extraordinary circumstances’, or simply finding that waiver is in the US national security interests” (Hendrix 2010, p. 196).

The last reason to waive sanctions leave the United States some spaces and some liberties to choose which countries will suffer from sanctions and which will not. Other scholars call the TIP Report as political motivations that shape the placement of countries into different tiers, and indicators become social pressure in international relations (Kelley and Simmons 2015). Scholars have questioned the TIP Report’s credibility as a true measure of anti-trafficking efforts, suggesting at times that political factors distort its country assessments. Even, it is suspected that the TIP Report can be a form of US interference in their domestic affairs (Mattar 2003; Rosen 2017).

The US narratives and replacement of countries on different tiers can be seen as “ranking and shaming” approach (Mattar 2003). It is a symbolic exercise in public shaming. Along with the embarrassment of being listed on Tier 3 as an egregious violator, such countries are open to sanctions by the US government. A low ranking not only hurts a country’s reputation, it also may result in sanctions that limit access to aid from the United States, the IMF, and the World Bank. Some even call it “soft power” – the ability of the United States to influence behavior of others not by using its superior military or economic power but by setting standards, spreading information, and otherwise nudging countries to adopt its values, determinations, and policies (Mattar 2003; Kelley and Simmons 2015). It shows the power of the ones who rank others, and those who have power must be held accountable.

The TIP Report has been criticized for poor data performance and lack of efforts to improve the situation. Only 66,500 victims were identified and helped globally last year according to the law enforcement data published in the 2017 TIP Report (USDOS 2017). The Global Slavery Index of 2016 shows that this figure represents less than 0.2% of the estimated 45.8 million slaves worldwide (Walk Free Foundation 2016). The TIP Report lacks an in-depth analysis of the root causes of slavery (Schartz 2017). Inconsistency in the US human trafficking figures has been criticized in the existing literature. Snajdr (2013) acknowledges that although TIP reports have
been considered as a master source of data, inconsistency can be found in the master narratives. He provides evidence for this claim. For instance, in the 2002 TIP Report, the estimate was 4 million victims globally; in the 2003 TIP Report, the estimate was incredibly lower – between 700,000 and 900,000 victims. The 2004 TIP Report showed that between 600,000 and 800,000 people were trafficked annually; in the same report, the estimate for the United States also fell from 50,000 in 2002 to 17,000 in 2004 (Snajdr 2013). Since then, few definitive annual numbers for human trafficking are given in the TIP reports. Again, in 2013 the newer figure provided in the TIP reports continues to confuse and alarm people with an estimated number of 27 million people being trafficked (USDOS 2013). In the 2014 TIP Report, John F. Kerry – the Secretary of State – reaffirmed that in 2013, there had been 44,000 survivors identified and more than 20 million others had been unidentified (USDOS 2014).

Also, the lack of research, both quantitative and qualitative, makes the report not extensive enough to eliminate modern slavery. It is clear that without a true understanding of the nature of modern slavery, the problem will be impossible to successfully fight.

Weiss (2012) argues that the USDOS must take major changes to the TIP Report’s methodology of ranking by modifying its standards and tailoring its analysis to each country’s specific situation. Further, the TIP Report’s analysis must be clear to all readers and supported by evidences and isolated from the political and economic concerns of the United States. On the other hand, the TIP Report must be a valuable tool that accurately reflects international efforts to combat human trafficking. The United States, therefore, needs to increase transparency in the TIP Report ranking process. Equal judgment will enhance the countries’ efforts and collaboration in tackling human trafficking crime and ensure that countries are making current efforts to eliminate the crime, not only promise to do so in the future. Without collaboration from the international community, many people will continue to be exploited across the globe. Further, a tier ranking should focus on protecting vulnerable lives – lives destroyed or saved by the on-the-ground impact of a government’s inaction or action (Smith 2016).

The above analysis shows that, there is a lack of comprehensive analysis to assess the countries’ efforts to combat human trafficking. The following multilayer framework may aid in the evaluation of national anti-trafficking policies and programs which act as a solid backdrop for the assessment of anti-trafficking efforts of government worldwide.

**Descriptions of Multilayer Framework to Evaluate Anti-trafficking Policies and Programs**

Anti-trafficking is clearly a political issue which reveals the state’s ideologies and commitments. Additionally, it is a gender-sensitive issue, as it impacts strongly on women and girls and less so on men and boys. To successfully evaluate anti-trafficking policies or programs, there is a need to have a comprehensive framework
that covers not only technical but also political and gender dimensions. My methodological contribution, in this chapter, is to develop such a multilayer framework, which I hope will contribute to policy evaluation practices.

My approach to policy evaluation in this chapter is drawn from two main methodological sources: the gender-responsive and rights-based approach for policy evaluation developed by the UNIFEM (Corner 2008) and Fischer’s (1995) policy evaluation framework. The UNIFEM approach asserts that gender equality and gender responsiveness are crucially important to help women achieve their human rights. In general, women have different roles from men; therefore they have different needs, priorities, and specific rights. To evaluate a gender policy, gender-sensitive analysis of the policy’s goals and achievements is appropriate and necessary, because the lack of a gender-responsive and rights-based approach contributes to slow progress and poor outcomes for women (Corner 2008). The integration of the UNIFEM gender-responsive and rights-based approach and Fischer’s two-order evaluation method forms a multidimensional evaluation framework which aids the analysis of anti-trafficking achievements and failures in terms of the fulfillment of its objectives, the gender implications of the policies, and the construction of human trafficking and trafficking victims’ identities. In short, it is an integrated framework that addresses global transitions in the country’s socioeconomic context, reveals the patriarchal normative values that undermine the state’s responses to human trafficking, and examines policy integration and goal realization.

This multilayer framework of policy evaluation has both technical and gender dimensions. The former is a fundamental level of analysis concerning the policy program and its participants. This micro-level of policy evaluation aims to tease out the empirical impacts of anti-trafficking policies and programs on women’s empowerment which, in turn, helps improve women’s status and reduce their vulnerability to human trafficking. The latter is a more abstract level of evaluation which turns to ideological and value concerns and investigates the relationship of policy goals to gender equality and women’s empowerment. This macro-level of policy evaluation aims at uncovering the ideological commitments of the state in the policies and programs that may create particular social values and contribute to the development of women’s progress in particular ways. In both dimensions, critical analysis is used to tease out the empirical and ideological contributions of the program and to reveal the underlying values and ideologies that govern the decision-making process and form the state’s responses to the human trafficking issue.

Accordingly, the evaluation of anti-trafficking policies and programs is undertaken at several levels: to ascertain whether the policy empirically fulfilled its stated objectives and to identify underlying non-gendered and gendered values that hampered the success of the policy program and their implications for women. The first layer examines aspects of a “technical” evaluation; these refer to process and outcome elements of the policy program. It serves the role of an indirect gender analysis to look at both men and women and their involvement in different policy processes. Technical evaluation section consists of an evaluation of anti-trafficking policy based on the 3-P anti-trafficking framework of prevention, protection, and prosecution and an additional important P (partnerships) as part of sophisticated
response to human trafficking. The gender evaluation section offers gender analysis of the policy program, including the values and identity construction underpinning the policy framework (Fig. 2).

**Section 1: Technical Evaluation of Anti-Trafficking Policies and Programs**

**Evaluation of the First P: Prevention of Trafficking Under the Policy**

It is said that “prevention is better than cure.” This notion is even more appropriate and proactive in the case of human trafficking because protection (including rehabilitation) and prosecution are interventions that only arise after trafficking cases have occurred (Nair and Sen 2005). Good prevention of trafficking helps reduce situations of vulnerability that challenge people’s safety and development and, in turn, contributes to saving the time and resources spent on receiving and
reintegrating trafficking survivors into the community, as well as on investigating and convicting traffickers. Additionally, effective protection and prosecution contributes to good prevention. The efforts to strengthen law enforcement and protection practices are important to ensure a stronger prevention strategy and to surmount challenges in the fight against trafficking. Thus, prevention must be placed at the center of intervention efforts to ensure that it becomes the focus and priority of any antihuman trafficking strategy. Also, as Shinkle (2007) argues, prevention is the most long-term intervention for reducing or eliminating trafficking because it helps avert the exploitation of vulnerable people: women, men, boys, and girls. Prevention strategies vary in different countries. In some, prevention includes economic empowerment, legal intervention, advocacy and awareness raising, and efforts to tackle demand for the labor or services of trafficked persons (Commonwealth Secretariat 2002). In other countries, prevention covers supply-based measures, demand-based measures, and solutions to reduce the financial gains of perpetrators (Shinkle 2007) or education, capacity building, and empowerment of the most vulnerable groups. In some countries, prevention is a main focus of the antihuman trafficking strategy, with particular attention given to awareness raising (Duong 2014); in other countries protection is the focus following the victim-centered approach (Andreatta 2015). In this section of evaluation, main characteristics of prevention activities of the policy program must be analyzed, along with the analysis of gaps and challenges of the policy prevention activities.

**Evaluation of the Second P: Protection of Trafficking Victims**

Protection of victims of trafficking refers to the efforts that seek to provide appropriate assistance and services to trafficking survivors to maximize their opportunity for a comprehensive recovery (USDOS 2012). Worldwide, different frameworks to protect victims of trafficking are adopted. Among those, the two most popular are the human rights approach and the criminal justice approach. The human rights framework aims to meet the specific needs of the victims of human rights violations (Wuiling 2006), while the criminal justice framework focuses on providing victims with a safe environment and ensuring their rights are upheld during criminal proceedings (Jorge-Birol 2008). These frameworks are used either separately or in a combination of human rights and criminal justice. Raffaelli (2009) acknowledges that European countries apply the criminal justice solution to protect trafficked victims; however, at the same time, victims are supplied with secured accommodation, psychological and material support, and assistance for their children. In some cases, the protection of trafficked victims targets trafficking survivors using the human rights approach to help them stabilize their lives, seek jobs, and reintegrate into the community (Duong 2014).

In the countries, where victim-centered approach is applied, protection of trafficking victims can be the main pillar of anti-trafficking framework. The Recommended Principles on Human Rights and Human Trafficking (UNHCHR 2002) acknowledges that violations of human rights are both a cause and a
The human rights of trafficked victims must be placed at the center of all antihuman trafficking strategies to protect, assist, and provide support to victims to overcome the difficulties that make them vulnerable. The UN Trafficking Protocol of 2000, which offers overall guidance for nation-states worldwide to set up principles and laws to combat human trafficking, emphasizes that antihuman trafficking activities must be targeted at protecting and assisting the victims of trafficking with full respect for their human rights, and all antihuman trafficking activities must pay particular attention to women and children. More concretely, the TVPA of 2000 calls for special support to trafficking victims because they are vulnerable and frequently have limited access to legal knowledge and information; they thus often find it difficult to report the crime or assist the authorities in the investigation and prosecution of perpetrators. The Act confirms that nation-states worldwide have to focus on protecting victims of trafficking, rather than punishing them or adversely affecting their lives and progress.

In this section of “protection,” efforts evaluation, mechanism to support victims, support provided by government and civil society, as well as gaps and challenges in the protection area are the focus.

**Evaluation of the Third P: Prosecution of Traffickers**

Prosecution is necessary to help eliminate human trafficking. Effective prosecution is of great importance because it ensures there are penalties for traffickers and helps attain justice for victims of trafficking (Gallagher and Karlebach 2011). Overbaugh (2009) emphasizes that criminal prosecution is critical in order to combat human trafficking, because it deters further trafficking, incapacitates traffickers, and protects trafficking victims by removing them from immediate danger and averting further possible exploitation or harm. Prosecution has become more essential as it is one of the more measurable and integral criteria of anti-trafficking efforts but is somewhat overemphasized by the United States in its annual TIP reports (Wang 2005), where it is being used to judge and sanction countries which have not complied with the minimum requirements of the TVPA. More specifically, breaking trafficking chains and prosecuting traffickers also help discover and reduce the other types of organized crime (such as drugs and weapons trading or smuggling of migrants), while those crimes and human 149 trafficking have a close link to each other. According to Picarelli (2009), major international organized crime groups are perpetrators of trafficking in human beings as well.

Despite the great importance of criminal prosecution of traffickers, the rate of prosecution for trafficking offenses globally is still very low. Of course, the reported number of prosecuted cases does not reflect the huge number of people living under different types of exploitation worldwide, although exploitation is not always the same thing as human trafficking. The prosecution of traffickers is a difficult task, especially for developing countries, because it requires different resources and skills to cope with organized and shadowy human trafficking chains. While much research and effort has been spent on prevention of trafficking and protection of trafficked
victims, there has been limited research on the practice and experience of trafficking prosecution and on the relationship between prosecution and the other two Ps. According to David (2008), there appear to have been few studies that have sought to systematically examine issues such as who is being prosecuted, how these cases are being prosecuted, and so on. David (2008) argues that this lack of research on prosecution of trafficking crime can be explained by the complexity of the crime, and perhaps difficulties accessing relevant data, especially primary data such as trial observations, interviews with prosecutors and defense lawyers, and trafficked persons who give evidence in court.

Although in most countries worldwide prosecution is the third P of a basic anti-trafficking paradigm, actions toward prosecution of traffickers are different in different countries. In India, prosecution focuses on bringing traffickers to court, confiscating illegal assets of traffickers resulting from trafficking crime, and forcing traffickers to compensate for the damages done to victims (Lazarsfeld and Rosenberg 2004). In New Zealand, the Plan of Action to Prevent People Trafficking issued by the Government of New Zealand defines prosecution to be the act covering investigation of suspected trafficking activities, support for victims of trafficking during the criminal justice process, and compensation for victims of trafficking. The penalty for this crime is up to 20 years in prison and/or a NZD500,000 fine (Government of New Zealand 2009). Prosecution of traffickers in Vietnam focuses more on investigation of trafficking cases, arresting and punishing traffickers, while compensation schemes for victims and support for them during and after investigation and prosecution have not been sufficiently paid attention to Duong (2014).

The evaluation of the third P of the trafficking paradigm identifies whether the policy program is a crime-control approach, or trafficker-centered or otherwise, with focus in the analysis and evaluation of prosecution activities and points out challenges and gaps that the government faces in prosecution activities.

**Evaluation of the Fourth P: Prosecution of Traffickers**

This chapter highlights the importance of partnership in combating human trafficking, although partnership has not been officially added to the anti-trafficking paradigm. Up to 2017, the US Department of State still maintains the assessment of the countries’ efforts to push back human trafficking based on the three main parameters of prevention, protection, and prosecution. However, the US Department of State continuously emphasizes partnership as a powerful tool that accelerates the success of any anti-trafficking interventions and emphasizes that the interlocking 3-P paradigm requires highly coordinated counter-trafficking responses and collaboration within and between local, central, and international government and communities (USDOS 2011, 2012, 2017).

Partnerships are important for combating trafficking because they accumulate strengths from different actors to address the crime and to provide victims with the freedom to move out of the slavery trap (USDOS 2010). On the one hand, they show coordination and cooperation between different actors; on the other hand, they
involve the expansion of the broad alliance of stakeholders to provide technical know-how and expertise to government and nongovernment organizations to address human trafficking challenges. Considered from the perspective of strong partnerships, countering human trafficking is everybody’s business and every country’s task; therefore, the stronger the network against trafficking, the weaker the criminal network is. Further, anti-trafficking can never be successful as a single program; it requires the coordination of different people, actors, and countries.

It is evident that partnership promotes gender equality to counter trafficking. While gender inequality is a cause and also a consequence of human trafficking (Kelley and Simmons 2015; Duong 2014), partnerships can be an effective means of promoting gender equality and women’s empowerment by bringing greater attention to the need of ensuring better linkages between gender equality and the promotion of sustainable development. Further, actions at the grassroots level can be better facilitated through a network of partnerships working toward common objectives and outcomes. Through involvement in policy networks, men, women, state, and non-state actors learn from each other’s experiences and benefit from a wide pool of knowledge, skills, and contacts.

There is no doubt that dealing with the complexity of human trafficking crime always requires a strong partnership with a substantive ethical content, in which there is a high level of trust among partners, a respect for partners, and the elimination of any existing boundaries to ensure a common voice and common goals to work toward. In this partnership, discussion of rights and obligations must be a central concern. Similarly, accountability and confidentiality need to be taken into account in partnerships to ensure that all partners can contribute to the achievement of common goals but still preserve their own professional identities.

Recently, countries worldwide have tended to highlight and promote partnerships in countering human trafficking crime. Assuming to be the leader of international anti-trafficking scourge, the United States asserts that the fight against human trafficking is one of the great human rights causes of humankind, and the United States continues to lead the fight in partnership with people and countries worldwide. Building partnership is a necessary component of any successful anti-trafficking strategy (White House 2013). As part of the government’s longstanding commitment to protect the vulnerable, Canada has committed to strengthen the relationship with different stakeholders to facilitate the ongoing development of effective policies and tool and to ensure a comprehensive and coordinated approach (Government of Canada 2012).

It is meaningful to evaluate partnership efforts of the countries. In the one hand, the evaluation of partnership highlights the efforts of stakeholders involve in partnership activities. In the other hand, it points out the gaps and limitations in partnership that need to be improved. Knowledge and information of partnership, especially, in anti-trafficking area, are limited. Carnwell and Carson (2009) define four particular types of partnership: project, problem-oriented, ideological, and ethical. Project partnerships are time-limited for the duration of a particular program, while problem-oriented partnerships are formed to respond to a publicly identified problem and remain as long as the problem exists. Ideological partnerships affirm
certain viewpoints that are considered to be the correct way of seeing things. Ethical partnerships have a substantive ethical content in their mission and practice. Based on this suggestion, one may have some clues in defining evaluation criteria by identifying whether their government anti-trafficking partnership is ethical or problem-oriented.

Duong (2014) evaluates partnership efforts of the Vietnamese government to counter human trafficking with a focus on three dimensions: (1) multi-pillar partnership, vertical partnership between central and local government and horizontal relationship between the main state actors in charge of national anti-trafficking policy; (2) public-private partnership, partnership between different levels of government and NGOs and IGOs which operate in the anti-trafficking area; and (3) international partnership, partnership between the country with governments in the region and international.

Partnership evaluation is not simple because it involves different stakeholders, both nationally and internationally. It is also because partnerships are conducted based on compromise among partners with different sociopolitical aims and, therefore, are quite complex (Funnell, 2006). Further, it is a challenge to evaluate partnership and its impacts on particular groups within the population because partnerships are dynamic, multilevel, embedded in specific cultural and political movements, and responsive to those contexts (Butterfoss 2009). Partnership evaluation of anti-trafficking efforts is more difficult because human trafficking is a transnational organized crime that is hidden and difficult to be uncovered. Apart from the evaluation of different partnership dimensions, gaps and challenges in partnership should be identified.

Section 2: The Multi-pillar Gender-Sensitive Evaluation of Anti-trafficking Policies and Programs

Existing literature has emphasized the importance of gender evaluation of policy program. As Corner (2008, p. 7) noted, for policies and programs to be well designed and implemented, monitoring and evaluation must be gender-responsive and rights-based (Corner 2008, p. 7). For Fischer (1995), policy evaluation needs to target both micro- and macro-levels – the fundamental and the more abstract areas of policy impacts. This section of the policy framework focuses on the gender evaluation of policy processes (especially in terms of women’s participation and state’s accountability) and of policy outcomes (particularly, women’s empowerment) to both explore the state’s gender ideologies as manifested in the policy and to examine policy contribution to women’s empowerment. This section of framework also helps identify policy contribution to achieving greater gender equality and to the reduction of women’s vulnerability, especially that of trafficking returnees.

Although gender analysis has recently been widely incorporated in academic discussions of the human trafficking issue by different scholars (Heyzer 2006; Samarasinghe 2008), there has been little research that has integrated gender considerations into the evaluation of anti-trafficking policies worldwide. This section of
the gender evaluation framework is informed by the Gender Responsive and Rights-Based Approach (GRRA) initiated by D’Cunha (2002) and the UN network (UNIFEM 2002; Corner 2008) which highlights the importance of gender and human rights in addressing the trafficking issue. The GRRA emphasizes that anti-trafficking policy must focus on realizing and addressing the issues that hamper equal development opportunities for women and men, girls and boys. Gender and rights are two main perspectives used in the GRRA. This section of the framework, however, uses a gender-sensitive approach that encompasses both gender equality and human rights to undertake a gender analysis of the policy in terms of its processes and outcomes. This gender-sensitive approach, therefore, helps evaluate both the state’s and women’s efforts (women in the community and trafficked women) in addressing women’s vulnerabilities and in advancing gender equality.

Theoretically, policy should address gender inequality, but often does not as it too reflects dominant gender norms and values. Internationally, gender has not been an issue in international law and policy, and women are often being viewed as naturally inferior to men (Charlesworth 1989). Similarly, in international policy agendas, women are framed as the forgotten and the invisible (Waring 1989). This reality needs to be addressed, so that policy evaluation can become well-grounded in a gender-sensitive framework. Gender sensitivity, according to the World Bank (2005), helps reveal the extent to which a development program has addressed the different gendered needs of men and women or made an impact on their lives and the lives of others. Additionally, gender analysis not only entails different gender tools and approaches but also a structural analysis that utilizes one or more gender analysis frameworks to tease out different gender dimensions of the policy continuum. Further, to make development work for women, policy needs to be responsive to the discursive context in which gender issues are perceived and interpreted differently by policy stakeholders. In the case of anti-trafficking policy, the need for gender-sensitive evaluation is incontrovertible because human trafficking, clearly, reflects patriarchy and gender inequalities.

In this section of the gender evaluation framework, I look at gender within the institutional framework by examining the participation of women in the development of policy, the state accountability in responding to the needs of women and trafficked victims, and in terms of outcomes in empowering women. Such a Gender-Sensitive Evaluation Framework (GSEF) covers three evaluative dimensions: participation, accountability, and empowerment. The three chosen themes are distinct but interrelated dimensions of social relationships that are significant to the analysis of gender and social inequality. To better evaluate anti-trafficking, specific evaluation contents should be identified.

Participation and representation of women in anti-trafficking policy processes are meaningful in increasing women’s capability to protect themselves from human trafficking crime. The term “women’s participation” has been widely used in mainstream social science but with slightly different meanings. On the one hand, women’s participation is documented as women’s political representation in the political mainstream and in formal structures of governance (Rai 2002; Heyzer 2006) and as women’s inclusion in policy-making processes (Karl 1995; Corner 2008).
Elsewhere, it is discussed in terms of women’s involvement in collective action with other social actors. Women’s participation in any form brings about increased decision-making power for women and provides women with economic and empowerment benefits (World Economic Forum 2005; Oxfam 2013). The Beijing Platform of Action of 1995 highlighted the need to provide women with positions of power and raise women’s voices in decision-making processes. To facilitate this, the platform of action recommended that nation-states take measures to ensure women’s equal access and women’s full participation and inclusion in power structures and decision-making processes and to improve women’s capacity in order to increase women’s leadership to work for women and to ensure gender equality. Participation, therefore, not only promotes women’s representation in policy processes but also helps ensure that women’s interests are represented and translated into actual implementation. Women’s participation is important, because as Goetz and Baden (1997) indicate, greater participation by women helps change the characters of the institutions and better promote women’s empowerment in development. Women’s participation in policy processes can be further evaluated in relation to two main areas: women’s involvement in the various stages of the decision-making processes and collective participation of women and other social actors (men or NGOs) in anti-trafficking activities.

Gender accountability is the second pillar. Women, in the words of the UNIFEM (2008, p. 18), “must be the drivers of the accountability process” and accountability must work for women’s progress and gender equality. The accountability of the state derives from a rights-based approach to engendering policy and to providing institutional rights for women in development (D’Cunha 2002; Goetz and Baden 1997). In the words of Kardam (1997), gender accountability is the responsiveness to women’s interests and the incorporation of gender-sensitive policies, programs, and projects in state institutions (p. 44). Gender accountability, therefore, needs to ensure that women’s human rights are well represented and state institutions are gender sensitive when addressing development issues. Following this understanding of gender accountability, the state, as power holder or duty bearer, needs to deliver appropriate and knowledgeable institutional services in order to fulfill its obligation to its people, who are defined as rights-holders or service recipients, and people, especially women, need to be provided with favorable conditions to claim their rights (Corner 2008). In other words, strong accountability ensures women as rights-holders to make claims from the state as duty bearer.

Along with accountability is transparency. Accountability and transparency are generally regarded as core and interactive elements of good governance, and both link to sustainable development (UNIFEM 2008). The United Nations also asserts that good governance and human rights are mutually reinforcing (United Nations 2007). Without good governance, human rights cannot be respected and sustainably protected. The proposed evaluation framework takes into account a gender-responsive accountability perspective to analyze the state’s accountability in terms of women’s rights and gender equality. To trace the state’s accountability and its impact on women, this chapter turns around two main areas of analysis. The first is transparency in anti-trafficking politics – meaning, the degree to which anti-trafficking-related data and
information are widely available for public disclosure. The second is the state’s ability to create favorable conditions for women to achieve gender-based rights and to demand changes.

Women’s empowerment is the third pillar of gender-sensitive evaluation section. Development policy always has its own target group, and women’s empowerment is essential for any development effort (Kabeer 1994; Bayeh 2016). The Beijing Declaration and Platform of Action states that women’s empowerment is “fundamental for the achievement of equality, development and peace” (UN Women 1995, para. 13). While human trafficking is an issue of human rights which links to gender inequality and women’s vulnerabilities, empowerment is an important tool to help women craft their own brighter futures. Empowerment has been defined as the goal of development and intervention. Drawing on the work of Batliwala (1994) and Kabeer (1994) on empowerment, empowerment is both a process and an outcome. As a process, women’s empowerment challenges patriarchal relations, which lead to changes in men’s control over women. As an outcome, empowerment is the result of that development process. This evaluation traces empowerment as a policy outcome rather than a policy process. Accordingly, empowerment can be assessed by an improvement in women’s ability to act for change and to secure sustainable livelihoods as a way to prevent them from being trafficked.

Empowerment of women, as a policy outcome, therefore, in turn, enhances women’s capacity and overall well-being. Luttrell et al. (2009) acknowledge the emphasis on women’s empowerment as an outcome that always leads to a focus on economic empowerment and increasing women’s access to economic resources. Among different types of empowerment, economic empowerment can be one of the main criteria because it may help trafficking returnees overcome their difficulties and reintegrate into the community.

Section 3: Gender Construction Analysis of Policies and Programs

Tracing the gender construction of policy is an art of exploration, because knowledge in the policy world is an outcome of negotiation between those with political power, such as policy makers, and political elites and people who live in the everyday world (Ridgeway 2011). Policy analysts must know what people believe reality to be and uncover the underlying competing meanings of policy debates. Recognizing that policy is a social construct rather than a self-defining phenomenon, Fischer (2009) considers that policy analysis is a deliberative craft that “seeks to bring a wider range of contextually sensitive empirical and normative criteria to bear on the argument under investigation” (p. 125). Similarly, other scholars Ball (1993) and Loomba (1998) emphasize the analysis of policy as texts (focusing on the discursive dimension of policy, particularly in relation to policy texts) to discover how policy problems are framed within policy proposals and how those frames affect possibilities for policy actions. Believing that people construct reality, Bacchi (1999) highlights the constructivist perspective that helps uncover underlying norms and values in policy deliberation, rather than merely identifying the facts of policy
arguments. For Bacchi (1999), public policies are competing framings of problems, and there are social visions that lie behind those competing representations; therefore, an analysis of policy problems’ constructions is as important as examining whether the policy objectives are fulfilled.

The questions of how women are constructed in policy and how women perceive themselves have become a particular concern for the contemporary policy agenda. The terms associated with the constructivist perspective (e.g., framing, construction, negotiation, representation, and deliberation) are used regularly by feminists and policy analysts such as Fraser (1989), Bacchi (1999), and Fischer (1995, 2009). These theorists show that social constructions around gender play a significant role in “technical” responses to policy: firstly, issues that are women focused – like abortion, contraception, and sexuality – are heavily influenced by the values of the cultural milieu; secondly, women as subjects are not neutral citizens. They are constructed differently to men, either in terms of the different roles they play in society or their abilities and capacities. There is often not just one construction about gender, policy, and women but rather multiple, conflicting discourses. The analysis of gender construction of the policy employs the analysis of policy as texts and also examines the specific historical, institutional, and cultural contexts which produce particular discourses around human trafficking in specific countries. Thus, as Bosso (1994, p. 189) noted, policy makers who conceptualize and implement policy as agents are not completely free to construct or reconstruct discourses but rather are informed by their social and cultural contexts.

Human trafficking is a highly contested issue in public policy. The use of a gender constructionist perspective in analyzing anti-trafficking policy is suitable given that the analysis of policy problems’ construction helps reveal how policy problems are socially constituted, framed, and interpreted. The analysis of the gender construction of anti-trafficking policy offered in this chapter will center on three main discourses: a discourse of women’s vulnerability, a discourse of morality, and a discourse of stigma against women. The analysis helps identify the implications of those discourses for policy on human trafficking and, in turn, their implications for women. Deconstructing the policy highlights that there are multiple ways in which vulnerability is understood, leading to tensions and disconnections in conceptualizing and implementing the policy in practice. The second discourse relates to how policy makers construct morality, and this discourse is found in the overlap between trafficking and prostitution. The third discourse turns around the issue of stigma and discrimination against women and trafficked victims and argues that by eliminating stigma, the cycle of women’s vulnerability can be broken.

Conclusion

Evaluation of anti-trafficking policy is an essential tool and function of every government, not only because no country is immune to human trafficking, as noted earlier, but also because it points out strengths and weaknesses of policies and programs and organizations to improve their effectiveness. Evaluation of
anti-trafficking policy provides a useful and important tool to address the need for credible information, well-grounded decision-making, and governmental transparency. Human trafficking is a gender-based violence against women and they are more vulnerable to trafficking. Gender evaluation of anti-trafficking policy based on gender-responsive and rights-based approach and discourse analysis of the policy help uncover the underlying meanings and practices around policy implementation and other stages of policy cycles.

This chapter offers a multilayer gender evaluation framework to evaluate anti-trafficking policy and government efforts to counter human trafficking, given that the assessment of the US Department of State is still limited and unfair, as discussed above. The proposed framework consists of technical section covering the evaluation of 4-P (prevention, protection, prosecution, and partnership), while gender section provides gender-sensitive indicators to trace policy gender concerns and its gender implications for women. Further, it helps to tease out the underlying social and cultural factors informing the policy debates which inherently impact on the state’s efforts to address the gender concerns of anti-trafficking policy. Depending on evaluation purpose and the scope of evaluation, different criteria and discourses can be set and expanded. The different criteria and discourse are considered useful in different context. Further, the proposed framework can be applied in evaluating other sociopolitical policy, not only human trafficking. However, technical evaluation section needs to be modified with relevant criteria.

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Establishing the Constituent Elements of Trafficking in Persons: Conceptualizing “Transnationality” and “Involvement by an Organized Criminal Group”

Nicole Siller and Kathryn E. van Doore

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Abstract

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocols) established an internationally agreed upon definition of the crime of “trafficking in persons” under its Article 3. By virtue of this definition, the crime of trafficking in persons is substantiated when an “act” (recruitment, transportation, transfer, harboring, or receipt of persons) is committed by way of a “means” (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 a purpose of exploitation. This protocol is subject to its parent instrument, the United Nations Convention against Transnational Organized Crime (CTNOC). The

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CTNOC notes that it extends to offenses which are transnational in nature and involve an organized criminal group. It, therefore, appears that the CTNOC imposes additional elements forming part of the crime of trafficking: that the offense be transnational in nature and involve an organized criminal group. Whether these are required elements is a discrepancy found throughout trafficking scholarship and has been identified as a point of unresolved contention. The lack of clarity regarding the definitional contours of this offense means that there is potential for issues in the investigation and prosecution of trafficking. In an effort to bring clarity to the constituent elements of trafficking, this contribution uses a textual analysis to show that, despite some language suggesting that trafficking is strictly a transnational organized crime, the codified definition is not limited to offenses which are transnational and nor does it require the involvement of an organized criminal group.

Keywords
Palermo Protocol · Organized crime · Trafficking in persons · Transnational · Definition of trafficking

Introduction

The widespread international adoption of the United Nations Convention against Transnational Organized Crime (CTNOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) established the international legal framework with which to address the crime of “trafficking in persons.” As codified in its Article 3, the Palermo Protocol defines “trafficking in persons” as:

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.

Article 3 enumerates three elements of this offense: the perpetration of (1) an “act” (recruitment, etc.) by the use of (2) a “means” (threat or use of force, etc.), for (3) the “purpose” of exploitation. The codification of the “act” and “means” elements are rather finite, while the third element is open to interpretation since the term “exploitation” is left undefined. Instead, Article 3 identifies several types of exploitation which “at a minimum” satisfy this element.

The Palermo Protocol is bound to the CTNOC as explicitly codified under its Article 1 which states that it “shall be interpreted together with” the CTNOC and that all of the CTNOC’s “provisions...shall apply, mutatis mutandis” to the Palermo Protocol “unless otherwise provided.” The CTNOC explicitly applies to offenses that are “transnational in nature” and “involve an organized criminal
group, conditions also articulated within the Palermo Protocol’s scope of application as indicated in its Article 4.

Considering the interplay between these instruments, the interpretation of the definitional construct of trafficking varies among scholars. For example, there are those who maintain that trafficking under international law is only trafficking per the Palermo Protocol when the conduct expressed in Article 3 is perpetrated by an “organized criminal group” and is “transnational in nature,” as suggested by the language of the CTNOC (Allain 2013: 353; Brand 2010: 24–26; Elliot 2015: 91; Hathaway 2008: 9). Alternatively, others conclude that “trafficking in persons” is exclusively comprised of the act, means, and purpose elements contained in Article 3 of the Palermo Protocol (Gallagher 2009: 812–813; Mattar 2013: 137; Roth 2012: 97). Whether the crime requires transnationality and involvement by an organized criminal group is thus a subject of confusion and conflict regarding the confines of the crime of trafficking and its application in practice.

This definitional issue is a legitimate cause for concern since most State Parties have implemented the Palermo Protocol’s construct (or language inspired by it) in their respective domestic laws criminalizing human trafficking (Gallagher 2010: 79). The extent of this legal uncertainty has already resulted in the publication of a UNODC Issue Paper on the links between organized criminal activity and the crimes of human trafficking and migrant smuggling. Additionally, the United Nations Working Group on Trafficking in Persons made a formal request for clarity on the role of “transnationality” concerning the trafficking offense. It also been raised in academic research discussing the interpretation of the Palermo Protocol (see Jansson 2014: 71; McClean 2007: 15). However, the definition, context, and/or scope of this crime beyond the confines of the Palermo Protocol’s Article 3 has not yet been exposed to deeper academic scrutiny. This chapter aims to provide that scrutiny and come to a clear conclusion regarding what the constituent elements of the offense of trafficking are as codified in the Palermo Protocol.

Firstly, this chapter will briefly discuss why clarification of the constituent elements of trafficking is important. Secondly, it will discuss the codification of transnational crimes under international law through the introduction of the CTNOCs and its Palermo Protocol. Thirdly, the definitional contours of the concepts of “transnationality” and “involvement of an organized criminal group” within these instruments are examined. Finally, the relevant articles within the CTNOC and Palermo Protocol contributing to the interpretational tension of elements of the crime of trafficking are analyzed. Based on a strict textual reading of the instrument, its preparatory works, the Commentary, and interpretation by countless UNODC publications, it is argued that transnationality and commission involving an organized criminal group are not constituent elements of the offense.

The Purpose of Clarification

The CTNOC and Palermo Protocol and their preparatory works produce conflicting interpretations because they appear to simultaneously require and reject transnationality and the involvement of organized crime groups as elements of the
construct of trafficking. This chapter clarifies the crime of trafficking in this regard by engaging in a textual analysis of these international instruments (see Hutchinson and Duncan 2012: 83). A textual analysis reveals how the interpretational conflict has arisen and offers a systematic approach to resolve the question. Orakhelashvili (2008: 286) explains that this process involves examining the instruments themselves, as well as their preparatory works and associated commentary, in order to “deduce the meaning exactly of what has been consented to and agreed.” This approach accords with Article 31 of the Vienna Convention on the Law of Treaties, which states “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.” This methodology reveals how “transnationality” and “organized crime” may be considered as elements of trafficking under international law.

The goal of this exercise is to aid in the harmonization of the legal interpretation of trafficking. This contribution aims to bring clarity to an understanding of the international definition of trafficking for governments who have implemented it in their domestic law and perhaps even for those using it in internationalized criminal courts and tribunals, should prosecutions of traffickers at this level eventuate (see Siller 2016).

The Codification of Transnational (Organized) Crimes Under International Law

Transnational criminal law is generally understood as a classification of offenses, codified via multilateral “crime suppression conventions,” but enforced and prosecuted within domestic systems under states’ respective domestic criminal laws (Boister 2012: 11–12). “Transnational crimes” are understood to “identify certain criminal phenomena transcending international borders, transgressing the laws of several states or having an impact on another country” (Boister 2012: 11–12). Specifically, Albanese (2012:2) categorizes transnational crimes according to at least one of three “broad objectives” including the following:

1. Provision of illicit goods (i.e., drug trafficking, stolen property, counterfeiting)
2. Provision of illicit services (i.e., human trafficking, cybercrime and fraud, commercial vices)
3. Infiltration of business or government (i.e., extortion and racketeering, money laundering, corruption)

International criminal law is said (Cassese 2013) to be distinguishable from transnational criminal law because the former is concerned primarily with addressing the so-called core crimes (genocide, war crimes, and crimes against humanity). While there are, of course, substantive and contextual differences between most international and transnational crimes, Boister (2012: 12) contends that the primary distinguishing feature is the manner in which these crimes can be addressed in practice (e.g., indirect for transnational and direct for international) (In the context of trafficking, however, this conclusion is not so clear, since “trafficking in persons”
has been inserted into the definition of “enslavement” as a crime against humanity in the Rome Statute of the International Criminal Court (see Siller 2016: 2).

Putting theory to practice as it concerns the codification of transnational criminal law was enabled by the efforts of the United Nations, which took an active role in facilitating international meetings, sponsoring conferences, and the establishing a commission during the 1990s (see McClean 2007: 2–3). Specifically, General Assembly Resolution 53/111 of 1998 decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in firearms, their parts and components and ammunition, and illegal trafficking and in the transporting of migrants, including by sea.

An ad hoc committee was tasked with drafting the proposed convention and its protocols. Representatives from over 100 nations attended the drafting sessions of this committee (see McClean 2007: 12; Roth 2012: 80). Remarkably, in just 2 years, the CTNOC and its three protocols – the Palermo Protocol; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing and Trafficking in Firearms (The Palermo Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air are closely related to each other, but they draw a distinction between migrants who provide consent to be moved illegally across borders, which constitutes smuggling, and migrants and other persons who are coerced or fraudulently moved for the purpose of their exploitation, which constitutes trafficking.) – were finalized culminating with the signing conference held in Palermo, Italy, in December 2000. Considered as a “parent” instrument to the protocols, the CTNOC entered into force on 29 September 2003.

The CTNOC articulates that its purpose “is to promote cooperation to prevent and combat transnational organized crime more effectively.” This broad goal has been implemented through two main strategies: (1) “eliminate differences among national legal systems” and (2) create guidelines for domestic legislatures in order to foster national action against transnational organized crime (see Schloenhardt 2015). Gallagher (2010: 74) explains that this “Convention seeks to eliminate ‘safe havens’ where organized criminal activities or the concealment of evidence or profits can take place by promoting the adoption of basic minimum measures.”

Codified in its Article 3, offenses within the CTNOC’s “scope of application” include the “participation in an organized criminal group,” money laundering, corruption, obstruction of justice, and “serious crimes.” In addition to the specific definition of each crime, the CTNOC also requires that the commission of those enumerated offenses be “transnational in nature” and involve an “organized criminal group.”

The fundamental notion of conduct considered “transnational in nature” is that the offense involves more than one state. This is seen in Article 3(2) of the CTNOC which defines an offense as “transnational in nature” if:

(a) It is committed in more than one state.
(b) It is committed in one state but a substantial part of its preparation, planning, direction, or control takes place in another state.
(c) It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state.

(d) It is committed in one state but has substantial effects in another state.

It is clear from this Article that cross-border action is not necessary for an offense to be “transnational in nature”; all that is required is that the offense in question includes some form of “tenuous potential extraterritorial impact” (see Boister 2012: 13).

In addition to the transnational component, the CTNOC identifies a set of specific transnational organized crimes, offenses within its purview that involve an organized criminal group. Under Article 2(a), the CTNOC defines “organized criminal group” as:

a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

As Schloenhardt (2015: 414) explains, this definition “combines elements relating to the structure of criminal organizations with elements relating to the objectives of the group.” Boister (2012: 11–12) examination of this definition reveals that it can be understood as comprising of four parts: (1) structured group of three or more persons (acting in concert), (2) existence for some period of time, (3) aiming to commit serious crime, and (4) for a financial or material benefit.

First, the group must comprise three or more persons acting in concert. The concept of a “structured group” has also been defined in the Convention under Article 2(c), as “a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.” As McClean (2007: 38, 41) notes, this characterization “proceeds by excluding factors rather than including them.” In the Interpretative Note (UNODC 2006: 17), the preparatory works explain that:

[the term ‘structured group’ is to be used in a broad sense so as to include both groups with hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members of the group need not be formally defined.

The concept of “acting in concert” was not further elaborated upon within the CTNOC or its preparatory works. In utilizing common definitions of these terms, McClean (2007: 38–41) explains his Commentary on the CTNOC and its protocols (Commentary) that “the phrase in the text means no more than that this must be a group activity, not merely the simultaneous acts of some of its members each acting on his or her own account.”

The second element requires that the group’s existence be for “a period of time.” This element has been characterized in the Commentary as “remarkably imprecise” (see also McClean 2007: 38–41). While Schloenhardt (2015: 414–418) concludes that this means “single, ad hoc operations” are thereby excluded by this element, McClean (2007: 38–41) proffers instead that “[a]cting with a view to committing a single offence may suffice” so long as the structured group element is also satisfied.
McClean (2007: 38–41) describes the third and fourth elements as ones which “speak of motivation.” Specifically, the third element requires that the aim of the group be “to commit one or more serious crimes” or those offenses specifically articulated within the instrument. Article 2(b) of the CTNOC defines “serious crime” as: “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.” Interestingly, it is the crime’s potential punishment (under domestic law) which determines its qualification as “serious” as opposed to the actual conduct committed.

Considering these definitions, it is however the Palermo Protocol, not the CTNOC, which is responsible for addressing the crime of “trafficking in persons.” The Palermo Protocol is not a “stand-alone” treaty; states are required to first ratify the CTNOC and provisions contained within the CTNOC “apply, mutatis mutandis,” to the Palermo Protocol (see Gallagher (2010: 73). The Interpretive Notes (UNODC 2006) outline that the meaning of mutatis mutandis is “with such modifications as circumstances require” or “with necessary modifications” and that where provisions of the CTNOC are applied to the Palermo Protocol, they should be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention. The application of mutatis mutandis cannot therefore require one’s interpretation of the elements of the crime under the parent convention to be so restrictive in order to render those elements nonoperational in the child instrument. Therefore the application of mutatis mutandis and consequent modification to the Convention does not extend to clarifying the interpretational conflict at issue.

This interaction between the CTNOC and the Palermo Protocol ignites the conflict over the interpretation of the construct of trafficking, which will be discussed in the following section.

**Interpretational Tension and Identifying the Definitional Contours of Trafficking in Persons**

On initial examination, it appears that the Palermo Protocol’s relationship to the CTNOC as a supplementary instrument creates an inference that the definition of trafficking only applies to transnational cases (see Gallagher 2001: 983) involving organized criminal groups.

This sentiment seems to be clearly stated in Article 4 of the Palermo Protocol, which outlines its scope as applying:

> except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offenses are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offenses (emphasis added).

In seeming direct contradiction, the Commentary and the UNODC’s many publications consistently state that trafficking does not require a “transnational in nature” component or involvement by an organized criminal group (see UNODC
2010:13). As such, it is necessary to investigate whether the elements of transnationality and organized criminal group involvement are required to prove the offense of trafficking.

In addition to Articles 3 and 4, other articles of the Palermo Protocol are also relevant to the construct of trafficking. Specifically, Article 1(3) of the Palermo Protocol states that “offenses established in accordance with Article 5” of the Protocol are regarded as offenses under the CTNOC. Article 5 of the Palermo Protocol requires that states engage in domestic criminalization of trafficking. It reads:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses the conduct set forth in Article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offenses:
   (a) Subject to the basic concepts of its legal system, attempting to commit an offense established in accordance with paragraph 1 of this article
   (b) Participating as an accomplice in an offense established in accordance with paragraph 1 of this article
   (c) Organizing or directing other persons to commit an offense established in accordance with paragraph 1 of this article

The offense of trafficking is therefore fully articulated in Articles 1(3), 3, 4, and 5 of the Palermo Protocol.

Having delineated the limits of the offense within the Palermo Protocol, the CTNOC provides further interpretational guidance (This paper will mostly rely on the VCLT for recognized sources of international law.). Article 34(2) of the CTNOC specifically describes how certain offenses must be established independently of transnational in nature and organized criminal group elements:

The offenses established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

These offenses are the criminalization of participation in an organized criminal group (Article 5), the criminalization of the laundering of proceeds of crime (Article 6), the criminalization of corruption (Article 8), and the criminalization of obstruction of justice (Article 23). As trafficking is not explicitly mentioned here as being an offense under the CTNOC that should be established independently of transnational in nature and the requirement of an organized crime group, it might be inferred that these elements should apply in accordance with the CTNOC in the criminalization of trafficking.

The Palermo Protocol does not itself include an Article creating independence of these elements, particularly in relation to its Articles 3 and 4. Therefore, by omission the independence of the two elements established in Article 34(2) of the CTNOC do
not extend to the Palermo Protocol. Taking this perspective, Article 34(2) of the CTNOC only applies to the Palermo Protocol by direct reference through Article 5 of the CTNOC which specifically criminalizes participation in an organized crime group.

The Commentary regarding the Palermo Protocol consistently states that the transnational nature and involvement in an organized criminal group elements are not required (see UNODC 2010: 13). As McClean (2007: 15) points out, the Commentary explains that the Interpretative Note addressing this point “requires the elements of transnationality and the involvement of an organized criminal group in the context of its provisions as to international cooperation, but not so far as the creation of criminal offences is concerned.”

In relation to the transnational component, Hathaway (2008: 11) criticizes the perception that domestic trafficking occurring within the borders of only one country without the involvement of outside parties would be considered beyond the scope of the Palermo Protocol. Gallagher (2009: 812) clarifies that the purported transnational element exists to require interstate cooperation, not to mandate that trafficking is limited to conduct that is transnational in nature. Gallagher further notes that the Palermo Protocol contains a general obligation on nation states to criminalize “exploitative practices taking place within as well as between national borders” and that the “central and mandatory obligation of all State Parties to the Palermo Protocol is to criminalize trafficking in their domestic legal systems.” In fact, Gallagher notes that she is not aware of any evidence of a domestic statute limiting the definition or the scope of criminalization to only transnational instances.

However, where states have chosen not to include a transnational requirement within their domestic codification, this does not lead to a conclusive outcome on trafficking’s definitional contours in the Palermo Protocol itself. The UNODC’s Organized Crime Issue Paper refrains from determining whether this is in fact, an element of the crime of trafficking. Nevertheless, the Issue Paper noted that trafficking is perpetrated by organized as well as “un-organized criminal involvement.”

The decision to not include these aspects in domestic codification is likely due to the UNODC’s Legislative Guide (2004) which states:

(a) Noninclusion of transnationality in domestic offenses. The element of transnationality is one of the criteria for applying the Convention and the Protocols (Art. 3 of the Convention), but transnationality must not be required as a proof in a domestic prosecution. For this reason, transnationality is not required as an element of domestic offenses.

(b) Noninclusion of an organized criminal group in domestic offenses. As with transnationality, the involvement of an organized criminal group must not be required as a proof in a domestic prosecution. Thus, offenses established in accordance with the Protocol should apply equally, regardless of whether they were committed by individuals or by individuals associated with an organized criminal group and regardless of whether this can be proved or not.

Gallagher (2010: 73) notes of the Legislative Guide, “[w]hile not intended to be authoritative or otherwise deliver a definitive legal interpretation of these
instruments, the Guide is nevertheless a useful source of additional insight, particularly with regard to legislative implementation obligations.” Other UN bodies, including the United Nations High Commissioner for Human Rights, have also defined trafficking as wholly encompassed within the Palermo Protocol’s Article 3 – that is, defined trafficking without requiring transnationality or involvement of organized criminal groups. As such, a prima facie application of the CTNOC, as opposed to strict textual reading of both instruments, may in fact be the cause of confusion for scholars and practitioners alike.

An Interpretational Way Forward?

The absence of the elements of transnational in nature or organized crime group as components in the Palermo Protocol’s definition leads to the inference that these two components are not necessary requirements to prove the offense of trafficking. This raises the question of whether the elements of transnational in nature and involving organized crime groups are present in the Protocol for another reason.

Given that the main driver for the drafting of the Palermo Protocol was to “contest the world’s organized crime networks and combat the trade in human beings and transnational prostitution” (Raymond 2002: 1), one would assume that the first form of this “contest” would be found in the constituent elements of the offense of trafficking. However, it appears that the references to transnational in nature and the involvement of an organized crime group are included simply to provide a universal concept that promotes international standardization and accountability (see Baer 2015: 167).

The insistent requirement within the drafting of Protocol that the elements of “transnational in nature” and the “involvement of organized crime groups” are required, and the equally insistent contradictory interpretations and commentary that says they are not, leads to an examination of whether the elements of “transnational in nature” and “involvement of organized crime groups” might be considered independent requirements pertaining to the obligations of State Parties to the international instrument.

Instead of connecting the transnational and organized criminal group involvement considerations to the material elements of the trafficking offense, this construction can be interpreted as imposing explicit duties and requirements on signatories of the Palermo Protocol (specifically, domestic criminalization of, and international cooperation to combat, human trafficking). Only under circumstances where the trafficking is “transnational in nature” and “involves an organized criminal group” is a State Parties’ commitment (e.g., cooperation) to act triggered. These circumstances do relate to the commitments of the signatories to the international instrument, not to the legal definition of the trafficking offense. This perspective diverts from the concept that the material components of the offense of trafficking are (1) an act, (2) a means, (3) all committed for the purpose of exploitation, (4) involving an organized criminal group, and (5) “transnational in nature” (see Allain 2013: 350–353). By interpreting the requirements of transnationality and organized criminal group in this manner, the international obligation placed on states is an obligation to legislate a more narrowly defined crime (see Gallagher 2009: 812).
This is not to say that the Palermo Protocol decrees that states must or should only criminalize trafficking that is “transnational in nature” and “involves an organized criminal group.” On the contrary, all of the UNODC literature expressly recommends domestic legislation which only embodies the contents of Article 3 of the Palermo Protocol and states have primarily legislated based on the definition found in Article 3 of the Palermo Protocol (see also Gallagher 2009: 813). However, the scope of activity (and therefore international commitment) requiring state action is more limited and may offer a solution to the interpretive tension.

Conclusion

On first impression, the language of the CTNOC and the Palermo Protocol articulates that human trafficking offenses must be transnational in nature and involve an organized criminal group. However, the Palermo Protocol is attached to an instrument designed to address transnational organized crime, which effectively establishes the legal characterization of human trafficking as a “transnational organized crime.” Yet other evidence suggests that human trafficking is not limited to conduct that is transnational in nature and involving organized criminal groups. As a result, there has been conflict and confusion regarding the proper understanding of the definition of the crime of human trafficking in international law.

Based on a strict textual reading of the instrument, its preparatory works, the Commentary and their interpretation by countless UNODC publications, it is clear that transnational in nature and commission involving an organized criminal group are not part of the constituent elements of the offense. Upon review of the instruments and supporting documents, the interpretational confusion is likely the result of a failure to distinguish between the duties and obligations imposed upon states when committing to an international instrument and the contents of the instrument itself and, specifically, the definitions of offenses contained within.

Cross-References

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▶ Human Trafficking: An International Response
▶ The Nebulous Definition of Slavery: Legal Versus Sociological Definitions of Slavery
▶ UN Palermo Trafficking Protocol Eighteen Years On: A Critique

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Part III

Types of Trafficking in Human Beings
The Challenge of Addressing Both Forced Labor and Sexual Exploitation

Alexandra Ricard-Guay and Jill Hanley

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Abstract

Internationally, human trafficking is usually defined officially as involving a range of exploitative scenarios: forced labor, sexual exploitation, illegal adoption, and organ sales are all commonly included. Each of these phenomena, while having some commonalities, also has many different characteristics. When the state or civil society tries to respond to “human trafficking,” it can be difficult to find an approach that works for all these scenarios. This chapter will discuss the strengths and weaknesses and the advantages and disadvantages of endeavoring

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to serve the differing populations of people affected by sexual exploitation versus labor trafficking. To substantiate our analysis, we will highlight the experiences of frontline workers by drawing on the findings of 79 interviews conducted in Canada with stakeholders and practitioners in the field. In the context of increased efforts worldwide to counteract trafficking in all its forms, with a notable growing attention to forced labor, this chapter will examine the challenges that arise from tackling diverse forms of trafficking, looking specifically at forced labor and sexual exploitation.

**Keywords**

Trafficking for forced labor · Trafficking for sexual exploitation · Anti-trafficking actions · Collaborative approach

**Introduction**

The field of study on trafficking in persons (TIP) has developed greatly since the adoption of the Palermo Protocol at the turn of the century. There has been a shift toward greater attention to forms of trafficking other than for sexual exploitation, notably for forced labor. However, the expansion of the anti-trafficking field faces new challenges and gaps in knowledge as well as in terms of practice.

One area that remains quite overlooked concerns the manifold challenges that arise when different forms of trafficking are addressed by one single entity (be it a coalition, a committee, or a civil society organization). Internationally, TIP is usually defined officially as involving a range of exploitative scenarios: forced labor, commercial and other forms of sexual exploitation, and the removal and sale of organs are all commonly included. (This non-exhaustive list follows the definition of TIP as established by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted in 2000).) Each of these phenomena, while having some commonalities, also has many different characteristics. When the state or civil society try to respond to “human trafficking,” it can be difficult to find an approach that works across each of these scenarios.

There has been abundant research on the difficulties encountered in providing assistance to persons who have been trafficked, but it has mainly concerned intervention in the context of TIP for sexual exploitation, including shelters and programs supporting exiting the sex industry. Critics sometimes frame this approach as the “rescue industry” (Agustin 2007).

Further, the importance of adopting a collaborative and multi-sectoral approach in anti-trafficking efforts has been widely acknowledged and called for by scholars and practitioners alike. However, there is little critical, in-depth and comprehensive analysis of the implications and challenges that arise from multidisciplinary actions. Some of these challenges emerge precisely from the difficulties of trying to use one approach to respond to different forms of trafficking. A single entity bringing together the issues of TIP for forced labor and sexual exploitation is likely to face
challenges, for example. To begin with, attention and actions targeting trafficking for labor trafficking are relatively recent. Hence, if compared with the issue of sex trafficking – that has garnered most of the TIP attention so far – addressing labor trafficking entails specific challenges and requires the involvement of new actors (e.g., labor inspectors, trade unions).

This chapter will discuss the strengths and weaknesses and the advantages and disadvantages of endeavoring to serve differing populations of people affected by TIP for sexual exploitation versus TIP for forced labor. (In this chapter, the terms TIP for forced labor and TIP for sexual exploitation will be used interchangeably with labor trafficking and sex trafficking.) We will do so by analyzing responses to TIP that are inter-sectoral, coordinated, and concerted; this approach, usually in the form of coalitions or committees, is commonly used as a means to tackle trafficking in all its forms.

The chapter will draw on the findings of a pan-Canadian study (funded by the Department of Justice of Canada), highlighting the experiences of frontline workers. The study is based on interviews with 79 stakeholders and practitioners from different sectors (community, law enforcement, social services, and health sectors), which were conducted in diverse Canadian cities. One of the objectives of the research was to document and examine experiences of inter-sectoral collaboration in the field of trafficking in Canada.

The chapter will first briefly review definitional debates around trafficking and highlight some key points that inform discussions on the struggles of frontline work in the field of human trafficking. Second, the paper discusses the challenges that arise from tackling specific forms of trafficking within collaborative initiatives, before presenting some promising practices for doing so.

**Practical Insights on the Long-Lasting Definitional Debates Around Trafficking**

Ever since TIP emerged as a public concern, there have been pervasive definitional debates.

A significant part of the definitional discussions concern the role of “representations” of the phenomenon and their impacts on the way trafficking is perceived and conceptualized in policy and practice (Andrijasevic 2010; Kempadoo et al. 2012; Andrijasevic and Mai 2016). Since the early stages of the study of TIP, a critical anti-trafficking scholarship has developed, precisely outlining and discussing the contentions around the definition of TIP and attempting to paint a more nuanced picture (Doezema 2010; Kempadoo et al. 2012; O’Connell Davidson and Anderson 2006; Andrijasevic 2010).

Beyond the legal definition of TIP, the way TIP is understood and perceived is influenced by the way it is represented in mainstream narratives (media, policy statements, NGO anti-trafficking campaigns, etc.). Not only is TIP often equated with sex trafficking, there is a powerful imagery about who is the **archetypical victim**, mainly imagined to be young women and girls, vulnerable and naïve, and readily falling prey to trafficking. As argued by Kempadoo et al. (2012) and
Sanghera (2005), among others, victims of trafficking are embodied by the image of (migrant) women, powerless, helpless and passive, poor migrants from third-world countries, and in need to be rescued by organizations and people from “developed countries” (Kempadoo et al. 2012). Hence, there is also a strong racial component.

Critical studies on trafficking have also highlighted that the common conflation of human trafficking with “sex trafficking” has led to overlook other types of trafficking, particularly trafficking for forced labor. This has been true in terms of research and both public and political attention to the problem. But also, consequently, this conflation of trafficking with sex trafficking has translated into less developed responses in the field of trafficking for forced labor.

Early anti-trafficking understandings strongly associated trafficking with organized crime and hence maintained the idea that TIP occurs outside of the mainstream economy, social values, norms, as well as policies. In other words, trafficking was confined to the underground, the criminal, and the “extraordinary,” and not easily related to labor market structures and labor migration laws (Rijken 2011). In addition, it is the more extreme cases of TIP that generate the most attention and, consequently, the most efforts to protect.

In the same vein, there has been a growing shift toward the use of the term “slavery,” to the extent that slavery, trafficking, and forced labor are sometimes used interchangeably. Some scholars argue that the current discourse on trafficking, portrayed and conceived as a new form of slavery, depoliticizes the wider debate on migration and labor (Andrijasevic 2010), diverting attention from the structural causes of inequalities (e.g. the way the labor market and migrant labor are regulated). As argued by McGrath and Strauss (2015), focusing on extreme cases (that often fall within more specific/individual situations) precludes addressing structural causes and thus leaves aside, without questioning, the overall labor framework and the pitfalls of the labor and migration systems.

Cases of extreme violence and suffering are used as stereotypical examples and illustrations of trafficking. However, such sensational representations of TIP leave more complex issues of human rights violations and labor exploitation in the shadows. TIP does not always involve physical violence, physical confinement, and situations of being “enslaved.” Some forms of exploitation that do not fall within trafficking or forced labor definitions may be perceived as being residual and even tend to be normalized (Anderson 2007), thus creating a “hierarchy of suffering” (Skrivankova 2010: 18).

The blurred or confused definitions and frames have multifold implications, not only in terms of how we conceptualize and understand the issue but also in terms of how responses (political, legal, institutional) are developed. Definitional ambiguities and lack of clarity may “result in either non-recognition or sensational and victimizing labeling” (Piper et al. 2015). In regard to labor trafficking, it has resulted in low visibility and little consideration and, in turn, the under-identification of cases.

Growing concern regarding labor exploitation has the potential to challenge those perceptions. Situations of labor exploitation may occur in the domestic sector or
family-owned businesses (restaurant, hotel), for example, far from organized crime networks. It may relate to international corporations’ responsibility and accountability regarding working conditions in different countries. However, as we will further discuss, (mis)conceptions about trafficking still today impact the identification of situations of trafficking and of the criminal exploitation of migrants.

Further, despite advances in definitional discussions – notably in bringing to the forefront the issue of labor trafficking – debates have offered little in terms of practical insights. Namely, what does it mean in practice to deal with different forms of trafficking? Should a global approach to trafficking – encompassing both situations of TIP for sexual exploitation and TIP for forced labor – be developed and maintained? Or, to avoid diluting efforts, does it make more sense that each sector mobilizes the actors and expertise it needs? This is one of the many challenges in service provision that has been overlooked.

**Addressing Different Types of Trafficking: Need for More Divergence or Convergence?**

The physical, psychological, and socioeconomic recovery of each person who has experienced trafficking require a broad range of resources; no single organization can respond alone to their needs. This explains the importance given to coordination and concertation among organizations from different sectors in the anti-trafficking field. Inter-sectoral and collaborative approaches ensure that the person may access a wide spectrum of services, on the one hand, and, on the other, that knowledgeable actors may help better inform other stakeholders. Further, collaboration may also be a way to combine efforts addressing different forms of trafficking.

The call for better collaboration is not recent. The need to improve coordination and collaboration in service provision – not only between groups in the community sector but also with social service providers, public health, and law enforcement – is commonly acknowledged in scholarly literature, policy documents, and international organizations’ reports. Important gains have been made in this direction worldwide, nationally, and also locally.

However, a distinction has to be made with regard to the type of work or actions being implemented by collaborative anti-trafficking entities. When coalitions/groups/networks focus their actions on awareness-raising and prevention activities, they may not be confronted with the difficulties or limitations related to the fact that they cover different forms of trafficking. On the contrary, outlining the multiple realities that the umbrella term “trafficking” encompasses may well suit the mandate of awareness-raising on trafficking. But if anti-trafficking coalitions/groups/networks start to step into service provision and assistance to victims, they may then be confronted with important challenges.

Let us now turn to the practical challenges – but also opportunities – of addressing different types of trafficking under a single umbrella-organization, committee, or coalition.
Labor Trafficking: Still Under-detected? Or Rather Called by Another Name?

Labor trafficking is still often off the radar of law enforcement. Why are fewer cases of labor trafficking identified? Issues related to definition and understanding have already been raised. In practical terms, this means, for example, in the case of law enforcement, that there is less awareness about the occurrence of the phenomenon, and hence actors are less familiar with the issue:

I mean, a lot of times cops are not very comfortable with the non-traditional form of trafficking which we advocate for. Meaning labor or meaning forced marriages. (Interview 12, Legal Assistance)

As a result, labor trafficking is still a neglected aspect of police intervention and is rarely the object of proactive investigations (Maroukis 2016). There are more resources available and more attention given to TIP for sexual exploitation, and often law enforcement can draw upon already existing experience and knowledge working in the ambit of the sex trade. In some cases, dedicated teams within the police force, focusing on TIP for sexual exploitation, might exist.

Another difficulty in detecting cases of labor trafficking is that the initial arrangement is usually voluntary. The person has consented to migrate (if migration is involved) and to engage in a labor arrangement. Coercive recruitment in situations of labor trafficking is not common. However, this is not to say that coercive recruitment is a common feature of sex trafficking. Further, as it has been documented through case law analysis (Beatson et al. 2017; EC 2015), indirect forms of coercion (such as withholding of wages and threat of penalty) as opposed to direct forms of coercion (e.g., threat to safety, violence) are less accepted in court as a form of coercion and, as a consequence, as an indicator of trafficking.

Within the law enforcement realm, the literature on trafficking has already documented the challenges encountered in trafficking investigation work. Awareness of trafficking for labor exploitation is new and still little understood. Investigations are more complex (Sikka 2013). It often involves an intricate combination of violations of labor standards, immigration policies, and criminal charges that can be both under immigration law and the criminal code (Sikka 2013; Dandurand and Chin 2014) and thus requires a combination of different expertise. Further, cases of labor trafficking mostly involve migrants, who often become undocumented through the process of exploitation. There might be breaches or misuses of legal temporary migration programs, as is the most common scenario in Canada, for example (Beatson et al. 2017). Migrants with a precarious migration status are much more reluctant to disclose and come forward to the police and authorities.

Challenges in the identification of labor trafficking cases go far beyond law enforcement. It is shared among different sectors. Despite the existence of legal definitions of trafficking, there is an ambiguity regarding “clear” parameters for a situation of exploitation to correspond to trafficking. For example, some situations may involve offences under civil or labor law (unpaid salary, breach of contract, non-respect of labor standards); others involve more severe forms which then fall under
the scope of criminal law (e.g., use of physical violence or threat to one’s safety, confiscation of identity documents).

Further, it is important to include in the discussion not only the challenges of identification but also the reluctance of both practitioners and persons in exploitative situations to use the “trafficking frame” as the avenue for intervention. The focus on the problem of “under-detection” as being primarily linked to a lack of knowledge presupposes that detecting trafficking situations constitutes the starting point of intervention for protection, that identifying situations as “trafficking” is what everyone wants and thinks is best. However, this is not the case. Practitioners may well opt not to use the trafficking lens and it may be a deliberate choice. The fact that victims do not see themselves as trafficking victims and may even refuse assistance designed under the trafficking frame has been documented (Brunovskis and Surtees 2012). However, frontline workers can also be reluctant to name certain situations as trafficking, not because of a lack of awareness but because they do not always see an added value to it. This element has been less discussed. In a right-based approach, and empowerment perspective, the core of the intervention is the well-being, the interest, and the protection of the person. For example, when the person is undocumented, collaboration with law enforcement represents a concrete risk of being criminalized and deported, rather than having their rights protected. Once law enforcement is aware of their status, the person is vulnerable to detention and deportation. Yet being identified a victim of trafficking by law enforcement and immigration authorities may be one of the few, if not the only, way for undocumented migrants to get substantial assistance (as well as a temporary stay permit in the country).

This dilemma is important as practitioners’ evaluation will determine the avenue of intervention: the legal and criminal route versus the labor violations and access to remedies route (or both). Access to justice (more generally) and to compensation (more specifically) are avenues advocated as key components of programs of assistance and services for persons affected by trafficking (Comp.Act 2012). Compensation may include claiming for unpaid wages or remedy for damages as a result of the exploitation (p. 3).

Finally, there is also an important political dimension to the identification of, or even the framing as, labor trafficking:

One of the reasons why so few people have been designated as trafficked and provided with assistance is the lack of political will to tackle the widespread exploitation that undergirds industries like agriculture and domestic work. There are many stakeholders that benefit from normalising migrant exploitation; sometimes entire industries rely on low-wages. (…) Acknowledging trafficking makes visible capitalism run amuck and the link between migrants’ legal status and exploitation. (Brennan and Plamblech 2018: 2)

Including Labor Trafficking Means Working with “New” Actors

Another axis of difficulty is related to the fact that working with different types of trafficking implies working with very diverse collaborators and partners. Anti-trafficking coalitions, networks, and alliances have, for the most part, initiated
their work with a focus on TIP for sexual exploitation. In other words, many anti-
trafficking organizations were created with a mandate that was often limited to sex 
trafficking. As more attention was dedicated to issues of TIP for forced labor, new 
actors who were not (or to a lesser extent) solicited in early anti-trafficking efforts 
were brought together, such as trade unions, labor standard agencies, workplace 
inspectors, etc. Working across different sectors of intervention – at times with very 
different mandates and missions – represents a significant challenge regardless of the 
type of trafficking and even if only addressing one form of TIP. But this reality is 
amplified in contexts of combined response to multiple forms of trafficking. In 
addition, for many of the labor-related organizations or migration-related organiza-
tions, dealing with trafficking constitutes only a fraction of their work. Trafficking is 
often not an explicit part of their mandate, or, when included, it constitutes a minor 
issue rather than a priority. This also brings an additional layer of complexity when it 
comes to collaboration.

The way trafficking is understood by actors from different sectors is shaped 
and informed by very different approaches to intervention. Divergent definitions 
of trafficking (from narrow and restrictive to broader views of the continuum of 
exploitation and the importance of tackling structural inequalities) are common, and 
these divergent definitions often oppose state actors (typically working with the legal 
definition of trafficking) with nongovernmental actions (who are more likely to have 
a broader human rights and structural view of the issue). Further, specific organiza-
tional mandates will, of course, determine the parameters and orientation of inter-
ventions, which can also create further division or tensions. For example, 
organizations whose mandates focus on immigration or labor issues will have a 
different approach to organizations whose mandates have a feminist lens and focus 
on women’s issues such as domestic violence and sexual exploitation.

As an illustration of this point, it may be legitimate to raise such questions as: “Is 
it possible, for example, for labor-focused advocacy, which may call for unionization 
to protect workers, to sit alongside advocacy that problematizes the label ‘sex work’ 
as a failure to recognize that this work is inherently gendered and exploitative” 
(Piper et al. 2015: 1). In other words, is it feasible to reconcile such divergent 
mandates and if so, how?

Then, perhaps less evidently, the divergence of mandates and missions is not 
limited to the type of trafficking. Even within the ambit of TIP for forced labor, there 
are important labor and sector-specific dimensions and needs to take into consider-
ation. Cases of labor trafficking may occur in very diverse settings: in a private 
household, supply chains, fishing industries, construction, agriculture, etc. It may 
occur through a process of recruitment based on informal individual and social 
networks, or recruitment may occur through the use of intermediaries and employ-
ment agencies (including fraudulent ones). Gaining knowledge and awareness of 
such diverse settings is not an easy task. It requires very different actors or even 
sectors and may require different actions and interventions.

The importance of the role of labor inspectors has been pushed to the forefront 
and called for by advocates and researchers alike (Piper et al. 2015; Robinson 2015; 
ILO 2016). Not least among them, the ILO Forced Labor Protocol 2014 has
emphasized the crucial role of labor inspections and the need to reinforce them. The inclusion of labor inspections in anti-trafficking actions, or inversely the inclusion of trafficking within labor inspectorates’ mandates, is uneven across countries. Labor inspectorates commonly have the power to monitor and investigate (or document) labor rights violations, but not offences of a criminal nature. Advocates of people facing labor exploitation and TIP for forced labor also often call for a division of labor and immigration investigations in order to protect victims with irregular immigration status from detention and deportation. A further inclusion of trafficking within the ambit of their action may require changes in labor inspectors’ mandates or entail a closer collaboration with criminal law actors and immigration advocates.

As for trade unions, engaging in anti-trafficking actions raises specific challenges (Marks and Olsen 2015). Some sectors where exploitative practices and trafficking occur – which are characterized by isolation, informality, and difficult outreach – may render collective actions more difficult (Hanley et al. 2012). Some sectors also mostly involve temporary migrant workers. As a consequence, there might be a need to rethink ways to protect workers’ rights and making new and international alliances.

**Between National and International Cases of Trafficking**

Another line of difficulty that may arise concerns the differentiation between situations involving nationals (residents or citizens) versus when it involves international migrants, in other words between international and national cases of trafficking. The importance and attention given to domestic trafficking, which does not involve the crossing of a border, varies according to national contexts and specificities. Although in some countries, TIP for sexual exploitation may have an important “national” or domestic component – meaning it affects large numbers of citizens and permanent residents – labor trafficking, in contrast, is often exclusively associated with situations involving international migrants.

For example, the Canadian anti-trafficking policy is characterized by its strong focus on TIP for sexual exploitation and particularly on the occurrence of this phenomenon within the country, without necessarily involving international border crossing for victims or perpetrators. This trend has also been observed in the United States and northern European countries (Choi-Fitzpatrick 2016). Linking trafficking with young people, especially girls, in the sex trade in Canada has been a trigger to mobilize political and NGO efforts. For strategic reasons, indigenous women’s organizations in Canada have also linked the concept of trafficking to the disappearance and murder of women and girls from their communities (Kaye 2017). The linking of sex trafficking to domestic victims has served to give visibility to an issue that was previously not attracting such public sympathy and concern (a problematic situation in itself). However, this association has also had the negative effect of channeling most government and private foundation funding to combatting this form of trafficking (De Shalit et al. 2014), neglecting the challenge of labor trafficking.

This context has also led to the mobilization of actors involved with youth in the sex trade and shelters for (non-migrant) women within key coalitions or concerted
initiatives. As a consequence, knowledgeable actors regarding the realities of migrants and immigration laws and policies are often absent or very few around the table of anti-trafficking coalitions, alliances, and networks, a significant gap (Ricard-Guay and Hanley 2015). Regularization of migratory status is one of the primary needs of international victims. Knowledge about the different migration statuses and their related rights is essential and will affect the types of response and protection that are provided. The decision about what to do about immigration status – in the Canadian context, whether to pursue a temporary resident permit for victims of trafficking in persons (TRP-TIP), to make a refugee claim, and to apply for permanent residency through a humanitarian and compassionate claim – requires specialized knowledge and skills. The sensitive (often problematic) nature of the collaboration with law enforcement, while being common to various forms of trafficking, either national or international, becomes at times insurmountable when it comes to undocumented migrants.

The Delicate Collaboration with Law Enforcement for Undocumented Migrants

The definition of trafficking – as internationally agreed – builds on the definition of a crime. Hence, ultimately, the formal recognition of a situation of trafficking resides with law enforcement authorities, and then the judiciary, if a legal proceeding is initiated. Hence, access to public programs of assistance for victims of trafficking (including temporary residence permits, legal and psychosocial assistance, immediate and longer-term shelter, and other social rights (health, counseling)) is tributary to the binary decision: is it or is it not a situation of trafficking? Collaboration with law enforcement is, in most (if not all) cases, sensitive, given many victims’ reluctance to disclose to authorities their involvement in – more often than not – undeclared or even illegal activities. In situations involving undocumented migrants, it becomes even more of a dilemma.

As we know, if a migrant is not formally identified as a trafficking victim, those without proper stay (or residence) permits risk being deported. To access the temporary visas for trafficking victims that exist in many countries, such as in the European Union, in Canada, and in the United States, migrants have to be officially identified as victims of trafficking. In addition, and more problematically, the collaboration of the victim in legal proceeding against the traffickers is often a requirement to access the assistance and protection measures. In Canada and in Italy, even if the law does not require formal criminal charges against the trafficker to be laid in order for a person to be officially identified as a trafficking victim, in practice, not having an open investigation greatly impedes access to the temporary visa. Hence, it renders collaboration with law enforcement necessary in order to ensure status.

The challenges in collaborating with law enforcement is a shared reality regardless of the type of trafficking, but for the reasons discussed above, these challenges are greater for undocumented migrants affected by TIP for forced labor outside of the
sex industry. Further, in the case of labor trafficking, labor inspectorates become part of law enforcement, as they may become involved in denouncing undocumented migrants. Yet, even in situations in which a decision is made not to disclose a trafficking situation to law enforcement authorities, the risk of deportation remains and legal support and advice is still an important dimension of intervention.

**Beyond the Criminal Law Framework: Access to Remedies and Justice for Migrant Workers Facing Exploitation**

As compared with sex trafficking, which in most countries is not dealt with as a labor issue, dealing with labor trafficking requires broadening the scope of anti-trafficking knowledge to include tools and advocacy toward fair, just, and decent work conditions for all, which includes a strong focus on undocumented migrants’ rights. As well, when dealing with labor trafficking (or labor exploitation taken more broadly), alternative forms of access to remedies not commonly thought of as related to trafficking (e.g., through an employment tribunal) become possible for workers whose labor rights are being violated.

However, employment and labor law remedies (e.g., reclaiming unpaid salaries) are not widely used in all jurisdictions. These remedies are often inaccessible for migrant workers or seen as largely ineffective; the procedures are long and migrants may have to return to their country before a settlement is achieved (Ricard-Guay 2016). The situation for undocumented migrants is even more precarious. Even if, in some countries (e.g., in most of EU Member States, FRA 2015), undocumented migrants are entitled to claim remedies, in practice it is very difficult if not impossible to do so. For example, at the European level, the Employer Sanctions Directive (Directive 2009/52/EC of the European Parliament and of the Council of the 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals), adopted in 2009 and transposed in national legislations (except the UK) in subsequent years, aims to tackle the irregular employment of non-nationals. Some of the provisions seek to ensure the protection of labor rights of undocumented migrants. On the one hand, just the fact of recognizing the rights of workers regardless of their migration status is already an achievement. However, the primary goal of this directive is to criminalize the employers’ decision to hire undocumented migrants (Rolland and Soova 2015), something that will, on the other hand, make it difficult for workers to decide to make a complaint. In addition, it is centered on wage compensation and does not address all of the other rights of migrant workers.

**The Gender Bias**

When it comes to setting priorities, resources are still predominantly allocated to efforts to tackle TIP for sexual exploitation and in particular to women and girls. This is another challenge that coalitions and anti-trafficking organizations must
confront when responding concomitantly to TIP for forced labor and sexual exploitation. This gender bias is an important one to consider when coalitions or networks try to address sex and labor trafficking together. The stereotypical image of the ideal victim, discussed earlier, is persistent and still present today. As stated by Andrijasevic and Mai (2016), despite decades of research and activism, the image is still that of a young migrant woman tricked into prostitution and held physically confined against her will (p.4). Men are less easily seen as a victim of trafficking.

Gender biases do not only have an impact on giving more or less attention to certain dimensions of trafficking – women and girls being associated with TIP for sexual exploitation and men with TIP for forced labor – but it also results in lower investment in resources for men. We know little about the needs and experiences of men in the aftermath of trafficking, a field of knowledge that would be essential to the development of interventions tailored to their needs (Surtees 2018).

In a study conducted in Canada, results from the interviews with practitioners across the country showed that one key challenge for actors working in anti-trafficking organizations, coalitions, or networks was the absence or scarcity of existing resources to provide support to men victims of trafficking. Notably, with regard to shelters and specialized psychosocial support, resources were very often exclusively available for women. Those working with men victims had to turn to volunteer and activist support (Ricard-Guay and Hanley 2015).

Too often, anti-trafficking assistance and protection are focused on and limited to the rescue and rehabilitation of women and girls after TIP for sexual exploitation. Shelters for women and girls “rescued” from sex trafficking have been opened by civil society, international organizations, and faith-based groups in numerous countries to support their recovery and rehabilitation. Yet, this “rescue industry,” which channels funding streams, can have detrimental effects, either by involuntarily sending women and girls back to their countries of origin (through the so-called voluntary return programs) or by sending them to shelters with restrictive rules without responding to their particular needs and aspirations. (On this topic, see GAATW 2007 and Plambech (2014).)

**Combined Efforts to Tackle Multiple Forms of Trafficking: What Are the Advantages, Then?**

Despite all of the challenges discussed so far regarding what we can frame as “combined anti-trafficking efforts,” one could argue that addressing both types of trafficking together has had the positive effect of drawing more attention to labor trafficking. By including labor trafficking as an axis of intervention, thereby integrating new actors, the anti-trafficking coalitions/networks or organizations have managed to raise awareness about the issue. Further, by bringing together practitioners and organizations that were not traditionally working closely together, new opportunities for dialogue may have opened. Most importantly, including divergent forms of human trafficking may have helped frontline workers to open their horizon.
of understanding how people who have experienced trafficking see their situation and what they want for their futures.

The shift toward greater attention and interest for labor trafficking has also involved a shift toward a labor rights approach. This means that questions related to policies and laws – both in the fields of labor and, in particular, labor migration – have entered the discussion on trafficking. In terms of actions, it entails pursuing advocacy work toward greater protection of migrant workers’ rights. In that perspective, in engaging with labor trafficking issues, it becomes necessary to address more structural factors conducive to trafficking and obliges a questioning of the socioeconomic and political dimensions at the root of exploitative practices. Trafficking in the sex industry is compounded by its links to criminalization and links to criminal networks in all countries where sex work is illegal (partially or completely). The political debate that seeks to address the prevention of exploitation in the sex industry too often remains limited to the discussion about the pros and cons of decriminalizing the sex industry. In the case of trafficking for forced labor, the discussion goes beyond the criminal lens and touches the types of policies in place that may produce, reproduce, or reinforce inequalities or vulnerabilities conducive to different forms of exploitation. Indeed, a labor rights approach to trafficking builds on a premise that multiple factors will play a role in setting conditions conducive to trafficking, including the legal, political, and socioeconomic contexts, thus including immigration, labor and employment, and criminal laws (Shamir 2012). That being said, a labor and migrant rights approach has also been at the core of sex workers’ advocacy, activism, and scholarship.

The anti-trafficking framework, as developed so far, has mainly focused on “rescue” types of intervention. Bringing a labor protection component into the anti-trafficking framework requires addressing employment regulations and labor laws. It bears the potential of developing more and new tools to address exploitation of workers and to prevent it.

At the international level, the adoption of the ILO Forced Labour Convention, along with the Recommendations on Supplementary Measures for the Effective Suppression of Forced Labor (No. 203), has strengthened a labor approach to trafficking, integrating the consideration of labor rights within the anti-trafficking framework. It includes recommendations to strengthen labor inspections, tackle fraudulent recruitment practices, and expand labor law and labor rights to all workers, regardless of their immigration or employment status. One gap that remains to be addressed is the liability and responsibility of corporate actors for trafficking that occurs along supply chains.

**Conclusion**

In this chapter, we have explored how definitional discussions on trafficking have been linked to the types of interventions that are offered or available to people seeking to exit a situation of trafficking. While in many regards, persons who have been victims of trafficking will have similar needs in terms of protection
Questions about defining trafficking raise the more fundamental issue of whether the very concept of trafficking is useful to interventions. Isn’t trafficking just one extreme of a broad continuum of exploitation? Do the attention and resources focused on trafficking overshadow the plight of people who are exploited in other ways, more numerous and just as deserving of support and compassion? Is the “anti-trafficking” movement creating a category of “deserving victims” whose needs count for more, and who have a greater right to receive help, while abandoning those who don’t happen to fit the definition (Hanley et al. 2006)? As we have already discussed, many frontline workers do not think it is essential to their work to name their client’s situation as trafficking; this would make absolutely no difference to the way they intervene. However, some frontline workers may also believe, rightly or wrongly, that in specific contexts trafficking raises greater indignation and has become a priority, and that the interest in trafficking has created a greater recognition that all forms of exploitation are unacceptable.

As it has been discussed in the chapter, the shift toward greater attention for labor trafficking, and the shift toward a labor approach to trafficking, requires an expansion of the fields of expertise and sectors involved. It may be challenging to do so, but at the same time it bears the potential of developing new tools and new avenues of protection, beyond the narrow criminal lens. Combining the efforts of actors more traditionally connected to TIP for sexual exploitation with actors more traditionally connected to TIP for forced labor may help broaden our understanding of trafficking and better inform us (practitioners, researchers, and other stakeholders) about both how to prevent TIP and also how best to provide support, assistance, access to remedies, and protection that respond to the needs of the persons directly involved.

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Telling Victims from Criminals: Human Trafficking for the Purposes of Criminal Exploitation

Silvia Rodríguez-López

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Abstract

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims has expressly included the exploitation of criminal activities as one of the possible purposes of this crime. Consequently, not only was the concept of human trafficking broadened but also the difficulties in identifying victims, particularly in this type of exploitation in which many trafficked people are actually treated as criminals. This chapter will examine the wide variety of actions that can amount to human trafficking for criminal exploitation, using facts and cases reported by governmental and nongovernmental organizations as key documents. These experiences will highlight the challenges of differentiating between criminals and trafficking

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victims and will serve as a basis for suggesting some improvements in order to guarantee victims’ protection.

**Keywords**

Human trafficking · Exploitation · Forced criminality · Non-punishment

**Introduction: Broadening the Concept of Human Trafficking**

The definition of human trafficking provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Palermo Protocol) in 2000, has served as a basis to incorporate a concept of this crime into most national and supranational anti-trafficking legal instruments since then. The three elements (actions, means, and purposes of exploitation) that, according to the United Nations, characterize human trafficking have been present in the vast majority of definitions all over the world. Its influence has been such that many criminal codes have almost literally reproduced the wording of the Palermo Protocol.

Although it continues to follow this tendency, the most recent European legislation on this matter has considerably broadened the scope of the international definition by including new forms of exploitation. In reality, nothing prevents states party to it from expanding the concept of human trafficking in this way, since the Palermo Protocol itself expressly indicates that the catalogue of purposes of exploitation is just a list which has been kept “at a minimum.” In fact, United Nations Model Law against Trafficking in Persons indicates that states may consider including other forms of exploitation in their criminal law, among them “the use of illicit or criminal activities [including the trafficking or production of drugs]” (United Nations 2010, p. 26).

Thus, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims expressly incorporates “the exploitation of criminal activities” as one of the possible purposes of this crime (Article 2.3). The European text clarifies that “[t]he expression ‘exploitation of criminal activities’ should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain” (Directive 2011/36/EU, Recital 11).

This explanatory note aims to clarify one of the most important questions raised by this provision: its range of application in practice. Strictly following this note, the new modality of exploitation requires two aspects: the activity must be penalized and it must have an economic nature. However, these assumed requisites have not been free from objections. The first element has been considered unable to clarify the concept and therefore unnecessary and redundant, since all criminal activities will by definition be subject to a penalty. On its part, the need to obtain financial gain can also be criticized, since it seems to exclude from the scope of human trafficking the exploitation of people in criminal activities that do not, at least directly, generate economic profit, such as the use of children in armed conflicts. In reality, this debate connects with a more general yet unresolved discussion: whether exploitation as a
purpose of human trafficking should always have an economic nature. If that was the case, those cases in which the trafficker aims to obtain any other benefit or pleasure, even of a personal nature, would also be excluded (Borg Jansson 2015).

At this point, it is necessary to clarify that the inclusion of “the exploitation of criminal activities” among the purposes of trafficking does not necessarily mean that the exploitation of forced criminality should be automatically excluded in relation to human trafficking cases when it is not specifically foreseen in the law. Forced criminality can easily be included within the broad concept of forced services, providing that the unlawful activity has been exacted “under the menace of any penalty and for which the said person has not offered [themselves] voluntarily” (International Labor Organization, Forced Labor Convention, No. 29, 1930, Article 2; Skrivankova 2018). Therefore, even if, due to the requisites established by the explanatory of the directive, some exploitative activities would be excluded from a restrictive concept of “forced criminality,” they could still amount to forced services and ultimately to human trafficking. As Klara Skrivankova (2018) points out, the methods of coercion used in forced criminality are similar to those used to exploit workers in agriculture: victims are commonly not allowed to keep the profits, and they are forced to carry out the activity against their will. However, in this case, it is necessary to take into account the special risks of the criminal activity, derived from the performance of the illicit work itself or from its criminalization (Skrivankova 2018).

Thus, the first section of this chapter aims to clarify the scope of forced criminality by means of real experiences and cases reported by governmental and nongovernmental organizations. This analysis will help us understand the real reach of this purpose of exploitation in practice, in order to offer more appropriate interpretations for this new legal provision. Once its potential range of application has been demarcated, the following section exposes the main difficulties in identifying victims of this modality of trafficking, who are often mistakenly criminalized for the offenses they have been forced to commit. For this reason, the last section of this contribution highlights the importance of non-criminalization and/or non-punishment mechanisms, which should be correctly implemented in order to adequately protect victims of human trafficking for the purposes of forced criminality.

**Forced Criminality as a Purpose of Human Trafficking**

Leaving aside the controversies exposed in the previous section, human trafficking for the purposes of forced criminality can be defined as the recruitment, transportation, transfer, harboring, reception, exchanging, or transferring of control over a person, using coercive, fraudulent, or abusive means, in order to exploit them by forcing them to commit criminal activities.

This modality of human trafficking is not a new phenomenon, although it has been identified as an increasing trend (RACE 2014). As is always the case with human trafficking, current data collection systems are inadequate for providing a complete and accurate idea of the true nature of this type of exploitation (RACE 2014). Nevertheless, data offered by some international organizations can give a
general idea of the dimensions of this form of criminality. The most recent United Nations Office on Drugs and Crime Global Report on Trafficking in Persons states that cases of trafficking for the commission of illegal activity have been reported in Europe, Central Asia, South America, and Africa (UNODC 2016). According to this report, about 1% of the total number of detected victims in 13 countries were trafficked for forced criminality (UNODC 2016).

The United Kingdom (hereinafter UK) is one of the few countries that acknowledge criminal exploitation in official statistics about trafficking. Out of the 2255 potential victims of trafficking identified there in 2012, 362 (16%) were victims of forced criminality. The two most common activities for which victims were exploited were cannabis cultivation and petty crime (RACE 2014). Another state that offers specific data on this issue in national reports is the Netherlands. The Dutch National Rapporteur’s office registered 18 potential cases of trafficking for forced criminal exploitation in 2012 (RACE 2014). Similarly, the Spanish Intelligence Centre for Counter-Terrorism and Organised Crime (CITCO) informed about the detention of 7 perpetrators and the identification of 15 victims of trafficking to commit criminal activities (CITCO 2016). Victims came originally from Bosnia and Herzegovina, Romania, and Croatia (CITCO 2016). Nevertheless, although the situation is improving, the vast majority of countries still do not recognize this form of exploitation and, consequently, do not take steps to address it (RACE 2014). Overall, this issue “is more widespread than is currently reported” (RACE 2014, p. 8).

The few existing reports and research carried out on this topic show that this form of trafficking especially affects children (Council of the Baltic Sea States 2013; RACE 2014). In this sense, it is necessary to remember that no means are needed when the victims are minors. In general, regardless of whether they are children or adults, people exploited for the purposes of forced criminality are often engaged in activities that require a low level of expertise and which involve a high risk of detection by law enforcement authorities (EUROPOL 2016). A study by the RACE in Europe project (2014) found that trafficked people are being exploited for the following criminal activities across Europe:

- Theft (including pickpocketing, ATM theft, and shoplifting)
- Benefit fraud
- Cannabis cultivation
- Drug trafficking/smuggling
- Counterfeit goods production (such as DVDs and cigarettes)
- Illegal charity bag collection
- Begging (criminalized in certain jurisdictions such as Romania and Bulgaria)
- Sham marriage
- Illegal adoption
- Metal theft
- Methamphetamine production (RACE 2014, p. 64).

By means of real experiences that have been reported, the following subsections will provide a general overview of some criminal activities in which trafficked victims can be exploited.
Drug Crimes

Human trafficking victims are usually forced to engage in the production and distribution of drugs in exploitative conditions. The use of trafficking victims in drug-related offenses increases the profits obtained through this illicit activity, since more substances can be produced and distributed without having to pay to do so. At the same time, since they are more exposed to investigations, trafficked people serve as a shield that protects drug (and human) traffickers from detention and criminalization.

Trafficking for the purposes of exploitation in cannabis cultivation has been detected in several countries in Europe. In 2009 three Vietnamese minors were arrested and convicted in the UK for working in cannabis production factories. Later on, in 2013, a sentence of appeal annulled that conviction for drug-related crimes, since those young people were actually victims of trafficking in human beings (\textit{L, HVN, THN, and T v R} [2013] EWCA Crim 991). Trafficking for the purposes of forced criminality has reportedly increased by 130% between 2011 and 2012 in the UK, where the vast majority of victims (96%) come originally from Vietnam, most of them being children (81%) (\textit{RACE} 2014). Cases of exploitation through cannabis cultivation have also been reported in official statistics in the Netherlands (\textit{RACE} 2014). In Ireland, although no information is provided by the state, the Migrant Rights Centre identified in 2014 23 cases of potential victims trafficked for cannabis cultivation, coming primarily from Vietnam and China (\textit{RACE} 2014). Similarly, in spite of the lack of official statistics, NGOs and the media have reported potential cases of trafficking for cannabis cultivation in the Czech Republic (\textit{RACE} 2014) and Denmark (Council of the Baltic Sea States 2013).

Cannabis cultivation usually takes place in dog kennels, public houses, converted industrial warehouses, and containers buried underground, usually located in suburban areas. These facilities are adapted and provided with the appropriate equipment to allow production: hydroponics systems, high-intensity lighting, ventilation, extraction fans, etc. (\textit{Tri.x} 2017). Victims of exploitation in cannabis farms are usually deceived. They are often offered a job in a restaurant, but they are subsequently isolated, locked in the facilities where the plants are grown, and forced to work as gardeners of the cannabis plants (\textit{RACE} 2014). Both adults and children usually live in the place where cannabis is grown, forced to sleep on the floor or in cupboards (\textit{RACE} 2014). Debt bondage is a common way of controlling victims. Debts can rise up to between 17,000 and 20,000 lbs (\textit{RACE} 2014). An illustrative case was reported in the UK, where a 47-year-old Vietnamese woman, who had been forced into prostitution, was later on pressured into growing cannabis in order to “repay” the debt she had with those who transported her to the UK, since she was “unprofitable” due to her age (\textit{Burland} 2017, p. 7).

Hales and Gelsthorpe (2012) analyzed 103 migrant women in prisons and immigrant detention centers in the UK and found that 43 of them had been victims of trafficking. Among the interviewees, they identified several cases of women who had been deceived to work in the production of cannabis and two cases of importation of drugs under duress. In a similar study, in which 45 migrant women held in
two Spanish penitentiary centers were interviewed, Villacampa and Torres (2015) reported the existence of ten potential victims of trafficking who had not been identified. Of these ten women, eight had been convicted for drug trafficking.

These studies show that trafficking can also occur for the purposes of exploitation in drug distribution. Adults, especially women, can be forced to become drug mules in order to repay their debts. The use of lover boys, that is, men posing as boyfriends to emotionally blackmail and trick women into drug smuggling, has also been reported (RACE 2014). As was the case with cannabis cultivation, this form of exploitation also affects children. The US Department of State warned that organized criminal groups coerce children to work in the production, transportation, and sale of drugs in Mexico. Besides, a recent report by the UK Home Office has made available information about the use of children for criminal exploitation in county lines, that is, “urban gangs supplying drugs to suburban areas and market and coastal towns using mobile phone lines” (Home Office 2017, p. 2). Gangs use children to deliver drugs because they are cheaper, easier to control, and less likely to be caught by the police (Home Office 2017; Sands 2018). In fact, “clean skins,” that is, children with no previous criminal records, are especially targeted (Sands 2018).

Property Crimes

In a notification published in 2014, EUROPOL warned about the existence of children “trafficked to be forced to commit different types of property crime, such as burglaries, robberies, shoplifting, metal thefts, home-jackings or ATM theft” (EUROPOL 2014, p. 2). Cases have been reported in the UK, the Netherlands, Germany, France, Sweden, and Norway (Council of the Baltic Sea States 2013; United States Department of State 2014; RACE 2014).

The exploitation of trafficking victims through property crimes has been identified as an increasing trend, closely linked to the activity of organized crime groups (Crocker et al. 2017). It usually affects foreign nationals, both adults and children, in situations of vulnerability (Crocker et al. 2017). Victims of this form of trafficking are usually transported in small groups to places where they are forced to steal handbags from people, as well as cosmetics, telephones, USB sticks, GPS systems, and other electronic devices in shops (Council of the Baltic Sea States 2013). They are tactically sent out to commit shoplifting or pickpocketing until they receive their second police caution, when they are moved to another place or sent back to their country (Crocker et al. 2017).

This type of exploitation often comes together with other forms of forced labor. Individuals made to work long hours on farms with very low wages are also forced to steal to pay their “debts” (Crocker et al. 2017, p. 7). Similarly, cases of women trafficked for sexual exploitation being forced to steal their clients’ property, such as wallets or phones, have also been reported (RACE 2014). The profits derived from these illicit activities are surrendered to the traffickers, although in some cases, victims are allowed to keep part of it as a reward or in order to pay the debts they owe the traffickers (Schloenhardt and Markey-Towler 2016).
Violent Crimes

As has been shown in the introduction, it is debated whether human trafficking for the purposes of criminal activities includes the exploitation of individuals to commit violent crimes that do not necessarily produce economic profits. Some official reports already include violent crimes when talking about this form of trafficking. Eurostat, for example, includes terrorism, together with drug trafficking and petty crimes, in the list of criminal activities that may constitute the purpose of trafficking (Eurostat 2015). Equally, a report published by the US Department of State mentioned “terrorism and murder,” as well as “theft, illicit drug production and transport, [and] prostitution,” in the catalogue of offenses that trafficked individuals might be forced to commit “in the course of their victimization” (United States Department of State 2014, p. 1). This subsection will analyze previous studies in which people who were forced to commit violent crimes have been considered victims of trafficking for criminal exploitation.

The forced participation of women and children in armed conflicts has been long studied. The US Department of State in 2013 warned of the existence of Afghan and Pakistani children serving as suicide bombers. Moreover, a couple of recent pieces of research carried out in Colombia addressed the possibility of considering these facts as human trafficking (Hurtado et al. 2017; Villacampa and Flórez 2017). These papers show that people were forced to perform different tasks. Some of them were neither crimes nor directly related to the armed conflict, such as cooking and cleaning. However, the women and children interviewed had also been forced to take part in combat, plant landmines, kill, kidnap, and perform other essential tasks in the context of war (Hurtado et al. 2017; Villacampa and Flórez 2017). In the case of women, labor and criminal exploitation was accompanied by sexual exploitation, forced abortion, or the administration of medicines to induce abortion in other women (Villacampa and Flórez 2017).

Villacampa and Flórez (2017) concluded that 16 out of 20 women interviewed (80% of the entire sample) who were serving sentences in a Colombian prison for crimes committed within the guerrilla were actually victims of human trafficking for the purposes of criminal exploitation. Their interviews show that the three elements of the crime had been fulfilled. First, they were recruited and transferred from rural areas to the jungle, where they were completely separated from their social environment with no possibility of communication. The recruitment, transportation, and reception for the purposes of exploitation had been achieved by means of violence, deception, and the abuse of a position of power or vulnerability. Ultimately, if we consider that the tasks they carried out are the exploitative purpose of trafficking, the third element would be satisfied.

The commission of violent crimes together with other types of exploitation can also occur outside the context of an armed conflict. An illustrative example has been reported in the Netherlands, where a girl who had been trafficked from India to be kept in a situation of almost total serfdom, being completely isolated and constantly beaten up, was instructed under duress by her captors to kill a boy (Dettmeijer-Vermeulen and Esser 2017). She was not only not considered a victim of human trafficking but also faced criminal charges for manslaughter.
These examples show that, in practice, exploitation does not refer exclusively to obtaining profit but should also extend to situations in which the traffickers aim to obtain political utility or mere personal satisfaction (Hurtado et al. 2017).

**Human Trafficking**

“There is evidence that, particularly in the field of trafficking for sexual exploitation, many former victims are at some point offered the opportunity of recruiting new victims or serving as a ‘madam’” (UNODC 2016). That has been one of the explanations given for the high percentage of women convicted of human trafficking (Broad 2015; Siegel and De Blank 2010).

Sometimes female traffickers are pressured by male counterparts to recruit other women or otherwise engage in trafficking. They feel compelled to do so as a way of escaping their own situation of exploitation, in order to avoid situations of violence and abuse, or so as to repay their debt to traffickers (Broad 2015). In a case reported in Argentina, a criminal group used women who had been previously trafficked to recruit other victims from the Dominican Republic by means of deception regarding the working activities they would perform at the destination country. In this case, the court gave a lighter sentence to these women, since they recognized that they were victims themselves (UNODC 2016). However, this is not always like that. In these cases it is especially difficult to draw the line between victims and perpetrators. Discourses of perpetration and deviance are usually given more prevalence than experiences of victimization in criminal justice processes (Broad 2015).

**Specific Difficulties Related to Victim Identification**

Despite the express inclusion of trafficking for forced criminality in the definition contained in Directive 2011/36/EU, the identification of this crime is defective. A study that analyzed the identification of child trafficking for criminal exploitation in Lithuania, Norway, Poland, and Sweden reported that minors exploited in criminal activities get in contact with authorities repeatedly without being identified (Council of the Baltic Sea States 2013). As a consequence, prosecutions of traffickers are very rare. For instance, nobody in the UK has ever been convicted of trafficking people for the purposes of cannabis cultivation, although trafficking victims have been sanctioned instead (Burland 2017).

Victims of this crime are often not identified as such, but rather prosecuted as criminals (RACE 2014; United States Department of State 2014). On many occasions, they are completely invisible to law enforcement authorities until the crimes they have been forced to commit are noticed. Particularly in the case of shoplifting or pickpocketing, trafficked people perform tasks that are more exposed to criminal investigations, and therefore they are more likely to be caught and arrested than traffickers (Skrivankova 2018). For this reason, victims’ first contact with the professionals who can formally identify them usually occurs in a police station (or at the
airport in the case of mules), after they had been arrested (Villacampa and Torres 2017). In the absence of an appropriate protocol for the detection of these victims, they end up being punished for the crimes they committed during their exploitation. When trafficked people are migrants, they often face detention in immigration removal centers following the completion of a prison sentence with the strong possibility of deportation (Burland 2017).

Thus, human trafficking victims suffer a double victimization: one caused by those who trafficked and exploited them and another inflicted by the state. This institutional victimization has two aspects. On the one hand, the lack of identification means that the victims are deprived of the rights and protection granted by this status. On the other hand, to make matters worse, they are forced to serve sentences, including imprisonment, for crimes committed as a result of trafficking. In addition, the inability to identify victims means that traffickers continue to exploit individuals and benefitting from the criminal activities with impunity.

Several factors can explain the lack of identification of victims of human trafficking for criminal exploitation:

**Lack of Awareness and Prevalence of Stereotypes About Trafficking**

Firstly, since this modality of crime is new, there is little awareness of what it is, and victims are mistakenly viewed as having chosen to engage in criminal behavior (Sands 2018). Trafficked women serving sentences for drug crimes have reported that law enforcement authorities barely asked about their personal circumstances at the time they committed the offense so as to analyze if they had been trafficked or not, but rather focused on finding more people guilty of smuggling illicit substances (Villacampa and Torres 2015). Moreover, it is frequent that various different agencies in charge of identifying trafficking victims work with distinct interpretations of the definition of this crime (Council of the Baltic Sea States 2013).

Besides, when it comes to identifying victims, authorities are still too centered on sexual exploitation and on stereotypical constructions of ideal or innocent victims of trafficking, which undermines the successful identification of people trafficked for forced criminality (Burland 2017; Council of the Baltic Sea States 2013). A qualitative study carried out in Spain, in which 37 criminal justice professionals and victim service providers were interviewed, showed that “trafficking for criminal exploitation was only clearly identified as a form of trafficking in 15 of the interviews (40%)” (Villacampa and Torres 2017, p. 398). Therefore, if law enforcement authorities do not know what trafficking for criminal exploitation is, and are not familiar with its red flags, the vast majority of cases will remain unreported.

**Lack of Victims’ Self-Identification**

Especially in this modality of trafficking, victims do not self-identify as such (Sands 2018; Villacampa and Torres 2017). Stereotypical conceptions of what a trafficking victim should be also play a determinant role here. Many victims still understand
Trafficking as being “sold” and “taken,” usually by means of violence, and unless these elements are made obvious, they are unlikely to see themselves as trafficked people (RACE 2014, p. 76). Besides, trafficking victims, particularly children, may develop strong emotional links with their traffickers (Council of the Baltic Sea States 2013). This makes them experience a sense of protection, usefulness, and power that prevents them from realizing that they are actually being exploited.

Individuals trafficked to commit crimes not only are not aware of their status as victims but also perceive themselves as offenders (Villacampa and Torres 2017). Since they are aware of having participated in the commission of a crime, they are afraid of being detained and are unwilling to tell their story to the police due to shame or fear. This situation is exacerbated by traffickers, who may threaten victims with being reported to the authorities if they try to escape (Council of the Baltic Sea States 2013). Moreover, there is some evidence that traffickers train victims to “handle” contacts with the police, by instructing them to refuse to speak (Sands 2018, p. 5).

**Lack of Trust in the Police**

Their inability to express themselves as victims comes together with “a high level of fear and mistrust of the authorities and of the police, both in victims [sic] home counties and in destination countries” (RACE 2014, p. 76). The lack of trust in authorities is aggravated by their failure to recognize trafficking indicators, as explained above (RACE 2014).

Traffickers also contribute and take advantage of this situation. They tell the victims they will be punished because authorities will not identify nor assist them. They are also told that officials are corrupt and cannot be trusted. Again, victims assume these statements are true because “they have seen corruption first-hand or are aware of other victims who have been prosecuted for illegal entry or for other offences they may have been forced to commit as victims of trafficking” (Schloenhardt and Markey-Towler 2016, p. 23). They are, in sum, convinced that if they are identified, the victimization process will continue (Villacampa and Torres 2017).

For these reasons, it is crucial that law enforcement authorities who are in a position to identify victims of this form of trafficking are appropriately trained to look for the “crime behind the crime” (Skrivankova 2018, p. 116; United States Department of State 2014). In order to identify victims, law enforcement authorities need to be aware of the possibility of this type of trafficking existing, which is not often the case (Skrivankova 2018). Previous studies have confirmed that the number of victims identified increases when professionals receive training (Renzetti et al. 2015; Villacampa and Torres 2017). Moreover, it is important that they are familiar with indicators of this form of criminality. For instance, the following aspects have been suggested as examples of red flags that should be used to detect child criminal exploitation:

- Evidence of vulnerability
- Lack of supportive/caring adult
– Evidence of children moving between different locations
– Persistently going missing from school or home
– Regularly being found away from the home area
– Unexplained acquisition of money, clothes, or mobile phones
– Excessive receipt of texts/phone calls
– Relationships with controlling/older individuals or groups
– Leaving home/care without explanation
– Suspicion of physical assault/unexplained injuries
– Significant decline in school results/performance
– Self-harm or significant changes in emotional well-being (Sands 2018, p. 6)

Non-punishment of Victims of Human Trafficking for the Purposes of Forced Criminality

As we have seen before, individuals can be trafficked so as to be used and exploited in the commission of criminal activities. However, the risk of criminal offending linked to trafficking expands beyond this. Schloenhardt and Markey-Towler (2016) offer the following categorization of offenses that human trafficking victims may commit:

– Status offenses: These are offenses committed “as a direct result of their status in the place to or through which they have been trafficked” (p. 13). When trafficking involves the crossing of borders, victims are likely to enter, stay, or exit the destination country in violation of existing migration and border requirements and consequently could be apprehended and prosecuted for immigration-related offences. These offences committed in the process of being trafficked are also called “causation-based offences” (Villacampa and Torres 2017, p. 394).

– Consequential offenses: These are offences committed as a direct consequence of trafficking, because victims were coerced or forced by the traffickers to do so. The victims are used as instruments to commit crimes. The experiences mentioned in the above sections (drug trafficking offenses, property crime, violent crimes, human trafficking, etc.) would be included in this category. They may also be called “duress-based offenses” (Villacampa and Torres 2017, p. 394).

– Liberation offenses: These are offenses committed while trying to free themselves or trying to improve their situation. “In most cases, these offences would be directed against the traffickers, their associates, or their property, or involve offences committed to acquire weapons, other instruments, or documents needed to leave the trafficking situation and perhaps, the host country” (p. 15).

As stated before, punishing victims for any of the abovementioned offenses constitutes a double victimization: first criminally and then institutionally. For this reason, not punishing victims for trafficking-related offenses, particularly for consequential ones, is the most convenient answer from a criminal-political point of view. On the one hand, it would not be coherent to condemn the trafficker for the
recruitment, transportation, or receiving of an individual in order to exploit them in the commission of criminal activities and, at the same time, punish the victim too for the offenses they have been forced to perform. This is, in fact, one of the reasons behind the non-punishment clause: “even if a victim of trafficking deliberately commits an offence, they cannot be charged and prosecuted for that offence if they lacked true autonomy or agency at that time.” (Schloenhardt and Markey-Towler 2016, p. 19). The point is not offering blanket immunity to victims but balancing offenses committed against them with others committed by the victims (Schloenhardt and Markey-Towler 2016).

On the other hand, avoiding punishment serves as a way to enhance victims’ trust in the justice system. This way they will be more likely to exit the trafficking situation and cooperate freely with law enforcement authorities in the investigation and prosecution of traffickers (Schloenhardt and Markey-Towler 2016).

Aware of these advantages, some anti-trafficking legislation already foresees provisions in this line. Although the Palermo Protocol does not say anything in this regard, the United Nations Model Law against Trafficking in Persons (2010) recommends states the adoption of either non-liability, non-punishment, or non-prosecution of victims (p. 32).

– **Non-liability**: it is the broadest term. If adopted, criminal liability simply does not arise, that is, “offences committed by victims of trafficking are not illegal and do not require prosecution and punishment” (Schloenhardt and Markey-Towler 2016, p. 32). This provision is not used in any binding international instrument (Schloenhardt and Markey-Towler 2016).

– **Non-prosecution**: in this case, the offenses committed as a direct consequence of the trafficking situation would still be illegal, but prosecutors would refrain from pressing charges against victims. This option is foreseen in the OSCE Action Plan to Combat Trafficking in Human Beings, Decision 557/Rev.1, 7 July 2005. This provision impedes trafficking victims being held in detention centers or prisons at any time before, during, or after all civil, criminal, or administrative proceedings (United Nations 2010). It can be problematic in civil law jurisdictions where authorities have a duty to prosecute (Schloenhardt and Markey-Towler 2016).

– **Non-punishment**: it is the narrowest provision, according to which states only refrain from imposing penalties for the victim’s involvement in illicit activities they have been compelled to commit as a consequence of the trafficking situation. It is foreseen in the Council of Europe Convention on Action against Trafficking in Human Beings, as a possibility that states party should consider, in accordance with the basic principles of their legal systems (Article 26). Directive 2011/36/EU gives member states the possibility of choosing between non-prosecution or non-punishment, also in accordance with the principles of their legal systems (Article 8).

Despite non-prosecution and non-punishment clauses being widely adopted, victims of trafficking for the purposes of criminal exploitation continue to be punished. “In 24 out of 28 Country Reports, GRETA [Group of Experts on Action
against Trafficking in Human Beings] calls for the adoption and full transposition of non-punishment provisions, or calls for further steps to be taken to ensure its full Implementation” (RACE 2014, p. 77). In a study about people trafficked for cannabis cultivation in the UK, Burland (2017) provides several examples of real cases in which judges recognized that the defendants were “an example of modern day slavery,” and that they “had been used by others,” but they were nevertheless sent to prison (Burland 2017, p. 11–12). “Judges expressed sympathy and remorse for what they described as the desperate and sad circumstances of the defendants,” but “they lacked recognition and understanding of the possibility of the laws protecting the defendants they identified as trafficked and enslaved from being found guilty and sent to prison” (Burland 2017, p. 11).

Non-punishment provisions have also been outlined as a rationale for overturning convictions when it is subsequently demonstrated that those convicted were actually victims of trafficking for the purposes of forced criminality. The most paradigmatic case in this sense occurred in the UK in 2013 (L, HVN, THN, and T v R). In this case, three convictions of minors for drug-related offenses and one conviction of a woman of legal age for possession of false identity documents were annulled, given that these individuals had been victims of trafficking and that the criminal activities committed were integrated into the exploitation suffered. The court considered that, when assessing whether the offenses committed by the victims are part of the exploitation situation, it is not necessary to be prescriptive, and three types of situations must be distinguished:

1. In the first place, there will be cases, such as those of the judgment in question, in which the facts will show that the trafficked person acted under duress (“under levels of compulsion”) and guilt will be completely extinguished.
2. In other cases, culpability decreases but does not disappear, so that only the application of some mitigation will proceed. In order to reduce or eliminate the guilt, it will be necessary to take into account not only the age (a relevant factor in the case of minors) but also the fact that the victim had no realistic alternative other than obeying the mandates of the trafficker. It is important to note that this second criteria is but one of the elements of human trafficking: the existence of a situation of vulnerability that is abused by the trafficker.
3. Finally, on certain occasions the commission of crimes does not arise from victimization, and therefore, immunity would not proceed at all.

These criteria used by the British court could be useful to shed light on the application of non-punishment principles in practice, since there is not yet a uniform criteria recognized in international law or widely adopted in national legislations (Schloenhardt and Markey-Towler 2016). Different texts use different expressions in order to establish a causal connection between the offenses committed and the position of the victim (Schloenhardt and Markey-Towler 2016). Therefore, it is not clear whether leniency affects only consequential offences or also status and liberation ones. The United Nations Working Group on Trafficking in Persons (2015) stated that “in practice [. . .] it appears clear that crimes committed incidentally in the
course of an individual’s exploitation are more readily overlooked than crimes committed as a direct manifestation of the exploitative purpose, particularly where there is some indication of possible consent in the latter case. In such cases the threshold for disregarding apparent consent appears to be higher and courts have been less willing to accept broad interpretations of subtler means (such as abuse of a position of vulnerability) as a justification for disregarding apparent consent to involvement in criminal activities” (p. 7).

**Conclusion**

- The definition of human trafficking provided by the Palermo Protocol has been broadened by more recent anti-trafficking instruments to include, among other changes, new modalities of exploitation, such as forced criminality.
- Human trafficking for the purposes of forced criminality can be defined as the recruitment, transportation, transfer, harboring, reception, exchanging, or transferring of control over a person, using coercive, fraudulent, or abusive means, in order to exploit them by forcing them to commit criminal activities.
- According to Directive 2011/36/EU, forced criminality should be understood as the exploitation of a person to commit, inter alia, pickpocketing, shoplifting, drug trafficking, and other similar activities which are subject to penalties and imply financial gain. It is contested whether forced criminality can also include offenses that do not necessarily yield economic benefits, such as murder, terrorism, or participation in armed conflicts.
- A review of existing literature on this form of criminality shows that adults and children are trafficked for the purposes of being exploited in drug production, particularly cannabis cultivation, drug smuggling, and distribution, as well as property crimes such as pickpocketing, shoplifting, and counterfeiting. Some studies highlighted that individuals can also be trafficked to commit violent offences, including killing, kidnapping, or planting landmines. Finally, it is also common that victims of trafficking for the purposes of sexual exploitation are forced to recruit new victims.
- The identification of human trafficking for the purposes of forced criminality is still defective. This is mainly due to authorities’ lack of awareness of this modality of trafficking, prevalence of stereotypes about trafficking, victims’ lack of self-identification as such, and lack of trust in the police. Training and capacity-building plans for authorities in a position to identify victims are much required in order to improve this situation.
- Victims of human trafficking for forced criminality are often punished for the offences they have been compelled to commit. Thus, they are doubly victimized: firstly by the traffickers and later on by institutions, which do not give them the protection their victim status should grant.
- Many anti-trafficking legislations include either non-prosecution or non-punishment provisions, according to which states can refrain from pressing charges or imposing penalties for victim’s involvement in illicit activities they had been
compelled to commit as a consequence of the trafficking situation. However, judges still lack awareness of the possibility of applying them. Further steps need to be taken in order to ensure their full implementation.

References


Trafficking of Human Beings for Organ (Cells and Tissue) Removal

Karin Bruckmüller

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Abstract

There is a worldwide shortage of body parts. This shortage leads to the patient’s willingness to pay high sums of money for body parts, especially organs. Criminal organizations – in cooperation with staff members of the healthcare sector – do lucrative business with the trade of body parts, especially with the offence on human trafficking for organ (cells and tissue) removal.

This chapter describes the international legal documents and regulations to combat human trafficking for body part removal, and characterizes the offenders and victims, thereby focusing on the health issues related to organ transplantation (especially in cases of organ tourism) and on the problem of victim identification. The chapter concludes with preventative approaches.

Keywords

Human trafficking for organ removal · Healthcare professionals · Organ transplantation · Transplant tourism

Organ (Cells and Tissue) Removal – An Exploitative Form of Trafficking of Human Beings (THB)

The transplantation of human body parts, especially of organs, but also of tissues and cells, is a significant achievement of modern medicine that has saved or substantially improved, many lives. However, the possibility of transplantation from live donors and donors after brain death also carries risks. Transplantation needs an increasing number of human body parts, but organs, and, to a lesser extent, tissues and cells, are not always readily available.

The gap between supply and demand of transplantable body parts, especially organs, is vast and still increasing (see section “Conclusions: Strategies for Preventing Human Trafficking for the Purpose of Organ Removal,” excursus), which makes humans and their body parts an easily identifiable and profitable business for
criminals, particularly those involved in organized crime. Patients have to pay a great deal of money to obtain their needed organ or body part, resulting in an enormous black market for organs, cells, and tissue that has emerged over the years. An article in an Austrian newspaper (*Der Standard*, 2009), succinctly characterized the problem: Although organs for transplantation are scarce, anyone with enough money can get any organ they desire (Author’s translation).

Human traffickers, therefore, gain profits by recruiting victims to exploit as “human spare parts depot” (Rugemer 2010). Organ removal is a specific type of exploitation within the broader offence of human trafficking and is penalized under international legal frameworks and most national criminal legal acts.

Usually, human trafficking for organ removal is only mentioned in the context of living organ donation. However, the last Report of UNODC (2016) reported cases of organ-extraction from deceased THB victims (refugees) (see section “Cases of Human Trafficking for the Purpose of Organ Removal”).

Organ removal is mentioned under the illegal purposes of human trafficking because the removal of an organ without consent freely given, based on comprehensive information, is a severe violation of physical integrity and human dignity (recital 11 Directive 2011/36/EU, see also Andorno 2017). A person’s right to make decisions about their own body is breached; it is an extraordinary violation of human rights (see also section “The Criminalization of THB for Organ (Cells and Tissue) Removal on the International, Supranational, and National Levels,” excursus).

The removal of tissues and cells is often not mentioned explicitly as a type of exploitation in international legal documents. When – in individual cases – the removal of tissues and cells constituting an effective intervention, comparable to organ removal, is accompanied by a fundamental violation of human dignity, it can be considered as a form of exploitation of human trafficking (see also section “The Criminalization of THB for Organ (Cells and Tissue) Removal on the International, Supranational and National Levels”). In such cases, the following statements apply to the removal of cells and tissue.

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**The Criminalization of THB for Organ (Cells and Tissue) Removal on the International, Supranational, and National Levels**

**United Nations Convention**

The first mention of organ removal within the context of THB and its criminalization at the international legal level is in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (see UNODC 2009). It states, that “trafficking in persons” shall mean:

> “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”.

A closer look at the UN definition of trafficking in persons shows that recruited victims can be transported as donors to another country or within their home country. Harboring or recruiting donors, where the person is not transferred, but the organ recipient is brought to the donor, is seen as human trafficking for the purpose of organ removal. The means used to recruit the donors are all forcible or deceptive; under all such circumstances, the donors cannot choose to donate an organ based on free will.

Excursus: Importance of Free Will in the Context of Transplantation

In the context of organ donation, the free will of the donor is of paramount importance. Legally and ethically, a patient has to give their informed consent for medical treatment. This is particularly so concerning organ removal. The Guiding Principles on Human Cell, Tissue and Organ Transplantation (2010) of the World Health Organisation (WHO) requires, in its Principle 3, that a person must donate “free of any undue influence or coercion.” In other words, trafficking is not an acceptable means of acquiring donor organs (see also the Directive 2010/45/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation; The Declaration of Istanbul On Organ Trafficking and Transplant Tourism 2018).

Council of Europe Convention

The UN definition served as a model for the Council of Europe Convention on action against trafficking in human beings, which also mentions the removal of organs as a possible exploitation in Article 4.

European Union Directive

The European Parliament and the Council followed on from Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, both previously mentioned Conventions, and involved victims of trafficking for organ removal in Article 2. The previous act, the Council Framework Decision on THB from 2002, had not mentioned this kind of exploitation.
Children as a Particular Victim Group: United Nations Optional Protocol


The Criminalization of Cell and Tissue Removal in Single Cases Made Possible

As mentioned, the removal of cells and tissue as part of human trafficking is not explicitly included in legal frameworks. Only the most common exploitation methods are listed; due to the wording, and it is a nonexhaustive, exemplary list (“exploitation shall include at a minimum…”). This means the removal of cells or tissue can be an additional form of exploitation. This is the case if the intervention to remove cells and tissue is deemed comparable to organ removal. In some cases, the involuntary donation of these body parts can be seen as a profound violation and exploitation. Furthermore, if the other preconditions are fulfilled – namely, an illegal act and means have occurred – then the crime of human trafficking for cells and tissue removal has been committed.

Criminalization in National Legal Documents

According to (these) inter- and supranational legal documents, the state parties, ratified member States, and third parties are required to implement legislative and practical measures to establish human trafficking for organ removal as a criminal offence. Apart from the explicit sanctions on trafficking human beings for the removal of organs, offences such as bodily harm, homicide, or offences against personal liberty also play a role in the context of criminalizing THB for organ removal. Where organs are removed from deceased donors, necrophilia might come into question as a punishable criminal legal offence.

Limited Availability of Data

Even though “typical situations” and some single case studies (see section “Cases of Human Trafficking for the Purpose of Organ Removal”) are known, and research on the topic and media awareness are increasing, there is little data available on THB for organ removal.
Between 2007 and 2012, 100 cases of THB for organ removal were reported to the United Nations Office on Drugs and Crime (UNODC) by 20 countries (UNODC 2015). In the following 2 years to 2014, UNODC announced that 12 countries had detected 120 victims (UNODC 2016). A slight increase is thus recognizable.

In 2016, 1% of all human trafficking cases worldwide were for organ removal. Ten countries indicated such cases. North Africa and the Middle East were particularly affected; 3% of the THB victims were trafficked because of organ removal. In Central and Southeast Europe, 0.1% were victims of this exploitation type (UNODC 2016; see also UNODC 2015). The majority of victims (82%) were male, young and of low education (UNODC 2015) (see section “What We Know About the Victims”).

According to a report by the International Organisation for Migration (IOM 2017), refugees are affected by THB for the removal of organs and other body parts. Less than 2% of refugees on migration routes to Europe (during the so-called “refugee crises”) reported knowing of people forced to give organs and blood or other body parts against their will, mainly in Libya, but also in Egypt and Bulgaria.

These findings are just the tip of the iceberg; the vast majority of cases remain unreported because the victims are difficult to identify (see section “The Challenges in Trying to Identify the Victims”). The number of accusations and convictions is also deficient, as in all THB cases, because police, prosecutors, and courts are faced with various challenges when investigating and judging THB cases (HOTT Project n.d.). There is also the problem that trafficking takes place cross-border, even cross-continent (UNODC 2015; HOTT Project n.d.). Moreover, the crimes “human trafficking for organ removal” and pure “organ trafficking” are often confused or mixed up, making proper data collection impossible.

Differentiating “Human Trafficking for the Purpose of Organ Removal” from “Organ Trafficking”

We must differentiate “organ trafficking” from “human trafficking for organ removal” because they are two different and distinct criminal offences. When used in political and academic discourse, we confuse the terms, and they can merge into one. (Bruckmüller 2014; Stanojoska and Nikolova n.d.; UNODC 2015). While we acknowledge that these types of offences can sometimes overlap, it is vital to maintain their distinction for prosecution and the support of victims.

Human trafficking for the purpose of organ removal encompasses situations, as mentioned above, in which a person is recruited as a victim – usually under false pretenses or by violent means – and transported to a clinic (usually outside their country) to be subjected to organ removal. In this case, the persons themselves are the object of the trade.

In the cases of organ trade and body parts trade, the organs, cells, tissues, or other body parts are the object of the trade. Organ trafficking can be defined as a contractual agreement concerning implanting body parts into patients as a medical treatment for profitable ends. The donor gives the organ – in most of the cases voluntarily – (while living or promising the organ after death). Thus, from a legal
perspective, free will is still involved, even if the donor decides under duress or, for example, based on financial pressure. The recipient (illegally) pays the donor or the body parts dealer a high sum. This is also – in most countries – a crime because, for ethical reasons, organs are not allowed to be sold (e.g., see The Declaration of Istanbul on Organ Trafficking and Transplant Tourism 2018).

Sometimes the offence of “organ trading” and that of “human trafficking for organ removal” overlap, for instance, in cases where the offender commits both crimes (e.g., by not only recruiting the victim but also selling the organ to the recipient). This overlap also occurs in cases where the donor wishes to sell an organ but, in the course of finding a recipient or a medical institution, they are recruited by a trafficker and do not receive the agreed medical care or the agreed payment (UNODC Toolkit).

**Why Is Understanding the Differentiation Important?**

Although in practice, the distinction between “organ trade” and “human trafficking for the purpose of organ removal” may not always be discernable in every case, the distinction must be made because of the “criminal legal status” of the donor.

In an organ trade case, the donor – according to most national criminal codes – is an offender. If the offender illegally takes money for the organ, they are committing the crime of “organ trading.”

On the other hand, if a donor is recruited and exploited by a trafficker, they are a victim of human trafficking (although their organ is part of an organ trade). As a victim, they must be granted comprehensive victims’ rights and support.

In cases of THB, where the donor is a victim but receives money (even if this is less money than agreed), then from a legal perspective, the “victim” may not be seen as only a victim of THB. The victim becomes an offender in the organ trade because they earn money for their body part. In such incidents, the person can be called a “victim-offender” (Bruckmüller 2006; Bruckmüller and Schumann 2012; Bruckmüller and Schumann 2016). International legal frameworks (e.g., the UNODC nonbinding model law on THB, the binding legal frameworks at the European level, and some national, mostly criminal procedure, codes) stipulate that the offence of organ trade committed by a victim of THB within an exploitation situation should neither be prosecuted nor punished. This is known as the “non-punishment rule” (see, e.g., Article 22 of the Directive 2011/36/EU) (Bruckmüller and Schumann 2012; Bruckmüller and Schumann 2016; Bruckmüller 2017; Jovanovic 2017).

**Cases of Human Trafficking for the Purpose of Organ Removal**

**Typical Cases of Living Organ Donation**

Typical situations involving human trafficking for the purpose of organ removal may be as follows: A victim is brought on false presumptions to a clinic for a living organ donation. Either the organ recipient is brought to the same clinic as the donor
(such as in cases of “organ tourism”), or the organ is removed and then transported to the hospital (sometimes in another country) where the recipient is to be implanted.

In most cases, the donors are tricked into taking a well-paid job abroad, and so are tricked into coming with the offender. There are also cases in which the victims know that they will be donating an organ but the offender lies in terms of the medical care the victim will receive before and after the transplant. While proper medical treatment is promised, in reality, most donors do not receive any medical help or support before or after the procedure. It is also common for victims who at first decide freely to donate an organ but wish to withdraw later, to be forced to go through with the operation. Typically, victims are defrauded because of the money; sometimes they get less than promised – mostly they get little to no money (UNODC 2015; Europol 2010; HOTT Project n.d.; Budiani-Saberi & Delmonico, Budiani-Saberi and Delmonico 2008).

Examples of Reported Cases by Human Trafficking Victims to Live Organ Donation

One victim’s court statement revealed how the victim, a male, needed money for his education and healthcare for his father. Seeing an advertisement offering money for a kidney, he contacted the e-mail address given. He was promised 10,000 euros for a kidney but did not read the contract he was given to sign. The kidney removal was conducted in a big city clinic, not in his hometown. When he left the hospital, he did not receive the full amount of money agreed. He was later contacted by the person who had made the arrangements, offering to pay him what he was owed and extra money for every person he recruited for kidney donation. When he refused, his life was threatened (UNODC 2015).

Another reported case is that of a South American migrant to Europe with a big family and only able to speak his native language. He was involved in a car accident, and when he was having the car repaired, a police officer asked him how he intended to pay, while, at the same time, offering a way to get the money he needed: sell an organ. Transportation to South Africa, where the transplant was to take place, was organized. He was made to sign consent forms, including a statement that he was related to the donor. He was not informed about the specifics of the operation, the potential risks, or the safety measures necessary afterwards. On the contrary, the surgeon told him there were no risks. He was paid US$5000 but was made to sign a form stating he had received US$7500 (UNODC 2015).

Reported Cases of Organ Removal from the Deceased

THB for organ removal is concerned with organ removal from living persons. However, cases of organ removal from deceased persons were reported in the last UNODC Report (2016). This is a phenomenon that has come into focus with the
increased flow of refugees into Europe. The report revealed that migrants from Eritrea were kidnapped along with their route and forced into work or other situations of exploitation, and tortured. While being tortured, they had to call their family to ask them to pay a ransom. When the family could not pay the money, the captors killed the refugees and removed their organs. The organs were sold for around US$15,000 each.

**What We Know About the Offenders**

Various actors participate in the trafficking of persons. Offenders are mostly male; the ratio is 63% male to 37% female traffickers overall in the regions of eastern Europe and Central Asia. In Central America and the Caribbean, the majority of offenders are female (UNODC 2016).

Concerning THB for organ removal, the field of persons involved is considerably extended compared to typical single and organized crime offences; healthcare professionals are offenders in this field and, further still, there are offenders from other professions (UN.GIFT 2008; Europol 2011; UNODC 2015).

**The Role of Medical Professionals and the Involvement of Clinics**

Due to the nature of organ removal for transplantation, along with typical criminal actors, the medical and nursing staff of clinics and laboratories become offenders (UNODC 2008, 2015). Notable professions involved are transplant surgeons, anesthetists, and nephrologists. To assist during the operation and for post-operative care, nurses and other assistants are also required (OSCE 2013).

The role of medical actors requires further scrutiny. Without them, organ donation and therefore THB for organ removal would be impossible. Little is known, however, about their involvement. In particular, surgeons who perform illegal operations do not seem to be indicted and are less so convicted. There have been very few convictions of medical professionals involved in the trafficking of persons. One explanation is that their profession is held in high esteem (UNODC 2015; HOTT Project n.d.). Another reason might be that many medical and especially nursing staff members act unknowingly, meaning they have no idea about the circumstances of the transplant if they are not in direct contact with the donor. This lack of knowledge is particularly real for health facilities, such as laboratories, where blood and other testing is conducted, and for administrative staff in healthcare facilities responsible, for example, for transplant coordination (OSCE 2013; UNODC 2015). If the recipients or staff meet and treat the donor, they are not able to identify this person as a victim (see section “The Challenges in Trying to Identify the Victims”), and therefore without knowledge, they are not acting with intent. Moreover, intent often cannot be proven in criminal proceedings.
Other Actors Within the Healthcare Sector

Other actors, such as pharmaceutical companies, might play their part in THB for organ removal (UNODC 2015). In single cases, medical insurance agents and patient advocacy organizations are also part of the trade, or even travel agencies specialized in medical tourism. The so-called “transplantation tourism” plays an important role because travel agencies offer “all-inclusive” travel packages with travel and hospitalization costs and/or body parts included (Broumand and Saidi 2017; Shimazono 2007; Bos 2007; Zöch et al. 2010; UN.GIFT 2008; Rugemer, Rugemer 2010; Europol 2011; see also The Declaration of Istanbul On Organ Trafficking and Transplant Tourism 2018). If they know of the organ’s origin and the sourcing procedure, then they have the intent to commit a crime.

Organized Criminality Involved

A high level of organization is required to bring a donor organ and recipient from different countries, often different continents, together in a clinic successfully. Hence, organized crime networks are also actively involved in this kind of human trafficking (UNODC 2008, 2015; OSCE 2013). The organized crime “chain” usually starts with local brokers, the ones making direct contact with the future donor (OSCE 2013). They are very skilled at identifying vulnerable individuals and persuading them to sell an organ; they may even be from the same background, a friend or relative, or former victims of THB for organ removal (UNODC 2015). There is little data available about the detailed structures of the organizational networks and the international coordinators within organized crime.

The “Appeal” to Commit THB for Organ Removal

As noted above, reliable data on organ trafficking is quite limited. Studying the phenomenon is further compounded by the challenge of finding and identifying persons who have been victims of organ trafficking. As a result, law enforcement agencies report only a low detection rate. It is the low detection rate, in combination with the high profit to be gained by trafficking persons and exploiting them for their organs, that makes this kind of offence so attractive for offenders and organized crime networks. Recipients have been known to pay up to US$200,000 for a donor organ (UNODC 2015; UNODC, n.d.), with the largest share of the money going to the traffickers, which makes it a very promising enterprise.

Recipients as Offenders?

Finally, yet importantly, the recipient of an organ can be a THB offender, if they know all the circumstances surrounding the organ provenance and have the intent to
take the organ of a THB victim. However, it is unclear how much a recipient would know about the donor’s situation and the transplant proceedings. The recipient may believe – or even be made to believe by the traffickers – that the donor has given his free consent, received adequate medical care, and has been paid accordingly. Even if a recipient is aware of organ trafficking when going to another country for the transplant, they might not conclude they are part of a human trafficking scheme. In any case, recipients’ motivation, knowledge, and decisions would have to be assessed individually (UNODC 2015). Another aspect also needs to be considered, namely, how urgent is the medical need of the recipient and, in most of the cases, if the victim is confronted with impending death. Therefore, in proceedings so far, recipients have usually been treated as witnesses and not as offenders (OSCE 2013).

What We Know About the Victims

Typical Characteristics of Victims

While it is difficult to identify any distinct characteristics associated with THB victims for organ removal, specific attributes can be discerned despite data scarcity. They are usually young, around 30 years of age, poor, and not well educated. The age can be explained by the market’s desire for organs from young, healthy people (UNODC 2015); the recipients hope such organs have a higher chance to be accepted.

Gender is another unique characteristic. Where victims of THB for other purposes, like sexual exploitation, are mostly female, the majority of victims of THB for organ removal are male. Of those trafficked for organ exploitation, 82% are either men or boys, while women and girls account for only 18%. Considering the whole THB picture, 1% of all male victims are trafficked for organ removal, and 0.1% are females (UNODC 2016).

At the time of preparing this chapter, persons fleeing from conflict situations, as was detected during the so-called refugee crisis (see sections “Limited Availability of Data” and “Cases of Human Trafficking for the Purpose of Organ Removal”), are another vulnerable subgroup endangered for organ exploitation (UNODC 2016; IOM 2017).

Based on the findings mentioned above, it is clear that young men from a poor background and with low education make up the majority of victims.

Staff members of law enforcement agencies and the healthcare sector involved in victim support and crime prevention should be aware of this specificity of THB for organ removal. In the context of refugee movements, particularly staff members of NGOs and victim support organizations as well as volunteer helpers should know this data.

Poorly Educated Victims – The Problem of Informed Consent

The victim’s situation – here especially the low education standard – makes him an easy target for traffickers. Information on planned organ removal must always be
provided in such a way that is understandable, to enable the donor to make an informed decision. For medical treatment not in the immediate interest of the patient, information must be even more detailed and thorough, particularly on the reasons against committing to the treatment. These essential legal and ethical requirements of medical treatment are severely neglected in the case of human trafficking for organ removal. The victims do not know about their rights as patients and are not informed of them by THB perpetrators. People with low education might not know or understand the dangers accompanying an operation for organ removal, the potential problems during recovery, and the possible long-term effects, and can thus be more readily persuaded to agree to the operation and the loss of an organ. They might be unaware of what they are doing when signing the agreement, irrespective of whether it is written in a language they know or not. Even if they ask questions, they can be lied to or coerced into cooperation. Moreover, people needing money are more likely to believe that donating an organ is a fast and easy way to acquire funds.

**The Challenges in Trying to Identify the Victims**

Identification of victims of human trafficking is difficult; this is also true of victims for organ removal. In common with other exploitation forms, these victims are pressurized by the traffickers, and thus they are afraid to go to the police. Moreover, they usually do not trust the police or other authorities. Language problems must also be mentioned. Especially in situations where victims might be “organ trade” offenders (see section “Differentiating ‘Human Trafficking for the Purpose of Organ Removal’ from ‘Organ Trafficking’”), when they receive money – even if it is less than agreed upon – for the organ, they do not dare go to the police because they are afraid of punishment and criminal legal sanctions. Moreover, police usually treat them as offenders and completely overlook the fact that they are also victims (Bruckmüller and Schumann 2012; Bruckmüller and Schumann 2016; Bruckmüller 2017).

To raise identification rates, sensitization of law enforcement officials are required to enable them to recognize victims of THB even if they encounter them primarily as offenders. Law enforcement must, at the very minimum, try to interview the persons about the circumstances and contact a specialized victim support organization. With the least suspicion, they are facing a victim of THB. In the healthcare sector, specially trained persons are also needed who, in suspected cases, can identify a possible victim and consult support organizations. This is because victims regularly fail to disclose information on their victim status to medical doctors or nursing staff they meet in the clinic. They do not know whom to trust, who is an offender, and who is just an unconscious participant in the illegal transplantation process (UNODC 2008; UNODC 2015).

Even after the operation, victims are often not detected as such by the healthcare sector. The people concerned usually do not visit a doctor even if they require urgent medical care. This is mainly for financial reasons, but also because they feel ashamed.
This results in health problems for the donors (see “The Challenges of Human Trafficking for Organ Removal: Victims’ (and Recipients’) Health Problems”).

In the context of possible THB cases for organ removal, healthcare staff and law enforcement agencies during criminal proceedings must keep an eye on the consent forms victims are given to sign. They should be aware that such documents are often not signed voluntarily. The lack of a consent form is also indicative of a forced donation (UNODC 2015; see also section “What We Know About the Victims”).

The Challenges of Human Trafficking for Organ Removal: Victims’ (and Recipients’) Health Problems

They have to leave the hospital only a few days after the organ removal, without being given adequate information on the operation, postoperative care, or the support needed in everyday life. Often from poor backgrounds (OSCE 2013), donors usually lack the financial means to consult local healthcare providers (UNODC 2015). Sometimes they are too ashamed to go to a doctor. Subsequently, health problems as a result of the organ donation are regularly reported by identified victims.

In some cases, however, victims and recipients have health problems after a THB organ transplant. Outside of the legal requirements and medical screening covering security, compatibility, and transportation, the quality of the organ and the transplantation procedure may differ from the safety norms required for the recipient (see, e.g., Directive 2010/45/EU). Documentation on such illegal transplantations, especially in the context of transplantation tourism, is not usually available. Doctors and nurses providing aftercare in problematic cases thus do not have the information necessary to guarantee adequate medical treatment.

Support for Identified Victims

If victims are identified, they need comprehensive support, in addition to victims’ rights and practical support measures (such as secret accommodation or assistance in returning to their country of origin, and adequate medical support, which is an additional requirement in organ removal cases (see Purkayastha and Yousaf 2019). Where needed, psychological support must be on hand. Such operations – mostly unwanted – and the fear of future health problems can be traumatic for victims.

Conclusions: Strategies for Preventing Human Trafficking for the Purpose of Organ Removal

On both the national and international level, preventative measures and identification approaches need to be implemented. They include, among other factors, the following.
Reducing the Problem of Organ Shortage

Reducing the need for organs would be the first step. States should strive to optimize organ donation by legal and practical measures; Spain and Austria are good examples with high organ donation rates based on the “dissent solution” (detailed below).

Excursus: Reasons for Organ Shortages

As the demand of organs is high, there is an organ shortage at a time when more people need them due to modern ways of living, growing human longevity, and disease (National Academies of Science, Engineering, Medicine, 2017; Saidi and Hejazii Kenari 2014; Campbell and Davison 2012). At the same time, developments in the medical field have allowed for an increase in successful transplantation numbers (Commission of the European Communities 2007). Today, transplantation can be performed on a much more full range of different organs and other body parts, for example, hands and faces, which is more than could be transplanted just a few years ago. Medical and technological development, however, cannot prevent people from dying due to not receiving a donor organ on time (Bruckmüller 2014). So-called “waiting lists” for organ transplants are long.

An estimated 15–30% of patients on waiting lists die before they can receive a donation (Council of Europe 2003; Eurotransplant 2011; United Network for Organ Sharing 2017). At the beginning of 2018 in the EU alone, around 14,000 patients were waiting for a transplant (Eurotransplant 2011). The same is true for the USA, where about 114,000 people were wait-listed in mid-2018 (United Network for Organ Sharing 2017).

Conversely, organizational and practical circumstances in healthcare systems affect low numbers of organs (especially of deceased). Insufficient space, especially a free room, and staff as well as machines capacities for transplantations in hospitals must be mentioned, because in hospitals with these requirements more organs can be explanted and/or implanted (European Union 2009). In most regions however, there are not enough teams for the determination of brain death. Meanwhile, for live donations, there is in a lack of general insurance coverage for cases involving during and after a transplant operation is a decisive factor in some countries.

Besides these organizational factors at hospitals, legal factors are also responsible for the low number of body parts available (Bruckmüller and Schroth 2015).

In the case of living organ donation, there are strict legal preconditions to protect the donor. This is important from an ethical and patient autonomy standpoint. Living organ donation is regularly limited to certain groups, for example, close family members, in most national legal acts. However, the lower the number of people allowed to donate, the smaller the number of organs available for donation.

Another factor for legal consideration is the number of post mortem organs, the so-called “consent solution,” applicable, for example, in Germany, Switzerland, and
the United States. This opt-in solution allows an organ to be removed only if the potential donor has given consent during their lifetime. As the practice shows, fewer people are willing to agree to their organs being taken after their death.

The so-called “dissent solution,” an opt-out approach in force, among other things, in Austria, Belgium, and Spain, results in higher numbers of organs being available for transplant. This is the case because, under certain necessary conditions, removal of the deceased person’s body parts is generally permitted. If somebody does not want to be an organ donor, they have to object during their lifetime.

- States need to provide more money for clinics to enable the organizational and structural conditions for transplantations. The staff members should be well trained in transplantation processes.
- States should force legal changes; living organ donation, in particular, should be legally regulated in a way that extends the pool of persons allowed to donate as far as possible, while at the same time including sufficient protection for the living donor. Regarding the removal of organs from the deceased, the dissent-solution should be given precedence (Bruckmüller and Schroth 2015).

Raising Awareness in Cooperation with Healthcare Staff

As in all types of THB, an important step is to raise awareness of the crime so that people vulnerable to exploitation, and organ recipients, are familiar with the issues involved.

- Doctors and other actors in the healthcare system should be included in awareness-raising campaigns, along with typical participants like government officials, law enforcement, and the public. Information should be given about possible health problems after an illegal organ transplantation process, especially those connected with medical tourism (UNODC 2008; UNODC 2015).

Increasing Identification Rate

As described above, identifying victims is a problem in itself. Here, medical and nursing staff can contribute to identifying possible victims and protecting them from involuntarily donating an organ.

- When dealing with potential donors, specific rules should be adhered to by expert staff. Patients should always be thoroughly informed on the procedure, the risks attached, and the alternatives available for the recipient. It should be a priority for the donor to have all the necessary information to allow them to make an informed decision in compliance with ethical and legal rules. In this context, signing the consent form in the presence of a medical doctor is explicitly mentioned as one
possible way of reducing forced donations (UNODC 2015). This would, however, presume that said medical doctor is not part of any trafficking scheme.

- To identify a possible victim in an unclear case, the person should be interviewed compassionately. This means that staff in both healthcare and law enforcement should be trained to ask a potential victim in a supportive way and under comfortable circumstances. They also should call in a specialist from a victim support organization as and when necessary. The interviews with the potential victim will ascertain if they are a victim. UNODC and other regional victim organizations provide a questionnaire guideline (UNODC 2008). This includes, among other things, questions on the personal background of the donor, their recruitment, transportation, the medical procedures involved, and payment.

This would help in two ways: (1) victim status can be identified and (2) better insight can be gained into how trafficking networks operate (Bruckmüller and Schumann 2012; Bruckmüller and Schumann 2016; UNODC 2015).

**Adequate Legal Rules and (International) Cooperation of Law Enforcement Authorities**

- Enacting transparent legal regulations on organ transplantation and making organ removal a clear criminal offence within THB could also impede illicit activities. Such regulations should enable the traffickers to be prosecuted more efficiently. Thus, states need to reinforce their cooperation with each other, as trafficking is a cross-border problem (UNODC 2015).
- The legislation, however, should also consider victim support and victims’ rights for particularly vulnerable victims to THB for organ removal and prevent secondary victimization.

**Reducing the Risks of Becoming a Victim**

Reducing the reasons why people are vulnerable to becoming victims of trafficking for organ removal is paramount.
- This can be achieved by reducing poverty; communities most prone to falling victim to traffickers should be the primary targets of prevention programs.

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**References**


Legal Frameworks

Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018)
UNODC (n.d.) Model Law against Trafficking in Human Beings
Defining Child Trafficking for Labor Exploitation, Forced Child Labor, and Child Labor

Luz María Puente Aba

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Abstract

Child trafficking for labor exploitation is one of the worst and most invisible forms of human trafficking. Moreover, this specific form of trafficking is intertwined with other phenomena ranging from forced child labor to broader concepts like child labor and child work. The convergence of factors related to child trafficking for labor exploitation not only complicates efforts to regulate child work and criminalize forced child labor and child trafficking for labor exploitation, but it also hampers attempts to establish adequate and effective preventive measures. This chapter aims to unravel this complexity in three steps. Firstly, child work is defined as a comprehensive term that includes work legally undertaken by children as an economic activity. Secondly, the term child labor is defined as a concept that encompasses diverse categories of work prejudicial to children. These categories, based on specific conditions of work, differ in seriousness, and the International Labour Office (ILO) has classified forced child labor and trafficking for labor exploitation as two of the unconditional worst forms of child labor. Thirdly, these two graver forms are explained

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with emphasis placed on two special circumstances: the specific role of consent when children are the victims of forced labor and the progressive approximation of these two different concepts as a necessary strategy to effectively combat the exploitative situation.

Introduction

Addressing labor exploitation of children requires defining diverse concepts and situations, each of which carries a different degree of seriousness. In this introduction, four concepts are briefly defined, and the subsequent sections elaborate on each concept in more detail. The first concept, child work, applies to children at work in an economic activity. The core of this definition lies in the meaning of economic activity since the adoption of the System of National Accounts production boundary excludes domestic chores undertaken by minors in their own households. As will be shown, this exclusion could be problematic, because such domestic chores could also be omitted from the definitions of child labor, forced child labor, and child trafficking for labor exploitation. The second concept, child labor, is defined as all work that deprives children of their childhood, their potential, and their dignity and that is harmful to their physical and mental development. In practice, the elements which could turn child work into child labor include the child’s age, the nature or conditions of the work, or being engaged in any of the identified worst forms of child labor. Although the International Labour Office (ILO) has established a minimum age to work, distinguishing between light work (permitted above a determined age) and hazardous work (not permitted to minors) is indeed a controversial question which poses some difficulties, especially regarding the establishment of a universally accepted age for accessing to work. The third and fourth concepts, forced child labor and child trafficking for labor exploitation, respectively, fall under the (unconditional) worst forms of child labor. The ILO refers to forced labor as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This definition underscores two core elements: coercion (menace of a penalty) and involuntariness. The special feature of forced labor when victims are children is that coercion can be applied directly to the child or to his/her parents; in this realm, it should be considered that, according to ILO definitions, the person imposing forced labor should be someone other than the child’s parents. The fourth concept, child trafficking for labor exploitation, constitutes a process during which three stages can be distinguished: recruitment, transport, and purpose of exploitation. What binds these stages is the act of taking control over another person with the objective that he/she will be exploited afterwards. When victims of trafficking are children, their consent is irrelevant, so no special means will be required to recruit the child. Even though the exploitative situation is often not considered when defining the concept of trafficking, recent trends advocate for including the exploitation itself in the general definition of human trafficking.
Child Work

It is necessary to first define child work (or children in employment), in order to understand related concepts of child labor, forced child labor, and child trafficking for labor exploitation. The ILO refers to child work as children at work in an economic activity (ILO 2002). It is a broad concept that encompasses most productive activities performed by children. It comprises light work and also those activities that do not harm the health and well-being of children (Scarpa 2008).

The ILO adopts the term “economic activity” as defined by the System of National Accounts (SNA). This term refers to the internationally agreed standard set of recommendations on how to compile measures of economic activity in accordance with strict accounting conventions based on economic principles. In the SNA, production is understood to be a physical process, carried out under the responsibility, control, and management of an institutional unit, in which labor and assets are used to transform inputs of goods and services into outputs of other goods and services. All goods and services produced as outputs must be such that they can be sold on markets or at least be capable of being provided by one unit to another, with or without charge. The SNA includes within the production boundary all production actually destined for the market, whether for sale or barter. It also includes all goods or services provided free to individual households or collectively to the community by government units or nonprofit institutions serving households (EC/IMF/OECD/UN/WB 2009).

According to the ILO document Child labour statistics. Report III. 18th International Conference of Labour Statisticians (ILO 2008b) – a document whose definitions are taken as a basis in the last Global Estimates of Child Labour (ILO 2017) – “the SNA production boundary is more restricted than the general production boundary, in that it excludes, among others, unpaid household services. Such production activities outside the SNA production boundary are defined as non-economic production, and comprise items such as cleaning, preparing meals and care of other household members.” On the contrary, production falling within the SNA production boundary is defined as economic production. As defined, the SNA production boundary includes nonmarket economic production but excludes non-economic production like unpaid household services, which are part of the definition of the general production boundary. The ILO has always maintained its decision to continue to measure child labor on the basis of the SNA production boundary, and not on the general production boundary. This decision was made primarily to maintain comparability with the earlier ILO Global estimates on child labor. It was also made because only a few countries provide the necessary data on unpaid household services carried out by children at home (ILO 2013).

This definition of economic activity and, therefore, of child work covers all market production and certain types of nonmarket production, including production of goods for personal use. As the ILO explains, whether paid or unpaid, the activity or occupation could be in the formal or informal sector and in urban or rural areas. Children working as maids or domestic workers in someone else’s household are
considered to be economically active. However, children engaged in domestic chores within their own households are not considered to be economically active, e.g., caring for household members, cleaning and minor household repairs, cooking and serving meals, washing and ironing clothes, and transporting family members (ILO 2002, 2017). It is undoubtedly complicated to label some types of activities. For example, the ILO document *Child labour statistics* (ILO 2008b) identifies common children’s activities such as the collection of water and wood for fuel, or repairing roofs or walls, as nonmarket economic production. It also gives some examples of household activities: cooking, washing up, indoor cleaning and upkeep of abode, care of textiles, installation, servicing and repair of personal and household goods, outdoor cleaning and upkeep of surroundings, minor home improvements, maintenance and repair, care of family members, and procurement of household goods and services. This classification raises two issues. Firstly, it is inherently difficult to discern between economic and noneconomic production in relation to work for personal utility in one’s household, i.e., why is collecting wood for fuel categorized as economic activity but cooking is not. Secondly, why are household activities categorized as economic production when performed in someone else’s house, but not when they are done in one’s own home. Addressing these issues is undoubtedly relevant since each successive definition is a subcategory of the previous one (e.g., ILO 2017). In other words, including the SNA production boundary would render it inherent to the concepts of child labor and all the worst forms of child labor. This could pose some controversial questions in the definitions of these concepts as will be seen in the next sections.

**Child Labor**

According to the International Programme on the Elimination of Child Labour, created in 1992 by the ILO, “the term child labour is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to attempt to combine school attendance with excessively long and heavy work” ([http://www.ilo.org/ipec/facts/lang%2D%2Den/index.htm](http://www.ilo.org/ipec/facts/lang%2D%2Den/index.htm)). In contrast to child work, child labor refers to hard tasks that should not be undertaken by minors (Scarpa 2008).

In other ILO documents, the term child labor has been defined as a term that excludes all children working legally in accordance with ILO Conventions on Minimum Age, 1973 (No. 138) and on Worst Forms of Child Labour, 1999 (No. 182) (ILO 2013, 2017). In practice, the elements which could turn child work into child labor include the *child’s age*, the *nature or conditions of the work*, or being engaged in *any of the identified “worst forms of labor”* (ILO and IOE 2015).

This has led to the establishment of a *minimum age* to begin employment, provided by the ILO and also stipulated in each national legislation. The ILO
Minimum Age Convention establishes that each Member State shall specify a minimum age for admission to employment or work, respecting the limits provided in this Convention. Article 2.3 establishes that this minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Nevertheless, some exceptions exist regarding the nature or conditions of the work.

Firstly, when employment or work is likely to jeopardize the health, safety, or morals of young persons, the minimum age shall not be less than 18 years or 16 years if national laws or the competent authority guarantee that these persons are fully protected or have received adequate specific instructions. This is the so-called hazardous work, defined by the ILO as “any activity or occupation which, by its nature or type has, or leads to, adverse effects on the child’s safety, health (physical or mental), and moral development. Hazards could also derive from excessive workload, physical conditions of work, and/or work intensity in terms of the duration or hours of work even where the activity or occupation is known to be non-hazardous or ‘safe’” (ILO 2002). Secondly, a Member State whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years. Thirdly, the Convention permits people from 13 to 15 years (or from 12 to 14 years in case of Member States with the aforementioned facilities insufficiently developed) to do light work, which is defined as work “(a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority or their capacity to benefit from the instruction received” (ILO 2017).

In any case, the establishment of a compulsory minimum employment age is difficult at an international level in light of the diversity of wealth and culture across nations (Bonet Pérez 2010). Currently, an absolute prohibition of working under a worldwide accepted age is difficult to establish because it can neither accommodate the social and economic particularities of each country (Nieuwenhuys 1996) nor result in a comprehensive solution to a global problematic situation. A different approach would account for the socioeconomic determinants of child labor, in which the regulation of a child’s labor rights could potentially be a temporary solution that guarantees both fair wages and workplace safety. With this in mind, the existence of fully organized child labor unions is remarkable, taking into account that they advocate for a child’s right to work and therefore for the legal recognition of fair conditions to carry it out (Cordero Arce 2015; Liebel 2015).

Pertaining to child labor, the ILO has selected the worst forms of child labor in its aforementioned Convention No. 182 (Worst Forms of Child Labour Convention) (ILO 2017). According to its article 3, “the worst forms of child labor comprise: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the
relevant international treaties; and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Category (d) refers to the already defined hazardous work (Scarpa 2008), a more in-depth description of it can be found in the ILO Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labor, 1999 (No. 190), which puts special emphasis on particular conditions such as exposure to physical, psychological, or sexual abuse, the use of dangerous machinery, or the existence of confined spaces and particularly difficult situations, e.g., very high or low temperatures, hazardous substances, noises, or long hours of work (Scarpa 2008). The three first categories (a, b, c) are the so-called unconditional worst forms of child labor; within these worst forms, the focus should be on where the ILO mentions “trafficking of children” and “forced or compulsory labor.” These concepts will be clarified in the next two sections; here it is interesting to point out that it has been argued that both forced child labor and child trafficking for labor exploitation are not actual “forms” of child labor (Cordero Arce 2015; Mendizábal 2011), because being subjected to an exploitative situation cannot be considered as a kind of work or labor.

As a last important data, it should be noted that, according to the ILO document Global Estimates of Child Labour (2017), most child labor takes place within the family unit. This means that most child laborers are not in an employment relationship with a third-party employer but rather work on family farms and in family enterprises. In this regard, it is important to highlight that children engaged in domestic chores within their own households are not considered to be economically active. Thus, the concept of child labor excludes domestic chores and subsequently narrows the scope of its definition as a specific subcategory of child work. This could be problematic because some studies have revealed that a great deal of child work takes place in the sphere of non-remunerated jobs within households. Children can be put to work within their own homes or within a relative’s home; indeed, the most common forms of work are domestic chores and, especially in poorer countries, agricultural tasks (Nieuwenhuys 1996). Then, the exclusion of the household realm from the concept of child work and child labor would overlook some situations where exploitation could also occur.

In fact, the ILO indicates that agricultural and household activities carried out by children have been neglected in global estimates and admit that child domestic labor is often masked by kinship arrangements (ILO 2006). This kind of labor has been experiencing social tolerance similar to what is deemed as acceptable within agricultural work, alleging that children are learning useful skills within this supposedly protective environment (ILO 2006). In the end, the ILO recognizes the convenience of advocating for the inclusion of child domestic labor as a form of child labor and potentially one of its worst forms (ILO 2006; Fabregat and Virrueta 2000). It is noteworthy that the distribution of children in child labor by employment status shows that child laborers work primarily without being paid by their own families: unpaid family workers account for more than two-thirds of child laborers (68%), followed by paid employment (23%) and self-employment (8%) (ILO 2013b). This shows that a large number of child laborers perform work within a domestic setting,
ranging from household chores to agricultural work. It is also significant to note that the exclusion of domestic work from the concept of child labor also has a gender dimension, since most of these tasks are undertaken by girls (see, e.g., Gibbons et al. 2005). If domestic chores within their own household are considered as noneconomic production, these activities would then be excluded from the concepts of child work and also child labor.

**Forced Child Labor**

When defining forced labor, the ILO refers to the general definition contained in the ILO Forced Labour Convention (No. 29, 1930), “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (definition reaffirmed by the Protocol of 2014 to the Forced Labour Convention) (Allain 2013; ILO 2017b). The ILO also specifies that forced child labor can be distinguished from other forms of child labor through the presence of one or more of the following conditions: a restriction of the freedom to move, a degree of control over the child going beyond the normal exertion of lawful authority, physical or mental violence, and absence of informed consent (ILO 2002). In this sense, the definition of forced labor includes two of these criteria: the menace of penalty and the involuntariness (ILO 2005; Scarpa 2008).

The definition of forced labor contained in the ILO 1930 Convention is detailed in the aforementioned ILO document *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (ILO 2012). The document outlines four dimensions of forced child labor, which are the same as for adults, but with some distinctive characteristics. The first three dimensions are equivalent to involuntariness, whereas the fourth dimension explicitly addresses coercion; this last dimension is further divided into six subcategories, in other words, six recognized methods of coercion which can be applied either directly to the child or to their parents (ILO 2012):

1. Forced and/or the deceptive recruitment of children. “Forced” means that, during the recruitment process, constraints are applied to oblige a child to work for a particular employer. “Deceptive” means that the child is recruited through false promises made to him/her or his/her parents.
2. Work and life of children under duress, which covers adverse working or living situations imposed on a child by the use of force, penalty, or threat of penalty. “Work under duress” may entail an excessive volume of work or tasks that are beyond what can reasonably be expected of a child given his/her physical and mental capacity. “Life under duress” relates to situations where restrictions on freedom or excessive dependency are imposed on a child by his/her employer.
3. The impossibility for children to leave their employer. The difficulty to leave an employer is characteristic of forced labor in situations where leaving would entail a penalty or punishment which, in the case of children, might be something seemingly less significant than for an adult; for example, an inference that his/her
parents would be extremely unhappy or disappointed if he/she were to leave and that the family would suffer as a result.

4. Regarding coercion of children, the categories of coercion of adults also apply: threats and violence, restriction of workers’ freedom of movement, debt bondage, withholding of wages, retention of passport, and abuse of vulnerability.

A specific question regarding forced child labor is that, given that a child cannot legally consent and is under paternal authority, to what extent do coerced parents play a role? In this sense, a child must be considered as a victim of forced labor when he/she is working with his/her parents, who are themselves victims of forced labor (ILO 2005). As the ILO document *Hard to see, harder to count* (2012), or the *Global estimates of modern slavery* (2017b) recognize, the penalty can be applied to the parents, rather than directly to the child. Indeed, two kinds of situations can ensue: one in which children are victims of forced labor because coercion is applied to the child or to the child’s parents, or one in which the state of forced child laborers results from her/his parents being themselves forced into labor (Dottridge and Jordan 2012).

According to the ILO (2012), forced labor of children cannot be characterized merely by the nature of the job or by the working conditions. Any type of economic activity undertaken by a child should be considered as forced child labor if some form of coercion is applied by a third party, either directly to the child or to his/her parents. It should also be noted that, according to the definition given by the ILO, the person imposing forced labor should be a person other than the child’s parents (ILO 2017b; Dottridge and Jordan 2012). The reference to the performance of an “economic activity,” and to the fact that coercion must stem from a third party, excludes some nonpaid domestic work as well as coercion applied by parents themselves, even though child labor most frequently occurs within the family unit (ILO 2017). Hence, this definition of forced child labor fails to recognize coercion directly applied by parents on the child.

Finally, it bears mentioning that the exclusion of domestic work can have a distorting effect on the definition of forced labor, a definition categorized as one of the unconditional worst forms of child labor. If child labor and its worst forms fall within the broader concept of child work, and if this term does not include domestic work in one’s household, does this really mean that child trafficking and forced labor cannot have the purpose of exploiting the child for domestic services within the family unit? In fact, these tasks are excluded neither from the general definition of human trafficking nor from forced labor, and, as the ILO itself recognizes, most child labor takes place within the family unit, with children working as contributing family laborers (ILO 2017).

**Child Trafficking for Labor Exploitation**

Like forced child labor, child trafficking is considered one of the unconditional worst forms of child labor. In this section, the difference between child trafficking for labor exploitation and child labor exploitation or forced child labor itself is highlighted.
Before explaining this distinction, it is important to reiterate the same criticism as with the definition of forced child labor: the definition of child trafficking, as an unconditional worst form of child labor, could exclude domestic work performed by children within their own household. This would certainly contradict the general definition of human trafficking for labor exploitation, focused, as it will be seen in this section, on the recruitment of persons for the purpose of being subjected to forced labor, which is defined as all kind of work or service exacted under the menace of any penalty. According to the definitions and considerations made by the ILO, both terms are not synonymous, with “forced (child) labor” entailing a wider and more comprehensive concept than “human (or child) trafficking for labor exploitation” (ILO 2008). Certainly, both terms have not been considered synonymous since the essentials of trafficking constitute a process, during which three stages can be distinguished: recruitment, transportation, and exploitation, as, for example, the UN indicates (UNODC 2006; Coster van Voorhout 2007; Olsen 2008; Scarpa 2008; Villacampa Estiarte 2011). In this last stage, one can find different forms of exploitation, with forced labor being one of them. However, since trafficking does not require the presence of an exploitative situation, but rather implies the purpose of exploitation, it should not be identified with the situation of exploitation that derives from the process of trafficking itself. As the word trafficking implies, it is a process that ends with the effective recruitment of the victim and the transportation to the place where he/she is going to be exploited (Bales/Trodd/Williamson cited Villacampa Estiarte 2011). Movement is an essential element of trafficking (Dottridge and Jordan 2012), regardless of the extent of this movement, whereas forced labor is a typical outcome of trafficking and occurs at the point of exploitation. Victims of forced labor may have migrated willingly and only been subjected to coercion after arriving; there can also be victims of forced labor in the same place where they live (Kane 2013).

Although human/child trafficking includes a stage of transportation, this does not necessarily mean crossing national borders, because victims can be recruited and exploited in one country (Jansson 2015). The UN *Global report on trafficking in persons* (2016 edition) highlights that most trafficking is national or regional, carried out by people whose nationality is the same as that of their victims, even though there are also notable cases of long-distance trafficking (also UNODC 2006). Even more, victims of trafficking can be also legal migrants, who may find themselves in the country of destination in a situation of vulnerability, which will facilitate the involvement of the person in a process of trafficking (Scarpa 2008). This *Global report* of 2016 affirms that this “domestic trafficking,” i.e., trafficking within the same country, has increased in recent years and accounts for some 42% of detected victims between 2012 and 2014 (see also Gallagher 2010; Plant 2011; Villacampa Estiarte 2011; Montero 2012; Burke 2013; Kane 2013).

According to the definition of the UN Protocol, human/child trafficking requires the presence of three elements, namely, act, means, and purpose. Put differently, this definition is fulfilled when the recruitment and transportation of the person are made by different means that are always tantamount to a lack of real consent, with the purpose of some form of exploitation (UNODC 2006; Smith and Kangaspunta...
Nevertheless, in the specific case of trafficking of children, the UN Protocol establishes that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article,” that is to say, “the threat or use of force of 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.” In other words, the consent of a child to be recruited for the purpose of exploitation is irrelevant. It is only necessary that the child is taken to be put in an exploitative situation, in this case to be submitted to forced labor, as defined in the previous paragraph.

The separate mention of trafficking and forced labor is not specific to child trafficking and forced child labor; it also applies to human trafficking and forced labor related to adults. Actually, this separate definition of trafficking itself and the purpose of exploitation have been questioned. Indeed, the punishment for those who engage in human trafficking intends to cover a process through which a person is recruited and transported with the purpose of some form of exploitation. Thus it is possible to differentiate between human/child trafficking for labor exploitation and forced (child) labor; the former encompasses the process through which a person is recruited and transported for the purpose of subjecting him/her to coerced labor or services, while the latter refers to the coerced work itself, in other words, to the situation of exploitation that consists of working against one’s will, under the control of another person. Taking this into account, it has been questioned whether the international emphasis on fighting human trafficking is the most comprehensive way to end human exploitation, which is in reality the genuine and final objective of this sort of initiative. While it is true that trafficking does not require the execution of the exploitative situation, it is necessary to ascertain all the stages of the trafficking process, namely, recruitment, transportation, and purpose of exploitation (see Sanghera 2005; Olsen 2008; Defensor del Pueblo 2012). Attempting to address all these factors makes it difficult to gather enough evidence to prosecute the crime and can lead to some collateral consequences. Some examples of such consequences include the low number of prosecutions in national tribunals for the crime of human trafficking, the strengthening of national border controls in order to better combat human trafficking, and more restrictive immigration policies. Another result of this interpretation of trafficking is that due to the lack of global evidence of this process, cases of trafficking have been prosecuted as different types of crimes (Defensor del Pueblo 2012, 274).

All these considerations raise the possibility of placing more or equal emphasis on the prosecution of the crimes that are tantamount to the exploitation itself, instead of focusing mainly on the fight against the trafficking process (Rodríguez Montañés 2015; Rijken 2013; Sánchez Tomás 2015). In fact, the current trend both in literature and in state practices is to accept that the concept of trafficking not only encompasses the process of recruiting the victim in order to exploit him/her but also includes the situation of exploitation itself (Gallagher 2010; Chuang 2014; Jansson 2015). Thus, asserting that the criminalization of human trafficking can serve as a means of
punishing those who engage in activities that lead to the situation of exploitation should be welcomed. However, the real target should not be forgotten. Since the genuine reason to prosecute this crime is to avoid future exploitation, emphasis should also be put on the prosecution of those who perpetuate the exploitative situation itself. A comprehensive fight against human trafficking for labor exploitation would give priority to the prosecution of forced labor itself without disregarding the aspect of trafficking.

This particular perspective could be primarily useful regarding child trafficking. When analyzing the implementation of the ILO Convention No. 182 (Worst Forms of Child Labour Convention), the Committee of Experts on the Application of Conventions and Recommendations – set up by the ILO to examine state government reports on ratified ILO Conventions – emphasized the necessity of eliminating trafficking in the fight against all the worst forms of child labor (Scarpa 2008). However, as it has been indicated, focusing on the process of trafficking could override the real objective, which is preventing exploitation. A comprehensive approach would be necessary to prevent not only moving children into a status of dependency, i.e., trafficking, but also the situations of exploitation themselves, e.g., forced labor (Sax 2018).

In conclusion, an indisputable correct step in this direction is the current trend to include the situation of exploitation as a core element of what constitutes human trafficking. In any case, two mentioned issues emerge here once again: the fact that child labor fails to encompass unpaid domestic work, a situation in which a notable number of cases of child trafficking and forced labor (subcategories of child labor) can be found; and the fact that, although the consent of a child is irrelevant in the field of trafficking, the given definitions of forced labor (the exploitative situation as the purpose of trafficking) start from the irrelevance of the child’s consent but refer themselves to the existence of coerced parents and the necessity that coercion be applied by a third party.

References


Domestic Sex Trafficking of Children

Susan C. Mapp

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Abstract
A great deal of attention has been paid to trafficking across international borders; however, comparatively little attention has been given to those who are trafficked within the borders of their own country, including children. While growing attention has been given to this population, there is still confusion and misinformation about this crime. This chapter reviews relevant laws in several nations, as well as risk factors and forms of this crime. Lastly, effective interventions to assist these youth in leaving the life are discussed.

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A great deal of attention has been paid to trafficking across international borders; however, comparatively little attention has been given to those who are trafficked within the borders of their own country. The International Labour Organization (2017) estimates that while those who are trafficked for sexual exploitation are the most likely to be trafficked across borders, a quarter are trafficked within their own country. This population, especially those who are children, has been receiving growing attention in recent years. In the United States, this crime is often termed domestic minor sex trafficking (DMST), while in the United Kingdom (UK), it is commonly known as internal child sex trafficking. It has been found to occur around the world in countries as varied as the United States, Canada, India, Burkina Faso, and Nigeria (Hounmenou 2016; Hounmenou and Her 2017; Mapp 2016; National Task Force on Sex Trafficking of Women and Girls in Canada 2014; Santhya et al. 2014). This chapter will explore permutations of legal definitions of this crime between nations and how what is trafficking in one nation is not in another. Demographic factors of children who are at heightened risk for being trafficked will be explained, as well as its four main types divided by who the exploiter is, and, lastly, methods of helping children leave the trafficking situation will be discussed.

Numerical statistics have varied widely in estimating the extent of this crime, and many have been subsequently debunked as too inaccurate to be of use. This is due in part to what is known as the “Woozle effect,” in which an estimate is initially offered together with the limitations of how that number was developed, but subsequent citations remove the discussion of limitations, and the estimate evolves to be considered fact (Salisbury and Dabney 2011). The Washington Post has published an article explaining why the most commonly cited statistic of those involved in DMST in the United States – 300,000 – was, in their terms, “bogus” (Kessler 2015). However, the US Institute of Medicine (2013) has stated that it is not a good use of resources to assess exactly how many children were being trafficked but rather that these resources should be put toward solving the problem.

A number of international documents address the trafficking of children and have established important differences between the trafficking of adults and children. In the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (commonly referred to as the Palermo Protocol), the “means” required for trafficking to have occurred – force, fraud, or coercion – is not required if the individual is under 18 years of age (United Nations 2000a). Articles 34 and 35 of the United Nations Convention on the Rights of the Child prohibit the traffic of children. In 2000, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was adopted by the United Nations in order to expand the protection for children against

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**Keywords**

Domestic minor sex trafficking · Internal child sex trafficking · Commercial sexual exploitation of children

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these crimes. It similarly does not require means and states outright that “the use of a child in sexual activities for remuneration or any other form of consideration” is banned (United Nations 2000b, Article 2).

Attention to trafficking within national borders has been slowly evolving in national laws. For example, although the United States passed its first anti-trafficking law in 2000 – the Trafficking Victims Protection Act (TVPA) – it was not until the 2005 revision that domestic trafficking was specifically addressed (Title II – Combating Domestic Trafficking in Persons). It should also be noted that in the TVPA (Section 103(3)), similar to the Optional Protocol, the purpose of trafficking – exploitation – occurs if sexual acts, intercourse, pornography, or stripping, are exchanged for anything of “value.” This does not have to be money but can also include food, drugs, shelter, and so forth. In the United Kingdom, specifically England and Wales, a similar law – the Sexual Offences Act 2003 – came into force in 2004 in order to criminalize sex trafficking within their borders (Cockbain and Wortley 2015).

The difference between the commercial sexual exploitation of children (CSEC) and trafficking of children for sexual exploitation is difficult to untangle and can vary between nations based on their national laws, although both include sexual exploitation of a child as their purpose. Even within a nation, definitions can contradict each other. For example, in the United States, the Office of Juvenile Justice and Delinquency Prevention (OJJDP 2016, p. 1) defines commercial sexual exploitation of children (CSEC) as “crimes of a sexual nature committed against juvenile victims for financial or other economic reasons” and notes that this can include sex trafficking, as well as pornography and prostitution. However, the same government but a different agency – the Department of Health and Human Services – states that, “Human trafficking of a child for sexual exploitation includes all forms of commercial sexual activity with a child, including prostitution and participation in the production of pornography” (Child Welfare Information Gateway 2016, p. 3). Adding to the confusion is the fact that state-level laws vary as well; 25 states in the United States define stripping or exotic dancing by a minor as sex trafficking, but the other 25 do not (Child Welfare Information Gateway 2016).

It appears to be what is defined as the “act” of trafficking (recruitment, transportation, transfer, harboring, or receipt), specifically transportation, that creates the difference between CSEC and DMST in some nations. Some countries view transportation as necessary, while others do not. This may be due to the focus on the word “or”; some countries may be focusing on the fact that transportation is only one possibility of five acts, rather than stated as a requirement. This is strengthened by the fact that “receipt” is also one of the acts, and the United States has prosecuted buyers as traffickers on this basis (US Department of Justice 2013). For others, “trafficking” inherently implies some type of movement.

In countries such as the United States and Canada, transportation is not necessary for this crime to be considered trafficking (Administration for Children & Families n.d.; Department of Justice 2016); however in the United Kingdom and Australia, it is. In the United Kingdom, the Modern Slavery Act of 2015, Section 2 (1), states
“A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.” Similarly, the Australian Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, Section 271.5, states that domestic trafficking occurs if “the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia.” Therefore, if movement does not occur, it is considered commercial sexual exploitation (CSE), but not trafficking. In the United Kingdom, CSE is defined as:

Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology. (Department for Education 2017, p. 5)

In the United States, in contrast to the United Kingdom, the terms commercial sexual exploitation of children and domestic minor sex trafficking are relatively synonymous:

Sex trafficking is when a commercial sex act is induced by force, fraud or coercion OR when the person induced to perform the act is under 18 years old. A commercial sex act means any item of value is traded for any sexual service (prostitution, pornography, or sexual performance). Domestic minor sex trafficking is the commercial sexual exploitation of American children within U.S. borders for monetary or other compensation (shelter, food, drugs, etc.). This is synonymous with ... commercial sexual exploitation of children (CSEC). (Shared Hope International n.d.)

Now that the definition of the trafficking for sexual exploitation of citizen/resident children has been explained, as well as how it can vary between nations, it is necessary to explore what can place children at risk of this crime. Risk factors will be explained, as well as permutations of this crime divided by who is the exploiter. Due to the psychological coercion often seen with this crime, it can be difficult to help those who are trafficked to leave, and methods of doing so will be discussed.

**Children at Risk for Being Trafficked**

All children are at risk of being trafficked, regardless of individual circumstances, though some are at higher risk than others. The “means” of trafficking – force, fraud, or coercion – is not required for children due to recognition of their relatively immature ability for rational decision-making. Evolving science has brought an understanding that youth do not make decisions in the same fashion as adults, and their brain structure for decision-making is still developing until about age 25 (Konrad et al. 2013). This is particularly true for children who have experienced
trauma. The prefrontal cortex, which helps regulate control of behavior, planning, and risk assessment, matures later than other parts of the brain, making it more difficult to make logical decisions (Konrad et al. 2013). The ability to assess negative consequences or develop options in a situation is more difficult for adolescents (Beyer 2011). Sensation-seeking and acting in anticipation of an immediate reward are higher in adolescents, particularly in emotionally laden situations, when the more developed limbic and reward systems can override the relatively immature prefrontal cortex (Blakemore and Robbins 2012; Konrad et al. 2013; Romer 2010).

Children have been exploited, including for commercial gain, throughout history. However, changes in technology now facilitate this exploitation as children can be recruited and/or sold over the Internet and other platforms. These changes in technology are also changing social norms, which can lead to an increased risk of trafficking. Research has found the use of pornography to have become widespread among youth and that this affects perceptions of what is expected and normal in a sexual relationship, such as an expectation of multiple sexual partners and questionable consent (Marshall 2014). An English survey of 18-year-olds found that 46% of them agreed that “sending sexual or naked photos or videos is part of everyday life for teenagers nowadays.” Additionally, 81% agreed that “most young men look at pornography and 46% agreed that “most young women look at pornography” (as cited in Thomas and Speyer 2016, p. 21). Even outside of pornography, the sexualization of females in the media, including girls, contributes to the idea that females are only sexual objects (HTNCC 2014; Mapp 2016).

As noted, while all children are potentially at risk for being trafficked, certain demographics can place them at higher risk than others including their socioeconomic status, their ethnicity, their sexual orientation, or their gender identity, if they have experienced child maltreatment, if they have a disability, and if they are unhoused. These risk factors can occur on their own or can combine to further increase risk.

Poverty

Regardless of in which nation trafficking occurs, poverty is a common risk factor for being drawn into trafficking. For example, in India, the state of Bihar has been identified as a major area from which youth are trafficked. Bihar is less developed than other areas in India, and approximately one-third of its population lives below the poverty line (Santhya et al. 2014). Growing in an impoverished family can be a risk factor for a number of reasons. Children may long for the consumer goods their families cannot afford to buy them and see sex work as a method to earn money to buy them. They may be living in neighborhoods where there is prostitution or gang activity and come to see involvement in sex work or gang involvement as normal and acceptable. There can be biological impacts on the brain from living in poverty, which can result from a variety of sources, including the stress of poverty, a higher risk of lead exposure, malnourishment, as well as other reasons. These biological impacts can inhibit brain development that facilitates rational decision-making, as
well as potentially increasing impulsivity and risk-taking, which can lead to making decisions that involve one in trafficking. Poverty can also exacerbate other factors, exponentially increasing the risk of trafficking (Santhya et al. 2014).

**Ethnicity**

Those who are outside the majority identities of that country, such as by race, ethnicity, or caste, can be at higher risk for being trafficked. For example, while sex trafficking in Thailand has evolved from domestic trafficking to including more of those from surrounding nations, such as Laos and Myanmar, it began with those from rural areas of the country, including girls who were members of the hill tribes (Jayagupta 2009; US Department of State 2013). Girls would migrate to Bangkok searching for work and become involved in sex work. Many of them were not physically forced; however one study found that 90% were under the age of 18 when they began, thus meeting the criteria for being trafficked (Decker et al. 2011). In India, girls belonging to lower-caste groups have been found to be at greater risk for being trafficked (as cited in Santhya et al. 2014).

In Canada, Aboriginal girls are at particularly high risk of being trafficked (Kaye et al. 2014). Sethi’s pivotal piece (2007) cites a study that found that 60% of sexually exploited youth in Vancouver were Aboriginal. A 2017 news article stated that 50% of those trafficked for sex in Canada were of indigenous heritage, even though they only make up 4% of the Canadian population (Newton 2017). While the methods of recruitment and exploitation are not unique, Sethi notes particular vulnerabilities for trafficking experienced by this population including the legacy of colonization and residential schools. These institutions have weakened Aboriginal families and left children without role models for healthy families or life skills (National Task Force on Sex Trafficking of Women and Girls in Canada 2014; Sethi 2007). As noted above, poverty is also a major risk factor for trafficking, and Aboriginal children are much more likely to be living in poverty – 50% overall and 61% of those who live on reservations (Macdonald and Wilson 2016).

**Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Youth**

Another group whose identity is marginalized within the broader society is youth who identify as members of the LGBTQ community, which can place them at risk for being trafficked. They are more likely to be harassed at school (Gay, Lesbian & Straight Education Network 2015) and may face abuse at home as well due to their identity. These potentially hostile environments can lead the child to seek emotional or physical refuge elsewhere. They may run away or seek supportive relationships on the Internet, which can lead to being trafficked. In the United States, 40% of homeless youth are members of the LGBTQ community and are on the street due to being kicked out of their homes for their identity or have fled their homes due to bullying at home or school as a result of their identity (Durso and Gates 2012). Even
if school and home are safe places for them, the heterosexist nature of society, with its relative paucity of positive same-sex relationship models or “safe spaces” to explore healthy same-sex relationships, can lead to risk factors (Nicholls et al. 2014). Issues relevant to LGBTQ youth are rarely included in sex education at school, leading them to seek information on the Internet, which can result in them connecting with people seeking to traffic them (Marshall 2014). It can also be difficult for them to locate potential romantic partners, again potentially leading them to search online (Smeaton 2013).

**Sex and Gender**

When we look at who is portrayed as a survivor of sex trafficking, every media picture is a girl. A commonly stated statistic is that 80% of human trafficking victims are women and girls (United Nations Office on Drugs and Crime [UNODC] 2009). Indeed, the vast majority of prosecuted cases involve girls, and they are by far the largest group found in research. However, it is important to note that we are looking for. Since much research draws from agencies who are serving survivors and most agencies only serve girls, logically this is the population that will be found (Holger-Ambrose et al. 2013). In contrast, community-based studies of those involved in trafficking have found that approximately half were young men: 54% and 47% (Dank 2011; Dank et al. 2015). In fact, the 2015 sample was only about one-third female (36%) and 16% were transgender. The most recent UNODC report (2016) notes an increased number of identified trafficked men and boys and postulates this may be because investigators are looking for them more. Nicholls et al. (2014) found that the professionals they interviewed believed that there was a positive correlation between having a worker specializing in services for boys and the number of boys served.

One study found that one-third of users of child sexual exploitation services were boys; these data were from Barnardo’s – the largest agency providing these services in the United Kingdom, utilizing data from their 28 sites (Cockbain et al. 2017). Boys differed significantly from girls in several aspects: they were more likely to be referred by criminal justice agencies than social service agencies; they were more likely to be referred due to having gone missing as opposed to concerns of exploitation, they were significantly younger at time of referral (14 years and 5 months as opposed to 14 years and 9 months), and they were significantly more likely to have a recorded disability (35% as compared to 13%) (Cockbain et al. 2017). This may be due to the perception among some staff that when a boy goes missing, it is more likely to be seen as an indicator that he is involved in criminal behavior rather than at risk for being trafficked (Nicholls et al. 2014; Thomas and Speyer 2016). Boys are more likely to be seen as agents in their actions, while girls are seen as tricked or deceived (Dennis 2008; Goździak 2016). Similarly, if the boy is perceived as having an older girlfriend, this was more likely to be seen as him “playing the field” than as a risk factor (Nicholls et al. 2014; Smeaton 2013). A unique recruitment factor that has been found for boys is through online
gaming, an activity in which boys participate much more than girls (Nicholls et al. 2014; Thomas and Speyer 2016).

**Disability**

There are significantly higher rates of disability among both boys and girls who have been trafficked – especially learning disabilities and autism – than in the general population (Cockbain et al. 2017; Smeaton 2013). Children with disabilities may be more sheltered from the outside world, more socially isolated, and possibly be overprotected and not allowed to make their own decisions, which can place them at higher risk for trafficking, as they have the same yearning for experiences that other children do, including to be “normal” and have friends, yet they have a lower awareness of the risks as they often do not receive any sex education nor information about trafficking (Franklin et al. 2015; Thomas and Speyer 2016). The traits of their disability can place them at higher risk. For example, children with autism tend to have a concrete definition of “friend” and believe that if someone is their friend, they are trustworthy, while a “trafficker” is a bad person and therefore would not be nice to them (Mapp 2016). Children with ADHD often have difficulties with impulsivity, as well as social skills, which can place them at higher risk (Beyer 2011). Children with intellectual disabilities have also been found to be trafficked at higher rates as they have the body of a youth, but do not have the corresponding ability to understand what is occurring (Reid 2018; Twill et al. 2010).

**Maltreatment**

Involvement in the child welfare system is a known risk factor for being trafficked, as is a history of maltreatment (Cockbain et al. 2017; National Task Force on Sex Trafficking of Women and Girls in Canada 2014). Children who have been sexually abused have been found to be at higher risk for being trafficked for sexual exploitation. Reid et al. (2017) found the risk was 2.5 times greater for girls and eight times greater for boys. Maltreated children may be at a higher risk as many have learned that people who say they love you will hurt you and are inconsistent in their love, much like traffickers. Some children who have been sexually abused have learned they need to trade sex for attention and how to keep secrets, both of which are mechanisms used by traffickers.

If children are then placed in the child welfare system, they are at risk for inconsistent caregiving and being seen as a means to a paycheck. If a trafficker pays attention to them and tells them that they love them, they often long for this positive attention. In both the United States and the United Kingdom, trafficked children have stated that being trafficked was better than being in care (Nicholls et al. 2014; Pettigrew 2013). In Canada, child welfare services may end in some provinces when the child turns 16, leaving them unable to survive on their own and thus vulnerable to being trafficked (National Task Force on Sex Trafficking of Women and Girls in Canada 2014).
Running Away

Regardless of country, running away can be both an indicator of and a risk factor for being trafficked. As discussed previously, the child may run away from abuse that is occurring at home or school – physical, sexual, or emotional – and then be at risk for being trafficked due to their inability to survive on the street on their own and meet their basic needs. Youth may also be running from a family life that is dysfunctional in other ways, such as parental substance abuse or intimate partner violence (Nicholls et al. 2014). The child may also run away in order to be with the person who is seeking to traffic them (Mapp 2016; Smeaton 2013). However, as stated previously, professionals’ views of this as a risk factor appear to be affected by the sex of the child. For females, it is often regarded as one, while for boys, this is less likely (Smeaton 2013) (Fig. 1).

Forms of Domestic Minor Sex Trafficking

In the United States, four basic types of DMST have been identified (Mapp 2016). Three of these are similar to those discussed by Sethi (2007) in her exploration of the trafficking of Aboriginal girls in Canada. This should not be taken to mean that there are no other forms or that youth do not move from one type to another. The form with which most people are familiar due to its dominance in the media is pimp-controlled trafficking. In this form, one person, most often a man, though it can be a woman, sells those under their control for profit. Youth in this form of trafficking are most
often girls, though it does occur to boys as well. The pronouns used below reflect these majorities, though it must be emphasized that the gender roles can reverse.

In this form, youth are often lured in through someone they know. In some cases, they believe the pimp is a romantic partner, who finds them on the Internet (such as Facebook, online gaming, or chat rooms) or in malls or other public places. A Canadian report noted that online recruitment was relatively rare there, with most children meeting their trafficker directly or through a mutual acquaintance, such as at a group home or at school (HTNCC 2014). Sethi (2007) noted hitchhiking and airports as recruiting locations for traffickers in Canada. The “boyfriend” will romance the girl and tells her that she is special; she truly believes they are in love. He will then manufacture a financial emergency and ask for her “help.” Once she is “turned out” (starts selling sex), he will then withdraw his affection and use it only as a reward. However, the romantic bond that he created between them means that she is less likely to seek help from others, including law enforcement (Mapp 2016). In India, this pattern has also been found where youth are approached in public places such as bus stops or markets and lured with promises of marriage or better living conditions. In some cases, parents were promised a dowry-free marriage. Kidnapping also occurs, though not as frequently (as cited in Santhya et al. 2014).

Gay, bisexual, or Transwoman/transman youth are vulnerable in the same manner to trafficking through a romantic relationship as other youth. However, due to the societal stigmatization of these identities, they can be at higher risk due to a possible perceived need to keep the relationship a secret. This can be heightened for non-White youth due to higher rates of stigmatization of non-heterosexual relationships that are often present in these communities (Nicholls et al. 2014). One research study found that heterosexual boys are often brought in through what they perceive as a heterosexual friendship in which the trafficker seeks to bond over stereotypical male activities such as football or online gaming. The trafficker will then seek to sexualize the relationship through the provision of pornography, which then leads to sexual touching (Nicholls et al. 2014).

In other cases, the youth has run away to a larger city but then are unable to survive on their own. There are not enough beds in youth shelters, and pimps and their recruiters will wait around to see who gets turned away. They will then offer a bed and something to eat. Once the youth has been lured in through friendship, the pimp may tell them they know a way to make some money or that it is time to start paying back what they have been given. The youth may have been introduced to drugs during this time and agree in order to get the drug (Mapp 2016).

**Gang-Controlled Trafficking**

The second form is gang-controlled trafficking and has been found to be perpetrated by local, national, and international gangs (Woolf 2013). As noted by British researchers (e.g., Beckett et al. 2013), there is a variety of types of sexual violence that can be experienced by those associated with a gang, of which commercial
sexual exploitation and/or trafficking is one. In this form of trafficking, the singular pimp is replaced by a gang. While male pimps may encourage girls under his control to refer to him as “daddy,” gangs are seeking to replace the entire family (Woolf 2013). Gangs can help to meet the youth’s desire for family and acceptance (Sethi 2007; Sikka 2009). Due to gender norms and heteronormativity within gangs, this form of trafficking occurs almost exclusively to girls. Girls often see themselves as part of the gang and doing what they can to help the gang earn money. They may be told that part of their earnings is being set aside for their college. In this form, girls are typically still living at home, and their parents may be completely unaware of their involvement in either a gang or trafficking. Girls may skip school or be trafficked after school or after their parents believe they are in bed (Woolf 2013).

In this form of trafficking, it can be even more likely that the child is seen as a perpetrator rather than as a victim. They may have committed crimes as part of the gang, furthering the likelihood they are seen as a crime perpetrator, rather than a crime victim (Shepherd and Lewis 2017). British researchers found that agency staff would refer to children “putting themselves at risk” through gang involvement rather than being at risk (Berelowitz et al. 2013, p. 8). As a result, children noted that they were not believed when they shared what had happened to them and survivors were not being recognized, in part because police might not be looking at gangs as traffickers. In Northern Ireland, individuals involved with paramilitary organizations have purportedly been involved with trafficking. The groups themselves were not involved in the activity, but these individuals used “the authority of their paramilitary links and the fear it engendered” (Marshall 2014, p. 12). Similarly in Canada it has been found that while many traffickers are gang-involved, trafficking is not an organized activity of the gang, but an individual activity. However, in exploring the trafficking of Aboriginal women and girls, gang-controlled trafficking has been found to occur (as cited in Sikka 2009). The girls seek out the gang in an attempt to seek acceptance and control over their life (Sikka 2009).

**Family-Controlled Trafficking**

The third form is family-controlled in which children are sold or traded by their families. If it is not for cash, then it is typically for drugs. Children in this form are often younger than those in the other forms of trafficking and have been found to be as young as 4 years old (Reid et al. 2014). In the United States, they have been found to be trafficked most often by their mothers, though male relatives, including cousins, uncles, and fathers, are common as well (Reid et al. 2014). However, in Canada, Sethi (2007) notes that for Aboriginal girls who are trafficked by family members, it is often a male family member, while Nixon and Tuttty (as cited in Sikka 2009) note the involvement of older siblings. Sikka’s (2009) research found that participants reported that girls were brought in by their older sisters when they themselves were considered too old to make their living by prostitution.
Survival Trafficking

The last form is survival trafficking in which there is no third-party facilitator, but youths trade themselves for items they need, which can be money but can also include food, shelter, or drugs. As noted previously, while in the United States, this is classified as trafficking, in the United Kingdom, this would be classified as commercial sexual exploitation, but not trafficking. This is the form where boys are most commonly found. They tend not to see themselves as trafficked, but rather as “hustlers” (Estes and Weiner 2001). Youth in this form are commonly brought in by a friend or a buyer (Dank 2011; Mapp 2016). Boys may engage in same-sex intercourse even if they themselves do not identify as gay in order to earn money (Dank 2011). This can inhibit their identification being trafficked, since they do not want to admit what they have been doing due to its stigma and professionals are less likely to see them as trafficked (as discussed previously and below).

Assisting Youth in Exiting the Life

Reaching out to survivors is difficult with any form of trafficking but can be even more difficult with children who are trafficked. Because of their immature cognitive development, children can be more likely to believe that the trafficker is looking out for their best interests and cares about them. They may not see themselves as being exploited, but rather helping out to earn money for “them” —the pimp, the gang, or the family. This is even further exacerbated in the form of survival trafficking when there is no third party and the child believes they are choosing this of their own free will. Because there is rarely visible physical coercion, but rather psychological coercion, trafficking can be difficult to recognize. Adults may see these children as crime perpetrators, rather than crime victims (Kendell and Funk 2012). On the other hand, when these youth are seen, they are often seen as passive victims, rather than active agents. This view can be seen in language that speaks of “rescuing” children from trafficking. Striking the right balance as recognizing them as victims of a crime yet active agents in their lives is difficult but necessary.

This can be even more difficult with male survivors due to society’s images of males as “tough” and as perpetrators and never victims. If boys are on the street, they are typically seen as possibly engaging in criminal behavior, rather than as potentially being a crime victim (Smeaton 2013). Even media to fight trafficking can make this more difficult due to the pervasive images of females as trafficked rather than both boys and girls (Nicholls et al. 2014). The stereotypical view in the media of a kidnapped girl who is physically forced to sell sex by a pimp contributes to other trafficked children not being identified, either by others or by themselves (Kaye et al. 2014; Smith 2015). Boys may not see themselves as victims of trafficking or may fear not being believed by professionals or that they will be perceived as gay (Nicholls et al. 2014; Thomas and Speyer 2016). Additionally, research in the United Kingdom has found that workers feel less confident in their ability to identify trafficking within cultural groups outside of White British and to work with these
communities. This can be due to lack of knowledge of cultural norms, intra-community solidarity, or language barriers (Smeaton 2013).

Therefore, it takes a certain style and cultural knowledge to be able to establish a connection to reach survivors of DMST. Barnardo’s, a child-serving agency in the United Kingdom, states that “assertive outreach” is required (Shepherd and Lewis 2017). They state that service providers need to reach out to children in their own surroundings and be flexible about when they are needed. It takes time to build trust, especially with these youth who have their trust violated time and again. Therefore, staff need to be friendly, approachable, consistent, and persistent (Shepherd and Lewis 2017).

**Services for Survivors**

Once survivors are seeking to exit the life, they will need support to allow them to do so and to recover from the trauma they have experienced. The National Task Force on Sex Trafficking of Women and Girls in Canada (2014) states that services must be available immediately when a survivor seeks them. These services must be comprehensive, easy to access, and ones that will not blame or judge the survivor. If survivors need to wait, or the services do not meet these criteria, their safety may be in danger, or they may not return (The National Task Force on Sex Trafficking of Women and Girls in Canada 2014). Services need to be culturally sensitive, including sensitive to the culture of trafficking. One agency director, Tina Frundt of Courtney’s House in Washington, D.C., herself a trafficking survivor, noted that judgment of the world in which the youth has been living can be a barrier:

> It’s like living on an island, right, so this is the United States. But imagine you came to my island. My island has a culture. It has laws. You may not agree with the laws or structure of my island at all, but you just came onto my island. My island has a culture that you don’t understand and know. My island has rules, and unspoken rules that you don’t understand or know. You look on the outside and judge my island and then you decide that it’s done wrong. And so now you rescue me from my island, and you took me away from my island and you popped me into services. You said this is the right way you’re supposed to do it, but then get mad at me that I miss my home. Because it wasn’t a good island, you’re absolutely correct. But it had rules and procedures that were imbedded in my culture. So you can’t just plop me out and say you rescued me. I may have hated it. But you don’t even understand my rules. So for you to help me, you gotta understand my rules too. And show me what is wrong with the island. Because I don’t know. I was growing up on the island; I thought everything was fine. (Mapp 2016, p. 83–84)

This underscores the importance of having those who have been trafficked involved in planning outreach and services. Survivors can understand what is needed and effective in a manner that an outside person never could. The National Task Force on Sex Trafficking of Women and Girls in Canada (2014) reiterates this point a number of times in their report. Lisa Goldblatt Grace, co-founder and director of My Life My Choice in Boston, Massachusetts, is not herself a survivor but co-founded and co-runs the agency with a survivor. She states:
We don’t make any big decisions, we don’t figure out what direction we’re going, nothing happens absent that [survivor] voice being key in how we run the program. We really center the program around the idea of trying to elevate that voice; that should be the loudest voice in the movement, both adult women who were there as kids and kids who are there now. (Mapp 2016, p. 76)

A broad variety of services are typically needed by all survivors in order to get back on their feet. Trafficking can have a broad range of negative impacts – physical, emotional, psychological, and social – and staff will often need to help survivors to access services to address these needs (Shepherd and Lewis 2017). Unique to working with children who have been trafficked is the vast number of agencies that are potentially involved, such as police, child welfare, schools, mental and physical health providers, the court system, as well as others (Mapp 2016). Additionally, youth will often lack the ID needed to access services. When working with DMST, the coordination of multiple agencies is a necessity, together with an effective case manager (Kaye et al. 2014; Mapp 2016; Shepherd and Lewis 2017; Smeaton 2013).

The Children’s Commissioner in the United Kingdom recommends the use of the “See Me, Hear Me” framework when working with survivors of trafficking, which includes a broad network linking relevant agencies and maintaining a focus on the child and their best interests at all times (Berelowitz et al. 2013). Based on principles from the Convention on the Rights of the Child, this framework’s number one priority is the best interests of the child and their right to protection. It then prioritizes the participation of the child. As the Children’s Commissioner notes, those who have been trafficked have been controlled by the desires of others, and all too often, children then are controlled by agencies purporting to help them, rather than partners in their own recovery. This model is explained in full in their report (Berelowitz et al. 2013). All services must be trauma-informed and represent an understanding of the deleterious and multifaceted impact that trauma has on survivors of trafficking and how it can affect their recovery (Mapp 2016; National Task Force on Sex Trafficking of Women and Girls in Canada 2014).

Conclusion

In conclusion, it is essential to recognize that children can be trafficked for sexual exploitation within their own nation, though the current numbers put forth are highly questionable. How this crime is defined in law varies from nation to nation, meaning that what is trafficking in one country is not in another, though risk factors that increase the risk of being trafficked do not vary greatly. There is a variety of roles that the exploiter may have in relation to the child, including pimp, gang, family member, or purchaser. In seeking to help youth leave the trafficking situation, it is essential to recognize the agency of the youth and include principles brought forth in the Convention on the Rights of the Child including best interests of the child and participation of the child in matters that affect them.
Regardless of what method it takes or what it is called, the selling of children for sexual pleasure within their own country exists around the world. While there has been an increase in awareness of this fact, stereotypes of who it affects and what it looks like inhibit accurate identification of survivors and provision of effective services. There must be education of both professionals and the general public of the actual face of this crime and interventions that truly meet the needs of those caught in this web. Methods to identify and assist survivors are often still anecdotal, and research is needed to more firmly establish what is needed and for whom, given the variety of youth in trafficking situations. If this is not done, those seeking to assist can do more harm than good. Youth affected by this crime must be seen as active agents and partners in their own recovery if services are to truly help them restore their lives.

References


The Spoiled Supply Chain of Child Labor

Laurie Sadler Lawrence

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Abstract

The complexities of human trafficking make this criminal activity one of the most difficult and dehumanizing movements to abolish. While the eradication of slave labor has the attention of government agencies and major manufacturers, it does not have a comprehensive approach to facilitate quick resolutions. This chapter aims to evaluate the trafficking of children in Western Africa and the connection to chocolate manufacturers and their suppliers through the farming of cocoa along the Ivory Coast. The exploitation of children in Western Africa, a population recognized as vulnerable due to their long-standing societal challenges including poverty and lack of education, has festered in recent decades. Even under the assurance of change to these practices by the leading chocolate manufacturers, this problem continues to grow with an estimated 2,000,000 children working on cocoa plantation throughout the region right now. Exploring initiatives to eradicate these practices is the focus of this chapter, at times placing the spotlight on Nestlé, the world’s largest processor of food. Considerations include an exploration of their...

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prior, current, and speculative attempts to ratify the problem of child trafficking in their supply chain of cocoa production. From these assessments a theory of grassroots activity can provide insight into corrective measures. Changing the behaviors and attitudes of those that rely on the cocoa production, mainly the farmers, will create a lasting effect as globalization impacts the dominant values regarding the child labor that envelopes the region of the West Africa.

The Spoiled Supply Chain of Child Labor

The eradication of child slave labor is gaining the attention of government agencies and major manufacturers around the world; but, the problem of child labor continues to fester. While eight of the world’s leading chocolate manufacturers originally signed the Harkin-Engel Protocol, a voluntary agreement to eliminate child slave labor in the harvesting of cocoa by 2008, especially in Western Africa, progress is slow. Furthermore, these organizations failed to meet the self-imposed deadline; the National Confectioners Association along with the US Secretary of Labor, Hilda Solis, and the Labor Ministers of Ghana and the Ivory Coast came together to create a new statement. They signed the Declaration of Joint Action to Support Implementation of the Harkin-Engel Protocol which aims to reduce the worst forms of child labor by 70% across the cocoa sectors of Ghana and Cote d’Ivoire by 2020.

As time closes in on the presented deadline, studies show that while improvements have been made, the problem of child labor continues to fester. Many of the world’s leading chocolate manufacturers have implemented social programs but tend to place their primary focus on technical projects such as sustained farming. These programs often attempt to address the need for a reduction in child labor, but they do not directly address the eradication of child labor. According to the 2018 Cocoa Barometer (2018), a report published by researchers from 15 nongovernment organizations (NGOs) in Europe, there remains an estimated 2.1 million children farming cocoa in just the regions of Cote d’Ivoire and Ghana. The numbers demonstrate that while initiatives are being employed, there is no single organization or government agency making a significant impact on the abolition of slave labor in cocoa production. With this in mind, some companies are attempting to be more transparent in their efforts by incorporating Child Labor Monitoring and Remediation Systems (CLMRS) into their supply chains. This chapter will examine a case study of the world’s largest processor of food, Nestlé (Lawrence 2016), and their prior, current, and speculative attempts to rectify the problem of child trafficking in their supply chain of cocoa production.

Children: A Vulnerable Population for Slave Labor in Western Africa

Areas of West Africa including Cote d’Ivoire, Ghana, Togo, Benin, Nigeria, and Cameroon are destinations for children being trafficked for slave labor and domestic
servitude, according to the US Trafficking in Persons (TIP) Report (2018). The report defines the slave labor as “the use of force, physical threats, psychological coercion, abuse of the legal process, deception or other coercive means to compel someone to work” (p. 32). In the Cote d’Ivoire, children are subject to forced labor the agricultural and service industries. While there is no defined sex discrimination, boys are often sent to farm and fish, and girls are sent to work in restaurants, massage parlors, and domestic services.

Children are easy to manipulate with emotional and physical threats making this type of trafficking difficult to detect. Children do not have the resources to report their abusers and typically find themselves restricted from outside physical contact either by force or threat. Children working in the cocoa plantations along the Ivory Coast are trafficked in various ways; but, the two most common actually originate from their families. While it is not uncommon in most cultures for children to work alongside their parents in a family business, it is not acceptable for children to work if it affects their mental or physical health or takes away the opportunity to go to school and obtain an education. This is in accordance with the International Labour Organization’s C182 – Worst Forms of Child Labour Convention (1999). Nevertheless, most citizens in Western Africa are ill-educated and unaware of these restrictions to, and definitions of, acceptable practices. Families in this region of the world often inherit poor farms; and therefore, it is customary to require their children to stay home and work alongside the rest of the family for survival. Although most people do not realize it, this is still a form of trafficking.

These cocoa plantations are not the sprawling fields we envision in the southern hemisphere of the United States. They are small parcels located in the jungle that are difficult to manage and often provide the owner with little income, making it difficult to pay salaries for the harvesting of the cocoa when demand for the product from major corporations, including Nestlé, continues to grow. Nevertheless, forcing young family members to work on the plantation, while denying them an education, is in direct violation of several previously mentioned protocols and declarations, even if it is considered a last resource of survival for the immediate family.

A second common form of trafficking occurs when parents send their children off to these farms with the hope of finding good pay and an education for the child. In many countries, it is not uncommon for young children to leave their homes in Western Africa and migrate to the Ivory Coast with the expectation of being provided work (O’Keefe 2016). The preponderance of trafficked minors do remain in the countries of West Africa; however, according to the last US TIP Report (2018), a rising number of children are being exported to North Africa and Europe to serve as domestic servants or work within the sex trafficking industry.

Why would these families allow their children to be enslaved? They are often deceived with notions of false opportunities. Traffickers in this region will portray themselves as school teachers promoting education for children ranging from 5 to 15 years of age, when in reality they are slaveholders looking to exploit families and force the young students to panhandle in place of the time they should be spending in the classroom. Some children are sent directly into the agricultural sector to work the plantations; this is according to the US TIP Report (2016). These
Traffickers keenly prey upon poorly educated parents and often lure their children away with the promise of education, apprenticeship training, and a better life. Parents send their child off to unknown countries with a hope and dream for a better future, rarely ever seeing or hearing from the child again. It is not only a customary practice in many countries; but, it is also a cultural expectation for parents to accept opportunities for their children when those opportunities are presented. Rejecting such an opportunity would demonstrate that the parent did not care for the child or the family unit. Traffickers are mindful of this custom. Other traffickers simply abduct children knowing that law enforcement is not equipped to track the children or prosecute the trafficker. Children are often left scared, confused, and incapable of asking for help.

The lack of government support compounds the vulnerability of children in most West African countries. While many of these governments attempt to combat the forced labor of children, especially in the agricultural, mining, and fishing industries, gaps and lack of law enforcement by the governing agencies ultimately leave children unprotected. According to the US TIP Report (2018), the governments of these countries maintained inadequate records of their prosecution, protection, and prevention efforts and therefore are classified as Tier 2 or Tier 2 Watchlist. These classifications demonstrate that while the country does not meet the minimum standards to be compliant with the Trafficking Victims Protection Act (TVPA), they are making efforts to prevent and protect victims of human trafficking. However these efforts often fall quite short of the overall goal. The corruption of smaller local governments makes it difficult for state authorities to account properly for the victims. Compounding this issue is the absence of support received by nongovernment or social organizations and missionary groups working in the region, from law enforcement, to adequately address the problem. The regulations created to protect children cannot work if they are not enforced. Children are left vulnerable when the adults in place to protect them have insufficient resources available.

Life on the Cocoa Plantation

The word plantation often conjures visions similar to the southern plantations of the United States, with large homes and lifestyles of leisure that were afforded through the labor of the transatlantic slave movement. When in reality the word just refers to a farm that is cultivated by resident labor which includes cocoa plantations which are typically small, poor, and oppressed by governments and law enforcement. Maintaining plantation crops can be difficult when the longevity of the harvested plant is only 10 years; and, without the resources to invest in replanting, along with the uncertainty of income, farmers are driven to make short-term decisions (Guest 2015). This means that they rely on the low-cost labor of children to survive. According to the US Department of Labor (2012), most children working on the cocoa plantations are between the ages of 12 and 16, with some children working as young as 5 years of age.
Children working in the agricultural industry are often forced to work long hours, 7 days away, and frequently exposed to severe weather conditions. Traffickers impose physical and emotional abuse upon the children as a method of instilling fear and increasing productivity. Economic conditions are hard, and children are often forced to survive on cornmeal, bananas, and limited freshwater. They also take their nightly rest in poorly ventilated buildings while sleeping on wooden planks (Harkin and Engel 2005). These conditions lead to illness and poor recovery from injuries sustain in the hazardous work environment.

A typical workday for the laborers starts at dawn and ends at dusk. Children spend the day utilizing dangerous equipment. Some will use chainsaws, while others will cut down the large bean pods with machetes and large knives (Mull and Kirkhorn 2005). Pods are harvested in rotation every 2 weeks throughout the 8-month season. The bags of cocoa pods weigh over a hundred pounds; and, the children are expected to drag them through the forest. In the BBC production of Chocolate: The Bitter Truth (Kenyon 2010), a former cocoa slave, Aly Diabate, gave a recount that often “bags were taller than me. It took two people to put the bag on my head. And if you didn’t hurry, you were beaten.” She also spoke about being locked in at night and watching other slaves being beaten for trying to escape. According to her, this was a part of her daily life.

In addition to physical and emotional abuse inflicted by their traffickers, many children are injured or scarred from the hard labor and use of dangerous equipment, according to the US Department of Labor (2012). Hazards include the application of pesticides without any protection, handling dangerous equipment, and working long exhaustive hours. Harvesting of the cocoa requires splitting open the hard shells of the pods with large machetes and wooden rods. This allows the worker to remove the cocoa beans and sweet pulp inside so that it may be dried and fermented before being bagged and sold. Many of the tools used in the farming of cocoa are in violation of the International Labour Organization (1999) C182 – Worst Forms of Child Labour – and yet the violations go overlooked and unnoticed by law enforcement. In a documentary, The Dark Side of Chocolate (Faber 2010), a young boy is seen asking the camera crew why they want to eat his flesh. In his mind, that is the cost of harvesting the cocoa. He has witnessed the many injuries and the blood shed through the harvesting of the bean pods. These children have a difficult time understanding the demand for chocolate, a product many of them have never even tasted.

Supply and Demand

Cocoa is crucial to the economy of Western Africa. The lush jungles of Côte d’Ivoire make this country the world’s leading producer of cocoa, generating just under 2 million metric tons a year (Bitty 2015). That’s 40% of the world’s cocoa supply with the majority produced by over three million small plantations (Guest 2015). Some estimates are higher, claiming as much as 70% of the world’s cocoa is produced in West Africa. However this cocoa is not from one large source but rather small family parcels. These smallholders of cocoa are at the start of the supply chain. Having such
a crucial role in a product of high demand would seem to place the farmer in a position of power. However, that is not the case. A lack of education and cultural norms have conditioned the farmers to accept that they have no bargaining power and must accept whatever monetary compensation they receive through the harvesting of the cocoa. Life on the plantation is hard for both the farmer and the slaves when trying to meet the increasing need for cocoa (Percival 2014). A typical cocoa farmer has an income equivalent to the poverty line, which amounts to approximately $1000 USD annually, with a few meeting the criteria of lower-middle class with annual incomes just under $3000 USD. It is easy to access that these amounts does not allow the farmer to pay salaries or offer any suitable accommodations to workers, creating financial pressures that result in the plantation owners resorting to the slave labor of children in order to survive. The impoverished conditions do not improve when the country’s economy is dependent upon the demand for chocolate. The government may overlook the farmer’s plight in an effort to meet the demands of traders, processors, exporters, and manufacturers seeking higher profit margins. The leading chocolate manufacturers include ADM, Mars, Hershey, Guittard, Blommer, and of course Nestlé, all of which continue to have slave labor in the supply chain of cocoa.

However, there are some recent studies that demonstrate Nestlé is making attempts to talk about shared values and increasing payments to smallholders, as well as conditions and education for children; but it has struggled to develop an effective model (Guest 2015). The challenge is for companies to establish which small farms the cocoa is actually coming from and under what conditions it is being farmed, according to an article in Candy Industry (2012). Typically farmers stack their bags of beans at the end of the property and paid as the truck comes through. Since there are so many small plantations, the truck picks up all the bags along a route, stacking them together. This makes it difficult to determine what beans are harvested at each farm and which farm employs slave labor, tainting the supply chain.

The ability to clean up the supply chain may be more of a grassroots endeavor. The International Labour Organization has recognized that solutions lie within social progress, especially in the assuagement of poverty and greater opportunities for universal education. Auret van Heerden, the president of the Fair Labor Association (FLA) in 2012, agreed to work on a project with Nestlé to investigate their supply chain. He was quoted in an interview with Candy Industry as saying, “working with the FLA will help Nestlé and other stakeholders in West Africa to protect children in the cocoa supply chain. Eliminating child labor will take an enormous commitment from Nestlé and other companies sourcing from the region.”

**Nestlé’s Creating Shared Values**

Creating Shared Values (CSV) is a document produced annually by the Nestlé Corporation to outline the mission it envisions, the goals it aspires to, and the strategies being executed to reach those goals. The stated objective for Nestlé is to
remain the leader in nutrition and wellness while also becoming an industry example for economic leadership. Noted on the company’s website is the responsible sourcing page where a claim is made that Nestlé is “committed to fostering responsible practices in our supply chain, while ensuring that our sourcing and supplier relationships deliver a competitive advantage” (2016).

Nestlé claims to have a vision of value that includes providing a respect for people and the environment (Nestlé 2016). The company provides a basic supplier code of ethics, distributed in 26 languages, where a minimum standard is postulated for suppliers and subcontractors. While Nestlé claims the right to inspect both internal and external cooperative organizations from within their supply chain, it does not specify standards or penalties for infractions. These infractions of forced child labor have plagued Nestlé for years. This is a critical issue predominately in areas of the Ivory Coast of Africa, and yet the organization does not define these principles. In general, chocolate manufacturers are struggling to control cooperative organizations and transparency in their supply chains with the use of CLMRS, when increased profit margins are the driving force for the economy in the region. This supports the deduction in the case study used for this analysis that a grassroots approach may be the best method of modifying cultural values of both the plantation owners and the chocolate industry. A design that would incorporate both education and cultural sensitivity to the long-standing societal challenges of the region would be essential for a successful grassroots initiative (Lawrence 2016).

Creating Shared Values and Child Labor Speculations

An objective outlined in Nestlé (2015) philosophy is a significant impact in the abolishment of child slave labor by 2020. The company provides a framework which includes training 60,000 farmers to effectively manage their plantations along with the establishment of 60 schools. The framework also incorporates a labor monitoring and remediation system for their cooperatives. While the overall plan appears comprehensive, the company appeared to be falling short of meeting those objectives. So in 2017, Nestlé created their Tackling Child Labour report Nestlé (2017). The report looks at the company’s transparency, current situation with regard to child labor, and future initiatives. The report now speculates noticeable improvements by 2030 which is an expanse of time from their initial indication of 2008, followed by 2020. Nonetheless, Nestlé now recognizes the need for collaboration not only with human rights organizations but their competitors to bring about real change. As stated in the report, a company cannot succeed if they are working in isolation, and this may be an indication that real changes in child slave labor may actually occur.

Regardless, speculations of child labor do continue to plague Nestlé. In 2016, the US Supreme Court rejected a proposal by Nestlé to discredit a lawsuit holding them liable for being aware of and supporting cooperative organizations that continue to ignore forced child labor in the harvesting of cocoa off the Ivory Coast (Ziegler 2016). The lawsuit not only contains allegations that Nestlé was aware of the problem with child trafficking but that the company offered technical assistance to
farmers utilizing slave labor in an effort to regulate the low cost of cocoa. The increase in legal obligations and decrease in stakeholder trust may have influenced Nestlé’s decision to investigate further into the problem of child labor and produce their first Tackling Child Labour report.

These problems appear to represent a gap between the objectives stated in Nestlé’s CSV and the allegations of supporting child labor. In 2016, an article in Fortune claimed that while efforts were being made by the large chocolate manufacturers, the reality remained that 2.1 million children from Western Africa are still engaged in the physically demanding and dangerous work of harvesting cocoa (O’Keefe). In addition, a report from Euromonitor International (2016) demonstrated that in 2015, Nestlé had purchased less than 30% of the cocoa from supplies that were considered certified to be slave labor-free. While these reports were produced the year prior to Nestlé’s new position that they will work in collaboration with human rights organizations as well as competitors, current reports including the 2018 Cocoa Barometer (2018) demonstrated that while initiatives are being tested, there is no single organization making a significant impact on the practice of child slave labor in the harvesting of cocoa.

Outlying factors widen the gap between Nestlé’s objectives and the realities of cocoa production. The US Department of Labor’s 2014 report on the worst forms of child labor demonstrated that the operating budget for the anti-trafficking unit in Cote d’Ivoire was only $7700, an insufficient amount to adequately manage and control the use of child labor in these areas (O’Keefe 2016). Nestlé’s Tackling Child Labour report offers many statistics regarding actions in the modification of child labor, claiming to provide a more effective and transparent response, but actually fails to provide any clarity regarding their investment or funding into these programs. There is mention of cost implications and that to offset these expenses the current workforce would be given the added responsibilities of monitoring the CLMRS. However, this extra workload raises speculation as to the efficiency of monitoring such a complex and diverse initiative.

Understanding how complex the issue of child labor is in Western Africa, the 2014 report by the US Department of Labor also disclosed an interview with a law enforcement official in Cote d’Ivoire that revealed the cultural paradigm for officials in the area. There is a big boss, often referred to as the chief of the village. Charges would never be brought against the chief because there is a social order to maintain and arresting a man of that magnitude would create upheaval within their cultural norms. Fear of consequences and a general lack of understanding by law enforcement regarding policies and initiatives compound the issue. So while there is reason to hope that a collaborative effort focusing on grassroots education in these small communities can have a significant impact, there is also reason to speculate, based on the history of the cocoa manufacturers, that the implementation of child slave labor will continue to grow as long as the demand for cocoa continues to grow.
Solutions for the Cocoa Industry

The exploitation of child labor in the production of cocoa is multifaceted. While the problem exists among the predominance of cocoa manufacturers, this chapter focused on a case study of Nestlé. This was intentional with the consideration that Nestlé is the world’s largest food and beverage provider and therefore should have a conservable extent of accountability to their supply chain. With this consideration in mind, the key to having positive outcomes with any organization is to recognize the impact on both the company’s stakeholders and the communities in which their supply chain originates. The previously mentioned case study of Nestlé (Lawrence 2016) demonstrated that the most operative recommendation for monitoring these objectives occurs at the grassroots level. The recommendation is developed from the extensive sociohistorical backgrounds of cultures in the region of the Ivory Coast. Instead of a top-down approach, a grassroots attitude would be best suited for tackling child labor on the cocoa farms (Berlan 2013). This bottom-up approach considers the behaviors and beliefs embedded in the region and offers a level of self-efficacy (Bandura 1977; Tompkins 2013) for members of the community to be in control of change at the local, national, and international level. This change would be significant since most famers do not feel they have any control over their means of support of assets and live under the dictatorship of the buyers and village law enforcement. These initiatives can review successful programs with similar objectives. A grassroots study conducted in the Caribbean demonstrated how community media played a role in promoting agricultural practices and assisting the empowerment of women and looks at the modernity that promoted the approach (Prendergast 2012). This is an example of a grassroots approach to cultural change that could be considered for implementation in Western Africa.

This grassroots approach would utilize and employ individuals in the area to monitor, educate, and contribute to finding new methods to assist farmers during the harvesting of the cocoa pods so that children can remain in schools. These efforts should be employed in the surrounding countries of the sub-Saharan region since most children migrate to the area through the encouragement of their family to seek education, employment, and a better life, noting that those families often do not realize the dangers and harsh conditions of enslaved labor to which the children may fall victim. While this seems to be a practical approach, the organizations in the area should be mindful that practical knowledge and a general appreciation for the underlying causes need to form a greater part of debates regarding the eradication of child labor (Berlan 2013). Typical grassroots tactics can be employed and funded through the resources allocated by the large chocolate manufacturers, but there needs to be a greater transparency regarding the funds being allocated. Reeducating farmers on how to harvest, manage labor, and increase profits in conjunction with a cultural outreach of awareness directed toward the advantages of educating children can provide long-term changes to the region. A study regarding injustices and grassroots efforts to enhance education in sub-Saharan regions demonstrates that
organizations interested in promoting social justice should concentrate on improving access to and quality of low-cost private schools (Tooley 2013). Grassroots initiatives are useful in finding the incentives and intentions that motivate participation and acceptance (GrassRoots 2016). While the grassroots campaign pushes for new resources, attitudes, and an overall shift in values to reduce exploitation of children by the farmers, a lower tolerance needs to be implemented by authorities with harsher consequences to organizations that profit from these abusive behaviors. While a bottom-top approach will be successful in changing accepted norms of slave labor practices, a secondary top-bottom approach may enhance these efforts. By offering a perspective of required compliance or consequences, executives may be motivated to foster responsible efforts and assure that supply chains are being freed of child labor. This top to bottom approach addresses accountability. So often the large organizations claimed ignorance as they purchased from a supplier that had fair labor practices; however, they neglect to monitor where that supplier received their raw resources. This is where we encounter the child labor. Therefore, boycotting a single unit in the global chain will prove ineffective, according to Parella (2014). This study also considers public actors as a source to supply incentives, as well as working with stakeholders to facilitate an embargo against the entire global supply chain. These measures are far more effective, and if the executive administrators are personally held accountable for a tainted supply chain, embargos, and loss of revenue, a lot more resources will be provided to grassroots organizations, there will be a transparency to the funding, and change in cultural perspectives can begin to occur.

**Conclusion**

While there is no easy solution to eradication of child labor, it should be a clear focus of every manufacturer, legislator, and consumer of cocoa that this issue needs to be addressed more expeditiously. The exploitation of child slave labor still exists in Western Africa with an estimated 2,000,000 children working on the cocoa farms right now; for most people that 2,000,000 is too many. But the problem is overwhelming leaving more questions than answers. Today, Nestlé, along with dozens of world’s largest producers of cocoa, still remains a major sponsor, whether directly or indirectly, in this violation of human rights activity. While changes are not anticipated either practically or fundamentally to occur immediately, better efforts can be made in analyzing, employing, supporting, and monitoring the actions taking place to eliminate child slave labor, as agreed upon in the first Harkin-Engle protocol of 2001 and again in 2010 with the Joint Declaration for action by the International Labour Organization (ILO). It appears now that these organizations may be organizing a new declaration for 2030. The children addressed in the first protocol will be grandparents by the time child slave labor is projected to be eradicated.

The plans being implemented are working on the surface but are not correcting the deep-rooted issues in the cultural values and expectations.
When it comes to human rights violations, patience is never a virtue, but it just may have to be in this case. Changes will require time for new trends to emerge and norms to change, from the bottom-top perspective of community acceptance and understanding of children’s rights and needs to the education of the farmer and the empowerment of fair-trade practices. This would offer alternatives that would help provide better outcomes than the controlled slave labor of children. Looking further down the road, there is the top-bottom initiative regarding the accountability of executives and responsibility of law enforcement and finally resting on the resolve of the consumer to only purchase fair-trade (slave-free) products. This lineage requires patience but it also requires diligence.

These acts of injustice will not deter chocolate from being a beloved treat throughout the world. To provide us with the indulgence of this sweet confection, millions of children will continue to be recruited and enslaved in labor of farming cocoa. This reality is bitter-sweet. Nonetheless, consumers are powerful in their influence to major corporations and the latter of aforementioned initiatives. If we look to persevere in the fight against child slave labor, then pressuring the cocoa manufacturers to work more expeditiously and diligently in their efforts might produce the sweetest results of all, a slave-free world.

References


Dynamics of Child Labor Trafficking in Southeast Asia: India

Suman Kakar

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Abstract

Human trafficking is perceived to be a “moral evil” obligating every state to prevent and protect the current and future victims. Such an obligation attains higher priority when victims are children. There is a global consensus that child trafficking is one of the most inhumane forms of trafficking where children are traded as commodities to be exploited for labor and sex. This chapter discusses the current state of child trafficking. It focuses on children who are trafficked and forced to perform jobs well beyond their physical capacities jeopardizing their well-being. The chapter reviews general forms of child trafficking globally, and

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then it moves into the discussion of child trafficking for labor in Southeast Asia – India. It discusses some of the underlying factors such as culture, economics, and social structure that perpetuate such practices despite local and international prevention and control efforts. The chapter closes with a discussion of some of the strategies and suggestions for the protection of children’s rights and prevention of child labor trafficking.

Keywords
Child exploitation · Child labor · Trafficking · India · Southeast Asia · Well-being · Sex · Soldiers · Forced labor · International · Prevention · Culture · Social structure

Introduction

Child trafficking is perceived to be one of the most inhumane forms of child exploitation where children are “sold and bought as commodities.” The extant literature indicates that child trafficking like other forms of trafficking is prevalent in almost all parts of the globe. Children are easy to obtain, especially in states where there is abject poverty and the mainstream culture marginalizes poor families and children. They are used as cheap or unpaid form of labor, forced into prostitution and marriage, illegally adopted, and used for sport and organ harvesting. Some literature reveals that children are also recruited to serve into armed groups (Allred 2005). More recent research (Honwana 2011) reported that an unprecedented number of children are coerced into fighting as soldiers and others are thrust into it by poverty and crises in their communities. Children as young as eight are recruited as soldiers and transformed into merciless killers, committing the most horrendous atrocities.

Nature and Extent of Child Labor Trafficking Globally

The latest global estimates reported by the International Labor Organization (ILO, 2017a) reveal that globally there are 152 million children engaged in child labor – “almost half of them in its worst forms.” These 152 million child laborers consist of 64 million girls and 88 million boys. This translates into approximately 10% of all children engaged in labor. Seventy-one percent of these children work in agriculture sector, and 69% perform unpaid work within their own family unit. The report indicates that approximately half of all the child laborers – “73 million children in absolute terms – are in hazardous work that directly endangers their health, safety, and moral development” (ILO 2017a, p.11).

The most recent ILO’s Red Card to Child Labor Campaign (2018b) reported that more than half of the children in the global labor force are performing jobs that jeopardize their health and safety. An earlier report issued by the ILO (2015) stated that, approximately, “Twenty-one million people – three out of every 1,000 people
worldwide – are victims of forced labor across the world, trapped in jobs which they were coerced or deceived into and which they cannot leave.” The largest number of forced laborers in the world – 11.7 million (56%) – resides in the Asia-Pacific region. According to the same report, 90% (18.7 million) are exploited in the private economy, by individuals or enterprises. Of these 4.7 million (22%) are victims of forced sexual exploitation; 14.2 million (68%) are victims of forced labor exploitation in various industries, such as agriculture, construction, domestic work, or manufacturing; and 2.2 million (10%) are in state-imposed forms of forced labor, such as in prisons or in work imposed by the state military or by rebel armed forces. More than a quarter (26%) of these victims – approximately 5.5 million – are below 18 years of age. In many cases these children become trafficking victims and end up as unpaid laborers or sex slaves in their native or foreign countries.

Children Trafficked for Sexual Exploitation

In addition to labor, empirical evidence suggests that often children, especially female children, are trafficked for sexual exploitation and India has emerged as one of the main suppliers of children for sexual exploitation (International Justice Mission 2017). Younger female children are sold into brothels and trafficked to neighboring states and countries for sex work and prostitution. India Today (2013) reported that, “In India nearly 1.2 million sex workers are below the age of 18 with about 40 underage girls being forced into prostitution on a daily basis. With the 8% increase in the flesh trade, India has become one of the prominent names in child prostitution.” A more recent newspaper report (Reuters, 2018) stated that according to several nongovernmental organizations, 16 million of the estimated 20 million girls and women working in India’s sex industry are victims of trafficking. The same report also described that as part of the grooming process, it is quite common to inject young girls (as young as 5 years old) with growth hormones to make them physically grow and look like women and inject them with sedatives and drugs while they are being trafficked from one place to another. A 2017 report by the West Bengal government highlighted the brutal “breaking in” of girls trafficked into brothels, a process that often includes rapes, beatings, and starvation (Reuters, 2018). Another reporter of IndyStar (2018) adequately describes the dangers children face in India. The report stated, “Life is brutal in these dark halls and squalid rooms. Violence is a constant threat. Alcoholism is rampant. Strangers wander up the stairs to buy sex late into the night. A child has few defenses here, and although we’re told that the boy’s gender gives him some protection from sexual abuse, he’s still at severe risk.” International Justice Mission (2017) reported that according to the National Crimes Bureau of India, there has been a 95.5% increase in the number of trafficking cases registered from 2011 to 2015. The same report documented that in India, there is internal trafficking of children for commercial sexual exploitation (CSE) from one state to another or within states in India, and the country has also emerged as a destination country as well as an international supplier of trafficked women and children for CSE.
Forced Labor

Forced labor practices have been deemed illegal globally by the international law since its inception. The first Forced Labor Convention concerning Forced or Compulsory Labor held in 1930 (No. C29) and adopted in Geneva as 14th International Labor Convention (ILC) session defined forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” This Convention came into force in 1932 and mandated that all ratifying states consider the illegal exaction of forced or compulsory labor as a penal offense and be punished as such. It also required that the states ensure the penalties imposed by law to be adequate and strictly enforced.

Child Exploitation for Labor and Other Services

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labor, Convention No. C182 – The Worst Forms of Child Labor – was held in 1999. Convention No. C182 mandated the prohibition and elimination of the worst forms of child labor, requiring national and international action, international cooperation, and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973. It asserted that the effective elimination of the worst forms of child labor requires immediate and comprehensive action to recognize the importance of free basic education and the need to remove the children concerned from all such work. It also mandated that the ratifying states need to provide for the affected children’s rehabilitation and social integration while addressing the needs of their families.

According to this Convention, the worst forms of child labor comprise:

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict
(b) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances
(c) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties
(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children

The International Labor Organization (2015) reiterates the definition of child labor as defined by the Worst Forms of Child Labor Convention (No. C182). It summarizes “child labor”: 
as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

Convention on the Rights of the Child and other relevant international conventions define child laborers as 5- to 11-year-olds engaged in economic activities, 12- to 14-year-olds who work (in economic activities) for 14 or more hours per week, as well as children who carry out hazardous unpaid household services. It also asserted that some of the worst forms of child labor are covered by other international instruments, in particular the Forced Labor Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.

The International Trade Union Confederation (ITUC 2008) reported that “Child labor is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.” Thus, any work that jeopardizes children’s mental, physical, social, and/or moral well-being by denying them normal childhood activities, interfering with school attendance, requiring them to combine school attendance with excessively long and heavy work, and/or leaving them to fend for themselves at a very early age is considered child labor. It may also involve child slavery, separation from their families, exposure to hazardous working conditions, as well as children left to fend for themselves on the streets of large cities – often at a very early age.

Nature and Extent of Child Labor Trafficking in India

The latest Census of India (2011) reported that India had 259.6 million children in the age group (5–14) years, and of these, 10.1 million (3.9% of total child population) are part of the labor force, either as “main workers” or as “marginal workers.” In addition, more than 42.7 million children in India are out of school. India is one of the leading countries in Asia for child labor trafficking and has 33 million children employed in various forms of child labor (ILO 2017). The UNICEF Annual Report on India (2017) related that child labor constitutes 13% of the workforce in India. According to the United States Department of Labor (DOL) (2014), India is one of the countries that has a substantially large number of children being exploited for labor and sex. Some of these children are victims of exploitation in India, and others are trafficked to other countries including the United States. Another report by the International Confederation of Free Trade Unions (ICFTU 2008) revealed that there are over 60 million children under the age of 14 working in India’s agricultural, industrial, and commercial sectors. Some of these child laborers are as young as 4–5 years old. These children work long hours under horrific conditions, and their remuneration is only food and squalid living quarters. Their adherence to these atrocious working conditions assures that they do not die of starvation.

According to the most recent National Census data (2011), 4,353,247 children between the ages of 5 and 14 worked for 6 or more months during the years of 2001–2011 (Ministry of Labor and Employment, Government of India 2014). The
same Census data reported 3,875,234 children between the ages of 5 and 14 worked for 3–6 months during the year, while 1,900,182 children ages 5–14 worked for less than 3 months. The Bureau of International Labor Affairs for the United States Department of Labor (2015) reported that there are 3,253,202 (approximately 1.4%) children between the ages of 5 and 14 who are working in various industries and in many cases, these children are forced to work long and arduous hours in horrid conditions.

International Laws and Conventions and Child Labor Trafficking in India

International laws and conventions for the protection of children have not had much impact on children’s well-being in India. It is only very recently that India ratified the Minimum Age Convention, 1973 (No 138), of the International Labor Organization (ILO) (Kari Tapiola – ILO 2018). A report by UNICEF India (2017) reveals that majority (80%) of child laborers in India work in rural areas, and three out of four of these children work in agriculture and other small household industries such as carpets and clothing, brick kilns, and domestic staffing. These are home-based employments and thus not subject to government inspections, legal protections, or minimum wage requirements. Nina Smith, a Chief Executive of GoodWeave International (cited in Washington Post, August 21, 2017), stated that, “There is a huge workforce that is unregulated, does not really benefit from labor laws, and is highly vulnerable to exploitation” (see https://www.washingtonpost.com/news/wonk/wp/2017/08/21/child-labor-the-inconvenient-truth-behind-indias-growth-story/?utm_term=.2550a455234b). Thus, even today when the Constitution of India has provisions for protection of children and the ILO Minimum Age Convention, 1973 (No. 138), has been ratified by India, children’s state remains deplorable. Thousands of children in India are still forced to work jeopardizing their mental, physical, and psychological development (see details in Fig. 1). Figure 1 shows an overall decrease in child labor in India from 2001 to 2011. However, the numbers almost remain the same. There has been decrease in child laborers working in rural areas but increase in urban areas. In 2015 Child Rights and You (CRY) reported that the number of male child laborers in the urban areas grew by 154%, whereas the number of female child laborers grew by 240%.

According to the most recent list “The 2018 List of Goods Produced by Child Labor” published by the DOL (2018), India involves child labor in the manufacturing of the following goods: bidis (hand-rolled cigarettes), brassware, cotton, fireworks, footwear, gems, glass bangles, incense (agarbatti), leather goods/accessories, locks, matches, mica, silk fabric, silk thread, soccer balls, sugarcane, thread/yarn, bricks, carpets, cottonseed (hybrid), embellished textiles, garments, rice, and stones. The DOL (2018) reported that 25% of the world’s mica production originates from the Indian states of Bihar and Jharkhand, where child labor and hazardous working conditions are pervasive in informal mining and collecting operations which have not been permitted by the government.
The Guardian (2015) reported that children as young as seven are used as servants in homes of rich people where they are physically beaten and made to live under appalling conditions with little food as payment for more than 18–20 h of work. Thousands of children are being trafficked from India’s remote rural areas and sold into work in cities, often as domestic staff for wealthy families. According to the same report, millions of children are exploited and forced to work as laborers in various businesses and industries such as restaurants, silk industry, carpet weaving, firecracker units, stone quarries, cement factories, brick-making industry, farms, and carpet industry among other small unregulated home industries. In rural areas and villages, children are forced to work in agricultural sector such as farming, livestock rearing, forestry, and fisheries. According to another recent report, children under the age of 14 make up the 4% of the total labor force in India. More than 80% of these children are engaged in traditional agricultural activities, and others work in manufacturing, service, and repair industries.

Table 1 presents the number and percentage of children between the ages of 5 and 14 working in three main labor categories—agriculture, industry, and service. (Children in India engage in the worst forms of child labor, including in forced labor producing garments and quarrying stones. Children also perform dangerous tasks in producing bricks. Table 1 provides key indicators on children’s work in India (also see https://www.dol.gov/agencies/ilab/resources/reports/child-labor/india).
Interregional child trafficking is also rampant in India – where children are trafficked within India from rural to urban and/or one province to another for commercial and sexual exploitation, forced labor, domestic servitude, as well as use in armed conflict. (US Department of State 2014). In many cases India’s rural families send their children to work in industries, such as carpet making, spinning mills, and cottonseed production, where they are forced to work in hazardous environments for little or no pay (Kara 2014; Theuws and Overeen 2014). However more recently due to globalization and augmented wealth of some in urban areas where demand for house servants has increased, another form of child trafficking for labor – domestic servitude – has emerged (The Guardian 2015). Children are recruited/kidnapped or bought and then trafficked from remote rural areas to cities where there is demand for domestic servants. Here, they are forced to work as servants for rich families under horrendous working conditions. According to a recent newspaper report (Huffington Post 2015), thousands of children are trafficked from India’s remote rural areas and sold into work in cities, often as domestic servants for wealthy families. Phoolka, a senior advocate at India’s Supreme Court and a human rights lawyer and activist, stated that rising demand for domestic maids by rich in urban areas has given rise to a new form – trafficking children for domestic slavery (The Logical Indian 2016). Children from marginalized groups – such as low-castes, members of tribal communities, and religious minorities – are more likely to be the victims of forced labor, human trafficking, and commercial sexual exploitation (Kakar 2016). The US Department of State (2014) and the United National Security Council (2014) reported that the states of Bihar, Chhattisgarh, Jharkhand, and Odisha trafficked children to serve as soldiers in Maoist armed groups. Often children are recruited, and in some cases kidnapped, to fight in armed liberation groups in the northeastern states of Assam and Manipur. Insurgent separatists and terrorist groups from war-torn regions such as Jammu and Kashmir are known to forcibly recruit children to launch attacks against the Indian Government.

Child Trafficking Inside and Outside of India

<table>
<thead>
<tr>
<th>Percentage and total # of children (ages 5–14) in the labor force</th>
<th>1.4% (3,253,202)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>56.4% (1,834,805.9)</td>
</tr>
<tr>
<td>Industry</td>
<td>33.1% (1,076,809.8)</td>
</tr>
<tr>
<td>Services</td>
<td>10.4% (338,333)</td>
</tr>
<tr>
<td>Other</td>
<td>0.1% (32,533)</td>
</tr>
</tbody>
</table>


In some cases, abject poverty drives poor families to make tough decisions, and they voluntarily sell children in exchange for money. These children are then “resold to the highest bidder” to work in homes as servants, industries as workers, and brothels and other similar establishments as prostitutes. Trafficked children are forced to work in several labor sectors. Table 2 provides an extensive overview and description of the subcategories of various sectors in which underage children are forced to work. For example, the agricultural sector includes “farming” – inclusive of producing hybrid cottonseed and hybrid vegetable seeds, cultivating cotton, cultivating chili pepper and rice, and harvesting sugarcane, tobacco, and tea as well processing cashew nuts and seafood (DOL 2018).

A complete list of sectors and their subsectors where children ages 5–14 are forced to work and the list of activities they perform in each sector is provided in Table 2.

**Dynamics of Child Labor**

Despite the growing international concern over the deplorable state of children in the world and many concerted international as well as national endeavors in form of laws, conventions, mandates, and provisions, child trafficking for labor and sex is thriving. New forms of trafficking emerge as efforts are made to address the existing ones. The data presented in this chapter revealed that children are exploited for labor and/or other services in and outside of India. In addition to international and national entities denouncing it, India’s Constitution includes provisions and laws for protection of children from any form of exploitation. Nevertheless, it remains prevalent. This section discusses some of the dynamics that may explain why these practices thrive.

Child trafficking for labor in India is a multifaceted problem. It appears in varied forms and the causes for the incidence are also multifaceted. It is intertwined into the social, structural, historical, economic, and cultural fabric of India in a complex manner. Empirical evidence suggests that generally structural factors – socioeconomic status, lack of educational and employment opportunities, political corruption, and inequitable social conditions – are some of the main causes of child exploitation for labor. In the Indian context, the explanation becomes much more complex and intriguing because historical, religious, social, and cultural dynamics lay the foundation of a convoluted social structure that reigns India. Exploitation and servitude are main elements of the Indian social and economic structure. The caste system in India has in built culture of servitude, paternalism, and marginalization giving rise to a culture that binds the “exploiter” and the “exploited” in a special obligatory bond that is not only accepted but rather perpetuated by the exploiter and the exploited alike. Caste system allows inbuilt paternalism to frame servitude in familial terms, with the landlord as the caring parent and the laborer as the child obligated to do what he is asked without question (Choi-Fitzpatrick 2017).
Table 2  Industries where children ages 5–14 are forced to work in India by sector and industry

<table>
<thead>
<tr>
<th>Industry</th>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Farming, including producing hybrid cottonseed and hybrid vegetable seeds, cultivating cotton, cultivating chili pepper and rice, and harvesting sugarcane, tobacco, and tea</td>
</tr>
<tr>
<td></td>
<td>Processing cashew nuts(^a) and seafood</td>
</tr>
<tr>
<td>Industry</td>
<td>Manufacturing garments, weaving silk fabric and carpets, producing raw silk thread (sericulture),(^a) spinning cotton thread and yarn, and embellishing textiles with silver and gold (\textit{zari})(^a)</td>
</tr>
<tr>
<td></td>
<td>Manufacturing glass bangles,(^a) locks,(^a) and brassware,(^a) and polishing gems(^a)</td>
</tr>
<tr>
<td></td>
<td>Rolling cigarettes (\textit{bidis})(^a) and manufacturing incense sticks (\textit{agarbatti}),(^a) fireworks,(^a) and matches(^a)</td>
</tr>
<tr>
<td></td>
<td>Manufacturing footwear and bags, producing leather goods or accessories,(^a) and stitching soccer balls</td>
</tr>
<tr>
<td></td>
<td>Producing bricks,(^a) quarrying and breaking sandstone,(^a) and granite,(^a) and mining and collecting mica,(^a) and coal(^a)</td>
</tr>
<tr>
<td></td>
<td>Manufacturing garments, weaving silk fabric and carpets, producing raw silk thread (sericulture),(^a) spinning cotton thread and yarn, and embellishing textiles with silver and gold (\textit{zari})(^a)</td>
</tr>
<tr>
<td>Services</td>
<td>Domestic work (62; 63)</td>
</tr>
<tr>
<td></td>
<td>Working in hotels,(^a) food service, and tourism services (64; 65; 66; 67; 68)</td>
</tr>
<tr>
<td></td>
<td>Street work, including selling food and other goods, and scavenging and sorting garbage (69; 70; 71)</td>
</tr>
<tr>
<td></td>
<td>Construction(^a) (72)</td>
</tr>
<tr>
<td>Categorical worst forms of child labor(^b)</td>
<td>Forced labor in agriculture, including producing hybrid cottonseed and harvesting sugarcane, both sometimes as a result of human trafficking</td>
</tr>
<tr>
<td></td>
<td>Forced labor in rice mills, quarrying stones, and producing bricks</td>
</tr>
<tr>
<td></td>
<td>Forced labor in producing garments, spinning cotton thread and yarn, and embroidering silver and gold into textiles (\textit{zari})</td>
</tr>
<tr>
<td></td>
<td>Forced labor in producing carpets, bangles, leather goods, plastic goods, footwear, and bags</td>
</tr>
<tr>
<td></td>
<td>Forced labor in domestic work and begging, both sometimes as a result of human trafficking</td>
</tr>
<tr>
<td></td>
<td>Commercial sexual exploitation sometimes as a result of human trafficking</td>
</tr>
<tr>
<td></td>
<td>Use in illicit activities, including the use of children to traffic children</td>
</tr>
<tr>
<td></td>
<td>Forced recruitment of children by non-state armed groups for use in armed conflict</td>
</tr>
</tbody>
</table>


\(^a\) Determined by the national law or regulation as hazardous and, as such, relevant to Article 3(d) of ILO C. 182

\(^b\) Child labor understood as the worst forms of child labor per se under Article 3(a)–(c) of ILO C. 182
Social, Cultural, and Structural Dynamics

India’s socioeconomic culture is a derivative of long-standing cultural practices of exclusion and divisions based on birth and ancestry. It is an artifact of ancient class relations that are reinforced by deep-seated cultural biases which are at the forefront of class and caste structures – where lower class is often at the mercy of the upper class for survival. Such social stratification based on ancestry creates rigid and impenetrable social classes where entry or exit from one to the other is impossible as one’s place in the social strata is determined by birth. These practices have led to the social exclusion of the lower classes from the mainstream society, from educational opportunities and decent jobs – immortalizing intergenerational poverty among people from lower classes – making them socially, economically, and psychologically marginalized and vulnerable to exploitation by the upper classes. Choi-Fitzpatrick (2017:132) eloquently describes this in the following statement:

Servitude is normalized and “legitimized ideologically such that domination, dependency, and inequality are not only tolerated but accepted and are reproduced through everyday social interaction and practice.” In such a cultural space it becomes “virtually impossible to imagine life without it, and practices, and thoughts and feelings about practices, are patterned on it.

Ancient atrocious cultural caste system still exists, and the artifacts of this system have resulted into caste oppression that has marginalized and exploited Dalit community socially, economically, and psychologically. “Though protections exist in Indian law, they are seldom enforced as caste hierarchy is mirrored in the bureaucratic, police, and court systems” (Navsarjan Trust 2017). Despite laws prohibiting such conduct, socially excluded classes are forced to perform jobs traditionally considered dirty and impure and “are constantly subjected to egregious violence, dehumanizing labor and a pervasive system of social exclusion” (also see https://www.justice.gov/sites/default/files/oir/legacy/2014/02/04/IND104063.E.pdf). A range of sources maintain that Dalits continue to suffer discrimination – described as “deep” (The Guardian 8 Feb. 2012), “widespread” (Hindustan Times 23 Nov. 2010), and “prevalent” (US 8 Apr. 2011, 58) – based on caste and the practice of untouchability, even though it is illegal (ibid.; Hindustan Times 23 Nov. 2010). Untouchability, a “direct product of the caste system” (Navsarjan n.d.c) means that Dalits often live segregated from the caste communities (ibid.; The Guardian 8 Feb. 2012; Hindustan Times 23 Nov. 2010). They are reported to be typically denied access to public wells, must use separate cups for drinking, and are denied entrance into temples, among other restrictions (Navsarjan n.d.c.; NCDHR n.d.a). Dalit rights groups indicate that the practice of untouchability also affects Dalits in schools (Navsarjan n.d.c.; NCDHR n.d.a). For example, Dalit children may be required to clean toilets, eat separately from the other children (Navsarjan n.d.c), or sit in the back of the classroom (NCDHR n.d.a). As well, Dalits attending higher educational institutions have reportedly been subject to “caste-based discrimination,” driving some Dalit students to suicide (The Globe and Mail 2 Dec. 2011; The Chronicle of
Debt Bondage: Child Labor

The ancient and convoluted social stratification system still dominates the social landscape of India. Often cloaked under false affectations of religion, it is enforced to maintain the status quo of the upper classes and hold lower classes in inescapable cycles of persistent poverty and bondage. Child exploitation in India is an offshoot of these ancient practices of social and cultural exclusion. Children born to the lower-class families are often used as bonds— as an assurance of debt re-payment— for the debt incurred by their ancestors (ILO 2010). The initial debt is often incurred through an amount of money borrowed as a small loan from subcontractors. The deceptive lending practices and enormously high interest rates keep increasing the principal and a small amount of money borrowed as the initial debt keeps growing at an exponential rate. The debt is then assigned to the entire family and is not nullified even in death. This means children are forced to repay the surging debts of their deceased parents. The initial small loans get transformed into large debts over time— leaving children, families, and the future generations in the state of debt bondage (ILO 2013; Choi-Fitzpatrick 2017). The majority of these marginalized and enslaved families are predominantly from the lowest and the condemned social strata (Kakar 2016; Ghose 2003).

Child exploitation or forced labor is the principle form of slavery in India. Traditionally limited to agriculture industry and rural areas, it has morphed into varied contemporary forms and pervaded almost all industrial sectors of India. It continues to thrive both in rural and urban India despite its illegality (ILO 2015). The debt bondage of laborers exists in many forms. It becomes intergenerational when the burden of labor and debt is transferred to the next generation (Kakar 2016).

Urbanization

Many of the lower-class families migrate from rural areas to cities in search of employment in industries, such as brick kilns, carpet making, spinning mills, and cottonseed production. In the cities, these newly arrived families find themselves in streets without any food to eat or any place to sleep. They and their children become easy targets for exploitation in labor and sex industry. To survive, many times they are obligated to work in hazardous environments for little or no pay. Children as young as four are found working in squalid conditions according to one of the NGO’s reports on “blood bricks” (Global March – 2012).

As discussed earlier, child labor trafficking thrives despite international and national legal protections. ILO (2017) reported, “… inequality, lack of educational
opportunities, slow demographic transition, traditions and cultural expectations all contribute to the persistence of child labor in India.” It impedes children from growing naturally, gaining the skills and education they need to have opportunities of decent work as adults. They are exploited for labor and sex by their families as well as strangers in their home country and foreign countries. The social, cultural, and structural dynamics of India silently acquiesce such a state of children, and they are subjected to the worst forms of exploitation. Their rights are trampled upon, and they are treated as commodities to be sold and bought for profit. In many cases they are bonded in slavery even before they are born (Kakar 2016).

Suggestions for Control and Prevention

The devastating aftermath of child exploitation is felt in all aspects of children’s lives. It thwarts their physical, mental, and psychological growth. Inequality, lack of educational opportunities, slow demographic transition, traditions, and cultural expectations all contribute to the persistence of child labor in India (Kakar 2016). Their lack of education limits their opportunities for any meaningful employment and leads them and their families to remain in perpetual poverty and bondage.

Given such a state of affairs, it is incumbent upon Indian as well as international entities to prevent continuation of child trafficking. India has made some endeavors to rectify the situation. For example, India has ratified most key international conventions concerning child labor, including its worst forms such as ILO C138, Minimum Age Convention; ILO C182, Worst Forms of Child Labor; UN CRC Optional Protocol on Armed Conflict to assure that underage children are not recruited to serve in the army; and UN CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography to prevent child exploitation for sex and other related activities.

In 2013, the Ministry of Home Affairs launched the Criminal Tracking and Networking System on a pilot basis. This system connects all of India’s 15,000 police stations and enables the police to monitor trends in serious crimes better, including trafficking (Ministry of Home Affairs 2013). In 2013, the government established 100 new antihuman trafficking units across India to bring the total number of Anti-human Trafficking Units to 300 (US Department of State 2013).

According to the United States Department of Labor report issued for the Bureau of International Labor Affairs in 2014, India made some moderate efforts to eliminate the worst forms of child labor. The Government of India implemented the National Child Labor Project to develop strategies in order to assist child laborers. As a result, programs such as loans, provision of alternative means of livelihood, as well as social policies and programs were developed to address the underlying causes of child exploitation. To coordinate efforts of state and national government agencies, the Ministry of Home Affairs for India (2013) launched an online human trafficking portal.

The irony is that despite many existing and new laws on books, exploitation of children in India persists. A report, “Campaigners concerned as India delays tough
new anti-trafficking law” by Reuters (2018), testified that India already has laws to prosecute employers and middlemen involved in debt bondage, as well as pimps and brothel managers in sex trafficking cases. However, social and cultural acquiescence and indifference to the plight of the victims who are generally from “marginalized classes” known as “Dalits” and often considered “impure” “untouchables” and “outlawed” the laws have not transcended to them. Consequently, trials are often drawn out and trafficking survivors’ rights to benefits like cash compensation, housing, and free education for children are often ignored or denied (also see https://www.foxnews.com/opinion/human-trafficking-will-not-end-until-it-ends-in-india).

The discrimination and oppression – the artifacts of caste culture – persist today and defunct the new laws leaving the socially, economically, and psychologically marginalized, mostly the Dalit Community, in the same or worse situations. Deshpande (2016 as cited in the Global Slavery Index) articulates it, “Discrimination against Scheduled Castes, Dalits, and Scheduled Tribes is still a characteristic of the modern and globalizing Indian society, with reports that it is becoming more evident in urban areas.” A great number of children are still forced to work in hazardous industries under horrific conditions. Instead of attending schools, they are found working in agriculture, manufacturing, and various other industries. India needs to do more to protect children and end the atrocities inflicted on children. The social structure revolves around the vicious circle of perpetuating exclusion at all costs. Lerche (2007) reports that economic marginalization along with social and cultural exclusion compounds the unequal power dynamics between marginalized groups, government, and dominant groups who usually own or manage worksites. Such a complex system emasculates emerging efforts and laws.

This section discusses some strategies and suggestions for controlling and preventing child labor exploitation.

**Modification and Enforcement of Existing Child Protection Laws**

One of the most distinctive suggestions would be to criminalize child exploitation and punish the violators. However, India already has several existing laws that promise to protect children against any and all forms of exploitation. Article 24 of the Indian Constitution prohibits employment of children below the age of 14 in factories, mines, and other hazardous employment. Article 21A and Article 45 promise to provide free and compulsory education to all children between the ages of 6 and 14. In 2009, India passed the Right of Children to Free and Compulsory Education Act (RTE). In 2016, the Child Labor (Prohibition and Regulation) Amendment Act (CLPRA) amended original 1986 Act, and it states the purpose of the amendment to be:

An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.
This act prohibits “the engagement of children in all occupations and of adolescents in hazardous occupations and processes,” wherein adolescents refer to those under 18 years and children to those under 14. The Act also imposes a fine on anyone who employs or permits adolescents to work. However, most of these laws have some flaws and more importantly not enforced equitably. For example, Section 3 in Clause 5 of CLPRA allows child labor in “family or family enterprises” or allows the child to be “an artist in an audio-visual entertainment industry” allowing families to engage their children in work. Since most labor is performed by lower classes, this act provides little protection for children from poor families that comprise of 80–90% of the child labor. They are still deprived of their constitutional rights and protections. Additionally, the clause does not define the hours of work – thus children can still be exploited to work and work long hours with immunity. In addition to the RTE and Article 45, Plantation Labor Act (1951) in the northeastern states of Bengal and Assam mandates free education to all the child laborers working in tea gardens, yet these rights and protections have not been extended to children (Goswami 2018).

In order to protect children against exploitation in the true sense, the acts and laws need to be clear and unambiguous about protecting children. For example, CLPRA 2016 contradicts the Juvenile Justice (Care and Protection) of Children Act (JJCP(C) of 2000 and violates the International Labor Organization’s (ILO) Minimum Age Convention and UNICEF’s Convention on the Rights of the Child, to which India is a signatory. The JJCP(C) (2000) defines a child as anyone who is under 16 years of age, while the RTE (2009) defines children as 6- to 14-year-old, and CLPRA (2016) defines a child as someone under 14 years of age. Such a lack of one uniform and distinct definition of a “child” not only causes confusion but also sanctions manipulation and exploitation to forcefully alienate children from the main society. Such practices tacitly acquiesce perpetuation of intergenerational poverty and inequality. For the laws to be effective, there should be clear and concise definition of who is a child and the type of employment and number of allowable work hours for them. More importantly these laws should rise above the caste hierarchy and be enforced objectively and equitably.

**Efforts Should Begin at the Grassroot Level**

A socially and culturally diverse society like India that is meticulously organized by a callous system of class, caste, and gender to maintain the status quo of classes requires more than Supreme Court and Constitutional provisions for children’s protection against exploitation. Intervention efforts should carefully consider the contextual complexities of the Indian society. Its multidimensional complexity requires similar complex intervention, education, and training. The efforts need to be designed to effectively remove children from hazardous work.

The underlying contextual factors such as poverty and inequity interwoven in the cultural, social, political, and economic environment and class-based society must be addressed with practical solutions. Legislation needs to be explicit, and enforcement
must be unequivocal devoid of class, caste, and religious undertones. To actually realize the full potential of these laws and protect children, the efforts need to be concerted, collaborative, and unwavering and begin at the ground level. Efforts by Kailash Satyarthi, the Nobel Laureate, such as “Bachpan Bachao Andolan” (Save the childhood Movement), are some of the grassroot efforts’ examples to eradicate such atrocities as child exploitation and child labor, working along with the authorities to ensure that the existing laws are followed and justice is meted out to the perpetrators and offenders. More importantly efforts need to focus on eradicating the precursors leading to child trafficking.

Goals set by the United Nations for India propose feasible and sustainable development goals. These sustainable goals such as #1 propose to eradicate poverty – which generally is one of the most important factors contributing to child trafficking. Similarly goal #8 proposes strategies for decent work and economic growth, and #16 proposes peace, justice, and strong institutions (United Nations 2016). India needs to endeavor to follow and maintain these sustainable development goals.

References


Child Trafficking for Adoption Purposes: A Criminological Analysis of the Illegal Adoption Market

Elvira Loibl

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Abstract

Over the past decades, numerous reports have emerged suggesting that children from poor countries are being obtained illegally and transported transnationally in order to meet the high Western demand for adoptable healthy babies. This chapter identifies the structural components of the transnational illegal adoption market by applying the basic logic of the routine activity theory that has been developed by Cohen and Felson. It explains that in the context of extreme inequality (“criminogenic asymmetries”) between the sending and the receiving countries, supply, demand, as well as weak public and private sector social control mechanisms have contributed to the nature and size of the illegal adoption market. The chapter outlines the main difference between conventional forms of human trafficking and child trafficking for adoption purposes and explains why the latter phenomenon is particularly difficult to detect.

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Introduction

The last half-century has seen the emergence of an illegal market in adoptable children. Numerous reports have emerged, illustrating that children are being kidnapped or purchased from poor families in developing countries and then transferred to Western states to be placed with involuntarily childless couples and individuals. A great body of criminological research has dealt with the issue of human trafficking; however, so far the phenomenon of trafficking in children, for the purposes of adoption, has totally escaped the attention of criminologists. This might also be due to the fact that the purchasing, kidnapping, and selling of children for adoption purposes is still not considered a form of human trafficking by the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and by most national criminal laws. Even if the children have been obtained by fraudulent means, the ultimate objective is to place them with adoptive families who wish to care for them. Adoption per se does not amount to exploitation: the third constituent element of human trafficking. This chapter seeks to fill this criminological gap. It identifies the organization and operation of the illegal transnational adoption market in children by applying the basic logic of routine activity theory that has been developed by Cohen and Felson (1979). It explains that in the context of extreme demographic as well as economic inequalities between the sending and the receiving countries (“criminogenic asymmetries”), demand, supply, and weak public and private sector social control mechanisms have contributed to the nature and size of the illegal adoption market. The chapter outlines the main differences between conventional forms of human trafficking and child trafficking for adoption purposes, and it seeks to explain why the latter phenomenon remains particularly invisible.

The Basic Logic of Routine Activity Theory

In order to understand the organization of the transnational illegal market in children, it is important to identify its structural components. The basic logic of routine activity theory offers a means to conceptualize this market. Routine activity theory was developed by Cohen and Felson (1979) in order to explain the behavior of individuals engaged in predatory street crimes (e.g., robbery, burglaries, larcenies, or murders). Routine activities refer to the “recurrent and prevalent” activities of individuals in everyday life (e.g., work, leisure, social interaction) (Cohen and Felson 1979: 593). The premise of the theory is that crime is the product of three minimum elements that converge in space and time in the
course of the population’s routine activities: (1) motivated offenders, (2) suitable targets, and (3) the absence of capable guardians. The first element refers to offenders with both criminal inclinations and the ability to carry out the crime. Target suitability refers to a target’s qualities, such as the value of a person or property, physical visibility, access to them, as well as resistance capability. A capable guardian is someone with the capacity to stop or impede a crime, one in whose presence the crime is not committed and whose absence makes it more probable. This definition includes formal third parties (e.g., police officers or security guards), as well as informal ones (any private person).

Routine activity theory is a micro-level theory that was developed and employed to explain why individuals engage in criminal activities. Nonetheless, criminologists have applied its basic logic to structurally analyze illegal transnational markets. For instance, Lane et al. (2008) have transposed the theory’s three components into structural equivalents so as to analyze the market in illegal art and antiquities. According to them, this market is a patterned system of economic exchange that consists of three factors: demand, supply, and regulation. Thus, from a structural market perspective, motivated offenders constitute the demand component, whereas suitable targets constitute the supply component of the illegal market. The absence of capable guardians then involves both weak public sector and private sector social control mechanisms, which establish the necessary link between the demand and the illegal supply component.

In the following paragraphs, the basic logic of routine activity theory will be applied to structurally analyze the transnational illegal market in adoptable children. It will be explained that the adopters and adoption agencies in rich Western countries constitute the demand component, whereas a large number of poor families and orphanages caring for children in the developing countries form the supply component. In order to meet the high demand for adoptable children, children are illegally obtained from their birth families or from orphanages caring for them. Demand and illegal supply are then being connected by individuals and organizations from both the public and private sector that ought to serve as legal guardians in the adoption system but who misuse their function to launder children through legitimate channels.

**Demand Component**

Intercountry adoption, meaning the transnational movement of children for the purposes of adoption, is a fairly recent phenomenon that developed in the second half of the twentieth century as a humanitarian response to World War II and the Korean and Vietnam Wars (Altstein and Simon 1991). Initially, the motivation to adopt a child internationally has mainly revolved around an altruistic core. Adopters, many of which already have biological children, considered intercountry adoption as an important measure to rescue children from atrocities and destruction in war-torn regions or from poverty and neglect in so-called “Third World” countries (Hoksbergen 1998).
Since the 1980s, however, the adopters’ own interests and needs have begun to play a more prominent role in the intercountry adoption system (Hoksbergen 1998; King 2008). In Western societies, the number of couples and individuals who would like to be parents but who are unable to have a biological child was rising, particularly due to the increased use of contraception and the later age at which couples attempt to have their first child (Högbacka 2008). Many so-called involuntarily childless thus seek to create their own families through adoption.

However, the number of children available for adoption in Western countries has fallen since the 1970s due to liberal abortion politics, widespread use of contraception, and the increasing acceptance of unwed motherhood. Hence, the adoption of a child from a foreign country has become an attractive (and often last resort) alternative for many involuntary childlessness (Fleisher 2003; Högbacka 2008; Nelson 2006). The decrease in the number of domestic adoptions strongly correlates with the increasing number of intercountry adoptions in all Western countries. Whereas in the 1970s, intercountry adoption was mainly considered as a child care measure, it gradually became a remedy for involuntary childlessness as of the 1980s. Most adopters wish to adopt a child that is younger than 2 years old, and they are not willing to accept an orphan with a disease. Therefore, young and healthy girls are in particular high demand. Adopters’ demand exerts an inexorable pull on the healthy babies of child-rich countries (Marijnen and Doomernik 2015).

Moreover, adoption agencies in receiving countries play an important role on the demand side of the transnational adoption market, as they channel and intensify the adopters’ pressure on the sending countries. Many adopters decide to use the services of an adoption placement agency in order to pursue an intercountry adoption. Although the adoption agencies repeatedly stress that their main mission is to find parents for children, and that they exclusively serve the best interests of the child, they effectively act as representatives of the adopters which seek to find suitable children for their paying clients. Adoption agencies commonly allow the applicants fill out a checklist indicating their preferences concerning, among other things, the child’s age, origin, health status, and sometimes gender, which serves the agencies as a basis for their placement services. They seek attractive source countries, negotiate placement quotas with the local institutions and organizations, and make sure that the proposed children actually comply with their clients’ preferences (Goodwin 2010).

However, the pressure on the supplying states does not only originate from the adoptive parents, it also emanates from the adoption agencies themselves. In many receiving countries, adoption agencies are accredited private bodies that do not receive any subsidies and therefore have to cover their expenses exclusively with the fees paid by the adopters. This means that the agencies’ existence is dependent on the number of intercountry adoptions they place. Due to this dependency, agencies put pressure on the sending countries to send more children for adoption. Arguably, this pressure has further increased since the number of international adoptions started to decline in 2004 for reasons that will be explained below.
Supply Component

Whereas adopters and adoption agencies in the wealthy Global North (primarily the United States, Western European countries, and Canada) constitute the demand component, large numbers of poor families and orphanages caring for children in low-income countries of the Global South (and postcommunist Eastern Europe) form the supply component of the adoption market. In 2015, China, Russia, Ethiopia, Guatemala, and Colombia were the most significant sending countries in terms of children sent abroad, followed by Ukraine, South Korea, Vietnam, Haiti, and India (Selman 2017). The reasons why there are children in need of a family or care in these countries are basically independent of the demand: wars, natural disasters, extreme poverty, AIDS, religious and cultural traditions (e.g., stigmatization of unwed mothers), and changes in economic and social policies (e.g., the collapse of communist-era welfare systems in Eastern Europe, the introduction of the one-child policy in China) (Högbacka 2008). Commonly, a combination of these factors, as well as expedient and bureaucratic adoption procedures, makes a state an attractive source of children for intercountry adoption.

Since the 1990s, the number of intercountry adoptions has constantly risen, peaking in 2004 with approximately 45,000 placements. This rise, Selman (2016: 24) explains, “seems in many ways to have been driven by an increasing ‘demand’ for children, fuelled by the apparent steady increase in the number of children available in China, Russia, and Guatemala and the opening up of possibilities for adoption by single individuals.” However, since 2005, the number of intercountry adoptions fell to some 12,000 in 2014 (Selman 2017). This decline is particularly attributable to the suspension of intercountry adoptions by Guatemala in 2008, as well as to the restriction in the number of children sent by China and Russia (Selman 2016). Several factors had caused the drop in intercountry adoptions from previously significant source countries, including economic developments, stronger reliance on domestic adoption, as well as reports about illegal and abusive adoption practices, which often resulted in stricter adoption procedures (Smolin 2010).

Conflicts, natural disasters, extreme poverty, and epidemics leave numerous children worldwide extremely vulnerable. However, only a small fraction of them are deprived of their family environment and thus legitimately available for adoption. This reality runs contrary to the belief that there are millions of children around the world who desperately need parents (ISS 2008). The Western myth of a “global orphan crisis” is created by estimates on orphans, institutionalized children, and street children (e.g., UNICEF 2016), which are often misinterpreted to stress the urgency to adopt internationally (Cheney and Rotabi 2015; Graff 2008). Yet, the majority of these children are not orphans in a legal sense (meaning that they have lost both their parents), but they have at least one living parent or grow up in an extended family network – an acknowledged form of child care in many traditional societies (Broad 2007). Furthermore, most of those children who actually need a family are not attractive adoptees, as they are already older, sick, or more traumatized than most adopters are willing to accept (Joyce 2013).
In order to meet the high Western demand for healthy babies, actors in the supplying countries employ a variety of illegal means to generate “adoptable” children. In some sending states, citizens, including independent agents, attorneys, and orphanage directors, establish a system for purchasing children from their birth parents. They send out intermediaries, generally of a lower social status, serving as scouts or recruiters who would approach impoverished families and potentially vulnerable pregnant women or mothers – often young, poor, and unmarried – and incite them to give up their future or newborn child (Commission on Human Rights 2000; Smolin 2006). Consent to relinquishment is not given freely but induced by psychological pressure and financial or material rewards. The parents may be told that they are not suitable persons to raise a child and that they should give their future or newborn children the opportunity to have a better life than themselves (UNICEF 1998). Such pressure may be reinforced by the reward of money or goods (Smolin 2006).

Another method to illegally obtain children is the deception of biological parents to obtain their consent to adoption. Here, biological parents are intentionally provided with false information about the consequences of an adoption in order to obtain their consent (UNICEF 1998). They may be told that their child is only going away for educational purposes or on a temporary basis, or they may be promised that they can keep in contact with their child, receive payments and letters from the adoptive parents, or that they will be allowed to follow their child to the Western nation once the child has grown up (Smolin 2006). In other cases, birth parents are urged to sign paperwork relinquishing their parental rights without fully understanding the concept of “relinquishment” that is based on a culturally foreign, exclusivist nuclear family model (Wereldkinderen and Against Child Trafficking 2009).

Furthermore, there are cases where children are being obtained through kidnapping or abduction. The children are either being kidnapped from the streets, hospitals, and their homes or abducted from orphanages, hostels, or schools where they have been placed temporarily by their parents for purposes of education or care (Dickens 2002; Fuentes et al. 2012). Poor families commonly use these institutions as a safety net without intending to sever their parental rights or ties (Cheney and Rotabi 2015). They either place their children into an institution on their own initiative for a period of time, during which they are not able to care for them due to financial or other reasons, or the children are deliberately recruited into such an institution on the basis of false pretenses (Smolin 2006).

In other incidences, birth mothers are fooled into thinking that their newborn children were stillborn or died shortly after birth, while in reality the babies are being abducted from the hospitals or maternity clinics (UNICEF 1998). Furthermore, there is the scenario of child abduction in the aftermath of a natural disaster or in a conflict situation where “lost” or “missing” children are being placed for intercountry adoption without any efforts having been made to find their birth parents or relatives (King 2012).

adoption should only be considered for a child deprived of his or her family environment, if no domestic child care solution can be found. In a number of instances, the subsidiarity principle has been violated in the sending countries: directors of child care institutions or government officials – bribed by adopters and adoption agencies – approved an intercountry adoption even though there were sufficient families in the child’s native country on the waiting list for foster care or adoption (Hoelgaard 1998; Meier and Xiaole 2008; Post 2007; Smolin 2011).

Social Control Component

In order to sustain an illegal transnational market in adoptable children, a diverse set of demand and supply sources is necessary. However, demand and supply sources alone are not sufficient; it is equally important that these sources are securely linked. Connecting buyers and sellers with each other is crucial, which is organized differently than in conventional forms of human trafficking.

There is at least one important feature that immediately distinguishes the trafficking in children, for purposes of adoption, from other forms of human trafficking. Whereas the purpose of conventional forms of human trafficking is illegal (e.g., sexual exploitation, organ removal, slavery), adopting a child is perfectly legal at the demand end of the system. An adoption only becomes illegal when the child has been obtained illegally. Therefore, the illicit means by which children were obtained must be disguised: a laundering process is crucial here. Just as crime proceeds and “dirty money” are laundered, illegally secured children must be purified in order for them to be profitable (Smolin 2006).

There are two ways to launder a child. The first one involves the adopters, who bypass the adoption system by trafficking the illegally obtained child as their biological child, after having the child’s birth certificate falsified or fabricated. These adoptions are commonly referred to as “illegal adoptions” (Boele-Woelki et al. 2011). The adopters circumvent the adoption procedure because they do not fulfill the adoption requirements as they are too old or because they are not willing to take on the long waiting times and bureaucratic hurdles in an adoption process. Often they use a private contact as an intermediary who locates a child and then assists them in the laundering process. Adoptive mothers may have the child’s birth certificate issued with their name as the biological mother, or adoptive fathers may wrongfully acknowledge the paternity of an allegedly “illegitimate” child (UNICEF 1998). Sometimes this approach has already been prearranged prior to the child’s birth, involving psychological pressure and/or payments to the pregnant mother (Wuttke 1996). The latter may be involved in the laundering process by registering at a maternity clinic with the name of the adoptive mother. In other cases, birth certificates are issued with the names of the adoptive parents, while the biological mothers were told that their baby was stillborn or died after birth. The adopters may not necessarily be aware of the illegal origin of the child that is presented to them. Their intermediary may tell them that the baby is an orphan or was abandoned.
The second way to launder an illegally obtained child is by passing the child through the adoption system. Again, the child’s birth certificates and other necessary documents (e.g., maternity and paternity certificates, documents containing the birth parents’ consent to adoption, death certificates of the birth parents, rejection letter from domestic adoption applicants) need to be falsified or fabricated in order to hide the illegal conduct and to identify the illegally obtained child as legally abandoned, for which no domestic children care solution could have been found (Fuentes et al. 2012; Graff 2010; Maskew 2004; Meier and Xiaole 2008). As a final step in this laundering process, an illegal decision on an adoption is rendered by a court of law that bears all the hallmarks of a perfectly legal adoption procedure. Cantwell (2005: 1–2) explains:

The “illegality” of that decision could […] result from situations where, variously, the required procedures have not been followed, documents have been falsified, the child has been declared adoptable without due cause or as a result of manipulation, money has changed hands… but if it is truly an adoption, rather than some other form of transfer or removal, it will necessarily and by definition have been approved by a judge. It follows that all events and acts that would make it “illegal” must therefore have taken place up to and including, but not after, the judgement. “Illegal international adoptions”, therefore, are not the same as “illegally moving children abroad”: in cases of the former, children are moved abroad legally following an adoption process that contains illegal elements.

All traces of the illegal adoption will, in most cases, be wiped out at the time when the child arrives in the receiving country, and the adoptive parents, the adoption agencies, and the authorities can plausibly deny knowledge of illegal practices overseas. Only because of the possibility of laundering children can a lively adoption industry actually exist. This need for transforming the status of trafficked human beings is not found in traditional forms of human trafficking. Since the very purpose of human trafficking is illegal, there is no need to “clean” the status of the trafficked persons.

The process of laundering is usually facilitated by legitimate individuals and organizations from both the public and the private sector. For instance, in cases where children are passed off as the adopters’ biological parents, a nurse or doctor may issue the child’s false birth certificate. In cases where children are channeled through the adoption system as “orphans,” the laundering process is commonly facilitated by actors which actually ought to serve as guardians in the adoption system.

Basically, the adoption system’s integrity relies on capable guardians in the form of effective regulatory institutions, which monitor and control the adoption process and make sure that only children that are legitimately available for international adoption enter the system. The drafters of the Hague Convention believed that illegal and abusive adoption practices can best be prevented by increasing capable guardians in the adoption system. Therefore, the treaty obliges its contracting states to designate a Central Authority acting as a gatekeeper through which all intercountry adoptions have to be channeled (Kimball 2005). The Central Authority has to fulfill the tasks outlined in the convention, some of which may be delegated to public
authorities (e.g., youth welfare offices, family courts) or accredited private bodies (e.g., child care institutions, adoption placement agencies).

Yet, as uncovered cases of illegal adoptions have shown, these public sector and private sector institutions do often not serve as guardians in the adoption system, but rather they misuse their knowledge and status to pass the children through their organization (Dohle 2008; Smolin 2004; Stuy 2014). They thereby create the necessary linkage between demand and illegal supply sources by converting illegally obtained children into “orphans” and then “adoptees.” These institutions might not only serve to connect buyers and sellers, but they may also have been involved in illegally sourcing the children for adoption in the first place. For instance, a state-run orphanage might illicitly secure adoptable children (e.g., by circumventing the subsidiarity principle or by sending out scouts) and then falsify the necessary paperwork to hide both the illegal conduct and the children’s real origin (Wacker 2000).

The limited effectiveness of regulatory institutions facilitating the child-laundering process can be traced to widespread corruption and unwillingness to enforce laws in place. A high incidence of corruption in the sending countries is a significant reason for illicit practices within the intercountry adoption system (Smolin 2006). Public officials are accustomed to demanding and receiving payoffs to provide not only legitimate but also illegitimate approvals and services. Generous (by sending nations’ standards) fees and payments from Western adopters and adoption agencies provide ample means for creating an intercountry adoption system, which is greased by bribery. Corruption is the lubricant that enables child laundering to flourish, as it covers up illegal adoption practices, skews the decision-making process, and diverts law enforcement resources.

The cooperation partners and representatives of the Western adoption agencies in the supplying states play a particularly crucial role at the demand-supply nexus. There are different forms of cooperation between adoption agencies and the countries from which they place children for adoptions. These forms of cooperation depend on the laws, as well as structures in the sending states. Typically, adoption agencies established a cooperation with local partner organizations. Sometimes, these organizations are orphanages that are accredited by the sending countries’ authorities to place children for international adoption (HCCH 2012). In other cases, the partner organizations are working as adoption placement agencies with strong links to the local child care institutions. Then there are sending states (e.g., China), where the Western adoption agencies have not established a collaboration with a partner organization but are obliged to directly cooperate with the competent authorities who place the adoption applicants on a “waiting list” and do the matching with a child that becomes available for intercountry adoption (Stuy 2014).

Many Western adoption agencies have representatives in the sending countries who manage the agencies’ representative office or mediate between the agencies and their foreign partner organizations and/or the competent authorities. They are often locals who know the language and are familiar with the adoption laws and procedures in the sending country. The representatives’ qualification and the range of functions to be performed basically differ from body to body, as well as from country to country. Some representatives, like, for instance, those in China, only handle...
bureaucratic matters by translating documents and accompanying the adoption applicants to the official authorities and court hearings. Others play a more proactive role in the adoption process. They have strong contacts with the local child care institutions, which they visit on a regular basis to inquire if there were children in need of an adoption. Moreover, they may be required to undertake certain functions and duties for the authorities in the sending countries (HCCH 2012).

The adoption placement agencies’ foreign cooperation partners and representatives play a crucial role in the adoption procedure, as they are involved in the most crucial phase of the child placement process: the phase between the abandonment or relinquishment of the child and the adoption decision in a court, where most illegal and abusive practices commonly occur. They are important “cogs” in the adoption system, as their working method, ethical stance, as well as understanding of the child’s best interests have a significant influence on the subsequent processes and, ultimately, the resulting adoption. On the one hand, they could – and actually should – serve as guardians that only let those children pass through the adoption system that are legitimately free for intercountry adoption. On the other hand, they may allow illegally obtained children to be laundered through the system (Tribowski and Loibl 2017). As uncovered cases of child trafficking have shown, adoption agencies’ partners and representatives in the sending countries are often involved in abusive adoption practices (Stuy 2014; Wacker 2000). They either illegally secure children for intercountry adoption themselves, launder illegally obtained children through the system, or facilitate abusive practices by other actors and organizations by looking the other way.

Child trafficking for adoption purposes causes deep harm to the children and their birth parents, whose human rights are seriously violated (Loibl 2016). Yet, the scope and frequency of this phenomenon are difficult to assess. Illegal adoption activities often remain invisible since they are embedded in a legitimate system. Illegally obtained children – often too young to conceive the illegal circumstances of their placements – are not traded in the underground but passed through the same legal channels as children that are legally declared free for intercountry adoption. As a result, illegal and legal adoptions become hopelessly mixed up in the adoption system. The children can therefore not easily be identified and construed as illegally obtained. An adoptee’s illegal origin may only be detected if the child was not laundered “properly,” meaning if the adoption documents include contradictory information on the child’s origin and background (see, e.g., Wacker 2000).

Criminogenic Asymmetries Between Demand and Source Countries

The high demand of and the illegal supply with adoptable children, as well as the reduced ability of legal guardians to control the intercountry adoption system, are caused by demographic and economic asymmetries between the sending and the receiving countries. Passas (1999: 402) argues that transnational crime is the product of “criminogenic asymmetries,” which he defines as “structural
discrepancies, mismatches and inequalities in the realm of economy, law, politics, and culture.” Such asymmetries are produced in the course of interactions between unequal actors and systems with distinctive features (Passas 2000). They cause crime in three ways:

1. by fuelling the demand for illegal goods and services;
2. by generating incentives for people and organizations to engage in illegal practices; and
3. by reducing the ability of authorities to control crime.

Dynamics of globalization, Passas (1999) claims, have further intensified the existing criminogenic asymmetries. Globalization has brought into closer contact, interaction and interdependence countries with unequal power and diverse cultures, legal traditions, and economic and political outlooks. It reinforces inequalities of power and wealth, both within nation states and among them, and intensifies global hierarchies of privilege, wealth, and control. As criminogenic asymmetries are multiplied by these dynamics, rates of criminal activities naturally increase, unless effective control systems are in place. However, Passas (1999: 410) argues that official controls get weakened by processes leading to dysnomie, which is constituted by “(1) the absence of a widely accepted transnational normative framework to regulate cross-border activities, and (2) the existence of many different, inconsistent and often conflicting legal frameworks.”

With regard to the intercountry adoption market, economic and demographic asymmetries between the sending and the receiving countries have fueled the demand for, as well as the illegal supply with, adoptable children. Whereas the rich Western countries are struggling with low birth rates and decreasing numbers of children available for domestic adoption, birth rates are increasing in the poor countries of the global South. These asymmetries were intensified by processes of globalization, which further increased the wealth in industrialized Western countries, leading to reduced birth rates, while aggravating poverty in other parts of the world, which is linked with population growth (Harrison 2007). The bifurcation between wealthy child-poor countries exerting the demand for adoptable healthy babies and poor child-rich countries that are the source of the highly valued children is evident in the statistics on intercountry adoption, which clearly refers to industrialized countries as receiving nations and developing countries as sending states (Selman 2017). An exception is the United States which is both the most significant recipient and an important provider of children (mostly of African descent) to same-sex couples in Europe, particularly in the United Kingdom as well as in the Netherlands (Marre and Briggs 2009).

The economic and demographic asymmetries between the sending and receiving states have fueled the demand for adoptable children and shaped the motivation of actors in the source countries to illegally obtain them. A large proportion of the population in attractive supplying states live in poverty. In societies with very low per capita incomes, country fees and other costs that may seem reasonable from a Western perspective are sufficient to create an incentive to illicitly source children and then launder them through the adoption system. As Smolin (2006: 175) stresses:
Money is the primary motivation in most cases of child laundering in the intercountry adoption system. The transfer of Western wealth into sending nations is the primary vulnerability of the intercountry adoption system. Western funds provide an incentive to engage in child laundering which attracts unscrupulous persons into the system while tempting even charitable child welfare institutions into unscrupulous conduct.

An example of the enormous sums of money that can be earned from an international adoption is Guatemala, a country that emerged as a significant supplier of children from 2003 to 2008 and which became almost synonymous for illegal adoption practices. Although Guatemala is a developing country where about 39% of the population lives below $2 a day (The World Bank 2013), the fees for international adoptions paid to Guatemalan attorneys handling international adoptions ranged between $18,000 and $19,000 (Smolin 2006). According to the report of the Special Rapporteur on the sale of children, child prostitution, and child pornography (Commission on Human Rights 2000: para. 36–38), the attorneys would “use middlemen to seek out pregnant women who, because of poverty or prostitution, might be willing to give up their children or to sell them” and who would “resort to threats or even baby-stealing.” If the mother cannot be persuaded.

Even charitable organizations may be financially motivated to generate and supply “adoptable” children. They may subvert the subsidiarity principle, laid down in the UNCRC and the Hague Convention, as more money can be made from international placements rather than domestic child care solutions. Or they may even place children whose families have not actually relinquished their parental rights. Orphanage directors may engage in these illegal practices out of the necessity to cover the institutions’ expenses or in order to profit financially (Hoelgaard 1998; Stuy 2014).

The criminogenic asymmetries have also reduced capable guardians in the adoption system. Basically, the Hague Convention sought to establish an effective control system with the aim of reducing incidences of illegal adoption practices. Yet, the treaty does not provide an overseeing international body that would ensure that intercountry adoptions would comply with its principles and standards. Rather, it leaves regulatory enforcement functions in the hands of national bodies. Yet, widespread corruption in the sending countries, which was both caused by and further increased existing asymmetries, has weakened official controls. Individuals and organizations, from both the public and private sector, that ought to monitor and control the adoption system misuse their function to connect demand and illegal supply, by laundering children through their organization.

Profit is not the only reason why actors become involved in illegally sourcing children and then laundering them through the adoption system. Also, the idea that children are better off growing up in a wealthy Western state than staying with their impoverished families in their poor native countries, that international adoption is in any case in the child’s best interests, may incite actors in the adoption system to engage in abusive adoption practices (Hoelgaard 1998). In countries where children and their families live in extreme poverty and face difficulties in affording shelter and food, let alone education, trafficking the children for the purposes of adoption may seem as a necessary evil toward a greater good.
Cycles of Abuse and Displacements Effects of Supply Reduction

Generally speaking, China and Russia have been quite persistent supply countries. Both emerged as sending states in the 1990s, and they have remained among the top suppliers of children ever since, even though the number of children sent abroad has been on a constant decrease for several years. This is not true for many other countries that quickly rise as significant providers for a couple of years only to shut down intercountry adoptions altogether or to limit them after serious incidents of illegal and abusive adoption practices. The decreasing significance or entire dropout of important sending countries leads to a displacement effect. As supply is restricted from one source country, another supplier emerges which would invite the unscrupulous into the adoption system. Illegal adoption practices would then continue in this new source country (Smolin 2006).

Graff (2014) investigated international adoption in Ethiopia and identified three stages this country underwent, which may also be observed in other “temporary” sending nations. In the first stage, only a relatively small number of intercountry adoptions took place in Ethiopia that were a “welcomed humanitarian venture for the desperately needy few.” By 2003, only three licensed adoption agencies were operating which sought to place those children that could not be cared for by (extended) families or friends in their native country. Soon, however, Ethiopia became a significant supplier in the adoption industry. The number of children sent abroad rose dramatically from 620 in 2000 to 4553 in 2009. Also, the number of licensed adoption agencies increased to 70 in 2008. Contributing to that explosive growth was the fact that Russia and China were sending far fewer children and that Guatemala was about to stop intercountry adoptions altogether.

Ethiopia, therefore, reached the second stage which Graff (2014) calls the “gold rush.” She explains, “there were too many agencies, too many children coming and going, too many people opportunistically looking in the countryside for ‘adoptable’ children.” The enormous growth has turned Ethiopia into a fertile ground for illegal adoption practices. The problem of middlemen, actively buying and selling children for intercountry adoption, became so big that the Ethiopian government was forced to take countermeasures. By 2011, Ethiopia finally reached the third stage: due to reports about illegal and abusive practices, the government decided to slow down intercountry adoption dramatically, and it decided to suspend intercountry adoptions in 2017.

The restriction of supply in adoptable healthy babies does not only lead to a geographical, but also a functional, displacement. More and more sending countries decide to limit the number of (young and healthy) children sent abroad by enforcing tighter adoption laws and procedures (this often happens in the course of ratifying the Hague Convention). This is why the adoption market is slowly drying out (Joyce 2013). However, since the demand for healthy babies continues to stay high, a shift is taking place from intercountry adoption to surrogacy agreements (Rotabi and Bromfield 2012). Compared to intercountry adoption, surrogacy is less visible, less regulated, and even more difficult to control, which makes it a particularly attractive alternative to adoption for involuntarily childless couples in Western countries.
Conclusion

The last half-century has witnessed the emergence of a transnational adoption market in illegally obtained children. The basic logic of routine activity theory offers a means of conceptualizing this market and identifying its structural components: demand, supply, and social control. Adopters and adoption agencies, especially in the United States, Europe, and Canada, constitute the demand component. In Western countries, the number of children available for adoption has decreased since the 1970s due to liberal abortion politics, contraception, and the increasing acceptance of unwed motherhood. Hence, the adoption of a child from a foreign country has become an attractive (and often last resort) alternative for many involuntary childless couples. Their demand for easily adoptable healthy babies exerts an inexorable pull on child-rich poor countries. The pressure on these countries does not only originate from the adoptive parents but also from adoption agencies, whose existence is dependent on the number of intercountry adoptions they place.

Whereas Western countries constitute the demanding states, child-rich countries of the Global South form the source countries for adoptable children. However, most children actually available for intercountry adoption in these states are already older and/or sick and are thus not the attractive adoptees Western couples are looking for. In order to meet the high Western demand for babies, actors in the sending countries employ a variety of illegal means to generate adoptable children. Children are being purchased or abducted from their families, hospitals, or orphanages. Vulnerable birth parents are coerced or provided with misleading information on the consequence of an adoption to obtain their consent. Directors of child care institutions and government officials are paid to subvert the subsidiarity principle that is laid down in the Hague Convention and the UNCRC in order to increase the supply of adoptable children. From a supply perspective, thus, the magnitude of the current illegal adoption market is the product of a large number of poor families, struggling to provide for their children, as well as orphanages, caring for many parentless children.

In order to sustain an illegal market in adoptable children, demand and illegal supply sources need to be securely linked. Connecting buyers and sellers with each other is necessary, which is organized differently than in conventional forms of human trafficking. Whereas the purpose of conventional forms of human trafficking is illegal (e.g., sexual exploitation, organ removal, slavery), adopting a child is perfectly legal at the demand end of the system. An adoption only becomes illegal when the child has been obtained illegally. Therefore, the illicit means by which children were obtained must be disguised: a laundering process is therefore crucial here. This process is facilitated by individuals and organizations from both the public and private sector that ought to serve as legal guardians in the adoption system but misuse their function to convert illegally obtained children into “orphans” and then “adoptees.” They would falsify or fabricate necessary documents in order to hide the illegal conduct, as well as to identify the illegally obtained children as legally abandoned orphans for which no domestic child care solution could be found.
The high demand for and the illegal supply of adoptable children, as well as the reduced ability of legal guardians to control the adoption system, are caused by demographic and economic asymmetries between the sending and the receiving countries. Whereas the rich Western countries are struggling with low birth rates and decreasing numbers of children available for domestic adoption, birth rates are increasing in the poor countries of the global South. These asymmetries shaped the motivation of actors in the source countries to illegally obtain adoptable children. The adoption costs that may seem reasonable from a Western perspective are sufficient to create an incentive for orphanage directors, government officials, and others to illicitly source adoptable children. The criminogenic asymmetries have also reduced capable guardians in the intercountry adoption system. Widespread corruption in the sending countries, which was both caused by and further increased these existing asymmetries, has weakened official controls. Individuals and organizations from both the public and private sector that ought to monitor and control the adoption system misuse their function so as to connect demand and illegal supply by laundering children through their organization.

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Abstract

This chapter focuses on the situation affecting women and girls who are trafficked within the Boko Haram conflict. It navigates the entrenched cultural and traditional norms existing in the geographical area and how the conflict poses a double jeopardy for women and girls who are already marginalized. The added element of trafficking, as another author calls it, builds the arsenal of Boko Haram. This crisis within a crisis shows the nexus between trafficking, and the Boko Haram conflict and is categorized as the “not so good,” the “bad,” and the “outright ugly.” The abductions of the Chibok and the Dapchi girls are examples which are discussed, as well as the stigma that survivors undergo.

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The women, peace, and security agenda; the role of the media; and the role of female hunters provide avenues for addressing the issue. The chapter ends with a set of recommendations.

**Keywords**

Boko Haram · Nigeria · Trafficking · Chibok

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**Introduction**

From the fifteenth through to the nineteenth century, over 3.5 million African slaves were transported across the Atlantic to Europe, North and South America, and the Caribbean by the Europeans who had expanded and colonized those territories (Harvard Divinity School 2018). This is what is now known as the transatlantic slave trade. Slaves were provided by local rulers and traders, among others, and in exchange, they were given guns, gunpowder, rum, cloth, horses, etc. These slaves were used individually for domestic slavery or in larger groups. Domestic slaves worked mostly in shops and households, whereas larger numbers of slaves were employed to work on farms. The slave trade was abolished in the nineteenth century; however, it still continues in the form of human trafficking or modern-day slavery.

According to the United Nations definition, human trafficking is the acquisition of people through means of force, fraud, or deception, with the intention of exploitation (Wilken 2017).

The paper uses the United Nations Office on Drugs and Crime (UNODC) definition of trafficking (UNODC 2018).

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines trafficking in persons as the recruitment, transportation, transfer, harboring, 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 labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

The UN Protocol on Trafficking defines trafficking in humans as “all acts related to recruitment, transport, sale or purchase of individuals through force, fraud or other coercive means, for the purpose of exploitation” (Caritas Nigeria 2018). On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituent elements:

**The Act** (what is done)

- Recruitment, transportation, transfer, harboring, or receipt of persons

**The Means** (how it is done)

- Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
The Purpose (why it is done)

For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices, and the removal of organs.

Individuals are trafficked locally, regionally, and internationally across land borders, across seas, and by air. Difficulty in defending Nigeria’s extended borders has allowed traffickers and pimps, as well as groups like Boko Haram, to exploit this weakness and cross borders unimpeded (Petal 2014). One thousand four hundred seventy-nine illegal borders exist in Nigeria, which shares about 773 km border with Benin Republic, about 87 km with Chad, and a stretch of 1,049 km with Niger Republic and 1,690 km with Cameroon (http://nationaldailyng.com/porosity-of-border-why-nigeria-must-tighten-border-security/).

Nigeria is regarded as a “source, transit, and destination country.” Nigeria is a source country because a number of the trafficked people come from different parts of the country. It is also a transit country, as this is where trafficked women and girls pass through and are eventually distributed to other countries. It is a destination country; in some cases, it is the end of the road for trafficked victims: “Trafficked Nigerian women and children are recruited from rural areas within the country’s borders — women and girls for involuntary domestic servitude and forced commercial sexual exploitation, and boys for forced labour in street vending, domestic servitude, mining, and begging” (Osimen et al. 2014). Women and children usually bear the brunt of trafficking and are exported externally and internally for purely economic reasons. Internal trafficking involves the movement of individuals from local regions to bigger cities, i.e., for prostitution and child labor (domestic work and hawking). The root causes of trafficking in Nigeria include widespread poverty, violent conflict, and the desire to migrate to study/work/live in a better environment. Human traffickers adopt various methods to lure individuals into captivity. These methods include drugging, kidnapping, coercing with the promise of a better future, and offers of better opportunities for education or jobs.

Some of the external trafficking routes are better known than others. Recently, 26 Nigerian girls and women were reportedly sexually abused and murdered while trying to cross the Mediterranean to Europe. Most of the dead victims are teenagers aged 14–18 (Toromade 2017). In the account of a journalist, Ben Tuab, in 2016 alone, 11,000 Nigerian women and girls were trafficked. The route of trafficked girls is from Benin in Edo State, northward to Niger and Libya and onto boats across the Mediterranean to end up in Italy (Taub 2017).

Boko Haram

In 2005, a group emerged calling itself Jama’atu Ahlis Sunnah Lida’awati Wal Jihad (JAS), translated as People Committed to the Propagation of the Prophet’s Teachings and Jihad.

Initially, their motive was to protest unemployment and Western influence of universities. It was headed by a young cleric Mohammed Yusuf who preached that
the leaders who benefitted from Western education in northeast of Nigeria were corrupt. In July 2009, Mohammed Yusuf died while in police custody in Maiduguri, and his deputy, Shekau, emerged as his successor. More recently, they have become more militant and criminal. (Barna 2014)

The group has since morphed and is currently split into at least two distinct groups: JAS headed by Abubakar Shekau and Wilayat al Islamiyya Gharb Afriqiyah (Islamic State West Africa or ISWA) headed by Abu Musab al-Barnawi in 2016 (Gender Assessment of Northeastern Nigeria conducted for Managing Conflict in North East Nigeria (MCN)). JAS is now popularly called Boko Haram meaning “books are forbidden or western education is forbidden.”

The attack on non-believers draws from the “al-Wala wal-Bara” doctrine, which is portrayed as a defensive policy. All Muslims must fight to defend themselves and retaliate against the Kuffar (non-believer), who always instigate war (http://acdemocracy.org/islam-and-the-other-the-al-wala-wal-barra-doctrine/).

Boko Haram has robbed the northeast of Nigeria of its security and stability. Ironically, one of the northeastern states and most affected by Boko Haram was previously known as the “Home of Peace.” Deep-rooted patriarchy, rates of child marriage, literacy among girls, and women in positions of power are far worse than in the rest of Nigeria (Nwaubani 2017).

The Boko Haram sect has caused societal damage by negatively affecting millions of people by “daily killings, bombings, abductions, looting and burning,” and “schools, churches, mosques and other public buildings have been attacked and destroyed” (Amnesty International Nigeria 2015). The conflict has left in its wake fatalities, widows, acute food insecurity, widespread forced displacements, and insecurity.

According to the EU parliament, over 20,000 people have been killed and more than two million displaced, including from neighboring countries, since Boko Haram began its attack; and the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported in November 2017 that in Northeastern Nigeria, 8.5 million people were in need of lifesaving assistance and that 6.9 million people were targeted for humanitarian assistance in 2017, whereas the International Criminal Court (ICC) has stated that there are reasonable grounds to believe that crimes against humanity under Article 7 of the Rome Statute have been committed in Nigeria by Boko Haram, including murder and persecution (European Parliament resolution on Nigeria (2018/2513(RSP))The European Parliament).

The conflict has largely been driven by a failure of governance as well as non-adherence to existing laws and policies. The lethal cocktail of violent conflict has a mixture of unaddressed root causes, exclusion, and poverty and conflict entrepreneurs. Conflict entrepreneurs are those who benefit in one way or the other from the conflict.

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**Boko Haram and Trafficking**

The Boko Haram conflict has affected communities in Northeastern Nigeria Chad, Cameroon, and Niger. Millions of people have suffered “daily killings, bombings, abductions, looting and burning,” and “schools, churches, mosques and other public buildings have been attacked and destroyed” (Amnesty International Nigeria 2015).
In the context of violent conflict, such as Boko Haram, human trafficking has become the preferred trade of terrorists as it viewed as more profitable economically than any other trade. “Human trafficking is an extremely profitable industry that not only generates financial revenue, but also provides fighting power, helps terrorists vanquish the enemy, and destroys communities” (Wilken 2017).

The type of trafficking that occurred in the Boko Haram conflict fits the three constituent elements of trafficking: (1) The Act with the harboring or receipt of persons; (Wilken 2017) The Means with abductions; and (UNODC 2018) The Purpose with sexual exploitation, forced labor, or slavery or similar practices.

The trafficking routes can however not be categorized into distinct geographies such as a country of origin, transit, or destination for victims. In the context of conflict, these are blurred into one another. What is more obvious is the trafficking style and the destination.

The Boko Haram prototype of trafficking is the spectrum of women and girls most times forcibly married in a hybrid type of marriage or coerced, forced, or pressured because the sect used marriage as a simple way of recruiting women as wives, sex slaves, and even suicide bombers.

The unconventional war of Boko Haram, “the bad,” brought a new dimension of trafficking where the trafficked were forcefully married or abducted and married to Boko Haram terrorists.

According to a human watch report, Nigeria is seen as a source, transit, and destination country for human trafficking (Abubakar 2016). This as a result of the Boko Haram insurgency intertwined with the poverty and the violent state of the nation. Trafficking of women and girls has risen since the introduction of the Boko Haram sect.

The recurrent Boko Haram attacks have led to a mass exodus of people across the country and to neighboring countries with a number of internally displaced person (IDP) camps springing up. Women and girls are obviously the most vulnerable and in some cases undergoing several layers of trauma. The first layer is the disruption of their lives which may already be one of marginalization and exclusion which exists in times of relative peace. The endemic inequalities include early marriage and lack of access to education and land. The next layer as a consequence of conflict includes abduction, sexual exploitation, and child widowhood.

The phenomenon of the “layered widow” is depicted in the personal testimony below with a child widow losing first her militant husband and later her peacetime husband.

Maryam Ali, now 17, was 14 years old and 5-month pregnant when she was abducted from Bama in Borno State and taken to the Sambisa Forest and married out to a Boko Haram militant.

“I am from Mayanti a village near Bama. When I got married about a year before my abduction, my husband took me to Bama where we were staying. During the attack on Bama, my husband escaped to Maiduguri because the militants were looking for men to kill. When they came to our house and met me alone, they took me away. Shortly after, I delivered my first child, I took in again for my militant husband,” she narrated.

“When my husband saw me with a child and another pregnancy, he fell down and died.” (Lillie 2014)
The plight of internally displaced girls is a continuum of the plight of the girl in the community with an additional layer of marginalization and vulnerability brought about by the situation of violent conflict, displacement, and survival of the fittest.

The rise of Boko Haram has also led to an increase in gender-based violence (GBV) where women are either used as agents of terror or targets of terror. With the number of attacks growing, links have been drawn with the role of human trafficking and the operations of terrorist groups. “Human trafficking now serves three main purposes for terrorist groups: generating revenue, providing fighting power; and vanquishing the enemy. This is as trafficking intimidates populations and reduces resistance just as enslavement and rape of women were used as tools of war in the past” (Shelley 2018).

With IDPs lacking the basic amenities and poor camp conditions, they also become prey to human sex traffic workers who often paint a false picture of a better life abroad. In some cases, it is those who are meant to offer protection to the displaced, i.e., the military and police, that are often involved in the sexual exploitation of women and girls where sex is offered in exchange for food.

International human rights organizations have reported SGBV incidents. A Human Rights Watch report stated that Nigerian officials have raped at least 43 women and girls in the IDP camps (Reporters 2016). In a very recent report by Amnesty International released in May 2018, titled “‘They betrayed us’: Women who survived Boko Haram raped, starved and detained in Nigeria,” the Civilian Joint Task Force (CJTF) were alleged to have assisted in finding women for sex, for soldiers in the Bama Secondary School IDP camp. They were pressured or coerced in order to access food and other essentials. Young girls were systematically separated from their families and raped (https://www.amnesty.org/download/Documents/AFR4484152018ENGLISH.PDF).

In an account by a 30-year-old woman from Bama, Maiduguri:

“A few weeks after soldiers transported us to the camp, near Maiduguri, one of the soldiers guarding us approached me for marriage. He used to bring food and clothes for me and my remaining four children, so I allowed him to have sex with me. He is a Hausa man from Gwoza. That is all I know about him. Two months later he just stopped coming. Then I realized I was pregnant. I feel so angry with him for deceiving me. When he was pretending to woo me he used to provide for me, but as soon as I agreed and we began having sex, his gifts began to reduce until he abandoned me. Now my situation is worse as the pregnancy makes me sick, and I have no one to help me care for my children.” (Human rights watch 2016)

The abductors’ enclave and destination of abducted women and girls were mostly in a wild conservation area called the Sambisa Forest. According to the report of the visit by the Bring Back Our Girls (BBOG) movement following a guided tour of the war zone with the Nigeria Air Force, the Sambisa general area is 60,000 Km² (Bring back our girls 2017) (Fig. 1).
Chibok Girls’ Abductions

“At least 2,000 women and girls have been abducted by Boko Haram since the start of 2014” (Amnesty International 2015). It is important to note that, before these major kidnapping events, news reports highlighted a number of rape and kidnap cases. “They
(the militants) were doing it (raping her) almost on a daily basis,” the young girl, whose secondary school education was forced to end in her fourth year as a result of the kidnapping, said. “When one militant gets tired, another takes over (Obaji 2017).”

 Trafficking associated with the Boko Haram conflict targeted especially young girls in schools. Not only did this traumatize them, but worse still, it discouraged the young girls and parents from sending their children and wards to school, especially boarding school. In Northern Nigeria where female enrollment in schools has been the lowest in the country, this constitutes the “not so good.”

 The trend of mass abductions was brought to the fore on the international scene with the abduction on April 2014 of 276 girls from Government Girls Secondary School, Chibok, in Borno State.

 The international outcry and outrage was made visible through the hashtag #bringbackourgirls. The Bring Back Our Girls movement organized daily sit-outs at the Unity Fountain in Abuja, the capital of Nigeria. International public figures like Malala made a special visit to Nigeria to advocate for their release.

 The good news is that some of the girls have returned or have been released. The first 57 escaped, followed by 3 who returned on their own and 21 whose release was negotiated in October 2016 and then another batch of 83 in May 2017. In January 2018, another Chibok girl was rescued. To date, it is presumed that 112 are still in captivity (Wikipedia.org).

 The girls said they started documenting their ordeal a few months after the abduction when the terror group gave them exercise books to use during Koranic lessons. To hide the diaries from their captors, the girls would bury the notebooks in the ground or carry them in their underwear. The diaries were said to have been written by Adamu and her friend, Sarah Samuel – the authenticity of the book cannot be verified. According to one account, “They (the militants) were doing it (raping her) almost on a daily basis”; the young girl, whose secondary school education was forced to end in her fourth year as a result of the kidnapping, said “When one militant gets tired, another takes over (Obaji 2017).”

 According to them, life in Sambisa involved regular beatings, Koranic lessons, domestic labor, and pressure to marry and convert. On another occasion, the militants gathered those girls who had refused to embrace Islam, brought out jerry cans purportedly filled with petrol, and threatened to burn them alive (Akinloye 2017).

 One report also stated that the released girls said 61 of the 142 girls had married Boko Haram militants and 8 died during air strikes, 3 during childbirth, and 1 of an unknown cause.

 The 21 Chibok girls recently released by Boko Haram terrorists have said they were not raped or abused during their stay in captivity, according to a source (Omojuwa 2016).

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**Dapchi Girls’ Abduction**

In the course of writing this chapter, a similar abduction to that of Chibok was reenacted.
On February 19, 2018, 110 schoolgirls aged 11–19 years were kidnapped from Government Girls Science and Technical College (GGSTC), Dapchi, located in Bursari Local Government Area of Yobe State, in the northeast part of Nigeria. (The number was later confirmed as 113 by the Ministry of Information, Lai Mohammed.) Gunmen who were dressed in military fatigues and turbans arrived in Dapchi unchallenged and started firing indiscriminately shouting “Allahu Akbar” (“God is greatest”). The insurgents had attacked Government Girls Secondary School (GSS) Damaturu, GSS Mamudo, Federal Government College Buni Yadi, College of Agriculture Gujba, and GSTC Potiskum leaving scores of students dead and injured in the past (Marama 2018). One of the accounts of a school girl from Dapchi, Yobe State, Rakiya Adamu, SS2, who was among the lucky few who escaped on February 19, when dozens of her friends and school-mates were kidnapped, said, “I will not go back to Dapchi again (Premium times 2018).”

Their return was even more sinister because it was fraught with controversy. Tomi Oladipo, the BBC African security correspondent in his analysis, said: “Boko Haram definitely got something in return for waltzing back into Dapchi and dropping off the girls.” The manner of their return raised issues around the Boko Haram their manner of kidnappings and negotiations and the feeding of the pattern that has the potential to perpetuate such occurrences.

The Stigma Associated with Trafficking

The stigma associated with survivors of trafficking occurs at different levels. Girls returning from periods of abduction and forced marriage are stigmatized as wives of Boko Haram.

Boko Haram has forcefully married several of their abductors, some of them as young as 12 years old. These Boko Haram wives suffer additional layers of torture when their “husbands” are killed. The child widows when rescued are stigmatized as Boko Haram widows. These children carrying children are further stigmatized because their newborn babies are seen as having “bad blood” (Toogood 2016).

“Bad blood” means that these children are perceived to be tainted with the blood of Boko Haram and stand a chance of being ostracized, given fewer opportunities, and abandoned to a life on the streets. Women and girls are stigmatized or not trusted by fellow IDPs, security personnel, and their families.

With more women likely to be freed from Boko Haram or widowed as Nigeria’s military strives to defeat the militants, experts say insults, rejection, and even violence toward them as they return to their communities could hinder efforts to repair the social fabric of a region splintered by Boko Haram. For some, the fear of losing the status they acquired by being with their abductors is real. “Only when you get married to a rich man or a man of authority, can you get that kind of power” (Nwaubani 2017).
Trafficking and Interrupted Access to Education

The Boko Haram conflict presented the Nigerian state with an unconventional war-like no other, with the ideology of Western education being forbidden. The education environment that was hitherto seen as a safe space especially for the girl child was breached by targeted attacks on schools. This was compounded by the fact that Northern Nigeria already had issues around poverty, inequality, and poor development indices including low girl child education. Education is traditionally seen as the greatest form of empowerment of an individual, and this has been eroded by the presence of a conflict that attacked the very foundations of the educational system.

In one account, a young lady whose education was interrupted said, “I had completed my secondary education waiting to get admission into a tertiary institution. They brought out N2, 000 (The equivalent of approximately 6 dollars) and gave to my father as my bride price and dragged me into their vehicle and zoomed off. I was in the forest with them moving from one camp to the other until I took in for my so-called husband, Bakura, from Alagarno. Bakura left me in one of the camps and went for an attack when I was pregnant for 8 months but he was killed in the attack.” (Abubakar 2016)

During 2016, the UN documented nearly 500 attacks on schools or related education personnel in 18 of the 20 conflict countries (Human rights watch 2017).

Currently, in the northeast of Nigeria, all boarding schools closed. This has affected school attendance especially for those living at a distance from the schools and where protection on the way to school is lacking.

In the wake of the Dapchi school abductions, the Emergency Coordination Centre advocated for and achieved the signing of Nigeria of the Safe Schools Declaration on March 8, 2018 (Emergency coordination center. Women, Peace and Security-Gender Based Violence Fact Sheet).

Even after a conflict ends, it can take years to rebuild destroyed facilities and get the education system back on its feet – during which time whole cohorts of children are denied an education (O’Malley 2018).

Female Suicide Bombers

According to Elizabeth Pearson, writing in the International Business Times in an October 16, 2014, article, the first attack by a female was carried out on the military barracks in Gombe in July 2014. According to Guilbert, female members of Boko Haram are almost as likely as men to be deployed as fighters in northeast Nigeria (Guilbert 2016).

Women are not usually considered a threat, and the recruitment of females would throw the government of their scent as they were used to an all-male terrorist group. Female followers and forced conscripts can circulate in government-controlled areas more easily, as spies, messengers, recruiters, and smugglers (International crisis 2016). The attacks by females have typically been against “soft targets,” such as markets, mosques, and bus depots, and have taken place in urban settings. Boko
Haram, like other terrorist groups, has used women because they draw less attention and are less likely to be subjected to searches than men (Bloom 2016).

The spike in the use of suicide bombings constitutes the “outright ugly.” The attacks on soft targets rather than direct assaults using conventional weapons could also be evidence of the group’s dwindling resources, as reports of fighters riding horses rather than traveling in vehicles and utilizing weapons such as crude knives and machetes instead of guns seem to attest. According to one interview with a Nigerian soldier, the use of suicide bombers is a cheap and terrifying way to wage a war and also has the effect of sowing seeds of suspicion and fear among and between citizens, a tactic that furthers the group’s aim to unspool the thread of society. To be certain, in reports received from the field through the NSRP Observatory Platform as well as the P4P Map, over the course of late 2014 to the end of 2015, targets increasingly included mosques, churches, schools, petrol stations, markets, and, as noted in the beginning, IDP camps. (Confronting the Unthinkable: Suicide Bombers in Nigeria. The Complex Dimensions Behind Women and Children Suicide Bombers in Northern Nigeria, Fund for Peace, Patricia Taft and Kendall Lawrence.)

UNICEF states that between January and August 2017, 83 children were used as “human bombs,” 55 were girls, most often under 15 years old, 27 were boys, and 1 was a baby strapped to a girl. (Emergency coordination center. Women, Peace and Security-Gender Based Violence Fact Sheet) In 2005, the Security Council established a Monitoring and Reporting Mechanism (MRM) to systematically monitor, document, and report on violations committed against children in situations of concern around the world (https://childrenandarmedconflict.un.org/six-grave-violations/).

“They gave us N200 each which they said we should use to buy food for ourselves. It took us three days to come to Maiduguri on a motorcycle. We were directed by the sect members to detonate our explosives anywhere we saw any form of gathering (Dachen 2017).”

The Nigerian army revealed that some parents donate their daughters to the Boko Haram for suicide attacks. The Army in a statement by its spokesperson, Sani Usman, therefore warned such parents to desist forthwith. Mr. Usman said the appeal became necessary following revelations by some intercepted female suicide bombers during interrogations.

It was discovered that most of these hapless minors were ‘donated’ to the terrorist sect by their heartless and misguided parents and guardians, as part of their contribution to the perpetuation of the Boko Haram terrorists’ dastardly acts against the Nigerian society and humanity. (Ibrahim 2017)

Importance of the Women Peace and Security Agenda in the Prevention of Trafficking

Nigeria is currently on her second-generation National Action Plan (NAP) on Women, Peace and Security (WPS) (2017–2020). The essence of a National Action Plan is to (Harvard Divinity School 2018) help implementers set priorities,
coordinate action, and track progress; (Wilken 2017) prompt meaningful changes in behavior, policies, and funding; (UNODC 2018) create space for governments, multilateral institutions, and civil society to work together for greater impact; and (Caritas Nigeria 2018) provide civil society with a mechanism to hold governments accountable. (A review of Nigeria’s 1st National Action Plan on Women, Peace and Security (2013–2016). Anna Parke, Amy Harrison, Eleanor Nwadinobi and Uchenna Nwokedi August 2017).

Other reinforcing resolutions and conventions provide the opportunity to strengthen the WPS agenda:


UN Security Council, Resolution 2242, adopted October 2015, calls for “the greater integration by Member States and the United Nations of their agendas on women, peace and security, counter-terrorism and countering-violent extremism which can be conducive to terrorism.”

UN Security Council Resolution 2349, adopted by the Security Council on March 31, 2017,

Section 7 calls upon the countries of the region to prevent, criminalize, investigate, prosecute, and ensure accountability of those who engage in transnational organized crime, in particular in arms trafficking and trafficking in persons.

_in the words of the_ permanent representative of the UK to the UN, Amb. Matthew Rycroft, at the Security Council briefing on “Peace and Security in Africa” with the focus on Nigeria and the Democratic Republic of the Congo:

It’s unacceptable that women continue to be so poorly represented in formal governance and peace processes when time after time studies show that women’s participation in these processes aids their ultimate success. (George 2017)

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**Role of the Media and Trafficking**

Media accounts of the happenings attempt to give us a true picture of the situation. It is the media that played a key role in the #bringbackourgirls campaign. The print media kept a daily count of the number of days that had passed since the Chibok girls had been abducted. Each day the number was updated in the print and electronic media.

Unlike regular bombings and shootings, tactics long used by the group, human trafficking poses a new kind of threat: everyone is a target for slavery and anyone can be morphed into a tool for Boko Haram to use in its efforts (Wilken 2017).

Conflict-sensitive reportage ensures that the narrative does not further drive the conflict. It was important for the media to provide information in a way that maintained the dignity of the victims and to avoid reprisal attacks. The narrative had to be sensitive to around labeling or stigmatizing of abductees of Boko Haram.
These survivors now face intense stigma and in some cases brutal beatings, when they return to their communities, according to humanitarian groups. Some women who have escaped report psychological trauma and rejection by their communities despite the best efforts of religious leaders. Particularly for those who have been forcibly impregnated, reintegration is practically impossible (Bloom 2016).

Media also has a role to play in investigative journalism. With the Chibok and Dapchi incidents, there were conflicting reports followed by discrepancies in the numbers. The media at that time gave conflicting reports.

In a video, the leader of the Boko Haram, Abubakar Shekau, claimed responsibility for the abduction of over 200 Chibok school girls in Northeastern Nigeria and threatens “I will sell them off.” (Guardian 2014) This threat drew more attention to the reality of human trafficking and introduced an aspect of Boko Haram that had not previously been considered.

In a recent study, respondents agreed that the media enlightenment was useful in informing people about the dangers of associating with JAS and dissuading them from joining the sect. (Perceptions and experiences of children associated with armed groups in Northeastern Nigeria 2017 NSRP/UNICEF.)

The media is also what the terrorists feed on, as evidenced by the timing of their communications to coincide with countering the announcements by government. The announcements of containment by government are soon followed by an attack to inflict fear on the population or to refute the government narrative.

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**Role of Female Hunters**

In the case of Boko Haram and the trafficking of women and girls, the narrative usually focuses on their vulnerability and the ease with which they can be abducted. Little is said of the resilience of women and girls and their role in peacebuilding or as active participants in fighting off Boko Haram.

Female hunters are a part of security response to Boko Haram that includes the yan gora (Civilian Joint Task Force – CJTF), yan bang (vigilantes), and kungiyar maharba (hunters). A recent study is looking at the perception that the civilian population are largely unanimous in their thinking that CJFT were courageous in standing up to the armed gang and largely responsible for the decimation of Boko Haram.

The CJTF members have however assumed a new status in the community of respect on the one side; some have taken it to the extreme and have become extortionate at checkpoints, violence against women, and indulging in drugs.

The concern is what will happen now that the conflict has died down since they are armed and are therefore more easily be used by politicians in the upcoming elections.

The account of Bakari Gombi a hunter is fascinating. Bakari Gombi is one of only a handful of women involved, and she has become a heroine for hunters and local people alike. Her gallantry has won her the title “queen hunter.”

Like many in the rural regions of northeast Nigeria, Bakari Gombi is a Muslim but also believes in traditional spirits. One of her rituals is to douse fellow hunters with a secret potion to protect them from bullets. The 38-year-old leads a command of men aged 15–30 who communicate using sign language, animal sounds, and even birdsong.

“Boko Haram know me and fear me,” says Bakari Gombi whose band of hunters has rescued hundreds of men, women, and children (http://www.thebusinesdispatch.com/meet-aisha-former-antelope-hunter-now-tracks-boko-haram/).

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**National Response to Trafficking**

In an effort to curb the trafficking more broadly, the Nigerian Government has put in place an agency to address trafficking. Nongovernment organizations have also made an effort.

The Violence Against Persons Prohibition Act 2015 otherwise known as VAPP Act.

A bill for an act to eliminate violence in private and public life; prohibit all forms of violence sexual, psychological, domestic, and harmful traditional practices and discrimination against persons; and to provide maximum protection and effective remedies for victims and punishment of offenders, 2015 (hb. 191).

The bill which among other things has varying punishment for rape (s1), female genital mutilation (S6), harmful widowhood practices (S15), violence by state actors (S 24).

Section 10 depriving a person of their liberty, Section 12 forced financial dependence, and Section 13 forced separation from family and friends, all resonates with trafficking.

Part IV Section 44 of the VAPP act puts the onus for policing the act on the NAPTIP. “Part IV Regulatory body, Section 44, “The National Agency for the Prohibition of Trafficking in Persons and Other related matters (NAPTIP)” is mandated to administer the provisions of the act and collaborate with relevant stakeholders including faith-based organisations.”

The anti-human trafficking women and children unit is a unit of Force Criminal Intelligence and Investigation Department (FCIID) of the Nigeria Police Force. It came into existence in 1994 following an upsurge in cases of trafficking in human beings. There are officers across all police formations and divisions currently headed by a Deputy Commissioner of Police. The key role of the anti-human trafficking unit is investigation and prosecution of cases of human trafficking, gender-based violence against women/children, and other related offenses. In addition, they are engaged in interception at airports and land boarders of deportees and victims of human trafficking.
There have been efforts by civil society; these efforts are mostly targeted at the trafficking route which commences in Edo State of Nigeria, “routinely cited as the main area in Nigeria from where young women are trafficked,” efforts such as those of Titi Atiku-Abubakar, wife of the former vice-president of Nigeria. In 1999, she stood on her husband’s ascendency to the office of vice-president to establish the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF) (http://www.antitraffickingreview.org/index.php/atrjournal/article/view/64/62). In addition, there is the initiative of the wife of the Edo State Governor, Eki Igbinedion, the Idia Renaissance project which brought traffickers to book and was able to repatriate some of the girls. Surprisingly, parents were unhappy that their children were repatriated because things were difficult at home (https://www.vanguardngr.com/2017/05/horror-human-trafficking-edo/). More recently, a nongovernmental organization, Media Campaign Against Human Trafficking (MECHAT), launched a film called Desperate Journeys on anti-trafficking in February 2018.

Conclusion

In conclusion, the cultural vulnerabilities of women and girls which exist in relative peacetime have been made worse by the Boko Haram conflict. The development of a stabilization and recovery strategy that aims to create an enabling and safe environment and increase access to quality education will contribute to restoring confidence for trafficked girls to go back to school, thereby addressing this “not so good” phenomenon.

The presence of good governance, human rights, and dignity alongside addressing structural inequalities and marginalization of groups is the recipe for restoration of lasting peace. In the post-conflict phase, this will require sustained and coordinated peace building efforts, reconciliation, and the consolidation of resilience, thus addressing the “bad,” the unconventional warfare of Boko Haram.

The emergence of women and girls, especially the young girls among them as female suicide bombers, is considered to be the “outright ugly.” The different theories are yet to be fully understood. These include the fact that they may have been coerced, used as human bombs, or made to believe that they are practicing the doctrine of “al-Wala wal-Bara” and targeting those they perceive to be unbelievers. Whichever it is, this trend can be addressed through effective implementation of legislation, policies, strategies, and practices which will need to be adopted to counter and prevent violent extremism.

Recommendations

1. High political will is needed to prevent and respond to trafficking in the context of the Boko Haram conflict.
“It means governments holding to account those who have committed these crimes; showing that there can be really no impunity and no escape; that the rule of law applies to everyone (George 2017).”

This will include appropriate compensation and restitution, measures to counter the financing of terrorism, and keeping dialogue options open with abductors.

2. Community engagement with traditional institutions and leaders. This will require the use of traditional media, social media, community radio, community announcers, songs, poems, art, and traditional folklore and drama.

3. Domestication and implementation of related Security Council resolutions. Full implementation and funding of the NAP on WPS will address issues of trafficking which appear as a priority activity in all the geopolitical zones of Nigeria.

UNSCR 1325 on Women Peace and Security – survivors of trafficking in conflict should be part of prevention of conflict, mediation, and post-conflict reconstruction.

However, this involves not only providing financial and coordinating oversight but is part of a much bigger project of political buy-in and strategic prioritization.

Civil society actors also have a key role to play in supporting NAP WPS implementation.

Schools should provide the incentive for enrollment, retention, and completion.

Security Council members should endorse the Safe Schools Declaration, an intergovernmental political commitment, to protect education in armed conflict and to avoid the use of schools for military purposes, Human Rights Watch said (Human rights watch 2017).

Young girls in a safe space feel safe to play games and can build their voices to make demands on society.

Life skills clubs for girls provide an opportunity to engage girls in productive past time provision of second chance options for dropouts.

5. Services for returnees of trafficking.
Services should be holistic providing opportunities for girls involvement in humanitarian aid.

Women and girls also have a key role to play in the rebuilding of a war ravage areas.

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International crisis group (2016)


Family Violence and Exploitation: Examining the Contours of Violence and Exploitation

Marie Segrave, Bodean Hedwards, and Dinar Tyas

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Abstract

This chapter will draw on recent research in Victoria, Australia, to examine the limits of legal responses to both human trafficking and family violence. It will map some of the critical issues that arise when exploitation, including debt bondage, forced labor, sexual violence, and interpersonal abuse, occur within the context of a relationship between an Australian citizen or permanent resident (most often a man) and a noncitizen who has a temporary visa (most often a woman). The aim of the chapter is to highlight the limits of both trafficking legislation and family violence legislation to adequately capture and effectively respond to violence and exploitation in this setting. Drawing on case studies, the chapter will map key concerns that are challenging how we think about the utility of the current counter trafficking regime.

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Introduction

Since the first iteration of the contemporary international response to human trafficking, in the form of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [hereinafter Trafficking Protocol], there has been a tendency for the focus and scope of counter-trafficking efforts to expand and shift, reflecting shifting tides of focus, attention, and interest. The emphasis on the links between violence against women and human trafficking, too, have waxed and waned. The early focus on sex trafficking, almost exclusively, was focused on gendered sexual violence, but this is no longer the sole focus and indeed is no longer the predominant focus of counter-trafficking efforts, particularly in western nations (O’Connell-Davidson 2014; Segrave et al. 2018). It has been exploitation in the context of labor beyond the sex industry – in the farming, sourcing, and production of goods; in global supply chains; and in service and care industries – that has garnered increasing international attention. More recently, forced marriage, at times referred to as a servile marriage, has come to international attention within the context of human trafficking, and under the expansionist terminology of modern slavery (see Vidal 2017). While this is viewed as a gendered form of coercion and violence, it is largely not linked to the focus on a predominant global form of gendered violence: intimate partner or family violence.

The aim of this chapter is to draw on an extensive study of temporary migration and family violence conducted in Victoria, Australia, to explore the interconnections between family violence and trafficking or slavery-related offences in Australia (Segrave 2017). The study focused on the intersection of precarious migration status and family violence (a broader terminology that captures intimate partner and interfamilial violence). The research was informed by recent inquiries and reports that recognized the need for detailed research on the specific experiences of women from immigrant and refugee communities, particularly those whose migration status is temporary, in order to better understand the specific structural and familial circumstances that impact their experience of family violence and the supports available to them. Broadly, it focused on the specificity of migrant women’s experience of family violence (such as the prevalence of multiple perpetrators), the use of migration status as leverage for violence, the threat of ostracism from the community, and threats of harm to women and their families (in Australia and in their country of origin) as retaliation for leaving an abusive partner. Relevant here, though, is the specific focus in this study which was the effort to document the breadth of situations of violence and exploitation, and the extent to which some cases may better be considered cases of human trafficking and/or slavery-like offences as defined in the Commonwealth Criminal Code s270 and s271. The
complex ways that family violence overlaps and intersects with trafficking and slavery is explored in this chapter. This chapter seeks to lay the ground for informed, and careful conversations regarding the limits of legal responses, the importance of attending to structural factors the contribute to conditions within which exploitation and abuse occur, and the importance of prioritizing the safety and well-being of victim survivors in the context of the response to all forms of exploitation, particularly gendered violence. It begins first with an overview of the policy and legal context.

The Australian Legal and Policy Background: Migration Law, Trafficking, and Slavery Offences

The overlap between family violence and human trafficking is not well understood internationally, and this is also true in Australia. Both issues tend to be attended to separately in law and policy, but also in terms of how they understood. Where family violence is interpersonal, familial, and domestic, human trafficking and slavery-like offences are linked to organized and transnational crime. In relation to both issues, Australia has a national response. The two responses are, however, largely siloed.

Australia has been committed to addressing human trafficking since 2003 when it first introduced a Commonwealth policy response to focus, at that time, on sex trafficking specifically (see Segrave 2004). Since that time, the focus and the policy and legal response has expanded (Segrave 2017). Human trafficking and slavery offences are criminalized in the Commonwealth Criminal Code Act 1995 (Criminal Code) Divisions 270 and 271, where Division 270 specifies slavery, slavery-like practices (including servitude, forced labor, and deceptive recruiting for labor or services), and forced marriage. Division 271 relates to trafficking in persons and includes domestic trafficking, organ trafficking, trafficking in children, and debt bondage and harboring offences. To date, there has been no specific effort to focus on these offences within the context of partner migration and intimate partner relationships. While forced marriage has recently received considerable attention, it is largely a preemptive effort to support young women (predominantly) whose families have informed them they will be sent overseas to be married and who are seeking the assistance of authorities to prevent this from happening (see Segrave 2017; Vidal 2017 for some discussion of this).

While family violence and violence against women more broadly have long been issues addressed by the Commonwealth and State and territory governments in Australia in a piecemeal way, in recent years, this has come to the fore of political priorities. This is evidenced in multiple public statements from our Prime Ministers, and formally embedded in the 2011 National Plan to Reduce Violence against Women and their Children 2010–2022, which was endorsed by the Australian Commonwealth government together with the state and territory governments. Further, it has been the state of Victoria, which has effectively led the nation towards
an innovative and comprehensive response to family violence. In 2014, the Victorian Government announced a Royal Commission into Family Violence [VRCFV] was launched in 2015, and it released its final report and recommendations in 2016. The Victorian government committed to ensuring that each of the 246 recommendations of the VRCFV be implemented, and it has committed millions of dollars to creating infrastructure, funding research, and putting in place legal and structural reform towards achieving the agenda outlined by the VRCFV.

Within this national and state context of increased awareness and attention of the breadth and depth of family violence across Australia and its impact, there has been growing recognition of the importance of attending to the specificity of experience and the need for targeted support for a range of groups in our community such as LGBTQI, those with physical or intellectual disabilities or impairments and immigrant and refugee women. The contribution of the migration system to creating or sustaining immigrant and refugee women’s vulnerability has been recognized since the 1980s in Australia. In particular, there was a concern in relation to Australian citizens or permanent residents being repeat (or “serial”) sponsors for partner or marriage visas, and research revealed that many of those who were identified as serial sponsors were also often domestic violence offenders (Iredale 1994). Changes were made to sponsorship to limit this occurring, and in 1994, holders of a temporary partner visa who were on a pathway to access permanent residency were able to access what is now called the Family Violence Provision. This provision in the Migration Act sought to provide a safety net to women who had experienced family violence from their Australian citizen or permanent resident sponsor, and whose relationship had dissolved as a result of that violence, so they could still access permanent residency. It is, however, a limited safety net and the research that informs this chapter suggests that it is not well accessed (see Segrave 2017).

More recently, in the wake of the national and Victorian agenda for reform in the area of family violence policy and law, there has been a growing interest in immigrant and refugee women. In this context, emerging research has identified the need to build an evidence base to inform understanding of migration-specific risk which is understood to be at once significant, and poorly understood (McCulloch et al. 2016; Vaughan et al. 2016; VMC 2016; Commonwealth of Australia [DSS] 2011). This lay the ground for the research that is the foundation for this chapter. However, largely unaddressed both in the area of family and intimate partner violence research and policy development and in the field of human trafficking research is the interconnections between trafficking, slavery, and family violence. While there are some exceptions, particularly Quinn’s (2009) work on “exploitative domestic and sexual servitude” in relationships involving Australian sponsors and temporary noncitizens (see also Lyneham and Richards 2014), there is a limited understanding of the complex and nuanced ways in which these forms of exploitation and abuse may be experienced by women. This chapter draws on case studies from this study to raise some specific challenges to where and how we understand,
identify, and respond to exploitation and abuse as trafficking in persons. First, however, a brief outline of the study is offered.

**The Study: Methodology**

This study was a partnership with a specialized multicultural family violence service provider [The FV Centre] in Victoria, Australia, and the researcher. The study involved accessing 300 closed client case files from the FV Centre from 2015 to 2016 files, which involved clients whose migration status was temporary when they first came into contact with the FV Centre. These clients included those on partner-related visas, but also those on working, student, visitor, and other temporary visas. The research was conducted with the approval of the Monash University Ethics in Human Research Committee (CF16/2277 – 2,016,001,127) which took into account the highly sensitive nature of the case files, and the inability of the researchers and the agency to contact former clients to approve the use of these files for research purposes. The files were all maintained on the premises of InTouch, and a database was created to enter de-identified information into on site, to ensure that the physical files did not leave the premises.

The database enabled quantitative and qualitative data to be gathered, including the identification of indicators related to other Commonwealth offences, specifically forced labor, forced marriage, human trafficking, and slavery (as per ss. 270 and 271 of the Commonwealth Crimes Act and as per the International Labour Organization international indicators for sexual and labor-related exploitation, ILO 2012). However, it must be noted that the data was inherently inconsistent and limited: case files are not kept for the purpose of research; rather they reflect the specific parameters and needs of the client within the context of family violence service provision. As this is a specialist service provider where a migration agent works alongside case workers, when necessary, the case files included the collective records of case workers and the migration agent (see Segrave 2017 for more details regarding method). For the purpose of this chapter, four key issues and findings are brought to the fore with a detailed case study, to highlight some key considerations and complexities with regards to trafficking and slavery offences that occur within the context of a marriage.

**Case Studies**

In the full report, a comprehensive account of the specific forms of abuse and exploitation is offered in relation to the prevalence of indicators pertaining to slavery and trafficking offences (Segrave 2017). The evidence below focuses specifically on indicators of offences under Australian law. There were 11 cases in the 300 cases analyzed where one or more elements of the offence specific to human trafficking in
Australia was evident. Predominantly these related to coercion, threat, and deception with respect to exit from Australia (s270.2(1A(a&b))). This was evident in Rahmina’s case.

### Rahmina

Rahmina was a 22-year-old orphan from Iran whose extended family arranged her marriage to Yousouf, an Iranian born man who now lived in Australia as a permanent resident. Rahmina and Yousouf married in Iran. Yousouf returned to Australia and Rahmina followed him a few months later, once a temporary spouse visa was granted. There had been little time to get to know each other or to spend time together prior to Rahmina arriving in Australia.

Soon after her arrival, Yousouf began placing demands on Rahmina, including that she wear Moslem clothing. He was also physically and verbally abusive. In one incident, Yousouf hit Rahmina multiple times causing serious injury. A neighbor called the police. Police called an ambulance for Rahmina and she was taken to hospital. Yousouf was taken to the police station. After receiving medical treatment, Rahmina was given accommodation in a women’s refuge. Yousouf was released on bail, and a family violence safety notice (A family safety notice is a Victorian court order that is served on a respondent by a police officer and details the conditions that prevent the respondent from using family violence. If a respondent disobeys the conditions, they can be arrested.) was issued by the police. The matter was heard at the local court a few days later. In the court, Rahmina told police that she wanted to return home to be with her husband. She said that her assault was her fault. Given the seriousness of the allegation, the police proposed an interim order with full conditions to be put in place, which prohibited Yousouf from approaching Rahmina within 200 m. Rahmina was crying uncontrollably in the court. The matter returned a few times in court until the final order with limited conditions was granted, which allowed the couple to live together.

A few months later, Yousouf told Rahmina they were going to visit his family in Iran. Yousouf told her that everything had been arranged and they would leave within an hour. At the airport, Yousouf completed the predeparture paperwork for both of them, as Rahmina’s English was limited. When they arrived in Iran, they stayed with Yousouf’s family for a couple of weeks. During this time, Yousouf and Rahmina spent little time together. One day Rahmina realized that she had not seen Yousouf for over a day and realized he had gone. Two days later, she received a phone call from Yousouf, informing her that he had returned to Australia. Yousouf said that he was angry at Rahmina for agreeing to have an intervention order being put against him (It is important to note that the order is made by the court, not by the victim/witness. Even in cases where victim survivors do not wish an order to be in place, the court can still put one in place.) and this was his revenge. Yousouf also told Rahmina that he had taken her passport, burnt it, and would withdraw his sponsorship for her to gain Permanent Residency in Australia. Following the phone call, Yousouf’s family forced Rahmina to leave their
house immediately, threatening that they cut off her nose to make it impossible for her to be desired by another man.

Rahmina sought assistance from her relatives. However, Yousouf had already contacted them, complaining that she had sought an intervention order against him, and that she had been a bad wife. She was denied assistance from all of her family with the exception of a distant uncle who agreed to take Rahmina in his care, providing Rahmina consented to a marriage to his friend, an 80-year-old man. Before Rahmina could agree to this, she first had to seek divorce from her husband Yousouf. He agreed to divorce Rahmina but demanded a payment of AUD$8000. This was not money that Rahmina or her Uncle had. Rahmina was stuck. Without a passport, Rahmina could not return to Australia. She sought assistance from multiple embassies but was consistently denied support as she had no evidence or paperwork to support her claims or to enable a passport to be issued. She eventually met an embassy officer who agreed to help her in exchange for sexual services. Rahmina was raped multiple times until the officer agreed to issue the passport for her. The minute she received the passport, Rahmina contacted one of her relatives in Australia and begged him to send her some money to buy a ticket to Australia.

Eight months after her ordeal, Rahmina returned to Australia. She sought the support of a family violence service who specialize in supporting temporary migrant women. This service supported her and referred the case, with her consent, to the Australian Federal Police (AFP) for further investigation in relation to trafficking and slavery offences. The AFP could not find sufficient evidence to put charges against Yousouf and the investigation was closed.

In Rahmina’s case, there were many complex issues including but not limited to her vulnerability upon her return to Iran, the inability for her to access support to gain the requisite documents to access a new passport, and the opportunistic exploitation and sexual assault she endured to access that. Importantly, for this analysis, was the deceptive return to Iran with the intention of leaving her there without documentation. We consider some implications of issues arising across the case studies further final section below.

Twenty of the 300 cases in the study involved discernible evidence of forced labor and servitude (It is notable that in some research and writing in the field, there are references to “servile marriage” (which is distinguished from forced marriage), but this terminology is not used in this report.), and deceptive recruiting for the purpose of these offences. There are three key areas of law pertaining to slavery-like offences (under section 270 of the Commonwealth Criminal Code) relevant here:

“forced labour”: defined under section 270.6 as “the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free: (a) to cease providing the labour or services; or (b) to leave the place or area where the victim provides the labour or services.”

“servitude”: defined under section 270.4 as “the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception: (a) a reasonable person in the position of the victim would not consider
himself or herself to be free: (i) to cease providing the labour or services; or (ii) to leave the place or area where the victim provides the labour or services; and (b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.”

“deceptive recruiting”: defined under section 270.7 (c) as causing the victim to be deceived regarding:
(i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or (ii) the extent to which the victim will be free to cease providing the labour or services; or (iii) the extent to which the victim will be free to leave his or her place of residence; or (iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement – the quantum, or the existence, of the debt owed or claimed to be owed; or (v) the fact that the engagement will involve exploitation, or the confiscation of the victim’s travel or identity documents; or (vi) if the engagement is to involve the provision of sexual services – that fact, or the nature of sexual services to be provided (for example, whether those services will require the victim to have unprotected sex).”

Indications of labor exploitation were the most prevalent in this study. Achol’s case is an example of this, where she was effectively brought to Australia to work for her husband’s family.

**Achol**

Achol was a South Sudanese girl who was married off by her family to a distant relative Abdo. Achol’s uncle arranged the marriage and asked Abdo to give some cows to the family, as a part of their customs. Abdo promised that Achol could study and find an employment in Australia. Achol was excited. She had never travelled to other countries and always dreamt of visiting one. It is unclear how old Achol was at that time: her passport date of birth indicated that she was 19 at the time; however, it is likely she was younger. Achol was illiterate and her date of birth had never been formally registered.

After the wedding, Abdo stayed with Achol and her family before returning to Australia. Though Achol did not have a signature, Abdo managed to organize a passport for her by putting her finger print on the passport application (unable to sign) and applied for a spouse visa. After the spouse visa application was granted, Achol came to Australia. She lived with Abdo, his mother, his sister, and two of the sister’s young children. Her passport was taken by her mother-in-law as soon as she arrived. She was expected to cook, clean, and take care of the sister’s children while the sister was at work. Achol was not allowed to go out on her own, let alone to study, and find an employment as Abdo had promised. As she was illiterate, Achol did not know the address where she lived. Abdo came home irregularly, at times a week would pass between without seeing him. He would buy some groceries for the whole family and leave.
Achol was often abused by her mother-in-law and Abdo. The abuse was escalating when Abdo threatened to kill her if she did not listen to her mother-in-law. Fearing for her life, 1 day, when no one was at home, Achol left. She walked down the streets of Melbourne for about 3 h as she did not know where to go, until a pedestrian helped her and took her to a nearby homelessness service.

Achol was referred to a specialist family violence agency. She did not have any identification with her. The migration agent within the agency contacted the Department of Immigration and Border Protection (DIBP) to verify Achol’s identity. It took 2 days before DIBP was able to identify Achol through Abdo’s email address. The name on her passport was not Achol. Abdo made a mistake when applying for the passport by putting Achol’s middle name as the first name. As Achol was illiterate, she could not read it to correct it.

Achol was referred to the Australian Federal Police; however, the investigation was discontinued after a few months, as they could not find any sufficient evidence to bring the matter in to the court.

While Achol’s case raises issues pertaining to the circumstances of her marriage and her age, of concern and focus here is the utilization of marriage as a way to enable Achol to come to Australia in order to effectively work for Abdo and his family. While there may be nuanced cultural elements to these practices, there are significant vulnerabilities created for a young woman who has limited English-speaking and reading skills, who is bound to the family she has been married into and who has extremely limited capacity to engage with anyone outside of the immediate familial setting within which she found herself.

The next example, Chalai’s story, also involved indicators of forced labor, but also, elements of sexual servitude.

Chalai

Chalai was a Thai girl who met Alex, an Australian born man, via an online dating website. Alex came to visit Chalai a few times in Thailand. Chalai thought of Alex as a gentleman who was caring and generous. Whenever Alex came to visit her, Chalai would prepare various and delicious Thai dishes to spoil him. When Alex proposed to marry her, Chalai was delighted. The couple married in Thailand. Alex started the application for a spouse visa to bring Chalai to Australia. However, as the administrative process often takes some months from submission of the application to approval, Alex paid for Chalai to come to Australia on a 3-month visitor (tourist) visa.

Within weeks of arrival in Australia, Chalai recounted how Alex started becoming abusive. He demanded that Chalai worked in the Thai restaurant he co-owned with Buppha, a Thai lady. Chalai was expected to wake up around 7 am, to head to the market to buy fresh food with Alex, and to help him in the restaurant. She had to cook, serve customers, and cleanup when the business closed each evening. Alex and Chalai usually went home at around 11 pm. For the work that she did at the restaurant, Chalai was not paid as an employee. She was given approximately $50 a week in cash from Alex.
Despite these conditions, Chalai loved Alex and she loved cooking. She wanted to support Alex to build his business. What concerned Chalai was Alex’s bad temperament. He was often moody and whenever he was angry, he’d yell at Chalai and call her derogatory names. He would demand Chalai have sex with him every night, if she refused, he would kick her and force her to leave the house. A number of times Alex locked Chalai out of the house in the middle of the night in winter, which meant she would spend the night outside wearing only pyjamas and in bare feet. She recounted how she would be outside crying and begging Alex to let her in as she was tired, freezing, and afraid. The couple lived in an isolated house in a regional town in Victoria, which meant there were no neighbors to seek support from and/or to hear or report the happenings. Alex would eventually relent after some hours but would make her promise to never refuse to have sex with him again.

Chalai knew that she needed help and decided to approach Buppha. Buppha has long suspected that something has gone terribly wrong in Chalai’s relationship with Alex but did not want to interfere. After Chalai’s disclosure, she was taken in by Buppha who later referred Chalai to a specialist family violence agency. Once referred to the family violence agency, Chalai was referred to the Australian Federal Police (AFP) as the service provider caseworker felt that the deception in her marriage and/or the labor conditions may constitute an offence under the trafficking and slavery offences in the Commonwealth Criminal Code. However, following the referral and an investigation the case was closed by the AFP as they could not find enough evidence to build a prosecution. Chalai returned to Thailand.

**Implications**

The case studies above are offered to bring to the fore the complexity of women’s lives and the challenges in delineating where family violence begins and trafficking or slavery-like offences begin. The three case studies raise many issues and point to more potential offences than the area of law they are used to highlight. However, there are some important considerations to reflect upon. First, all three were cases that came to the attention of a family violence service provider. This service provider has skilled case workers who are increasingly aware of trafficking and slavery indicators and who proactively refer cases to the Australian Federal Police. This is unique in Australia, and hence the numbers being referred to the AFP is limited. Many of these cases would remain within the remit of family violence service provision in Australia. The consequence of this is the absence of any understanding or interrogation for the implications for forced labor and/or sexual servitude, or human trafficking that happens within the context of marriage. It is not that this is rare, it is that service provision in relation to family violence is not directly related to the investigative processes related to trafficking and slavery offences in Australia. This is complex and messy new terrain for service providers and authorities. As evidenced above, none of these cases were pursued by the AFP. The consequence is that we have very poor data on these complex issues. This is a persistent challenge in relation to human trafficking more broadly: that cases tend to be multifaceted and
complicated. Yet, the national and international emphasis on a criminal justice response results in the reliance on the rarest of cases to pursue a prosecution. Cases that are straightforward, where the exploitation is extremely serious and/or where this compelling evidence may more easily result in charges and prosecutions. However, given that often all of these elements are not evident in a case, reinforces the reliance on ideal victims and offenders, who are far from the messy realities of the circumstances of women, for example, who have sought an opportunity to marry, who have had a honeymoon period of happiness and whose husband-sponsor sets about exploiting via sexual servitude and forced labor in the form of working 7 days a week, 18 h a day for $50 a week as in the case of Chalai. These are complex cases to identify, and the legal system in Australia is not well equipped to respond.

Importantly, there must also be consideration of the victim-survivor. Indeed, women's safety must be the forefront of the response. These case studies are important because all of these women were able to access the best support available in Australia. They were able to be provided with highly skilled and specialized migration support and case workers focused on their well-being. There is no way to quantify how many women may be in similar situations who have not accessed services to assist them towards safety. Importantly the provision and details of the support provided to victim survivors in Australia is dependent on how the case is pursued (i.e., as a family violence offence or as a potential trafficking or slavery-related offence). This is further complicated by migration status, as women on temporary partner visas are able to access family violence supports (in relation to financial and accommodation support) and are able to apply to access the family violence provision, in order to pursue permanent residency in Australia. Women in Australia, such as Chalai, on another temporary visa that is not sponsored by their partner, have extremely limited access to welfare, financial, and accommodation support, and have no remit to migration supports based in their experience of family violence. For women in such circumstances, being referred to the AFP as a potential trafficking or slavery victims, opens up the opportunity to access the welfare service provisions available via the Trafficking in Persons Support Program. This is a very limited model of support (see Segrave 2017), but it is arguably better than no support. However, agreeing to a referral and cooperating with the AFP in order to be able to remain in Australia and not be returned to your country of origin, which may happen, is a sure way to undermine your credibility as a witness (as the victim survivor). What is clearly lacking is the breadth of service provision in relation to family violence, alongside limited recognition of the range of ways in which trafficking and slavery practices may manifest.

The final consideration arising from these cases studies, though, is the way in which the migration system and the criminal justice system can create leverage for exploitation to occur and contribute to women’s insecurity. The reliance in the criminal justice system on a witness and a case that is going to meet the legal requirements to pursue serious crime offences, translates into a system that can only pursue the rarest of cases. The consequence of that offenders are not held to account. The migration system in Australia is also designed to provide limited supports to noncitizens who experience exploitation within the context of family violence or
within the context of trafficking and slavery offences (see Segrave et al. 2018). Across both family violence and labor exploitation it is consistent that migration status is used as leverage by abusers, and that this contributes to their coercive control (Maher and Segrave 2018; Segrave 2017). There is an opportunity to change this, but focusing first and foremost on women’s safety. There is also an opportunity to review our criminal justice response and to consider how trafficking and slavery-like offences may be identified within the context of family violence. This requires further analysis and discussion; while in some instances, the relationship may not be evidenced at all (i.e., there was deception from the outset and there was no period of pretense as to a genuine relationship), which in others there is a period where a relationship seemed evident. The important consideration is the outcomes for women’s safety, from which we can then consider the best way to ensure the law is effective and efficient in identifying and responding to exploitative practices.

Conclusion

This chapter has sought to bring to the broader analysis of human trafficking, a consideration of the intersections of trafficking and slavery-like practices and family violence. There are legal and welfare implications that arise from pursuing cases as family violence or trafficking and slavery-like offences in Australia. However, rather than debating what law is most applicable, it is more appropriate to explore all potential legal avenues while ensuring that women are safe and can access the support and protections they need. Across this study what was consistent was that women’s precarious visa status as temporary migrants gave perpetrators leverage to control and abuse them, and had implications in relation to their perception of what was the best course of action. For an untold number of women in Australia, it is preferable to remain in Australia than to face being returned to their country of origin. This ought to be the beginning point for responding to all forms of gendered violence. In place of siloed responses to trafficking and family violence, there is an important opportunity to begin having conversations and developing research that recognizes the points of intersections, and to build transformative and creative responses to ensure women’s security and safety.

This chapter draws on a research project that examined the intersections of family violence and temporary migration in Australia. The discussion draws on three case studies to highlight the complex ways in which trafficking and slavery-like practices may occur in settings that have traditionally been identified as a family violence context. The chapter argues that we need to consider the overlap between these offences, but also to build a response that focuses first and foremost on women’s safety. The chapter highlights how migration and criminal law can create conditions that enable or sustain gendered violence by not recognizing anything other than the most serious of cases as prosecutable offences and by limiting access to support based on migration status. The chapter lays the ground for a new research agenda in the field of human trafficking.
Cross-References

- From the Street Corner to the Digital World: How the Digital Age Impacts Sex Trafficking Detection and Data Collection
- Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications
- The Onset of Global Violent Extremism and Its Nexus with Human Trafficking
- The Protocol on Trafficking in Persons and Transplant Tourism

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Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications

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Abstract

Human trafficking is known to be one of the most rapidly growing criminal industries globally, and a significant portion of this criminal industry is the trafficking of girls and women for commercial sexual exploitation and for labor (Polaris Project 2015). Trafficking, as it affects women and girls, in particular sex trafficking, is a form of gender-based violence. The lesser-valued status of women and girls worldwide places them at increased risk for abuses and exploitation. This chapter will focus on sex trafficking, as well as the sociocultural and institutionalized reasons that women and girls are vulnerable to this form of exploitation. This chapter will also address trauma related to sex trafficking and implications for psychological treatment of sex trafficking survivors.

[Authors’ Note: While sex traffickers victimize women, men, transwomen, transmen, and nonbinary adults and children, women and girls are the majority of victims of sex trafficking; therefore, these two groups will be the focus of this chapter.]
Introduction

Sixteen-year-old Alyssa was terrified the first time she was forced to have sex for money. Her trafficker, approximately 10 years her senior, hid in the bathroom of the hotel room he had rented, while Alyssa held her breath waiting for the heavy, sweating man to lift himself off her small frame. Alyssa was trafficked for 3 months; she was forced to have sex with between 9 and 21 men daily. She was beaten, raped, and drugged by her trafficker, who had convinced her he loved her in the weeks leading up to when he first advertised Alyssa on the Internet website Backpage. Alyssa believed his threat to harm her younger sister if Alyssa didn’t do as he demanded, and that, she said, was the single most powerful method of control he exerted. Alyssa’s story is not uncommon. Sex trafficking occurs in every country in the world and in every state in the United States. Traffickers use lies, manipulation, threats, debt bondage, and other forms of coercion to compel children and adults to engage in commercial sex acts against their will. In the United States, any minor under the age of 18 years involved in commercial sex is a victim of sex trafficking; this is regardless of whether there was use of force, lies, or other forms of coercion. Victims of sex trafficking can be citizens of the United States, foreign nationals, children, women, or men and may be LGBT or straight identified. However, because of the lesser status afforded to girls and women and the myriad sociocultural implications of this status, it is this group that is primarily victimized by sex traffickers.

Underlying Factors: Sexism and Gender-Based Violence

Women and girls worldwide are born into sociocultural systems in which they are disadvantaged in ways that impact their daily lives, both overtly and through means that are less easily identified. This disadvantaged social status of women and girls is socially constructed in the context of patriarchy. Patriarchy is defined as sociocultural practices and beliefs that normalize socially constructed gender differences that benefit men and oppress women (Ebert 1996). Harm and perpetuation of less privileged status are carried out by the institutions of society through structural violence (Brock-Utne 1989), in particular through the institutions of government, education, family, religion, and the economy. This means that the practices, policies, and norms of these institutions are discriminatory and function to oppress women in order to advantage men. This oppression usually takes the form of economic exploitation, although more extreme forms of sexism are characterized by brutality against women, in the forms of commodification of women and their bodies, domestic violence, sexual assault, rape, and sex
trafficking. Perhaps the aspect of this process that is most challenging is that when a way of being becomes “normalized,” or taken as the status quo, it seems to be more difficult to interrupt for it is widely accepted as “the way things are” or normative.

Sex traffickers often focus on women because as a result of these discriminatory practices, they experience high rates of poverty; both discrimination and poverty (which is often an outcome of discrimination) hinder access to profitable employment in formal market economies, making it challenging for women to financially support themselves and their children. In addition, the sexualization of women and women’s bodies, which can be considered as both a means of keeping women in a subordinate economic and social position and outcome of this subordination, fuels the commercial market for sex.

*Gender-based violence* (GBV) is important to any discussion of human trafficking, not exclusively sex trafficking, as it is both a “driver” of trafficking and a tool to control and manipulate victims. Gender-based violence is violence directed against a person on the basis of gender. It constitutes a breach of fundamental human rights including the right to life, freedom, security, dignity, equality between women and men, nondiscrimination, and physical and mental integrity. Gender-based violence affects women, girls, and nonbinary persons disproportionately (in comparison to men and boys). This reflects and reinforces the unequal power relationship between both groups in society. A review of academic research studies and project reports demonstrates a relationship between trafficking and gender-based violence, and while more information is needed, it is clear that gender-based violence plays a role in the vulnerability of women and girls being trafficked, and it is a part of their experience during the trafficking process (Winrock 2012).

Gender-based violence is grouped into the five categories of sexual violence, physical violence, emotional and psychological violence, harmful traditional practices, and socioeconomic violence. Examples of each appear below. It is important to keep in mind that these are examples and that there are many forms of each of these five types of GBV:

1. *Sexual Violence* – rape and marital rape, sexual abuse and child sexual abuse, sexual exploitation (defined as any abuse of a position of vulnerability, differential power, or trust for sexual purposes); this includes profiting monetarily, socially, or politically from the sexual exploitation of another, forced prostitution, and sexual violence as a weapon of war and torture. 

   *Note about sexual exploitation and forced prostitution:* these are the cornerstone of sex trafficking and are characterized by a woman or girl being forced to perform in a sexual manner (e.g., forced nakedness, forced pornography, forced prostitution, forced or coerced marriage, or forced childbearing) in exchange for money that is given to a third party.

2. *Physical Violence* – includes physical assault such as hitting, punching, beating, biting, burning, and kicking and the selling, purchasing, or trading in human beings for forced labor (or forced sexual) activities.
3. **Emotional and Psychological Violence** – stalking, harassment, humiliation, manipulation, coercion, degrading treatment, and confinement (i.e., isolating a person from others, restricting freedom of movement).

4. **Harmful Traditional Practices** – early or forced marriage, honor killing and maiming, female genital mutilation (FGM), infanticide, neglect of female children, denial of access to medical care including safe legal abortion for girls and women, and denial of education for girls or women.

5. **Socioeconomic Violence** – discrimination and/or denial of opportunities; harassment in education or employment settings; denial of access to education, health care, remunerated employment, and/or property rights; biological fathers’ abandonment of mothers and children which contributes to increasing feminization of poverty; and obstructive or otherwise biased legislative practices.

While progress has been made with regard to laws, social thinking, and norms on the issue of violence against women and girls, institutionalized and cultural forms of violence against women remain entrenched in the United States and globally. These structures of dominance enforce the vulnerability of women and girls to sexual exploitation and sex trafficking (Heise et al. 2002; Hughes 2005; Reed et al. 2010).

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**Defining Sex Trafficking in the Context of the Commercial Sex Industry**

Sex trafficking is part of the commercial sex industry in which women, girls, and boys are exploited for sex trafficking within their country of origin as well as across country boarders. In the United States, anyone under the age of 18 who is involved in a commercial sex act where a third party is profiting from the exchange is considered a victim of sex trafficking. Sex trafficking is carried out by criminal organizations (e.g., mafias) but also by less structured criminal networks, by individuals (e.g., pimps), and by family members of victims (UNODC 2014). It is estimated that profits from sex trafficking represent approximately 2/3 of what is believed to be $150 billion in illegal funds generated each year by all human trafficking around the world (ILO 2014). Sex trafficking can occur in any area of the commercial sex industry, which takes many forms including street prostitution, strip clubs, outcall services/prostitution, child and adult pornography, Internet pornography/interactive sex play exchange, phone sex, and sex tourism.

All too often, sex trafficking and prostitution are confused. Legally, prostitution is defined as (1) the promotion of or participation in sexual activities in exchange for something of value such as cash or drugs, including attempts or the solicitation of customers or transport of persons for prostitution purposes; (2) the ownership, management, or operation of a dwelling or other establishments for the purpose of providing a place where prostitution is performed; or (3) the assisting or promoting of prostitution. While the exchange of sex for money, even between consenting adults, is illegal in most of the United States, it does not constitute sex trafficking or sexual exploitation. Of significance is that increasingly, it has become clear that the
elements of force, fraud, and coercion that are part of sex trafficking are sometimes difficult to identify and therefore may not be readily recognized or screened for by law enforcement, who commonly charge women with the crime of prostitution when they may actually be victims of sex trafficking (Potterat et al. 2001). Women involved in prostitution are arrested far more often than the (usually) men who purchase sex. This has drawn criticism from many and is seen by some as a manifestation of sexism. The authors also note that there is a fierce debate in the anti-trafficking field between the view that prostitution is never a choice but always an activity engaged in under the coercive distress of patriarchal systems which commodify women’s bodies and disenfranchise women from economic security. This view is sharply criticized by organized sex workers, who include men and nonbinary adults and their allies. This second group advocates for policy changes to improve their safety and security and recognizes that not all persons involved in commercial sexual activity are able to determine their own hours, rates, and work conditions within their labor market.

**Risk Factors for Sex Trafficking**

Those at risk for sex trafficking most often come from vulnerable populations including undocumented migrants; runaways; domestic violence victims; lesbian, gay, bisexual, transgender, and other nonbinary (LGBT+) youth; youth in the juvenile justice and delinquency systems; other at-risk youth, females especially African American girls in the United States; members of other oppressed or marginalized groups; and the poor. Traffickers target individuals in these populations because they have few resources, limited social support, and limited work options. Such factors make these populations easier to recruit through deception or force, and they tend to be easier to control.

At-risk youth and runaways are targeted by traffickers and by pimps for sex trafficking as well as labor exploitation and begging (Estes and Weiner 2002; Finkelhor and Ormrod 2004). Pimps and sex traffickers manipulate victims and are known to use of a combination of violence, affection, and abuse of other victims in a group in order to cultivate loyalty in victims. This can result in *Stockholm syndrome*, a psychological phenomenon wherein hostages experience and express empathy and positive feelings for their captors or abusers. This is more likely to develop with children and teenagers than with adults. This psychological manipulation reduces the victim’s likelihood of acting out against the trafficker. Research suggests that emotional and sexual abuse in childhood, ever having run away from home, rape, having family members involved in the commercial sex industry, and having acquaintances or friends who have purchased sex are all significantly associated with child sex trafficking within the United States (Fedina et al. 2016).

In the case illustration below, Barbara Amaya shares her story of being a runaway youth and how that led to her being trafficked.
When I was 12 years old, on one of the many occasions I had run away from home, I was gang raped in the streets of Washington, DC. It happened under the street in a maintenance room in the Thomas Circle tunnel.

A man began talking to me on 14th Street and then lured me into the tunnel area, where eight to ten filthy homeless men raped me, repeatedly. They laid me on a table and took turns. I told one of them I needed to pee while he was on top of me. He said “Go ahead.”

I don’t think I was ever quite the same after this trauma. I stopped talking, began to disassociate more frequently, began to pull my hair out, and contracted a venereal disease consequent of this gang rape. When I returned home, I told my mother something was wrong and showed her my body. She took me to the doctor. He examined me, and they gave me medicine. No one in the doctor’s office asked me what had happened, or really talked to me at all; they didn’t seem to be concerned with how a 12-year-old girl from Fairfax Virginia had contracted a venereal disease.

Another time after running away from home, I was kidnapped by a violent man. He took me to his home and raped me multiple times. When I tried to escape, he stabbed me in my neck with a table fork.

By the time I was close to 13 years old, I was under the control of a brutal sex trafficker and remained so for over a decade. It was my experience that when someone paid for my body, they believed they could do whatever they wanted to it. I endured beatings with wire coat hangers from the trafficker if I didn’t bring him enough money. I was robbed, raped, beaten, and threatened with death at the hands of the buyers.

I have been raped and trafficked for sex so many times I cannot remember the exact number, in the thousands no doubt. With each of these traumas, a part of me died, but not completely.

Inside, I still held the will to survive. I think we all have this will to keep going.

Undocumented immigrants are extremely vulnerable to being trafficked due to a combination of factors (Human Rights Watch 2012). Some of these factors include lack of legal status and related protections, poverty, few employment options, immigration-related debt, limited language skills, and social isolation. It is not uncommon for undocumented immigrants to be trafficked by those from a similar ethnic or national background and whom the victims may trust due to their common background.

Regions impacted by political instability and war create situations that foster trafficking. In particular, long-term military occupation and the presence of “peacekeeping” troops feed the commercial sex industry in these areas and facilitate sex trafficking of women and girls (Mendelson 2005; Morris 2010). Natural disaster also increases the risk and likelihood of trafficking. Natural disasters can destroy communities in a matter of minutes and create tremendous physical and economic insecurity. Children can be separated from their caregivers, making them prime targets for sex traffickers. The December 2004 Indian Ocean earthquake and tsunami is an example of one such natural disaster, where the lives of close to a million children were placed in danger. In this situation, seemingly for the first time, a concerted effort was made to stop trafficking before it could begin. Another example,
although with a more problematic outcome, is the 2007 drought in Swaziland during which ECPAT International (End Child Prostitution and Trafficking) found increases in trafficking of children; there were reports of parents trading their children for food and water. Natural disasters not only impact children, they also increase adult vulnerability to trafficking. The kind of widespread devastation caused by this type of disaster can seemingly spontaneously create poverty and make it extremely difficult to meet basic needs. This may lead to immigration that can lead to victimization by a sex trafficker.

As illustrated, risk factors for sex trafficking are numerous and at the macro level include exposure to “compromised” or weak social institutions (Heil and Nichols 2015). The institutions of most significance to vulnerability in the United States are education systems, economic systems, criminal justice systems, and family systems.

Risk factors are also closely associated with identity-based oppression. An intersectional perspective indicates that each individual holds unique and intersecting identities that impact one’s lived experience. These identities include sex/gender (as previously noted), race, class, age, sexual orientation, ethnicity, and religion. In the United States and elsewhere, factors such as racism and classism become the structural barriers that oppress those who are politically, economically, or culturally disadvantaged. This ends up to be primarily women and girls who are oppressed by their race and class in addition to their sex (Kurtz et al. 2005). Unfortunately, across cultures, there tends to be marginalization of groups along these lines, and those who embody the marginalized position in one or more of these identity categories are at increased risk of different forms of victimization, including sex trafficking.

Survival sex is closely associated with runaway youth and is also referred to as trading sex and transactional sex. These terms are used interchangeably and refer to a sexual favor in exchange for something of value such as food, shelter, or clothing (Tyler and Johnson 2006). These terms are used mostly to describe the exchange of sexual acts for money or for something of financial value among youth and young women, often as a method of attempting to meet basic needs for survival (Greene et al. 1999; Tyler and Johnson 2006).

Methods of Recruitment

Sex traffickers use a variety of tactics to compel children and adults to engage in commercial sex acts. As mentioned previously, methods employed are often characterized by fraud, coercion, or force. According to federal law in the United States, a minor (someone under the age of 18 years) involved in a commercial sex is considered a victim of sex trafficking. Meaning, the minor is considered a trafficking victim whether or not the trafficker used force, fraud, or coercion; the minor is not of age to consent to commercial sex.

It is not uncommon for the trafficker to trick the victim into becoming romantically involved and then to use force or additional forms of manipulation to compel engagement in commercial sex. Other recruitment strategies may include false
promises of employment, such as working as a nanny, model, or dancer. In some situations, family members, including parents or others in the primary caregiver role, sell their children to traffickers or directly broker of commercial sex involving their children.

Sex trafficking can occur just about anywhere. Common locations include businesses such as massage parlors and escort services, in brothels, at truck stops or similar travel rest areas, in hotels or motels, and on the street. In addition, sex trafficking is not limited to in-person exchanges and can exclusively take place online.

Social networks and more personal relationships serve as a powerful tool of recruitment for traffickers. Through these relationships, trust is easily achieved, making it easier for the offender to recruit friends of friends, friends of family members, and friends of other girls they have trafficked. Recruiting can take place in any number of places such as malls, schools, bus/subway/train stations, amusement parks, beaches, and college campuses. As noted previously, some traffickers engage in feigned romantic or physical relationships with young girls and women, preying on the emotional and economic needs of the individual. They begin to build a romantic relationship with the person and then ask that they engage in commercial sex to help support them; this sometimes is done gradually, for example, with the trafficker encouraging or more aggressively pushing the victim into dancing in a strip club to more serious commercial sex acts.

The Internet has become a very active location for both the recruitment of sex trafficking victims and advertising the sale of sex to purchasers. Sites that mirror Craigslist in layout and function are used both to recruit victims (Fig. 1) and to draw in those who want to purchase sex (Fig. 2). Recruitment advertisements tend to appear to be for legitimate employment, typically offering opportunities for

![Image of the “entry page” for both Craigslist and Backpage](image-url)
modeling or dating services described as “upscale.” In some instances, more traditional jobs are advertised. For example, in the early 2000s, two college-aged women from Russia responded to an ad on Craigslist for office work in Pittsburgh, Pennsylvania. The women were picked up from the airport and transported to a popular Pittsburgh neighborhood where they were detained and trafficked for sex out of a home in a residential area. This story ended well in that the women escaped and were assisted by the Pittsburgh FBI and the Western PA Human Trafficking Coalition.

Current victims of the trafficker are often used to recruit additional women and girls. Slang terminology for these individuals is “bottoms” and sometimes the trafficker is “easier” on this person, making it an appealing position for the victim to hold. This creates a tricky situation when law enforcement is involved because despite also being a victim, action as a recruiter places the person at risk for a criminal trafficking charge. Social media platforms such as Facebook are used to recruit girls, boys, and women to sell. For example, traffickers will “friend” an individual, compliment them on their appearance, and offer modeling work. See Fig. 3 for an example of such an online dialogue.

The promise of economic support has been repeated time and again by sex trafficking survivors as what initially drew them to the trafficker. Traffickers are
aware of this and display their wealth with the intention of attracting victims who often have no social safety net or means to provide for themselves.

Methods of Control

Traffickers use a variety of methods to control victims that broadly include contrived affection, acts of physical violence, and psychological/emotional abuse. In sex trafficking, there is typically a complex relationship between the victim/survivor
and the trafficker that makes psychological manipulation a primary method of control. It is not uncommon for the trafficker to have cultivated romantic feelings in the victim as a way to engender attachment, trust, and loyalty. Traffickers use threats of harm to the family of victims as a means of control. For example, traffickers will threaten to pull a sister of the victim into sex trafficking, threaten physical harm to other family members and for victims who have children, the trafficker will often use access to the child to control the victim. Additional methods include sexual abuse, physical violence (hitting, punching, burning, etc.), induced drug dependence or addiction, isolation, confinement, and constant monitoring. Exerting control over seemingly small decisions in the victim’s life is also a way of reducing the sense of autonomy or self-determination of a victim, thereby making them easier to manage for the offender, for example, making rules about what time the victim goes to sleep, awakens, when the bathroom may be used, how much toilet paper is permissible for use, and when and what is consumed at mealtimes. Economic abuse is characteristic of trafficking, and survivors in large note severely restricted access to financial resources, further deepening dependence on the trafficker, even for the most basic of necessities.

### Mental Health-Based Implications: Post-traumatic Stress Disorder

Sex trafficking victims often suffer serious physical and sexual abuse, exhaustion, and starvation. Because those who have been trafficked for sex have often been subjected to multiple abuses over an extended period of time, they may manifest physical and emotional health symptoms similar to those experienced by victims of the trauma of domestic violence or prolonged torture. What follows is an explanation of trauma and considerations for therapists and other social service and law enforcement professionals interacting with survivors.

Trauma is defined as an experience that threatens one’s sense of safety and security and may or may not involve physical harm. Trauma is typically experienced as either a single or a repeating event that overwhelms an individual’s coping mechanisms and interferes with one’s ability to integrate and make sense of emotions and thoughts related to the experience. According to the *Diagnostic and Statistical Manual of Mental Disorders 5* (American Psychiatric Association 2013), a traumatic event is one that involves “exposure to actual or threatened death, serious injury, or sexual violence” (pp. 271). Exposure does not have to be direct and may include exposure through verbal account of another’s experience of visually through media. Sex trafficking victims, because of their exposure to physical, emotional, and physical violence, are at increased risk for developing PTSD.

Symptoms of PTSD are grouped into four categories: (1) intrusion/traumatic re-experiencing (e.g., flashbacks), (2) avoidance, (3) autonomic nervous system hyperarousal, and (4) negative alterations in cognition or mood. In order to meet the diagnostic criteria of PTSD, symptoms in each of these categories must be present.
Intrusion symptoms include memories of the event which are involuntary, intrusive, and distressing. Distressing dreams, dissociative reactions, distress at exposure to triggers of the event, and physiological reactions to trauma cues are also included in this cluster. Avoidance is the next symptom set. This is characterized by efforts to avoid thoughts or feelings associated with the trauma and/or efforts to avoid external reminders that activate memories of the event.

Negative alterations in cognition or mood is a symptom cluster that was recently added for the DSM-5. This refers to a broad range of symptoms including an inability to remember aspects of the event; exaggerated negative beliefs about oneself, others, or the world; distorted cognitions of guilt; negative emotional state; anhedonia; feelings of detachment; and inability to experience positive emotions.

The final cluster, hyperarousal or hyper-reactivity, is evidenced by irritability, recklessness, exaggerated startle response, problems with concentration, and sleep disturbance.

To meet a PTSD diagnosis, the duration of the four latter criteria must persist more than 1 month and in some cases may last throughout a life span, causing significant distress or impairment in social, occupational, or other areas of functioning. Complicating early and accurate diagnosis is the fact that individuals may not exhibit PTSD for months or years following the traumatic event, only to be triggered by a situation that resembles the original trauma.

An important consideration in working with survivors of the trauma of sex trafficking is understanding the extent to which they have trauma experiences predating victimization in trafficking. Trauma in early life is important for mental health professionals to understand because the way our clients think and feel about themselves and the relative safety of the world around them has meaningful implications for mental wellness and quality of life. The limited coping skill characteristics of infants and young children leave them at increased risk for negative outcomes associated with trauma in later life, such as that of sex trafficking.

Trauma reactions exist on a continuum based in part on the characteristics of the victim and the nature of the trauma (Briere and Spinazzola 2005). One end of the continuum is characterized by less complex reactions that are predominantly single-occurrence, adult-onset traumatic events: one-time trauma events in which the victim is an adult with a normal developmental history, a secure base for attachment, and no other psychological disorders. More complex trauma reactions exist on the other end of the continuum and typically include victims who are more vulnerable at the time of the trauma. This may mean earlier age of onset, multiple incidents as with sex trafficking survivors, and protracted trauma experience. The nature of the traumatic event in these situations is often interpersonal and invasive, such as with sex trafficking, child abuse, or rape.

Survivors of sex trafficking may experience trauma reactions characterized by dysregulation in emotion/affect, behavior, bodily functioning (e.g., somatoform disorders), interpersonal functioning in relationships/attachment, consciousness (e.g., dissociation), self-perception/self-concept, and systems of meaning. Children who have experienced sexual violence will react in various ways to protect
themselves and to exercise emotional reactions to the trauma. These reactions are often observable through behaviors and fall into categories of externalizing behaviors (e.g., aggression toward other children or toward self, as with sexual acting out) or internalizing behaviors (e.g., depression, withdrawal). Other protective strategies include the emergence of primary or secondary defense mechanisms (see McWilliams 1999) or dissociation. Symptomology in children that is consequent of abuse is expressed in dysfunction in the educational setting, familial relationships, and relationships with peers.

Dissociative responses to trauma are not specific to any particular type of trauma. However, they are generally thought to be more common in situations of childhood sexual abuse (Freyd 1996) and are a key diagnostic feature of complex trauma in children. Dissociation can be defined as disruption in a person’s psychological integration of experience. In other words, dissociation interrupts “contact” across domains of functioning (e.g., thinking, feeling, emoting, etc.). It begins as a protective factor against feelings and thoughts that seem utterly unbearable. It also exists on a continuum, with one end characterized by normal daydreaming and the other by dissociative disorder that may include depersonalization, psychic numbing, or amnesia regarding details of the traumatic event. Like other protective defense mechanisms, dissociation can become problematic.

For mental health professionals, it is important to approach sex trafficking survivors with an understanding of the implications of sexually based trauma as well as a strong theoretical foundation that will allow for robust explanatory power to deepen understanding of the implications of prolonged and severe abuse on the psychology of the survivor. Trauma expert Judith Herman (1997) has aptly captured the significance of childhood trauma: “Repeated trauma in adult life erodes the structure of the personality already formed, but repeated trauma in childhood forms and deforms personality” (p. 98).

Summary

Sex trafficking occurs in the United States and in countries around the world. Vulnerable populations are frequently targeted by traffickers, including runaway and homeless youth, as well as victims of domestic violence, sexual assault, war, or social discrimination. Victims of sex trafficking are disproportionately women and girls and usually become involved in sex trafficking through fraud, coercion, or force. While no movement is necessary for sex trafficking to occur, when there is movement it is typically toward more densely populated regions with large commercial trade centers or areas with large military bases.

Sex trafficking situations can be widely variable with regard to how victims are entrapped, to the age of the victim to the context in which s/he is being victimized. Some victims are tricked into romantic involvement with the trafficker, while others are responding to online, in-person, or word of mouth advertisement for work. In other instances, some are sold by family members or other primary care givers.
Sex trafficking victims may be trafficked one time or for days, months, weeks, or years. Regardless of the duration of victimization, survivors are subjected to a range of physical and sexual violence and emotional abuse, which often results in post-traumatic stress disorder. It is important that those working with survivors connect them with licensed mental health providers who can treat the psychological effects of sex trafficking.

While legislative and grassroots efforts worldwide have enhanced capacity to identify and reduce cases of sex trafficking, it continues to be misunderstood and goes unnoticed or misidentified. Continued efforts and funding in support of all iterations of anti-trafficking work will allow us to build on what has been done over the past 18–20 years and ideally serve to reduce or eliminate this crime.

Cross-References

▶ Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation
▶ Developing a Universal Standard of Care for Victims of Trafficking Under the Guiding Principles of Non-state Torture
▶ Explaining Human Trafficking: Modern Day-Slavery
▶ How Lifelong Discrimination and Legal Inequality Facilitate Sex Trafficking in Women and Girls

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From the Street Corner to the Digital World: How the Digital Age Impacts Sex Trafficking Detection and Data Collection

Jennifer Middleton

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Abstract

Although sex trafficking has been a social issue long before the conception of the Internet, the arrival of a worldwide network has increased sex traffickers’ reach and anonymity, potential victims’ vulnerability, and buyers’ selection, driving an explosion in sex trafficking and exploitation. Via the Internet, sex traffickers can advertise trafficking victims anywhere in the world. However, data mining initiatives allow law enforcement agencies and researchers to gather and analyze data from web pages that potentially contain sex trafficking information. Addressing the need for public security in this domain requires the use of these technologies via data aggregation, analytics, and computational forensics. For example, DARPA created the Memex program in order to index the data from web pages on the deep web. The Memex program shares similarities with popular search engines, which index the web pages that most users access every day. Gathering and analyzing data in new ways will allow for a greater understanding of how sex trafficking is being performed in the digital world by providing insight into the modus operandi of sex traffickers and providing valuable information.

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about the victims themselves. This, in turn, will inform more effective public security responses and victim aid to these crimes.

**Keywords**

Human trafficking · Sex trafficking · Labor trafficking · Information and communications technology (ICT) · Cybercrime · Data mining · Memex · Deep web

**Introduction**

 Trafficking existed before the conception of the Internet, but the arrival of a worldwide network increased traffickers’ reach and anonymity, potential victims’ vulnerability, and buyers’ selection. This chapter examines how the digital age has affected human trafficking in general – and sex trafficking in particular – as well as the actions being taken to prevent sex trafficking in the United States and abroad. First, the chapter discusses the victims of trafficking. Understanding the targeted individuals and what risks they face is crucial to understanding the process of being trafficked for sexual exploitation. Next, the focus shifts to traffickers and how they operate in the digital world. Traffickers use a variety of digital tools to lure victims and attract buyers. Following that, the chapter discusses how traffickers leverage technology for their benefit. Finally, the chapter analyzes current and upcoming prevention methods. There are many programs and initiatives in place that focus specifically on combatting sex trafficking. Understanding how they address the challenges inherent in investigating sex trafficking provides a more comprehensive understanding of all types of trafficking in the digital world.

**Victims**

The Victims of Trafficking and Violence Protection Act of 2000, enacted by the US Congress, defines labor trafficking and other types of trafficking for services as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjecting to involuntary servitude, peonage, debt bondage, or slavery” (U.S. Congress 2000). It goes on to discuss sex trafficking as one of the “severe forms of trafficking in persons” where “a commercial sex act is induced by force, fraud, or coercion, or, in which the person induced to perform should an act has not attained 18 years yet” (U.S. Congress 2000). With all the information of the Internet at their fingertips, it is easier than ever before for traffickers to recruit victims from social media like Facebook and Twitter. Similarly, due to the information available on the Internet – such as location check-ins on social media – traffickers can potentially locate and transport the victim via coercion or force. However, the trafficker does not have to utilize force, fraud, or coercion in order to be guilty for trafficking a minor. If the
victim is under 18 years old, the trafficker is guilty simply by persuading a minor to engage in a sexual act (U.S. Congress 2000).

The United Nations Global Initiative to Fight Human Trafficking (UN-GIFT) found that trafficking victims are used in a variety of industries, such as: “construction, manufacturing (e.g., textile, metal, wood), industrial fishing and fisheries, agriculture, domestic servitude, mining, quarrying, food processing, forestry, leather and tanning, carpet-weaving, [and] livestock” (International Organization for Migration 2009). Due to the ease of communication, traffickers can promise opportunities of gainful employment in other regions or countries. However, when the victims arrive, the traffickers force them to do jobs such as those mentioned above. The victims may be forced to work without pay or may have their identification papers taken from them which prevents them from escaping the trafficker.

In their white paper, Chawki and Wahab (2005) included an account of a trafficking victim from Mali. The authors discuss how information and communication technologies, or ICTs, are often used for criminal means such as trafficking. The victim, Seba, was contacted in chat room; the traffickers promised Seba could live with their family in Paris, France, and get a French education. Instead she was made to cook, clean, and care for the traffickers’ children:

One day I told her that I wanted to go to school. She replied that she had not brought me to France to go to school, but to work for her and for her child.

I was so tired and run down. I had problems with my teeth; some my [sic] cheek would swell and the pain would be terrible. Sometimes I had stomachaches, but when I was ill I still had to work. Sometimes when I was pain [sic] I would cry, but my mistress would beat me.

I slept on the floor, my food was her leftovers. I was not allowed to take food from the refrigerator like them, if I would take food, she would slap me. She beat me with the broom, with kitchen tools, or whipped with electric cable. Sometimes I would bleed; I still have marks on my body.

Seba described how at one point the traffickers threw her out, but she did “understand anything” and simply wandered the streets until her traffickers found her and took her back to their house. She was then tied up, beaten, and had chili peppers rubbed into her wounds (Chawki and Wahab 2005). Seba’s experience illustrates not only how trafficking victims are often lured but also the hopelessness they face when they are trafficked. Even if they are able to escape, or let go in Seba’s case, trafficking victims often find themselves in unfamiliar countries or regions where they do not know the language or culture. Victims are removed from their support systems and abused and may not know where to go for help.

In cases of transnational trafficking, victims may not even feel they can go to the authorities for help because they are in the country illegally. In the United States, the department of Immigration and Customs Enforcement (ICE) routinely raids companies that may have undocumented migrants. Some local laws stipulate that when law enforcement officers stop individuals to check their immigration status, they can also check to see whether the individual has other violations (Brennan 2010; Gardner 2015; Weitzer 2014). Migrant workers could be victims of trafficking, but due to government policies, they may not come forward for fear of jail time or the risk of
being deported. Even if the victim entered the country legally, all the trafficker has to do to coerce the victim is to hold their travel documentation hostage (Landesman 2004). This tactic can affect all victims of transnational trafficking.

In regard to the issue of sex trafficking, it is important to note the difference between sex trafficking and commercial sexual exploitation (CSE). Human rights organization Love146 differentiates sex trafficking from commercial sexual exploitation by the presence of a third party: “CSE is defined as the abuse of power differentials or the exploitation of a person’s vulnerabilities in order to exchange a sexual act(s) in exchange for something of value” (Kim et al. 2015). Commercial sexual exploitation involves the trafficker providing something the victim needs such as a place to stay in exchange for sexual acts. Sex trafficking involves a third party, the buyer, benefiting from the victim. In exchange, the buyer pays the trafficker for the time spent with the victim.

Although researchers are aware of the types of victims that traffickers target online, as well as the potential risks victims face while browsing the Internet, very little empirical research exists on the prevalence of child sex trafficking on the Internet (Mitchell and Boyd 2014). A study conducted in 2009 concluded that 5% of youth, between the ages of 1 and 17, experienced sexual victimization within their lifetime (Finkelhor et al. 2009). The same year, the National Crime Victimization Survey found that teenagers, between the ages of 12 and 15, experience violent crime victimization at a rate more than double the national average (Truman and Rand 2009). Online sex trafficking represents a subset of these statistics.

Victims of sex trafficking tend to be young women originating from all over the world. A report from the Human Trafficking Data Collection and Reporting Center found that 70% of all sex trafficking victims are under the age of 24, and 30% are under the age of 18 (Farrell et al. 2008). The same report found that an overwhelming majority of those victims were young adult women and juvenile girls, 98% and 94%, respectively (Farrell et al. 2008). The report documented victims who originated primarily from within the United States and developing countries such as Mexico, China, and South Korea. Traffickers also target juvenile boys and young men, but their primary victims are young women and underage girls. While the research to examine online victims of sex trafficking is still nascent, it is safe to say that the number of victims is significant. Furthermore, the number of victims is likely to rise in the coming years as it becomes easier and easier to connect and communicate on the Internet.

### Traffickers

Before the advent of the Internet, traffickers and sexual predators needed to have physical access to their potential victims. However, with the popularity of chat rooms in the 1990s, and the rise of social media in the 2000s, traffickers can electronically connect with victims regardless of physical distance. Traffickers are able to advertise opportunities to work and live abroad and can attract victims across international borders (Sciadas 2005). Sexual predators utilize the Internet to
exchange child pornography, attempt to lure victims and engage them in sexual acts, encourage juveniles and young adult victims to send pornographic photos, and exploit women and children for sexual tourism (Taylor et al. 2015). Sexual tourism can be defined as traveling “with the intent to engage in sexual behavior for commercial gain and/or personal gratification” (Taylor et al. 2015). The clients are often wealthy men who travel to a developing or third-world country to engage in sexual acts that are either illegal or viewed as deviant in their own country; they usually seek out adolescents and children (Taylor et al. 2015). The risks to victims online are myriad.

Organized crime groups can easily extend their reach internationally by harnessing the technology available to them. The United Nations Convention against transnational organized crime declared that transnational organized crime is a critical security issue for the world’s nations to address (Lavorgna 2003). Transnational groups advertise the opportunity to travel to a new country or region and promise the victims they will help secure travel plans, living accommodations, and visa documentation once they arrive (Sciadadas 2005).

Typical examples for job opportunities include positions such as dancers or servers at a restaurant (Stoecker 2000). After luring the victim, the trafficker offering the position may coerce the victim into slave-like working conditions, become the victim’s pimp, or may only be the bottom rung in a human trafficking chain. The trafficker might only be serving as a local representative of the criminal group, whose responsibility is to send the victim to an intermediary contact in another city or country (Stoecker 2000). Once the victim has been transported, the local trafficker or intermediary contact establishes a connection with a buyer, and the victim’s services are sold. As opposed to the drugs and firearms, a criminal group may also sell; they “can sell a human over and over again” (Gardner 2015).

Traffickers utilize many electronic venues in order to lure and sell their victims. Websites such as Craigslist and Backpage easily allow the trafficker to advertise the victim as an escort, masseuse, or companion. The use of classified advertisement websites has allowed traffickers to continue to advertise in the physical world but has also established “virtual red light districts’ [to] provide a low risk environment for buyers to connect with sellers” (Ibanez and Suthers 2014). Victims are advertised ubiquitously for the ease of potential clients. One law enforcement investigator said, “Almost everyone being prostituted is advertised on some type of advertising or social media site” (Mitchell and Boyd 2014).

The process for luring a younger victim is different than those that can feasibly travel by themselves for the promise of a job. Generally, when attempting to lure a child or young teenager, the trafficker attempts to gain the victim’s trust and build a relationship. Traffickers use many different tactics to engage their victims. The trafficker may begin indirectly, by sending a link to a pornographic site or engaging in a sexual conversation. The trafficker may also try to normalize sex acts, such as juveniles having sex with adults (Taylor et al. 2015). As the relationship progresses, the trafficker will attempt to isolate the victim – to alienate them from their support network of family and friends – and establish reliance on the trafficker (Finkelhor et al. 2009). Older children and teenagers seem to be the most at risk for these...
interactions. Young people in this age range often have Internet access, but a parent
or guardian may not be monitoring their activity. Traffickers attempt to establish trust
and dependency by physically meeting up with the victim and then presenting the
victim with gifts, food, or money. Eventually these seemingly kind acts lead to the
trafficker asking them for sexual acts in exchange. Once the trafficker has the victim
in their possession, the offender may utilize any combination of attempts to ensure
the victim’s captivity and dependency. The offender may physically punish or
threaten the victim or their family in order to ensure the victim’s submission
(Dixon 2013).

Mitchell and Boyd reported that over half of the law enforcement investigators
included in the study found technology to be nearly inseparable from their sex
trafficking cases (Mitchell and Boyd 2014). The law enforcement officials noted
that between 76% and 100% of their cases involved technology in some way
(Mitchell and Boyd 2014). When technology was a part of the case, it played a
“very important role” in 33% of cases and an “extremely important role” in 60% of
the cases (Mitchell and Boyd 2014). One law enforcement official explained the
value of technology in relation to sex trafficking: “The crime is the same, the way
they communicate to commit the crime has changed” (Mitchell and Boyd 2014). The
Internet is invaluable to traffickers and buyers because it allows them to expand their
habits to the digital world with slight modification and significant beneﬁt: perceived
safety and anonymity and a much greater pool of potential clients and victims.

Technology Used for Trafficking

Due in part to their relative anonymity, traffickers have routinely utilized digital
classified websites, such as Backpage, Craigslist, and social media sites, in order to
advertise their victims. Traffickers also utilize everything from niche websites to
smartphone apps to advertise to and communicate with clients (Mitchell and Boyd
2014). The ubiquitous nature of technology allows traffickers and buyers to com-
municate seamlessly. Buyers can access the advertisements as easily as they can look
for a used television. They can peruse the ads from their phone, tablet, or computer
while they are at work, school, or home. With the aid of classified websites and
social media, traffickers have attempted to normalize the process of buying or
renting a victim, so that the buyer is more detached from the trafficker, the victim,
and the act. The virtual experience allows the buyer to perform their research to
decide which victim to contact and make a decision in a low-risk environment. They
can do everything, except for the physical act, from the comfort of their normal
surroundings (e.g., their own home, their ofﬁce).

Prepaid, or burner, phones have helped to increase traffickers’ accessibility and
anonymity. Many traffickers have prepaid phones set up to link themselves to their
advertisements. Traffickers often link multiple advertisements to their prepaid phone
number. Prepaid phones are convenient because in several countries, purchase of a
prepaid phone does not currently require personal information or a service contract
to set up. Law enforcement cannot link the prepaid phone back to the trafficker
unless there is identifying information linked to the prepaid account. The only information that law enforcement can obtain is the original location of the prepaid phone’s purchase (Ibanez and Suthers 2014). A content analysis of the Louisville, Kentucky, Backpage website found that adult advertisements had contact area codes from all over the United States (Hayden 2014).

A significant portion of sex trafficking occurs via “adult classified” advertisements. Sex traffickers utilize classified advertisements to promote trafficked victims. Adult classifieds, and similar posts promoting prostitution or sexual tourism, appear on both the surface web and the deep web. The surface web, in this context, can be defined as sites indexed by search engines such as Google, Yahoo, and Bing. Conversely, the deep web is the majority of the Internet that is not indexed by search engines. Therefore, the user needs specific software, configurations, or information in order to access a given website or web page. On the surface web, Backpage.com has been the most common location to find adult classifieds over the past several years (Goldman 2016).

In the past, both Craigslist and Backpage were accused of facilitating sex trafficking (Dixon 2013; Hayden 2014). However, Craigslist removed its adult services in 2010. Since that time, Backpage became the dominant force in the commercial sex advertising market (Goldman 2016). The company’s total sales are more than $150 million; $100 million comes from adult classified advertisements (Goldman 2016). There are other niche sites that offer adult classifieds such as: Myredbook.com, TheEroticReview.com, CityVibe.com, and NaughtyReviews.com. However, the Backpage competitors have a stigma associated with them (Ibanez and Suthers 2014). Backpage is more commonplace and thus is not considered merely a site that a “John” or sexual tourist would visit (Ibanez and Suthers 2014).

Special events, namely, sporting events, have been found to increase online sex trafficking sales. Hayden (2014) analyzed Backpage adult advertisements in Louisville, Kentucky, for 15 months. The study concluded that on average, there were 53 adult ads posted per day. During major events such as the Kentucky Derby, the number of postings per day increased (Hayden 2014). As mentioned above, Hayden (2014) also found that area codes from across the United States were included in the local sex ads. Ibanez and Suthers (2014) found that traffickers frequently change locations along circuits or routes. It is possible that the distant area codes recorded by Hayden were contacts for traffickers who were staying in Louisville, Kentucky, temporarily as part of their trafficking circuit.

Senators Rob Portman and Claire McCaskill have led the Permanent Subcommittee on Investigations’ attempts to gather information regarding the adult ads on Backpage. Carl Ferrer, CEO of Backpage, has been uncooperative with the subcommittee (Everett 2016). In addition to reportedly stalling Portman and McCaskill’s efforts, Ferrer failed to comply with a subpoena (Everett 2016). The Senate subcommittee examined Backpage’s current policies for processing adult classifieds. The National Center for Missing and Exploited Children testified, “71% of all reports of suspected child sex trafficking” were found to be linked to Backpage (Goldman 2016). The subcommittee found that Backpage edits the content of advertisements to remove potentially illegal references to prostitution before publishing the post:
we find substantial evidence that Backpage edits the content of some ads, including by deleting words and images, before publication. The record indicates that in some cases, these deletions likely served to remove evidence of the illegality of the underlying transaction. Specifically, as part of its moderation process, it appears that Backpage will delete particular words or images from an advertisement before posting it to the web [sic], if those words or images violate its terms of service. The Subcommittee attempted to take the testimony of two Backpage employees in charge of its moderation practices, but they refused to testify on the grounds that it might incriminate them. The Subcommittee, however, obtained evidence demonstrating that, from 2010 to 2012, when Backpage outsourced its moderation work to India, it did delete certain images, words, or phrases from “adult” advertisements. The Subcommittee’s subpoena seeks to understand whether Backpage’s current practices have the purpose or effect of removing images or text that could alert law enforcement to the nature and extent of the transaction being offered. Backpage refuses to produce that information. (Portman and McCaskill 2016)

The subcommittee’s assertion is that by editing the text or image associated with an adult classified, Backpage obfuscated classified posts that may have been directly linked to sex trafficking. By removing information from the post, law enforcement officials are not as readily able to investigate potential sex trafficking cases. Furthermore, by editing the classified advertisement, rather than simply not publishing it or reporting it to law enforcement authorities, Backpage may have aided sex traffickers.

Additionally, the subcommittee found that Backpage removed the metadata from images on its website (Portman and McCaskill 2016). Metadata in photographs often contains identifying information such as who owns the file, what camera took the photo, and keywords to make the image searchable. Removing the metadata from a file provides a layer of privacy for the owner of the file. In e-commerce sites such as Backpage or Craigslist, removing the metadata serves to protect the user from potential cybercriminals who might use that information to identify and exploit the user. Therefore, it is beneficial for Backpage’s users that the website removes the metadata. However, in a potentially illegal classified advertisement, it would be very beneficial to law enforcement for the metadata to be available for their investigations.

In March 2016, the Senate subcommittee declared Backpage in contempt of Congress. Officially designating Backpage as being in contempt is an important step toward determining Backpage’s guilt or innocence concerning its affiliation with sex trafficking. The designation of contempt allows the Senate Legal Counsel to file a lawsuit (Goldman 2016). Backpage stated that the company would welcome a lawsuit so that the courts can determine if Backpage’s practices are illegal or if the First Amendment protects the company’s current operating procedure (Goldman 2016). The courts ruled that Backpage.com was legally protected by Section 230 of the Communications Decency Act, so citizens, victim rights advocates, and policy makers demanded a change to the current laws protecting websites such as Backpage.com.

As a result of bipartisan efforts at the federal level in the United States, on April 11, 2018, President Donald Trump signed a combination of bills into law to better protect victims of online sex trafficking. The bills include the Allow States and
Victims to Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA). The legislation opens more avenues for victims of online sex trafficking to legally pursue websites that facilitate trafficking by amending Section 230, making it easier for federal and state prosecutors and private citizens to go after platforms whose sites have been used by traffickers.

Technology Used Against Trafficking

Although sex traffickers and buyers are difficult to identify on the Internet, evidence of their criminal acts will become more visible as sex trafficking continues to shift into the digital world (Ibanez and Suthers 2014). Researchers and law enforcement agencies are using new technologies and various methods to identify trafficking and stem its spread. Utilizing data mining in order to collect and analyze aggregate data appears to be the most promising approach at this time. Researchers using data mining employ strategies to group, classify, and analyze data. Examining aggregated data allows patterns to emerge.

The more data that is gathered and analyzed, the more effective these investigative efforts will become. On the surface web, researchers gather data from suspected sex trafficking posts on websites and social media apps, in order to identify and analyze sex trafficking patterns. As noted above, Ibanez and Suthers (2014) tracked traffickers’ movements across the country and concluded that traffickers often travel in circuits, advertising their victims. Similarly, Hayden (2014) marked suspected traffickers’ approximate locations based on the telephone information the traffickers listed for their Backpage.com advertisements.

In 2015, Thorn, a nonprofit organization that focuses on the prevention of child sexual exploitation, launched the Spotlight program to help law enforcement officials identify and solve child sex trafficking cases. Spotlight is being used in 48 states, has helped identify more than 360 victims, and lead to the arrests of more than 60 traffickers (Thorn 2015). The program utilizes machine-learning algorithms in order to prioritize leads (Thorn 2016). Law enforcement agencies can access Spotlight for free in order to investigate sex trafficking in their area (Thorn 2016). Spotlight serves as an example of initiatives that organizations are harnessing, utilizing data mining to categorize and analyze potential sex trafficking cases.

To data mine potential sex trafficking cases on the deep web, Defense Advanced Research Projects Agency (DARPA) developed the Memex program. DARPA is an agency of the US Department of Defense whose goal is to develop greater technologies for improving national security. The name and concept behind “Memex” refers to a hypothetical device pioneered by Vannevar Bush that stores vast amounts of information and records and also possesses supplementary functions for its stored data (Shen n.d.). Memex focuses on identifying fraudulent advertisements and job postings used to lure potential victims, so traffickers can abduct them (Greeneemeier 2015). The goal of Memex is “to invent better methods for interacting with and
sharing information, so users can quickly and thoroughly organize and search subsets of information relevant to their individual interests” (Shen n.d.).

Memex will strive to meet its goals by utilizing domain-specific indexing, domain-specific search, and Department of Defense (DoD)-specified applications (Shen n.d). Sex trafficking is difficult to track in part because sex traffickers utilize temporary advertisements, as well as peer-to-peer connections, both of which reside in the deep web and, thus, are not indexed by traditional search engines (Greenemeier 2015). Researchers and law enforcement officials will be able to utilize Memex’s search capabilities to identify potential sex trafficking sources which they would have had no way of accessing on the surface web.

In addition to its search features, Memex also boasts the ability to link together data found within search results (Greenemeier 2015). When key patterns, similarities, and discoveries are detected, certain algorithms within Memex will generate a statistical score for significance. An important example is the Tika-Jaccard Similarity algorithm. This algorithm attempts to capture statistical similarities from image or video metadata, by weighing this metadata against a “golden feature set.” The golden feature set is a known set of metadata which represents sex trafficking activity. The metadata often includes exchangeable image file format (EXIF), Flash, RGB, Color Space, Camera Make, and Camera Model Serial Number. Mattman (2016) provides the following pseudocode of the Tika-Jaccard Similarity algorithm:

In the above algorithm, lines 1–2 initialize the input and output variables. Next, lines 4–6 initialize the “goldSet,” “allMetadata,” and “scores” variables as arrays to

```python
1  input: directory of files d
2  output: scores s for all files in d
3
4  goldSet:= {}
5  allMetadata:= {}
6  scores:= {}
7
8  for file in d:
9    text, metadata:= tika.parse(file)
10   goldSet:= goldSet ∪ metadata.keys
11   allMetadata[file]:= metadata
12
13  goldenSetSize:= |goldSet|
14
15  for file in allMetadata.keys:
16    overlap:=|allMetadata[file]| ∩ goldSet|
17    score:= overlap / goldenSetSize
18    scores[file]:= score
19
20  return scores
```
organize the input and output data. Lines 8–11 creates a “for loop” to gather the metadata from a known human trafficking data set. This loop will run until it has processed all the files within the data set. Line 13 sets the size of “goldSet” array, which will be used to calculate the statistical score of the suspected human trafficking data set. Lines 15–18 compare the suspected human trafficking data to the known human trafficking data. Line 20 returns the scores for each file in the suspected human trafficking data set. The researcher can then analyze the scores of the suspected human trafficking data to determine if the data set is likely to be linked to trafficking.

The data can be displayed visually in order to identify spatial and temporal maps in real time (Daire 2015). Memex is already being used to a limited extent. The New York District Attorney’s Office stated that Memex has aided over 20 active sex trafficking investigations, as well as 9 open indictments (Daire 2015). Traditional search engines merely display various search results, ranked by algorithms that prioritize the links the engine estimates will be the most helpful. Each search result is isolated to itself; there is no connection between the sources of data. Memex’s ability to link data points will present patterns that were not clear before, on both the deep web and surface web.

Although Memex is primarily being applied to sex trafficking cases at this time, its associative ability to index, organize, and link data has innumerable applications. Law enforcement agencies can utilize Memex to investigate similar crimes, such as firearm and drug trafficking (Greenemeier 2015). The domain-specific searching lends itself to investigating other major issues such as terrorism and disease tracking and response (Greenemeier 2015). Although the primary goal of Memex is to combat human trafficking, other organizations are also interested in using Memex to search and link data not related to crime at all. For example, NASA JPL is interested in utilizing Memex to catalog spacecraft data, a hefty task that is usually daunting for scientists (Churgwin 2015). Additionally, Memex also has capabilities of crawling and linking data from the surface web. One of the most important Memex utilities that perform this function is TJBatchExtractor. Specifically designed to harvest adult classifieds and female escort information from Backpage, TJBatchExtractor performs data collection and analysis on all available data across multiple advertisements. Specifically, TJBatchExtractor harvests data such as age, physical measurements, ethnicity, eye and hair color, phone numbers, and emails. The data is then linked together, and the same analyses can be performed as though the information had been gathered from the deep web.

The Memex team is creating a “dark web crawler” in order to index the dark web, the region of the Internet accessible only via Tor or peer-to-peer software (Greenemeier 2015). This is currently being accomplished by utilizing multiple web crawlers with specific guidance. The major web crawlers listed in the DARPA open catalog each serve a distinct purpose: ACHE enables focused crawling; Arachnado allows for deep crawling; Distributed Frontera integrates decision-making for logic and policies to be used when crawling; Frontera can be used when storage and priorities are needed; HSProbe (The Tor Hidden Service Prober) can extract hidden content; SourcePin assists with new website discovery (Shen n.d.).
Memex even has the capability to crawl web pages that require log-ins. Using a utility called “Autologin,” Memex can crawl any given web page of any given website, when provided with proper user credentials (Hyperion Gray 2014). Additionally, Memex also includes tools which provide machine learning, infrastructure, visualization, security, analytics, statistics, experimentation support, processing, distributed programming, and application program interface (API) (Shen n.d.). The complexity of Memex is an astounding achievement that has arisen from combating human and sex trafficking. Indexing the dark web will provide a greater understanding of the scope of activity that takes place in one of the most inaccessible parts of the Internet. While not all activity on the dark web is criminal in nature, advertisements for criminal activity do exist. Identifying locations on the dark web is a significant step toward tracking the cybercrime that is facilitated there.

The prospect of such a powerful data mining tool raises questions about the privacy of innocent users on the Internet. Data collection is one of the primary functions of Memex, and in the wrong hands, it seems as though it has the capabilities to gather sensitive user information, such as bank account information. The DARPA Open Catalogue currently lists 12 projects whose primary purpose is data collection (Shen n.d.). These data collection projects include web crawlers and tools that supplement and interpret the gathered data. Memex program manager Christopher White made a conscious decision for Memex to avoid password-protected content (Greenemeier 2015). The Memex program is not interested in “deanonymizing or attributing identity to servers or IP addresses, or accessing information not intended to be publicly available” (Shen n.d.). Significantly, the Memex project is mostly composed of open-source tools, all available on Github through the DARPA Open Catalogue (Greenemeier 2015). One of the most fascinating characteristics of the Memex program is the enormous amount of collaboration behind it. Memex has received aid from academia, government, industry, and open-source development. Some of the major contributors include the US Naval Research Laboratory, Georgetown University, Columbia University, Carnegie Mellon University, NASA Jet Propulsion Laboratories (JPL), Kitware, and Continuum Analytics (Shen n.d.). The open-source nature of the code will provide unbiased information about how the Memex team built the tools and how researchers and law enforcement agencies use those tools. The prevention of crimes such as sex trafficking is an objectively positive goal, but innocent users’ personal information need not be sacrificed in order to prevent those crimes.

**Conclusion**

The conception of the Internet has increased the scope of trafficking. Due to our interconnected world, victims can be targeted from any location around the world, traffickers can advertise to potential buyers with a sense of anonymity, and buyers can rent or buy victims from the comfort of their home. Although we know the demographics and groups traffickers target, there is dearth of prevalence data to speak to how many victims are affected by trafficking. However, traffickers will
continue to utilize technology to their advantage, and as their methods are analyzed, researchers will gain a better understanding of how to prevent trafficking.

Programs such as Spotlight and Memex will allow researchers and law enforcement agencies to organize data in new ways in order to find patterns and draw conclusions. As data is collected, and these technological approaches mature, researchers will have more evidence regarding how trafficking is conducted in the digital world. While traffickers are able to obfuscate their identities online, the tools discussed above provide an advantage to law enforcement officials in their efforts to track and prevent trafficking. Technology has initially negatively impacted anti-trafficking efforts by enhancing traffickers’ ability to recruit and sell victims for sex trafficking, but emerging programs such as those discussed in this chapter are narrowing the gap between traffickers and law enforcement responses to address the issue.

References


The Onset of Global Violent Extremism and Its Nexus with Human Trafficking

Halleh Seddighzadeh

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Abstract

Violent extremism is an emerging global threat instigated by extremist groups such as ISIS and Boko Haram. These organizations thrive only as a result of the consistent recruitment and indoctrination of new members. To date, preventative measures for those who are vulnerable to exploitation and recruitment have been under-researched in counterterrorism studies. More emphasis is placed on exploring the behaviors and patterns of those already identified as active participants in extremist groups. Recently, case studies have indicated parallels between the factors and patterns found in the recruitment and training of trafficking victims and the radicalization of adults and youth to these extremist causes. This chapter examines patterns currently employed by extremist enslaving groups that mirror those of human traffickers, including recruitment patterns, grooming protocols, coercive manipulation, power dynamics, and psychological coercion. Finally, it suggests gaps within and needed additions to treatment protocols and practices necessary to be developed in the counter-trafficking field that might also support treatment and practices in countering violent extremism.

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**Introduction**

The intersection of human trafficking and terrorism is a continually evolving and complex co-occurring area of exploitation that cross-pollinates with many areas of organized crime such as trafficking in arms and drugs and money laundering (Kaplan 2006), as well as cybercrime, given the greater accessibility to induct and recruit individuals through the advance of technology, Internet, and social media messaging platforms (Brown and Silke 2011). The lucrative multibillion dollar shadow economy of trafficking in persons is a tool that meets several key needs of violent extremists and terrorist organizations. These range from the financing of daily operations and purchases of weaponry to the dangerous ability to reinforce narratives of fear and oppression by the use of human trafficking to target ethnic and religious minorities and systematically deteriorate the character and composition of a region and its people. Groups such as ISIS (also known as IS, ISIL, or Da’esh) and Boko Haram seek to institutionalize rape and exploitation as tools of war, terror, power, and control (Abdulazeez and Oriola 2018). The Lord’s Resistance Army (LRA), a terrorist insurgent group in Northern Uganda, have abducted more than 12,000 children to be used as child soldiers or sexually exploited and trafficked (Shelley 2010). The Hezbollah, the Taliban, and the PKK have all been known to engage in the trafficking of persons to support their activities and strengthen their criminal enterprise capacity (Shelley 2010). Extremist groups use human trafficking to diversify their income streams such as those gained from selling women, men, and children as day laborers or sexual slaves. This activity reaps substantial profits, which in turn enable them to expand their influence and to plot and fund acts of mass-targeted violence and terror. Trafficking continues to fuel and perpetuate regional conflict, which enables violent extremist organizations to operate inconspicuously and to capitalize on the conflict-related unrest and chaos to advance their agendas, while further preying upon and exploiting the individuals and communities made vulnerable as a result of the conflict and unrest. Ultimately the profits reaped from sexual exploitation of victims enable these insurgent groups such as ISIS to be more than an insurgent group – to become, in fact, a terrorist network (Clarke 2017).

To date, there is no consensus or agreed-upon definition of the terms terrorism and violent extremism; however, the Federal Bureau of Investigation’s (FBI’s) definitions will be utilized in this chapter to define domestic and international terrorism, as well as violent extremism in this way:

**International terrorism:** Perpetrated by individuals and/or groups inspired by or associated with designated foreign terrorist organizations or nations (state-sponsored):
For example, the December 2, 2015, shooting in San Bernardino, CA, that killed 14 people and wounded 22 and that had involved a married couple who had radicalized for some time prior to the attack and were inspired by multiple extremist ideologies and foreign terrorist organizations (FBI 2016).

Domestic terrorism: Perpetrated by individuals and/or groups inspired by or associated primarily with movements (within their own country) that espouse extremist ideologies of a political, religious, social, racial, or environmental nature: for example, the June 8, 2014, Las Vegas shooting, during which two police officers inside a restaurant were killed in an ambush-style attack, which was committed by a married couple who held anti-government views and who intended to use the shooting to start a revolution (FBI 2016).

Violent extremism is defined by the FBI as “encouraging, condoning, justifying, or supporting the commission of a violent act to achieve political, ideological, religious, social, or economic goals” (FBI 2016).

 Trafficking Tactics Used by Violent Extremists

Human trafficking is not only a lucrative means of financing for violent extremist groups but a key part of reinforcing extremist ideology and systemically “crushing” or “breaking down” the “enemy.” It includes tactics of torture and conflict-related sexual violence such as rape, sexual enslavement, trafficking, and reproductive coercion through forced pregnancy, forced insemination, and forced sterilization, to name a few (Malik 2016). The sexual exploitation of women, girls, and boys is also used as a way to incentivize, recruit, and retain fighters, specifically for groups such as ISIS and Boko Haram (Shelley 2010; Malik 2016). Violent extremist groups are sexually exploiting and trafficking adults, children, and vulnerable persons – from developmentally delayed individuals to marginalized groups – for profits to expand the influence and power of their network. Furthermore, they are also utilizing recruitment tactics and communication strategies similar to those of traffickers to target and compel potential fighters and individual members to join their networks. For groups like ISIS, there are available online strategies using forums, propaganda video clips, and messages that target specific individuals identified as likely to be ready for recruitment (Brown and Silke 2011), or even the “planting” of a recruiter to groom and appeal to individuals within a specific situation, forum, or group of individuals, whether in encouraging engagement in person through physical travel to the areas they occupy and operate or, from afar, carrying out “lone wolf attacks” in an individual’s city or neighboring community.

Extremist messaging strategies and digital plotting that emulates one of many tactics employed by traffickers are carried out through online grooming, often by way of a fraudulent connection, and through befriending and showing an interest through false pretenses of friendship or romantic interest and using targeted tactics to enhance commitment and dedication (Gerwehr and Daly 2006). This is a tactic
similar to that of a “Romeo Trafficker,” who recruits and exploits through these false pretenses or to cults that recruit through “love bombing,” which is a tactic often designed to influence an individual through attention and affection. The recruitment processes for terrorist organizations are also similar to cult-like behaviors in that ISIS militants and other extremist terrorist movements prey upon and exploit vulnerably isolated persons who have a lack of interpersonal relationships (Bloom and Daymon 2018). Individuals researching ISIS propaganda using social media platforms have been besieged with hundreds of friend requests, likes, comments, and/or share messages by ISIS militants. ISIS utilizes “love bombing” tactics (Bloom and Daymon 2018) that are comparable to the behaviors of religious cult leaders, sex traffickers, and pimps. When media audiences that experience symptoms of isolation and depression receive external validation from these platforms, extremists’ groups might have an easier time recruiting this demographic (Bloom and Daymon 2018).

ISIS and Boko Haram also assign new names to victims and force a victim to adopt a new persona, reassigning a new “identity” as another tool of control, breaking down and attempting to override the victim’s sense of self to enforce compliance and deeper indoctrination. This is done either upon recruitment and grooming experienced before joining the group physically, in the case of Boko Haram, or remotely in the case of ISIS. It is also done upon capture and abduction, as is the case of ISIS’s treatment of Yazidi women, whom they have brutalized, trafficked, and committed acts of genocide against. Groups like Boko Haram and ISIS also brutalize victims they abduct or recruit and justify their actions as necessary due to the victims being “nonbelievers,” shaming and blaming them through sexual violence and abuse, as do traffickers that shame and blame the victims they exploit, excusing abuse and sexual violence upon the victim through a claim that the trafficking is due to the victims’ fault (DeMarni Cromer and Cunningham 2016).

Victims of Boko Haram and ISIS also exhibit trauma bonds, a result that is evident in the 2017 negotiations between the Nigerian government and Boko Haram to release over 80 of the 200 girls abducted in 2014. Many of the girls, at surface level, appeared to “refuse” to leave their captors, but this is indicative of the level of fear, shame, potential radicalization, and, ultimately, the traumatic bond developed due to severe sexual violence and abuse experienced. This has been found to be a common occurrence with domestic and international victims of trafficking, as well (Hopper and Hidalgo 2006).

**Tactics of Trafficking, Exploitation, and Violence Used by Boko Haram**

Boko Haram is a violent extremist organization situated in sub-Saharan Africa, specifically in northeast Nigeria, as well as in Chad, Niger, and northern Cameroon (Adigun 2018; Agbiboa 2013; IMADR 2015). The rebel group was founded by Mohammed Yusuf on the principles of extremist cult-like ideologies based upon a distorted superficial understanding of Islamic religious beliefs and practices (Asfura-Heim et al. 2015; Walker 2012). The insurgency comprises a myriad of working and
migrant classes that include professionals such as college professors, bankers, security forces, and politicians, as well as children and youth (Adigun 2018; Agbiboa 2013). Boko Haram has become a destructive cult-like extremist group. It has given allegiance to ISIS and conducts mass violence on behalf of ISIS (Agbiboa 2013; Adigun 2018). Boko Haram’s grievances are based upon socioeconomic, religious, and political corruption, and its adherents blame Western society and its education for the demise of Nigerian society because, its adherents claim, the USA is representative of sin, according to Boko Haram’s extreme cult-like interpretation of the Koran (Agbiboa 2013).

Estimates show that roughly 8,000 children have been exploited by Boko Haram since 2009 (UNODC 2017). The boys abducted have been positioned as child soldiers and are being normalized to violence, whereas the girls are trafficked, as well as forced into sexual servitude, marriages, and labor trafficked for the purpose of cleaning and carrying military equipment on the front lines. There has been an increase in the trend toward both gender demographics being used as human shields in some cases, while others of those individuals are forced into becoming suicide bombers, with three-fourth of them being girls carrying out these acts (UNODC 2017). Studies have estimated that, because 50–60% of children carry HIV/AIDS in that region, their debilitating physical symptoms and stigma they carry make those children more susceptible to being targeted. Boko Haram exploits children to give themselves more publicity, as a form of self-propaganda. Girls returning home after abduction or recruitment by Boko Haram who have been raped, trafficked, and/or impregnated are then subjected to ostracization by their families, friends, and community members. This places them in an even more vulnerable position of being targeted and re-trafficked by other predators (Maiangwa and Olumuyiwa Babatunde 2015).

Boko Haram participates in mass killings and abductions, and they indenture their victims through a servitude that entraps them in rape and forced beatings, as well as in forced pregnancies and further human trafficking (Onuoha 2014; Malik 2016). The insurgency breaks down the victims’ psychological mental state and emotional well-being through forced marriages and conversions (Onuoha 2014; Malik 2016). Boko Haram then forces abductees’ family members to also convert to its extremist cult-like ideologies, and if they do not embrace these ideologies, they are threatened with murder (Malik 2016). Women and children are given new Arabic names upon their conversion and are forced to learn the Arabic language (Malik 2016). Female children are coerced or forced into marrying fighters, just as is done with adults, for the justification of their ideological misinformation and rationalization of Muslim practices (Malik 2016). The male children are converted into child soldiers forced to fight for the militia (IMADR 2015). Moreover, women are subjected to successive rapes as an outcome of the male fighters being ordered to breed in order to produce the next generation of militant combatants (Malik 2016). Victims are targeted in various ways that include incidences of terrorist infiltration at camps for internally displaced persons (IDP), particularly in one area northeast of Nigeria (Barau 2018). As similar to that of traffickers that outsource duties to other victims, such as the “bottom girls, ” these women are forced to infiltrate various social or geographical
settings to find new recruits. Additionally, a parallel recruiting technique is used in the cult world. Abductions are also a method for targeting victims for trafficking, as is the practice of manipulating their trafficking victims with threats and the use of JuJu, also referred to as voodoo magic (Ikeora 2016; IMADR 2015). Trafficked women of Boko Haram are made to take “oaths of secrecy”; by serving the militia, they must repay their debt, if they have any, and they are required to commit to never telling the authorities of their oath (Ikeora 2016; IMADR 2015) – an effective psychological and ritual abuse tactic that continues to plague many victims of gender-based violence and trafficking under Boko Haram.

**Tactics of Exploitation and Violence Used by ISIS**

ISIS, a group name that stands for the Islamic State of Iraq and the Levant, has its original roots from Al Qaeda and has, since its inception, been identified with various names and/or titles by Western media, US government entities, and international tribunal organizations; these labels include ISIS – the Islamic State – and also ISIS, the Islamic State of Iraq and Syria (UNODC 2017). This militia is supposedly composed of Sunni Muslims; their grievances are against the West, and they promote sectarian violence (Malik 2016). As with Boko Haram, their goal is to enforce Sharia law, as ruled by a caliphate (Bloom and Daymon 2018; Malik 2016).

There tactics of abuse and violence mirror those of Boko Haram. ISIS places heavy emphasis on and has an obsessive preoccupation with nonbelievers that is known as the concept of Kuffar; through this lens of labeling, they justify abusive and dehumanizing acts of sexual violence and harm to anyone, especially women or minority ethnic groups such as the Yazidis. As a part of this depersonalizing process, they also change the names of female victims they are exploiting and trafficking – once they are captured, purchased, or recruited – and force their conversion to the process of addressing the “nonbeliever” (Malik 2016). ISIS claims that pregnant women are, in their group’s process, not allowed to be sold and that beatings are allowed only for the purposes of discipline; however, obstruction of the face – with veiling, for instance – is forbidden. Sexual intercourse with recruited or enslaved persons is permitted upon the purchase of a trafficked person, with the exception to that permission being intercourse with those who are virgins. ISIS members must abstain from having sex with these victims until they have had their first menstrual period in captivity, in a restriction that is understood as allowing for the purifying of the uterus and that guarantees certainty that the victim is not caring a child. ISIS abuses perpetrated against Yazidi women who were violently brutalized included chronic and consistent rape by one or multiple fighters and subjection to sex trafficking, as well as to indentured sexual servitude, severe beatings, torture, forced nudity, and forced impregnation, as well as forced conversions and constant humiliation sexually, psychologically, and physically. Victims are also forced to separate from their families (Malik 2016). Strategic and normalized sexual violence and trafficking is used by ISIS to subordinate and humiliate the “other” or the “enemy”
Restorative Treatment Needs and Gaps

The heinous violence and torture experienced by victims trafficked at the hands of violent extremist groups result in severe psychological trauma and grave health implications. Distinct clinical care similar to that of the treatment of torture trauma would be an appropriate clinical standard of care with which to norm and tailor the required psychological trauma care and comprehensive medical treatment. The implementation of a multidisciplinary, culturally intelligent approach would be crucial to the healing and reintegration of these survivors. Community-based practices must be established to reduce the shame and stigmatization of survivors and encourage healing and reintegration, through the use of cultural healing rituals and culturally appropriate therapeutic trauma modalities, as well as comprehensive psychosocial, medical, legal, vocational, and educational support. Additionally, collaboration with and support of key community leaders should be instituted for the purpose of reframing the narrative of shame and blame that burdens survivors, and actions taken toward accepting the survivor back into the community is imperative. Currently, there are no standards of care established for victims of human trafficking, and an inconsistent array of modalities and practices are utilized in diverse settings. Many best practices inconsistently applied reinforce the blaming and shaming and, thus, the re-traumatization of survivors of trafficking by the community and its various systems of support. It is essential, at a minimum, that a comprehensive clinical, medical, cross-cultural, and legal framework be established for such survivors of trafficking, specifically for survivors trafficked by extremist groups. Establishing specialized working groups can begin to highlight for the community and its caregivers the intersection of trafficking and terrorism, which intersection is an under-researched and poorly documented human rights crime (Malik 2016).

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The Protocol on Trafficking in Persons and Transplant Tourism

David Matas

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Abstract

Human trafficking should encompass organ trafficking. However, there is resistance to that inclusion. This chapter sets out that resistance and suggests ways in which it can be overcome.

Keywords

Organ and human trafficking · Transplant abuse

Does the Protocol on Trafficking in Persons of the Convention on Transnational Organized Crime encompass transplant tourism? The answer this chapter gives to that question is yes. Getting to that answer takes some explaining.

Though the question is general, the approach here comes from a particular perspective. A report in June 2006 under the name Bloody Harvest concluded that prisoners of conscience in China, practitioners of the spiritually based set of exercises Falun Gong, were being killed for their organs which were being sold at high prices to transplant patients, mostly transplant tourists. A second version in of the report was published in January 2007 and a third version in book form came out under the title Bloody Harvest in November 2009. The report prompted the founding of a nongovernmental organization Doctors Against Forced Organ

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Harvesting or DAFOH. A coedited book of essays on organ transplant abuse in China was published in August 2012 under the name *State Organs*. Ethan Gutmann, in research with Jaya Gibson, announced in June 2010, and, in a book titled *The Slaughter* published in August 2014, wrote that the killing of innocents for their organs had spread from Falun Gong to Tibetans, Eastern Lightning house Christians, and Uighurs.

Falun Gong is a set of exercises with a spiritual foundation begun in 1992 with the teachings of Li Hongzhi. It was initially encouraged by the Communist Party of China as beneficial to health. However, its increasing popularity led the Party, out of jealousy and fear for its ideological supremacy, to ban the practice and to insist that the practitioners recant. Those who did not recant were tortured. Those who did not recant after torture disappeared. The disappeared, in the hundreds of thousands, became a vast forced organ donor bank. Transplant tourism into China became a billion dollar business (Matas and Kilgour 2009).

After the 2006 report *Bloody Harvest* was published, the Government of China changed its organ transplant system to give a priority to nationals over foreigners. A number of countries changed their laws and policies in ways that penalized or discouraged transplant tourism into China. The flow of transplant tourists into China diminished but did not stop.

Until May 2014, the Omar Healthcare Service website promoted transplant tourism into Tianjin, China. The website was taken down only after a public protest letter by The Transplantation Society in February 2014. The 21st Report of the Malaysian Dialysis and Transplant Registry 2013 sets out in Chap. 13, Renal Transplantation, that there were nine Malaysian patients who obtained transplants in China in that year (Matas and Trey 2012).

A delegation from DAFOH met in Geneva Monday, December 9, 2013, with the Office of the United Nations High Commissioner for Human Rights to present a petition with nearly 1.5 million signatures from 53 countries and regions asking the High Commissioner Mme Navi Pillay to:

1. Call upon Government of China to end immediately the forced organ harvesting from Falun Gong prisoners
2. Initiate an investigation which can lead to the prosecution of the perpetrators of this crime against humanity
3. Call upon the Government of China government to end immediately the brutal persecution of Falun Gong

One of the people in the Office of the High Commissioner with whom the delegation met suggested they contact the United Nations Office of Drugs and Crime (UNODC) in Vienna. The delegation followed up on that suggestion on January 1, 2014, by contacting Mirella Dummar Frahi, Civil Affairs Officer, Advocacy Section, UNODC, in Vienna, asking for a meeting on March 21 (Matas 2014).

Mirella Frahi wrote back on January 30 confirming the requested meeting. She wrote:
I am pleased to confirm that it will be possible to arrange a meeting with UNODC on Friday 21st March. Please indicate your preferred time and the name of the people accompanying you. Thank you of your interest and kind regards,

An e-mail was sent back to Ms. Frahi on January 31 indicating who would attend the meeting and the preferred time. Included were an international lawyer for DAFOH from Spain and a delegation of four, one lawyer and three doctors, from the Taiwan Association for International Care of Organ transplants (TAICOT). After tickets had been booked, on March 4, 2014, over a month after the initial confirmation, Mirella Frahi wrote back saying:

With reference to your request for meetings on 21 March 2014, I regret to inform you that owing to our forthcoming major Commission meeting on Narcotic Drugs from 13–21 March that it will be challenging for us to tie down a convenient time to meet. I would suggest that we take contact following the Commission meeting on this issue.

A follow up e-mail March 12 from the delegation stated:

Our group will be in Vienna next week Thursday and Friday March 20 and 21 and would be available to meet on short notice.

On March 13, this message from the Asian delegation was forwarded Ms. Frahi:

Please let them know we delegation from Asia already finalized our air ticket and lodging in Vienna for this meeting, it will be improper to cancel this meeting by such short notice.

These e-mails prompted a response from an unnamed superior of Ms. Frahi who wrote on March 14:

Unfortunately, as Ms. Dummar Frahi has indicated previously, she will not have the time to meet with you and the Asian delegation.

Having already booked tickets, the delegation all came to Vienna. The TAICOT group went to the offices of UNODC on March 21 and attempted on the spot to meet with relevant officials. This effort prompted a response the same day from Mr. Ilias Chatzis, Chief, Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, United Nations Office on Drugs & Crime, Vienna. He wrote:

I would like to thank you for your message and for the interest in our work. I understand that you have been trying to reach me today. However, I had no earlier knowledge of your presence in Vienna nor of the issues you wanted to discuss with me. A meeting would also not be productive as my Section’s work does not include what you refer to as organ harvesting nor the other issues covered in your e-mail. My Section covers the UNTOC Protocols on Trafficking in Human Beings and on Migrant Smuggling. I am sorry that I cannot be more helpful at this stage.

Well, that seemed pretty straightforward. Nonetheless, clarification was sought from the person in charge.
An e-mail was sent to Yury Fedotov, Executive Director UN Office of Drugs and Crime Vienna, Austria, on July 30 asking for clarification. The e-mail stated:

As a result of the exchange of e-mail attached between Mr. Ilias Chatzis, Chief, Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, United Nations Office on Drugs & Crime and Dr. Alex Chih-Yu Chen, International Liaison Officer, Taiwan Association for International Care of Organ Transplants, which has been drawn to my attention, I request from the UN Office of Drugs and Crime a clarification. Does the Office a) take the position that transplant tourism and the sourcing of organs from non-consenting persons for sale are subject matters that
i) fall within the scope of the Protocol on Trafficking in Persons to the Convention on Transnational Organized Crime or
ii) do not fall within the scope of the Protocol or
b) take no position on these matters?

On August 8, 2014, on behalf of Mr. Fedotov, Mr. Tofik Murshudlu, Officer in Charge, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime responded by quoting extensively from the Protocol but saying nothing more. He wrote:

I refer to your email to Mr. Yury Fedotov on 28 July 2014. Our leading instrument is indeed the Trafficking in Persons Protocol to the Organized Crime Convention. According to Article 3 (a) of that Protocol,
‘... ‘trafficking in persons’ shall mean 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 removal of organs’.

The Protocol also requires, in Article 5 (1), that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

Therefore, conduct that fulfils this three-pronged definition is considered trafficking in persons for the purpose of organ removal.

As for consent, the Trafficking in Persons Protocol actually says in Article 3 (b) that ...the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

For children, that is persons under the age of 18, consent is actually always irrelevant.

That, of course, amounted to a lot of words saying nothing. So the original question remained.

The United Nations of Office on Drugs and Crime website has this entry:

... demand for organs has outstripped supply, creating an underground market for illicitly obtained organs.
Desperate situations of both recipients and donors create an avenue ready for exploitation by international organ trafficking syndicates. Traffickers exploit the desperation of donors to improve the economic situation of themselves and their families, and they exploit the desperation of recipients who may have few other options to improve or prolong their lives. . . . One factor that is distinct in this form of trafficking in persons is the profile of culprits; while some may live solely from criminal trafficking activities, others may be doctors, nurses, ambulance drivers and health care professionals who are involved in legitimate activities when they are not participating in trafficking in persons for the purpose of organ removal.

. . . The Trafficking in Persons Protocol supplementing the Transnational Organized Crime Convention includes trafficking in persons for the purpose of organ removal.

UNODC response

Trafficking in persons for the purpose of organ removal was on the agenda of the Working Group on Trafficking in Persons established by the Conference of Parties to the Organized Crime Convention at its fourth session, from 10 to 12 October 2011.


The Working Group recommended that States parties to the Convention should encourage relevant United Nations entities, including UNODC, to gather evidence-based data on trafficking in persons for the purpose of organ removal, including root causes, trends and modus operandi, with the aim of facilitating better understanding and awareness of the phenomenon while recognizing the difference between trafficking in organs, tissues and cells.

The Working Group also requested UNODC to develop a training module against trafficking in persons for the purpose of organ removal, and provide technical assistance, especially in regard to investigation, exchange of information and international legal cooperation.

It has been suggested that there is need for an international treaty banning transplant tourism (Matas 2014). It may be simpler, as the UNODC website suggests, just to make better use of the Trafficking in Persons Protocol to the Transnational Organized Crime Convention.

The Global Report on Trafficking in Persons 2012 published by the UN Office on Drugs and Crime states

Organ trafficking is not classified as human trafficking. For an act to be considered trafficking in persons, a living person has to be recruited by means of force or deception for the exploitative purpose of removing an organ. There is a large grey area between licit organ donations and the trafficking of persons for organ removal.

Within this “gray area” could be included the killing of prisoners of conscience for their organs to be sold at high prices to transplant patients as human trafficking.

In answering the question whether there is need for a new treaty or whether the existing treaty can be applied to transplant tourism, the experience of the Council of Europe is instructive. The Council of Europe had a Convention on Action against Trafficking in Human Beings dating from 2005 which applied to trafficking in organs. The Convention defined “Trafficking in human beings” to mean:

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 removal of organs;

The language of that Convention is identical to the UN Protocol. The Council of Europe, despite that Convention, saw fit to approve yet another Convention titled the Convention against Trafficking in Human Organs, opened for signature July 2014. That Convention can be signed by the member States of the Council of Europe, the European Union, and the nonmember States which enjoy observer status with the Council of Europe. It is also can be signed by any other nonmember State of the Council of Europe upon invitation by the Committee of Ministers.

The existence of this second Council of Europe Convention raises three questions. One is whether there is a need to replicate the second Council of Europe Convention at the United Nations. If the Council of Europe felt the need for a more specific Convention directed specifically to organ trafficking despite an existing Convention on human trafficking which encompassed organ trafficking, should not the UN also have the same need?

Second, why is there even need for a UN Convention on organ trafficking when the Council of Europe Convention is open for signature by all states? Would it not be simpler just to urge states to sign on to the Council of Europe Convention?

Third, do any of these Conventions now encompass transplant tourism? Is it necessary to have a third Council of Europe Convention and another UN Protocol or treaty to address specifically transplant tourism?

To a certain extent, these questions are bound up with a larger question which bedevils international treaty negotiation. Some argue that the international community is better off with a focus on implementation rather than instrument proliferation (Matas 1994). Others argue that a wide variety of specific new international instruments provides detail. States which may refrain from signing on to one treaty may be willing to sign on to another similar, but not identical, overlapping treaty. NGOs may be more mobilized to advocate adherence to a specific treaty which coincides with their priorities than to a general treaty which encompasses their priorities as only one among many matters.

The answer to the first question, why a second Council of Europe Convention, is, to a certain extent, answered by the preamble to the second Convention. One preambular paragraph states:

Determined to contribute in a significant manner to the eradication of the trafficking in human organs through the introduction of new offences supplementing the existing international legal instruments in the field of trafficking in human beings for the purpose of the removal of organs;

The first Convention states simply in Article 18:

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.
Article 4 contains the definition of trafficking, which included organ trafficking. This provision is similar to a provision in the UN Protocol. The Protocol states:

**Article 5**
1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

The second Council of Europe Convention is far more specific. The specific penalty provisions are set out below:

**Article 4 - Illicit removal of human organs**
1. Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:
   a. where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
   b. where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;
   c. where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.
2. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply paragraph 1.a of this article to the removal of human organs from living donors, in exceptional cases and in accordance with appropriate safeguards or consent provisions under its domestic law. Any reservation made under this paragraph shall contain a brief statement of the relevant domestic law.
3. The expression 'financial gain or comparable advantage' shall, for the purpose of paragraph 1, b and c, not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs.
4. Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law the removal of human organs from living or deceased donors where the removal is performed outside of the framework of its domestic transplantation system, or where the removal is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavour to apply also Articles 9 to 22 to such offences.

**Article 5 - Use of illicitly removed organs for purposes of implantation or other purposes than implantation**
Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the use of illicitly removed organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

**Article 6 - Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law**
Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law, when committed intentionally, the implantation of human organs from living or deceased donors where the implantation is performed...
outside of the framework of its domestic transplantation system, or where the implantation is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavour to apply also Articles 9 to 22 to such offences.

Article 7 - Illicit solicitation, recruitment, offering and requesting of undue advantages
1. Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party.
2. Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1, or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.
3. Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

Article 8 - Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs
Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

a. the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4;
b. the transportation, transfer, receipt, import and export of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4.

Also worthy of note are the jurisdictional provisions. The first Council of Europe Convention provides:

Article 31 - Jurisdiction
1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

c. by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;

The second Council of Europe Convention provides:

Article 10 - Jurisdiction
1 Each Party shall take such legislative or other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
d. by one of its nationals; or  
e. by a person who has his or her habitual residence in its territory.

4 For the prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1. d and e of this article is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or the laying of information by the State of the place where the offence was committed.

Both Council of Europe Conventions address specifically extraterritoriality. Both Council of Europe Conventions though limit extraterritoriality to nationals and habitual residents. They do not require assertion of jurisdiction over visitors who have committed the offences abroad.

The UN Protocol does not address jurisdiction but rather incorporates the UN Convention provisions on jurisdiction. The Protocol states:

Article 1  
Relation with the United Nations Convention against Transnational Organized Crime  
1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.  
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

The United Nations Convention against Transnational Organized Crime provides:

Article 15  
Jurisdiction  
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory;

On extraterritoriality, the UN Convention and Protocol are then different from the two Council of Europe Conventions. The Council of Europe Conventions requires it, using the word “shall.” The UN Convention and Protocol allow it but do not require it, using the word “may.”

There is one other piece in this puzzle, the definition of transplant tourism. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism defines transplant tourism to be travel for transplantation which

involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population.

With this background and a focus on China in mind, the three questions posed earlier should be considered: first, whether the Council of Europe Conventions are
sufficient or a UN Convention is necessary, second whether the existing UN Protocol will do, and thirdly, whether the existing instruments encompass transplant tourism.

The answer to the third question is straightforward. It may well be that not every aspect of transplant tourism is encompassed by the two Council of Europe Conventions and the UN Protocol. Nonetheless, all these instruments encompass travel for transplantation which involves the purchase of an organ sourced from a prisoner of conscience killed for the organ.

The answers to the first two questions present competing considerations. China is a party to the Trafficking in Persons Protocol to the Transnational Organized Crime Convention but with the reservation that it is not bound by paragraph 2 of Article 15 of the Protocol. Paragraph 2 of Article 15 of the Protocol provides:

Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

Just relying on the UN Protocol, rather than the Council of Europe Conventions or a new UN Convention, has both the advantage and disadvantage of working with an existing instrument to which the China is a party, albeit with a reservation. The Government of China has shown no interest in ratifying the second Council of Europe Convention and presumably, while the current abuse continues, would not ratify a new UN Convention similar to the second Council of Europe Convention.

The Government of China, one should not be surprised, does not acknowledge its institutions kill prisoners of conscience for their organs, although there has been some leaked internal debate within the Communist Party, at the time of the deposition of Bo Xilai, whether to admit the abuse and pin the blame on him. The Government of China though does admit that prisoners are sources of organs (Matas 2015). The Government of China claims that all the prisoners sourced for their organs have been sentenced to death. Falun Gong in detention are mostly not convicted of anything or, if convicted at all, are punished for the vague offense of disrupting social order which is not a death penalty offense.

In any case, sourcing of organs from prisoners sentenced to death is a violation of medical ethics. Both The Transplantation Society and the World Medical Association have concluded that the coercive situation in which a person sentenced to death finds himself means that true voluntariness is not possible.

Selling organs of prisoners to transplant tourists, no matter what the sentence of the prisoners or why they are being held in detention, violates international standards, something the Government of China would likely acknowledge (Matas 2015). The response of the Government of China to the abuse characterized this way is that eventually it will cease as China shifts to an organ donation system.
This response is problematic for several reasons. Abuse should not end sometime in the indefinite future. It should end now.

Second, the Government of China response comes without disclosure consistent with international standards of transparency, traceability, and accountability about what is actually happening. The Government of China should make original data available of sources and volumes of transplants rather than, as now, uttering a sequence of mutually inconsistent political pronouncements on the matter.

Third the Government of China asserts that prisoners should be free to donate their organs, including prisoners sentenced to death, and that the Government will in the future include prisoner sourcing among its voluntary donation statistics. These assertions undermine the claim of a shift from prisoners to voluntary donors as sources for organs.

The Government of China, in sum, is so steeped in abuse today and so prone to engage in abuse for the indefinite future that it is unlikely to sign on either to the second Council of Europe Convention or any new UN instrument (Matas et al. 2016). It is moreover probable that the Government of China will contest any interpretation of the current UN Protocol which brings under the jurisdiction of the UN Office on Drugs and Crime the transplant misbehavior of the Chinese Government.

A focus on the UN Protocol has the potential advantage of joining directly with Government of China the issue of transplant abuse in China. It has the disadvantage of stalling progress because the international community gets mired in this debate with China. Alternatively, given the geopolitical weight of China and a desire not to annoy its Government, the international community may make every effort to avoid a confrontation with the Government of China by avoiding the issue.

The run around the delegation got from the UN Office when simply attempting to arrange an appointment to discuss the matter, as well as the initial statement from the Human Trafficking section of the UN Office for Drugs and Crime that their “work does not include” addressing the sale to transplant tourists of organs sourced from prisoners of conscience may not have been influenced by the Government of China either directly or through fears of what that Government might think (Matas 2014). Nonetheless, this sort of behavior is not a good sign.

The UN Protocol only allows extraterritoriality; the Council of Europe Conventions requires it. A national or habitual resident of a signatory to one of the Council of Europe Conventions who has engaged in organ brokerage in China must be prosecuted in the signatory state. A national of a signatory to the UN Protocol who has engaged in organ brokerage in China may be but does not have to be, according to the UN Protocol, prosecuted in the signatory state. The UN Protocol though is not an obstacle to extraterritoriality, even for an assertion of jurisdiction for nonnationals of the signatory state (Matas 2014).

The advantage of a focus on the existing Council of Europe Conventions and the drafting of a new UN Convention is that the Government of China is left on the sidelines. The problem of transplant tourism into China, after all, is not just a problem of insiders, those in China, but also a problem of outsiders, those coming into China (Matas and Kilgour 2009). The problem of outsiders, those travelling to
China for transplants, can be addressed directly without Government of China interference, by a focus on the existing Council of Europe Conventions and the drafting of a new UN Convention.

Addressing transplant abuse in China has to be the number one priority of the global community concerned about the transnational crime of organ trafficking. Nowhere other than China is the state apparatus actively engaged in transplant abuse. Nowhere other in China are the numbers of cases of transplant abuse so large. Nowhere other than China is cover-up so systematic, the rejection of transparency so methodical. Nowhere other than China are prisoners of conscience killed for their organs.

There is not an either/or choice. Several options can be pursued simultaneously. One option is the UN Protocol. Ultimately, UN officials who staff implementation of a treaty take their direction from states parties. It certainly would be simpler and quicker if UN officials came around on their own, without the need to obtain a direction from states parties. Nonetheless, once states parties give this direction, UN officials would have no choice. There could and should be, at the next conference of states parties, if there is no movement from UN officials on this issue by then, a resolution stating unequivocally that the current Protocol applies to the sale to transplant tourists of organs sourced from prisoners.

Conclusion

The course of action suggested, in sum, is this:

1. Continue to request that the United Nations Office of Drugs and Crime include organ transplant tourism within its work on organ trafficking
2. Propose to state parties to the UN Protocol that at the next conference of state parties, they endorse a resolution that organ transplant tourism is included within the terms of the Protocol
3. Urge all states to adhere to the second Council of Europe Convention
4. Advocate the drafting of a UN Convention along the lines of the second Council of Europe Convention

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Child/Forced/Servile Marriages ⇔ Human Trafficking

Suman Kakar

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Abstract

This chapter examines the concept of child/forced marriages in the context of human trafficking for labor and sex. Empirical evidence suggests that most of the marriages that end up as forced marriages and may fall within the definition of human trafficking enterprise often begin as child marriages – where one (or both) of the partners (generally the female) is underage. It examines child/forced/servile marriages to determine whether such marriages fall within the definitions and measures set by the key treaties forming the international legal framework on human trafficking and slavery and whether they measure up to the confines set by the 1926 Slavery Convention and cover the subjection of individuals to force, coercion, control, ownership, and/or exploitation. Next the chapter discusses the dynamics of forced marriages which in essence are imbedded in the social fabric of many cultures. Then the chapter discusses how these cultural, economic, and structural factors facilitate perpetuation of such practices despite local and international laws prohibiting it. The chapter concludes with suggestions for controlling and preventing these practices.

Keywords

Forced marriage · Child marriage · Servitude · Trafficking · Servile · Slavery · Family dynamics · Culture

Introduction

Forced marriage is a lived global reality affecting millions of children and adults in all regions of the world today. For millions of girls and women worldwide, marriage is not a celebration of the union between two consenting adults; rather it is an imposed decision that often results in servitude, exploitation, and denial of basic human rights (Greene 2014). Often marriages consummated under duress operate as a shield behind which slavery or even trafficking occurs with apparent impunity (Turner 2013). Some of the estimates provided by the UNICEF Annual Report (2013) reveal that, globally, almost 400 million women currently aged 20–49 were married or entered into a union when they were under 18 years old. This equates to 41% of the total population of women in this age range. Many of these marriages involved children much younger than 16 years old. Approximately 23 million (or 11%) of young women aged 20–24 years old entered into marriage or a similar union before reaching the age of 15, and some were under 10 years old on marrying. Anti-Slavery International’s analysis of data and literature review on forced marriages maintain that a sizeable proportion of the children, mainly girls, featured in the reports and articles studied tended to be much younger than 18 years old. Many were under 14 years of age when they married. A few were even younger, with examples of girls who were 7 and even 5 years old when they were married or betrothed (National Geographic 2011). According to a report issued by the Fight Slavery Now Organization (2012), “sixty million girls around the world have been forced into marriage before the age of 18, a number that grows by 25,000 child brides every day. 
Tragically, 1 in 7 girls in developing countries is married by age 15 – often to a man twice her age or older.” In some cultures, girls getting married between the ages of 5 and 10 years is the norm such as in the North and South of Ethiopia (Somerset 2000). Although forced marriage is not a new phenomenon and for a very long time forced marriages have been part of almost all cultures, it is only recently that the issue of forced marriages has received more attention. Such marriages are becoming a rapidly growing transnational crime that exploits young women and children for sex and labor (Kakar 2016). It is a social evil threatening the freedom, safety, health, and education of many women and girls. Forced marriages are prevalent in almost all cultures across the globe. According to the United States Department of State (2010), forced marriages are not limited to any one part of the globe. Rather they are “a global phenomenon engendered by cultural and societal norms about the institution of marriage and the roles of spouses.” The report defines forced marriage as the one that is “entered into without full consent and under duress, where the individual has no right to choose a partner or ability to say no.”

The same report demonstrates that in many cultures, parents and families use marriages as means to many ends. They use physical, psychological, or emotional blackmail tactics to force or coerce their daughters to marry older men, and they see these marriages as means of enriching themselves and upgrading their status in their community (Kakar 2016). Evans (2015) argues that contrary to common belief that forced marriage is the “problem with migrants,” or a characteristic of particular religion, or country, the problem of forced marriage is actually a multifaceted and multilayered problem involving law, politics, and international relations. There is empirical evidence suggesting that such marriages are not a thing of the past; rather they persist even today and are as much part of social fabric as in ancient times despite changes in laws and international outcry against such practices (Kakar 2016).

What Is Marriage?

Under international law, several treaties and declarations explicate what marriage should be and clarify the individual right to marry and found a family. These treaties and laws, in general, define marriage as a union entered into with the free and full consent of two intending adults without any force or coercion. These treaties also underscore that such consent must be expressed by the intending adults in person in the presence of the [competent] authority. Thus, in a nutshell, for any marriage to be valid and legal, it has to be entered with free and full consent of the two individuals of age intending to get married and such consent must be witnessed by the competent authority. Some of these laws and treaties are listed below:

The Universal Declaration of Human Rights 1948: Article 16:

1. Men and women of full age […] have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964

Article 1: (1) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person in the presence of the [competent] authority [...] as prescribed by law. [...] 

Article 3: All marriages shall be registered in an appropriate official register by the competent authority.

International Covenant on Civil and Political Rights 1966

Article 23:

3. No marriage shall be legally entered into without the full and free consent of the intending spouses.

International Covenant on Economic Social and Cultural Rights 1966

Article 10 mandates [...] Marriage must be entered into with the free consent of the intending spouses.

Article 16 of International Covenant on Economic Social and Cultural Rights 1966 
mandates States Parties to ensure that the betrothal and the marriage of a child shall have no legal effect.

American Convention on Human Rights 1969

Article 17 mandates “No marriage shall be entered into without the free and full consent of the intending spouses”.

Points to be noted that in all the laws and treaties listed above mandate that a legal and valid marriage must be:

1. Between two consenting adults of full age.
2. Both adults intending to marry must give free and full consent.
3. Their consent must be witnessed by a competent legal authority.
4. All marriages must be registered in an appropriate official register by the competent authority.

Thus, any marriage that falls short of these fundamental elements falls under the confines of slavery, trafficking, and servitude and is deemed forced/servile. However, there are other circumstances under which laws of the land are defunct and child marriages may take place because religious, cultural, and social customs allow such marriages with parental and/or judicial consent. This is discussed below.

Forced Marriage and Child Marriage: Similarities

What Is Child/Early Marriage?

Child marriage can fundamentally be considered a subset of forced marriage, while forced marriage also encompasses adult unions (Anitha and Gill 2009). Under most countries’ laws, a child is an individual under the age of 18 for the purpose of
marriage. However, many countries allow marriages at earlier ages with parental consent. For example, despite the fact that the legal minimum age of marriage is 18 years old in England, Wales, and Northern Ireland, there is provision for marriage with parental consent between the ages of 16 and 18 (also see https://www.girlsnotbrides.org/child-marriage/united-kingdom/). Other countries also have such provisions. In Guatemala, 14 is the legal minimum marriageable age with parental consent, while Yemen has no legal minimum age for marriage. In the United States, child marriage still happens, despite laws prohibiting such marriages and declaring any marriage before the age of 18 illegal. For example, according to the report by Reiss Fraidy (2015) (also see https://www.globalcitizen.org/en/content/child-marriage-brides-india-niger-syria/), between 1995 and 2012 in New Jersey, 3481 children were married mostly with parental consent between the ages of 16 and 17, while 163 marriages were approved by judges for children between ages 13 and 15. Ninety-one percent of these marriages were between a child and an adult.

Article 1 of the UN’s Convention on the Rights of the Child (1989) defines a child as anyone under 18 years of age. In most countries, formal legal age for marriage is 18 years, although practices may vary and deviate from the set formal legal age. The United Nations’ Universal Declaration of Human Rights and several UN treaties and conventions (listed above) mandate consent of both parties as an essential element of marriage and rely on government registration of both marriages and births to prevent forced and/or early marriage (United Nations GA Res 69/156).

The UN’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Article 16(2) requires that all member States and Parties must ensure that “the betrothal and marriage of a child shall have no legal effect” and also requires that “all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

Since minors are deemed incapable of giving informed consent, forced marriage encompasses child and early marriage. The Special Rapporteur on Slavery, Gulnara Shahinian (2010), reported: “... Under international human rights law, a child cannot provide informed consent to a marriage. The marriage of a child is therefore considered forced and falls under the slavery-like practices defined in the Convention against Slavery.”

**What Is “Forced Marriage”?**

The United Nations General Assembly’s United Nations (2009) equates forced marriage to a contemporary form of slavery. The report defines forced marriages as those “in which a spouse is reduced to a commodity over whom any or all the powers of ownership are attached. ... the root causes of servile marriage ... include gender inequality, ideas of family honour, poverty, conflict and cultural and religious practices.” Numerous UN conventions define the conditions under which marriage may be considered “forced.” The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 references, situations in which “A woman, without the right to refuse, is promised or
given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any person or group.”

According to the Trafficking in Persons Report, “marriage induced through force, coercion, or deceit ... Forced marriage is one entered into without full consent and under duress, where the individual has no right to choose a partner or ability to say no” (The United States Department of State 2010). The international definition of trafficking in persons in the United Nations Trafficking Protocol covers trafficking for the purpose of exploiting people in “practices similar to slavery” and offers the following definition of forced marriage.

*Forced marriage* shall mean any institution or practice in which:

(i) A woman [person] or child without the right to refuse is promised or given in marriage on payment of a consideration in money or in kind to her [his] parents, guardian, or family or any other person or group.

(ii) The husband of a woman, his family, or his clan has the right to transfer her to another person for value received or otherwise.

(iii) A woman on the death of her husband is liable to be inherited by another person.

**Circumstances Under Which Marriage Can Be Classified as Forced Marriage: Servitude, Slavery, and/or Trafficking**

When marriage turns into domestic servitude and/or sexual slavery, it can be classified as forced, servile, slavery, or trafficking. A report by the 2005 Council of Europe and Forced Marriage in Council of Europe Member States uses a broader definition according to which forced marriage constitutes an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency of perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality, and undesirable marriage – in all of which the concept of consent to marriage is at issue.

The United States Department of State (2010) purports that child/forced marriages render females vulnerable to abuse and exploitation by their spouses or others, who exercise significantly greater power and control. Such marriages trap the victim in conditions of enslavement, particularly in domestic or sexual servitude (The United States Department of State 2010). The victims of early/forced marriage have no choice but to perform the tasks expected of them, such as domestic chores and shop or farm work, and engage in sexual intercourse with their husbands or whoever they are ordered to. If they refuse to do so, or if their performance is unsatisfactory, they face physical, psychological, and sexual abuse (Gulnara Shahinian 2010). Given the subtleties of child/forced marriages, they can irrefutably be classified as cruel and harmful as traditional forms of slavery and modern forms of human trafficking.
Marriages as Means to Control the Marginalized Classes of the Society

Social customs, culture, and assigned status to different classes play a significant and incontrovertible role in establishing and managing social as well as interpersonal relations. Marriage, being the cornerstone of human interpersonal relations, is regulated and controlled by the members of the class that has the socially assigned higher status (Kakar 2016). In cases of marriage — powerful and rich males are the members that belong to the class that has been assigned power, authority, and responsibility to dominate and manipulate most of the activities of the members of the marginalized classes, specifically females, from birth to death including who they will marry, when they will marry, and for what purpose the marriage will take place (Kakar 2017).

Kidnapping or Abduction

When one or both of the individuals getting married are kidnapped or abducted and marriage is performed, then it can be classified as a forced marriage. In the times of conflict and situations where girls are kidnapped or abducted in peacetime or conflict for the purpose of using them as wives obviously fall within the category of trafficking for sex and labor as these girls are forced to provide sex, do all the housework, bear children, and take care of men. The marriage of girls in conflict times, wartimes, and natural disasters has been documented in many countries including Haiti, India, Pakistan, Afghanistan, Somalia, Northern Uganda, Algeria, Chad, Sudan, Lebanon, and Palestine. In some cases, families themselves hand over young daughters to warlords and militia members for marriage during conflict in the hope of securing greater protection for the family and possibly protect the girls themselves from rape or other forms of sexual exploitation and brutality (Turner 2013).

Marriages Without Clear and Full Consent of One or Both Individuals Getting Married

A marriage that is characterized by coercion, where individuals are forced to marry against their will, under duress and/or without full, free, and informed consent from both parties falls under the category of trafficking and can be classified as such. Marriage at any age, where the notion of consent is nonexistent and the views of bride or groom are ignored, is tantamount to slavery, servitude, and trafficking venture. As discussed above, the 1926 Slavery Convention, Article 1 (1) demonstrates how marriage may and can amount to slavery. It defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”
Marriage Where One or Both of the Individuals Getting Married Is/Are Minor(s)

When one or both of the individuals getting married are underage and considered minors, then it can be classified as a forced marriage. The Universal Declaration of Human Rights states that individuals must enter marriage freely with full consent and must be of full age. In 1979, the Convention on the Elimination of All Forms of Discrimination Against Women stated that child marriage is illegal. In 1989, the Convention on the Rights of the Child defined children as persons under the age of 18 years. Many countries passed laws changing the legal age of marriage to 18 years. Any marriage where one or both of the individuals getting married are minors can easily turn into servile marriage and/or human trafficking. Children forced into marriage have a high probability of being trafficked for sex and/or labor by and for the financial gain of his or her spouse.

Deception/Fraud

If one or both of the individuals getting married are tricked into getting married, then it is a forced marriage. Such marriages that are performed under fraudulent auspices have higher probability of becoming a form of human trafficking. According to Weissbrodt (2002), a marriage where an individual is duped into a relationship that he/she has had no informed consent, is under full control of another, has no freedom of movement, has no control over his/her personal belongings, and has no freedom to agree or disagree to any of the activities he/she engages in and any refusal is accompanied by the threat of violence or actual violence is tantamount to slavery and/or trafficking as the individual is “enslaved” through the physical, psychological, and/or economic powers of “ownership” and control exercised over her/him.

Economic Incentives

When motive behind the marriage is economic, i.e., parents or guardians of the girl agree to marry their daughter off to a man without her consent and receive some sort of money, other gifts in kind, or other incentives in exchange, then it is a forced marriage and falls within the confines of slavery and human trafficking. The girl is equated to a commodity and exchanged for money, land, or some other form for status enhancement of the parents or guardians. In such an arrangement a young woman might be given in exchange for money or other payments, she could be sold to someone else and might be inherited by another person if her husband or the husband’s family so desires. In some cases, young girls and women are forced to marry wealthy older men to become sexual and domestic slaves as the men are able to pay a greater amount of money to the parents or guardians in exchange.

In some cultures, parents and families of the girls use marriage as a means of enriching themselves or relieving themselves of financial burden. The 2010 TIP
Report observed “in many countries, forced or coerced marriages are used by parents and families for many reasons such as to settle debt, receive dowry payments, further economic interests, relieve poverty, obtain residency permits, display status, provide inheritance, counteract promiscuity, and serve as compensation for a wrongful death” (The United States Department of State 2010).

Such marriages are carried out like business transactions – where rich older wealthy men seek to buy a younger wife and where young women and girls are treated as merchandise. Young beautiful girls and virgins fetch higher prices and are often used for sex work, prostitution, dancing nude in clubs and bars, entertaining clients, and/or sex slavery, while older women are used for domestic servitude and/or other types of labor. Such marriages are gross violations of the rights of girls and women and expose them to multiple risks, including sexual abuse and exploitation (Kakar 2016, 2017).

**Marriage as a Means of Enriching and Consolidating Power**

When marriage is used as a means of consolidating power and the individuals getting married do not have any power to refuse or end marriage, then it falls under the confines of slavery and trafficking. According to the United Nations Population Fund (2012), some of the factors that promote servile/forced marriages are poverty and economic survival strategies, sealing land or property deals or settling disputes, control over sexuality and protecting family honor, tradition and culture, and insecurity, particularly during war, famine, or epidemic. Such social conditions coupled with the accepted marginalized social status of women and girls facilitate acceptance of forced/servile marriages (Kakar 2016).

Such marriages serve as means of enriching and consolidating powers of the guardians/parents without any implicit or explicit consent of one or both individuals who are getting married. From the times memorial, marriages have been used as means to strengthen familial bonds. It has been more a matter of money, power, and survival than of delicate sentiments such as love, consent, or free will. Forced marriages have been very intimately embedded in the social and cultural fabric of the society. In ancient times early marriage was a norm to secure a safe environment in which to breed, handle the granting of property rights, and protect bloodlines. The ancient Hebrew law required a man to marry his brother’s widow in case of the brother’s death. Similar practices are common in India as well. In the ancient world, marriage served primarily as a means of preserving power, with kings and other members of the ruling class marrying off daughters to forge alliances, acquiring land, and producing legitimate heirs, and women had little say over whom or when they married.

**Extent and Prevalence of Forced Marriages: How Many?**

The covert nature of forced marriages and the fact that forced and underage marriages are prohibited in almost all parts of the globe contribute to the scanty records on such marriages. If one goes by official marriage statistics and records, forced
marriages are virtually nonexistent. Any data that exists is either anecdotal or based on the handful of extreme cases that get reported to the authorities. As such there is a paucity of reliable data to estimate how many marriages end up as forced marriages. Since no systematic data are collected or maintained on forced marriages, it is difficult to document the true prevalence of forced marriages for several reasons (Kakar 2016).

Another reason for not having the real solid statistics on forced marriage is the fact that in most communities and cultures around the globe, marriage is regarded a private, communal, and familial event solemnized by religious, cultural, and communal customs. Religious and community leaders who hold the highest status in the society are often delegated with the responsibility of controlling, managing, and documenting marriages. They are entrusted with the task of ensuring compliance with the social and cultural norms. In many cultures, even today, official registration of a marriage is not deemed necessary. As a result, many of the marriages are unregistered and unofficial. Marriages that are servile, forced, or underage are nonexistent in official records and registry as these are not recorded or registered for very obvious reasons (Kakar 2016).

However, recently some agencies have started collecting data that provide some estimation. For example, in 2015 the Home Office and Foreign and Commonwealth Office of the United Kingdom (UK) established a Forced Marriage Unit (FMU). According to the FMU, in 2016 the FMU gave advice or support related to a possible forced marriage in 1428 cases via its public helpline and email inbox. This represented an increase of 14% (208 cases) from 2015. Out of these 371 cases (26%) involved victims below 18 years of age; and 497 cases (34%) involved victims aged 18–25. In 2016, the majority of cases 1145 (80%) involved women victims, while 283 cases (20%) involved male victims (the Home Office and Foreign and Commonwealth Office of the United Kingdom, Forced Marriage Unit 2016). Granted these estimates are based on the cases where victims/survivors sought assistance and these estimates may be and perhaps are far below the actual number of cases that exist, nevertheless, these can provide some estimation on its prevalence.

According to a report published by The Home Office and Foreign and Commonwealth Office of the United Kingdom, Forced Marriage Unit (2017), in developing countries in South America, North Africa, and parts of Asia, one in three of all under 18-year-olds, and one in seven of all girls under the age of 15 are married. According to the same report, the rates of early and forced marriage are also high in Europe, with the highest percentages in Central and Eastern Europe where 2.2 million girls have married before their 18th birthday. The highest rates are in Georgia (17%) and Turkey (14%). At least 10% of the adolescents marry before the age of 18 in Britain and France. These statistics indicate that forced marriage of underage children is a serious problem existing in all parts of the globe. According to the Forced Marriage Unit, Home Office and Foreign and Commonwealth Office, in 2017, their office received more than 1196 calls from girls who reported being at risk of being forced into marriage (The Home Office and Foreign and Commonwealth Office of the United Kingdom, Forced Marriage Unit 2017).
The United Nations Population Fund Report (March 2013) predicted that if no action is taken to curb forced marriages and current levels continue, approximately 14.2 million girls annually or 39,000 daily will marry too young and majority of these will be under the age of 15 and forced into sexual and domestic servitude. The United Nations International Children’s Emergency Fund (2018) reported that by 2017, there were 21% of all women in the world who were married before the age of 18.

According to the United Nations Human Rights, the Office of High Commissioner for Human Rights (2012), each year about ten million girls are married before the age of 18, and many of these brides are as young as 8 years old, and they are being married off to men who may be three or four times their age. According to the United Nations Population Fund (UNFPA Annual Report 2015) in developing countries, one in every three girls is married before reaching the age of 18. One in nine is married under the age of 15. The UNFPA Annual Report (2013) reported that according to their estimates, every year over 14 million girls marry while under the age of 18 – that’s around one girl every 2 s – and the number is growing. Fight Slavery Now Organization (2012) reported, “sixty million girls around the world have been forced into marriage before the age of 18, a number that grows by 25,000 child brides every day. Tragically, 1 in 7 girls in developing countries is married by age 15 – often to a man twice her age or older.”

**Forced Marriage and Human Trafficking**

A report produced by the United States Department of State (2014) contends that marriage turns into trafficking enterprise when force, fraud, coercion, or abuse of power are used as means to manipulate wives and subject them to slavery-like conditions such as domestic or sexual servitude. The United Nations Office on Drugs and Crime (UNODC) Model Law and the United Nations’ Supplementary Convention on the Abolition of Slavery 1956 define forced marriage as “a practice similar to slavery.” The Supplementary Convention on the Abolition of Slavery 1956 states “practices similar to slavery” include:

> the status or condition of a person over whom control is exercised to the extent that the person is “treated like property”. Another definition of slavery, which focuses on the core of the crime – that is, the objectification of human beings – is “reducing a person to a status or condition in which any or all of the powers attaching to the right of property are exercised.”

According to the **UNODC Model Law against Trafficking in Persons**, practices similar to slavery are defined as follows:

> Practices similar to slavery shall mean the economic exploitation of another person on the basis of an actual relationship of dependency or coercion, in combination with a serious and far-reaching deprivation of fundamental civil rights, and shall include debt bondage, serfdom, forced or servile marriages and the exploitation of children and adolescents.
Dynamics of Forced Marriages

Forced marriages represent a multilayered issue penetrating all aspects of the society. The irony is that the forced marriages perpetuate even when they are indisputably condemned worldwide and no State in the world that adheres to the tenets of democracy and human rights condones such practices. Despite such strong disdain for the forced marriages, they happen all over the world every day as discussed earlier in the chapter. The following discussion provides an overview of the dynamics and what social and cultural variables facilitate perpetuation of such practices.

Forced Marriages and Marginalized Social Status of Females

In almost all societies, marriage is treated as a familial and social event. In most cultures, it is considered a matter governed by religion and culture. Around the globe, in many cultures, marrying young women and girls off to a rich person in consideration for money or other forms of payment is acceptable or at least tacitly permissible. Females are portrayed as commodities that can be sold to the highest bidder to serve a myriad of purposes. Additionally, in many cultures, women and girls are perceived to be burden and liability, and marrying them off at an early age when they are still virgins not only relieves the parents of providing for their daughters but also helps them in enhancing their social and financial status by association with richer families.

The United States Department of State (2010) testifies “marriage induced through force, coercion, or deceit is a global phenomenon engendered by cultural and societal norms about the institution of marriage and the roles of spouses."

The Human Rights Council’s report on forced marriage (2012) stated, “...from an early age, girls are brought up and viewed as commodities to be used to solidify family links and preserve honor, in addition to financial assets that can improve the family’s economic status.” The advances in technology and Internet have irrefutably assisted human trafficking organizations in enabling them to effectively converging marriages and sexual and labor servitude (Sico 2013).

Family Honor and Pride

In many cultures, getting daughters married off before the age of puberty is a matter of pride and honor while having unmarried grown-up adult daughters (past 18 years) who stay at home is a sign of social stigma. Thapa (1996) reports that in many cases, parents and/or guardians of young girls are concerned that girls, once past puberty, may also be more vulnerable to rape and other sexual exploitations by strangers as well as neighbors, family members, and others. Such an incident will not only be traumatic to the girl but will lead to rejection of the girl in marriage to anybody else due to the cultural stigma attached to rape. Thus, parents and/or guardians feel
socially and morally obligated to arrange and have their young daughters married off before they become victims of rape or sexual exploitation.

**Customs, Religious Beliefs, and Servile and Forced Marriages**

Cultural, social, economic, and legal elements play a critical role in perpetuating forced marriages and transforming these marriages into an industry that merges sex and labor trafficking across the globe (Rachelle 2013). In forced marriages women and girls are essentially sold as commodities in transactions that are legitimized through the recognition of the legal binding of marriage. Some literature suggests that despite the risks involved, many victims themselves seek assistance of the marriage brokers and participate in the process and transactions.

According to a Joint Release Committee by the United Nations Population Fund Report, UNICEF Annual Report (2013), in marriages, social and cultural traditions override any logic. Traditions, rituals, and norms embedded in religion and faith are used as guiding principles. Social pressures within a community generally guide the activities of the members. In some cultures, having young children married is the most desirable accomplishment and a matter of pride.

**High Premium on Virginity**

In many cultures, a high premium is placed on virginity and considered the prime requirement for marriage. Girls who are not virgins are treated as used goods and have a difficult time finding someone to marry. The only option left for parents is to either shun them from the society, sell them into marriage to the highest bidder, or worse, kill them, as having a daughter who has lost her virginity before marriage is a liability and a great disgrace and dishonor for the whole family (Raj 2010).

Poverty and economic survival strategies, status enhancement, sealing property deals or settling disputes, control over sexuality and protecting family honor, tradition and culture, and insecurity, particularly during war, famine, or epidemic, are some of the most significant factors that perpetuate forced marriages despite almost every nation’s laws prohibiting it. Such social conditions coupled with the accepted marginalized social status of women and girls facilitate normalization of forced marriages.

Cultural beliefs, among many communities, such as “girls become impulsive and develop desires to engage in intimate relationships with the opposite sex once they reach puberty. They may engage in sex before marriage and lose their virginity” creates further apprehensions among the respective communities, parents, and guardians as such an act on behalf of the young girls will tarnish the family reputation and cause a permanent social blemish onto their parents’ and siblings’ reputation diminishing impoverished families’ ability further to find bachelors for grown-up daughters in their economic social group. Such fears and social pressures are some of the significant variables that allow and perpetuate forced or child
marriages. One of the underlying rationales behind a family’s arrangement of a child marriage is preservation of the girl’s virginity and, by extension, the family’s honor (see http://www.errc.org/roma-rights-journal/child-marriage-a-cultural-problem-educational-access-a-race-issue-deconstructing-uni-dimensional-understanding-of-romani-oppression). Thus, family members, especially the male members, take it upon themselves to preserve family reputation. They believe that it is their responsibility to keep their sisters or daughters insulated from rapes, unwanted sexual advances, unwanted pregnancies, or other related problems and have them married off to older and richer men.

According to Laiou (1993) and Kraemer (1993), in ancient societies it was customary for girls to be betrothed at or before puberty. Friedman (1980) reported that the optimal age for girls to marry was often considered age on or before the age of puberty. Demand (1994) stated that in ancient Israel, the father of a young girl felt that “arranging and contracting the marriage of his daughters were his undisputed prerogatives,” and there was not to be any question as to his authority to have the marriage arranged without the permission or even knowledge of his daughter.

Customs, religious beliefs, social acceptance and approval of forced marriages, poverty, and marginalized status of the females are some of the most significant reasons why such practices persist despite universal condemnation of such marriages.

Forced Marriages in the Context of Human Rights Violation

Forced marriages constitute gross violations of human rights. Such marriages subject spouses not only to inhumane conditions but also strip them of their identity, self-esteem, and individuality. Spouses, generally wives, are treated and traded as commodities. Children by virtue of being children are “incapable of consent or of exercising the right of refusal” (Huda 2007: 9). Thus, any marriage of a child by default is a forced marriage and constitutes a violation of human rights (“What We Can Do to Help,” Forced Marriage Unit 2009). The United Nations Convention on the Rights of the Child and the United Nations’ Universal Declaration of Human Rights condemn forced marriage generally and child marriage specifically. Forced marriages deprive the victims of their identity and individuality and mar any and all potential. Such marriages degrade human beings to objects.

Article 16(2) of the UN’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires that all member States and Parties ensure that “the betrothal and marriage of a child shall have no legal effect” and also requires that “all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

Child marriages fall within the definition of servile/forced marriage “since children are, by definition, incapable of consent or of exercising the right of refusal” (Huda 2007: 9). Child marriage is a violation of children’s rights under the United

Despite the fact that international law prohibits forced and servile marriage as it classifies such a marriage as a form of slavery and a human rights violation (Meyersfeld 2011), forced and servile marriages take place in almost all parts of the world.

Conclusion

In a Thematic report on servile marriage, Gulnara Shahinian (2010) states that in forced marriages, a spouse is reduced to a commodity over whom any or all the powers of ownership are attached. These marriages cause irreparable damage to the victims and the society in general. These detrimental effects are felt in all aspects of social, emotional, psychological, and economic lives. A forced marriage is similar to the various forms of exploitative behaviors and slave-like practices as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It is incumbent on all members of the globe to understand the effects of forced/servile marriages and endeavor to prevent such marriages and support victims.

According to the same Special Report (Gulnara Shahinian 2010), victims of forced/servile marriage are often unable to escape because their families and/or the societies in which they live entrap them shunning them as an anathema. They are denounced because they are damaged goods and supporting them will be against communities’ traditional, cultural, and religious beliefs – the same beliefs and practices that are used to justify servile marriage. Thus, it is incumbent upon the States to take action and make amends to the victims for the wrongs done to them. “Under the Supplementary Slavery Convention, States parties are to bring about the complete abolition or abandonment of slavery-like institutions and practices, such as servile marriage. It does not provide for any exceptions in which slavery may continue to exist. Evolving international law has confirmed that slavery is a crime against humanity and, as such, no culture, tradition or religious practice can be used to justify servile marriage” (Gulnara Shahinian 2010).

The desperation to escape poverty and political pressures greatly increases the likelihood that parents/guardians as well as women and girls would risk leaving home, family, and friends to marry strangers and be entrapped in servile marriages. Traffickers use the guise of a respectable and legally binding marriage to legitimize sex and human and labor trafficking. Servile/forced marriages provide a legitimate front for entrapment of unsuspecting girls into exploitation and ultimately sex and labor servitude. Under the guise of marriage, traffickers are able to defraud victims and the authorities in States of origin and destination as well. Majority of the countries in the globe allow visas and lawful entries for spouses and fiancés. The fact that the process is a form of prostitution, human trafficking and sexual exploitation is disguised as marriage and/or promise of marriage dupes unsuspecting
nations into providing visas. Such a façade also tricks families who are too eager and too desperate to marry their daughters off to the prospective rich husbands.

The Human Rights Council needs to develop a more comprehensive approach to the issue of forced marriage, and all States of the globe need to enact legislation to prevent forced marriage, provide support to victims, and launch campaigns to raise awareness of forced marriage and its negative impact.

In order to fully fathom the repercussions of forced marriages and address the problems related with them, States need to recognize forced/servile marriages in terms of slavery-like practices, trafficking, and human rights violations. Such an understanding provides a clear and concise grasp of the violations that victims endure, and the kind of interventions are required to prevent, monitor, and prosecute forced marriages. All States need to develop victim protection programs and adjust accordingly to support victims of servile/forced marriages. If servile/forced marriages are understood in the context of trafficking, slavery, and human rights violations, then the efforts, programs, and strategies should be focused on not only protecting the rights of women and girls but also obliterating slavery and trafficking.

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Gang Sex Trafficking in the United States

Kristina Lugo

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Abstract

Gangs in the United States have long funded their activities from, and participated in, domestic and international sex trafficking. Whether Caucasian

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Motorcycle, African American, Asian, African immigrant, Native American, Hispanic, Eastern European, or other types of gangs, these groups have realized the potential in exploiting vulnerable individuals as a high-profit, low-risk enterprise. This chapter examines different types of sex trafficking networks in the United States by using federal case indictment documents as a starting point and then comparing these US gangs to what is known about gang and organized sex trafficking in several other regions of the world. The analysis seeks to understand the business operational processes used by these networks to recruit victims and maximize profits. Importantly, gang sex trafficking and gang-run prostitution operations often overlap, making it difficult to separate network members into distinct groups. Both types of activity are often intimately intertwined and must be understood as such. Gang networks do tend to differ from each other in terms of business practices along ethnic and cultural lines, which have implications for law enforcement tactics which must be adapted by network type to be effective.

**Keywords**

Sex trafficking · Human trafficking · Gangs · Organized crime · Criminal networks

### Gang Sex Trafficking: Definition

A “gang” is an enduring group with three or more members who share an identity, view themselves and are recognized as a gang, has organization, and is involved in criminal activity (Fox 2013). Sex trafficking (Trafficking Victims Protection Act of 2000 (TVPA, 8 U.S.C. § 1101) (Congress 2000) is: “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act in which [said] act is induced by force, fraud, or coercion, or in which the person forced to perform... is [under] age 18.” The United Nations (UNODC 2004) also employs the AMP (Act-Means-Purpose) model in its definition of human trafficking under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 (also known as the Palermo Protocol), which was developed around the same time as the TVPA. The Palermo Protocol specifies further what is included in the means of force, fraud, and coercion: deception, abduction, “abuse of power or a position of vulnerability, or giving payments or benefits” (UNODC 2014). These terms can be contentious between countries that view their meanings differently (Tyldum 2010). Likewise, state human trafficking statutes in the United States do not necessarily line up with the federal definition of human trafficking, and while their recent enactment and use is lauded and encouraged, challenges still exist in understanding and applying the new laws (Farrell et al. 2014). Transportation to another location may or may not be part of the equation in a trafficking situation (USDOS 2015), although movement is stipulated in the Palermo Protocol and by many scholars in their trafficking research (Tyldum 2010).
Introduction

Gangs in the United States have long funded their activities from, and participated in, domestic and international sex trafficking. Whether Caucasian Motorcycle, African American, Asian, African immigrant, Native American, Hispanic, Eastern European, or other types of gangs, these groups have realized the potential in exploiting vulnerable individuals as a high-profit, low-risk enterprise. This chapter examines different types of sex trafficking networks in the United States by using federal case indictment documents as a starting point and then comparing these US gangs to what is known about gang sex trafficking in several other regions.

At the outset, it is important to be clear that gang sex trafficking enterprises and gang-run prostitution rings involving sex workers who are not trafficked often overlap, making it difficult to separate network members into distinct groups engaging in only one activity or the other (Morselli and Savoie-Gargiso 2014). A prostitution ring may involve some workers who are trafficked and some who are not, but the gang-run enterprise shares members and resources regardless of the proportion that trafficking victims that make up of the total number of prostitution providers in that ring. Both types of activity are often intimately intertwined and must be understood as such, often sharing resources, members, and criminal business practices. The main difference is at the sex worker level and is made based on whether one sex worker is kept in line via force, fraud, and/or coercion and whether another is there by choice, or at least not by the coercion of another. Otherwise, these two types of business operations are usually entangled in the same rings. Perpetrators also understand and treat trafficking as a business (Shelley 2007, 2010), and it is discussed in those terms here.

Method

This chapter uses a review of the literature on gang sex trafficking in the United States and in several regions of the world, supplemented by a comparison of indictments from 20 US gang network cases from 1981 to 2017. These gang cases were compared based on type of gang or trafficking, size, location, complexity, and summaries of case facts in terms of business practices, means of control used, and criminal charges prosecuted.

Some of the US cases utilized racketeering charges, while others used conspiracy statutes to be able to prosecute these gang networks as groups rather than prosecuting each individual separately. The 2008 renewal of the TVPA (see content in section “Gang Sex Trafficking: Definition”) added conspiracy and “reckless disregard” provisions to the previous incarnation of the TVPA that formerly required perpetrators to “knowingly use” force or coercion (Smith 2010). This allowed Federal prosecutions to include those who “knowingly benefit from trafficking crimes,” and some Federal statutes were amended to include obstruction of trafficking investigations as prosecutable offenses (Smith 2010). This allows for prosecution and culpability of individuals who may be facilitators of activity, even if they do not participate in human trafficking themselves, and is
helpful in proving gang and other network cases. Earlier, in the 2003 renewal of the TVPA, human trafficking had been added as a predicate offense (A predicate offense in a RICO case is a criminal violation that can be used to substantiate the existence of a criminal enterprise.) to the federal Racketeer Influenced and Corrupt Organizations (RICO) Act, which was originally enacted as part of the Organized Crime Control Act of 1970 (Federal RICO has been amended numerous times to reflect court decisions and known realities in applicable organizations and criminal activities. The current federal RICO statute can be found in Title 18, Chapter 96, of the US Code.) Seven of the case indictments examined here (five RICO, two conspiracy) also involved asset forfeiture of criminal proceeds, or of assets used to further the business such as cars, funds, electronics, and in one case even a hotel. All cases were gang enterprise prosecutions. The complete list of cases compared is in Table 1.

After an examination of American gang sex trafficking types via the literature and analysis of these indictments, the American types are placed in global context using previous literature detailing the dynamics of gang and organized sex trafficking in

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<td>Nortenos Gang in ST: three related cases, all USA v. Espudos et al.</td>
<td>2011</td>
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<td>San Diego, CA, AZ, TX</td>
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<td>USA v. Montes et al.</td>
<td>2017</td>
<td>Houston, TX</td>
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Table 1 List of comparison indictments
the Balkans, Post-Soviet Russia, Central America, Eastern Europe, Southeastern Europe, Sub-Saharan Africa, Nigeria/West Africa, Libya, the Islamic State, China, and Turkey.

Background

US Sex Trafficking Types

Gangs engaging in sex trafficking in the United States may engage in domestic sex trafficking, international sex trafficking, or both. They tend to organize primarily, though not exclusively, along racial or ethnic lines. Major US trafficking types outside of those associated with gangs include highly organized Asian massage parlor networks with strong ties to their origin countries; brothels, many of which are run by closed Hispanic networks (some of which may be gang-affiliated); Russian and Eastern European topless bar networks; and small groups and individuals of all races and ethnicities engaged in trafficking either via internet, escort services, or on the street (Dank et al. 2014).

Gang Sex Trafficking Patterns in the United States

In the eight cities included in Dank et al.’s (2014) examination of the underground commercial sex economy in the United States – San Diego, Miami, Dallas, Washington DC, Kansas City, Denver, Seattle, and Atlanta – six were found to have gang (For the purposes of this study, the term “gang” is defined as “a group which has three or more members, generally aged 12–24, who share an identity, typically linked to a name and often other symbols, view themselves as a gang and are recognized by others as a gang, the group has some permanence and degree of organization, and the group is involved in an elevated level of criminal activity” (Fox 2013). This is consistent with the definition used by the National Gang Intelligence Center, which is the Federal Bureau of Investigation-coordinated clearing house for gang intelligence between Federal, state, and local law enforcement in the United States.) involvement in trafficking, and three reported the activity being dominated by gangs, including inter-gang cooperation (Dank et al. 2014). Further in Dank et al.’s study, law enforcement from three cities reported significant hierarchical structures indicative of organized crime involvement. Five sites reported that offenders frequently communicate with one another. Three reported sophisticated money laundering operations. Four reported that many sex traffickers were former drug traffickers, and four reported sex traffickers concurrently dealing drugs. Three sites have significant Asian involvement in trafficking, two reported significant Eastern European involvement, and five have significant Latino involvement (Dank et al. 2014).

While gangs are typically thought of as having territories and engaging in turf wars, particularly in popular conceptions about street corner drug markets (Papachristos et al. 2011), it was discovered by Dank et al. that rival gang cliques,
or locally affiliated gang subgroups, have begun cooperating with each other when it comes to prostitution. Indeed, previous literature on gang homicide describes ally relationships among gangs that change over time as often as rivalries do (Braga et al. 2013; Decker and Curry 2002; Nakamura et al. 2011). While a number of rules certainly apply, Dank et al. (2014) found that gangs have realized they can make more money working together and pooling resources than they can working apart. The use of the Internet to facilitate business also means the commercial sex market is now less based on geographic turf (Korsell et al. 2011; Rocha et al. 2010), so there is no longer the need to keep others “off your corner.”

Pimps (Notes on terminology of “the life”: the word “pimp” is a loaded term with many cultural meanings beyond simply denoting one who manages and profits from the prostitution of another. However, like Dank et al. (2014), this chapter uses the word “pimp” because it was commonly found in all the primary data sources. It was also used by the network participants to describe themselves in police interviews (Lugo 2016), although victims just as commonly referred to pimps as their boyfriends. “Bottoms,” or “bottom bitches,” are female members of the network who typically fill the role of a “lead prostitute” in charge of recruitment, training new recruits, enforcing quotas for how much money each prostitute was to bring in daily, and enforcing the “rules of the game.” Bottoms were often also given the task of carrying out violence on behalf of the pimp so that he could mitigate risk and keep being seen as a good guy. A bottom typically started as a regular prostitute that later moved up in rank. This position usually results in some perks and some relief from being the recipient of violence herself. Legally, she falls into a gray area because she becomes both victim and offender (Dank et al. 2014; Petrunov 2011; Lugo 2016).)

and sex workers (In instances where both voluntary sex workers and sex trafficking victims may be involved, the term “sex worker” will be used in this text for simplicity.) cite many of the same reasons for becoming involved in commercial sex. These include neighborhood influence, family exposure to sex work, lack of job options, or encouragement from a significant other or acquaintance. Individuals who are struggling to meet basic daily needs like shelter and food are obvious targets for traffickers, especially minors who may have run away from home or been kicked out. Other vulnerabilities include mental illness; learning disabilities; loss of a caregiver or family support; history of physical, sexual, or other abuse; recent discharge from a juvenile or drug treatment facility; living in foster care or in an area with concentrated disadvantage; or having family members already in “the life” (Carpenter and Gates 2016; Clawson et al. 2009; Dank et al. 2014; Estes and Weiner 2001; Polaris 2015). Youth are considered easier targets, with the average age of entry estimated to be between 14.5 and 19 depending on the study – not 12 as cited in many advocacy campaigns (Carpenter and Gates 2016; Marcus et al. 2014; Raphael and Myers-Powell 2010).

While the majority of sex trafficking and consensual pimping (The use of the word “consensual” here refers to a pimp-sex worker relationship between adults with no force, fraud, or coercion involved – see section on the legal definition of human trafficking above.) in the United States is committed by individuals or small groups of two to three individuals, domestic gang sex trafficking networks represent a type
of trafficking seen in cities and suburban communities and on travel circuits throughout the United States (Clawson et al. 2009; Dank et al. 2014). The proceeding section on the dynamics of American gangs will begin by discussing sex trafficking patterns in African American gangs and then compare the similarities and differences in other types of gangs to this reference point.

Dynamics of Gang-Controlled Sex Trafficking

Recruitment
Recruitment of victims by US gangs of domestic origin occurs in several ways. Sex trafficking victims in domestic networks can include female gang members sometimes initiated via a “sex-in,” where a recruit is forced to have sex with many gang members in rapid succession to cement her membership and to desensitize her to the activity. Those already in “the stable,” or already working for a particular pimp, may be made to recruit others. In rare cases, victims may be kidnapped. Gang-associated girlfriends of members, family, friends, and acquaintances are the most likely targets for “love-bombing,” or the Romeo method (Fox 2013).

The “love-bombing” method may begin with wooing, building trust, then asking her to have sex with another gang member “just this once” for money, then discouraging her from having sex for free, and eventually having her engaging in sex work regularly as “proof of love” for the pimp – even for victims that still live at home and attend school (Fox 2013; Dank et al. 2014).

Later, once she has been initially “wooed” in, the elements of force, fraud, or coercion may be introduced to control the victim and ensure she brings in a profit. The “girls in the stable” are the most likely to be confined to hotel rooms and subjected to severe violence, though violence is possible with all these groups (Fox 2013). Recruitment of pimps by prostitutes is less commonly reported (Dank et al. 2014) and is mostly mentioned by pimps themselves (Marcus et al. 2014). Victims trafficked internationally and by gangs of immigrant backgrounds are often promised employment in restaurants or other venues in the United States and then duped into a sex trafficking situation to repay smuggling debts after arrival, and in some cases the grooming begins in their home countries before they are brought to the United States (US v. Montes et al., 2017). Controllers may continue to alternate “love-bombing” with threats to victims’ safety and/or their families and other coercive control techniques so that the victim is manipulated into chasing the “love” experiences that eventually become fewer and farther between.

Pimp Control

Although research on traffickers and facilitators themselves is still in its infancy, it is safe to say that trafficker profiles globally and in the United States are not monolithic; they vary widely by place, culture, and victim profile (Dank et al. 2014; Marcus et al. 2014; Shelley 2010; Weitzer 2014). Within the United States, gang
trafficker profiles vary even between type and ethnicity of gang; pimps and traffickers belonging to Latino gangs operate differently than pimps and facilitators in African American gangs, for example (Carpenter and Gates 2016; Lugo 2016). The following discussion of pimp control dynamics and operations applies mostly to African American gangs and differs along some dimensions from other types of gangs, unaffiliated pimps, and pimps that function more as hired managers for voluntary sex workers that do not engage in trafficking per se (Carpenter and Gates 2016; see also Weitzer 2010, 2013, 2014; Marcus et al. 2014 for more about the importance of this distinction).

First, gang-associated pimps openly discuss with each other means of control to maintain power over victims, and they train new pimps on the same. As described above in the recruitment section, the first step is breaking down a victim’s psyche and resistance through a variety of techniques (Polaris 2015). Psychological manipulation is a primary means of control, and the complex relationships that develop are often a significant obstacle to victims leaving. This is especially true if the victim has had children with the pimp; threats to their children can be used to keep a victim “in pocket” and working (Polaris 2015).

Other means of control include economic abuse, which can include collecting most or all of the proceeds and only giving the victim an allowance for food, clothing, hair, nails, and a motel room in which to work (if applicable; Polaris 2015). Specifics about these expenses covered vary by trafficking venue for other types of gangs, but generally the resources victims are permitted to keep are restricted as a means of control. For example, a victim in a massage parlor may be provided housing in the facility rather than renting a hotel room, but she will still not be allowed to keep much of the money she earns or to move unsupervised outside of the massage parlor.

Economic abuse may also involve establishing quotas that victims must meet each day; these can range from $500 to 1500 or more (Polaris 2015; Dank et al. 2014). Victims, bottoms, and pimps in domestic gangs may add “john rips,” or client robberies, to increase revenue or meet a quota if the night has not been good (Dank et al. 2014; Lugo 2016). Risky assets, such as apartment or car leases or prepaid debit cards used in financial transactions and to keep cash out of bank accounts, may be placed in victims’ names so that victims will not go to the police for fear of getting arrested (Lugo 2016; Dank et al. 2014).

Victims of domestic US gang trafficking may also be subject to sexual abuse or rape by their pimps; beatings or other violence; isolation from others; physical branding or tattooing in visible and/or intimate locations to show ownership; confiscation of documents; control over access to drugs (both illegal, if the pimp allows his victims to use them, and those prescribed for medical conditions); monitoring or surveillance of movement, cell phones, and Internet activity; and confinement (Dank et al. 2014; Polaris 2015). The practice of allowing victims to use drugs varies, however, as a victim on drugs is harder to control, and it is harder to trust that she/he will turn over all the money earned; when drug use is allowed or encouraged, it is often limited to softer drugs such as ecstasy and marijuana (Carpenter and Gates 2016; Dank et al. 2016). The use of violence is often strategic to ensure that bruises
and injuries can be easily covered; if the injuries inflicted are severe, she may be kept in isolation until they heal (Dank et al. 2014).

Pimps in African American gangs also use a widely known set of “rules of the game,” not only to control victims by enforcing compliance but as a common language in the market. Rules for victims can include not looking at another pimp, not accepting black clients because they may be from a rival gang or may want to poach her to work for them, always giving a client the hotel room number next door so they can check him out first, meeting quotas, obeying the bottom as well as the pimp, using condoms with clients, and more (Lugo 2016). Victims may also be sold or traded between pimps: if a girl wants to “choose up” to a different pimp, she may pay a fee, or the new pimp may pay a fee to the old pimp (Dank et al. 2014). A girl may choose up because she believes she will be treated more kindly by the new pimp, for example (Dank et al. 2014). If a victim is a minor, she is also usually told which other girls or which bottom she must work with because someone over 18 must pay for the hotel room (Dank et al. 2014; Lugo 2016). Rules, again, may vary somewhat by type of gang and trafficking venue (street/motel versus commercial front brothel or trafficking out of a private home or apartment). It is important to note that trafficking refers to the activity and the force, fraud, and coercion involved, not the venue out of which it occurs.

Thus it is important to mention distinctions here between gang-related sex trafficking and gang-run prostitution – specifically, it is actually difficult to draw such distinctions within a given gang network. This is because an operation will often involve some individuals who are trafficking victims and some who are not, all working for the same pimps or sets of pimps that are members of the same gang. US v. Traylor et al. 2011 is but one example of such a case (Lugo 2016). Given that gang trafficking operations cannot always be separated from non-trafficking-related prostitution rings – they are often intertwined and share members and resources – it is important to keep this overlap in activities in mind.

**Money Use and Management**

After pimps receive their victims’ earnings and cover operational expenses (feeding and clothing their victims, paying for hotel rooms/transportation), pimps involved in African American gangs are known for spending most of their proceeds on visible consumption (Dank et al. 2014; Lugo 2016). However, recently the more sophisticated gangs are funneling some of the money into other criminal activities as their network structures become more mature (Dank et al. 2014). Pimps are not known for keeping detailed records, although some keep their own books, and some victims and bottoms maintain records on customers and transactions either on paper or in shared laptops (Dank et al. 2014; Lugo 2016). Aside from hiding assets by leasing or placing in victims’ or family members’ names, or hiding titles or cash in others’ homes, some gang-affiliated pimps also have modeling or music businesses setup for tax and recruitment purposes (Dank et al. 2014). Again, it is important to note that trafficking operations and gang-run prostitutions businesses are often intertwined.
and overlapping. This includes management of money and other resources; they are
not kept separate.

Hispanic, Eastern European, and Asian gangs operating in the United States are
more well-known than African American gangs for investing at least some sex
trafficking proceeds into other commercial ventures, such as drug and/or weapons
trafficking, rather than simply using profits for conspicuous consumption (Shelley
2010). However, some of the larger, more mature African American gangs are
beginning to do this (Dank et al. 2014). Perhaps this reflects varying levels of
need for members of different gangs to signal status in terms of material wealth. It
could also be that, since African American gangs have less of a vertical hierarchy
than others, that conspicuous consumption is a way to signal power and authority in
a way that more hierarchically organized gangs do not need to. They have their
authority established by their positions.

**US Gang Trafficking Network Types**

This purposive sample of US case indictments covers several regions of the country
and several types of gangs. Locations identified reflect the US state the case was
prosecuted in, regardless of interstate dynamics in the case, and were chosen
specifically to give a sample that reflected the entire country. Geographically speak-
ing, there were four cases in San Diego County, with two others also in California,
two each in Kansas and New York, and one each in Pennsylvania, Maryland, Texas,
Virginia, Tennessee, Minnesota, North Dakota, Florida, Arizona, and Washington
State. Numbers of individuals prosecuted ranged from 2 to 119. Types of gangs
included African American, Hispanic, Native American, Asian, and Caucasian
motorcycle, with some engaged in sex trafficking alone and some also engaged in
other criminal enterprises in addition to sex trafficking.

First, the “rules of the game” were similar across the African American gang
2014 (Crips/Bloods, San Diego), *U.S. v. Pittman* et al. 2012 (Black Mob/Skanless
(Fairfax County, VA), and *USA v. Cephus* et al. 2009 (Indiana/Illinois). These cases
also share flat, loose network structures, large membership numbers, and cooperative
behavior between cliques. Structurally, while cliques do cooperate with one another,
the Hispanic gangs in the San Diego area tend to be more hierarchical with more
military, regimented structure and rules involving stricter command and control,
including payment of “taxes” up the hierarchy by “soldiers” carrying out both sex
trafficking and prostitution activities (see also Carpenter and Gates 2016). This may
be due to the international structure of some gangs, like MS-13, where control is
more centralized than some of the more identity-based African American gangs.

Many Hispanic street gangs in the United States are often controlled by prison
gangs. Within their more hierarchical structure, they also have stricter division of
labor including rules enforcement, and they have also typically engaged in higher
proportions of weapons and drug trafficking than sex trafficking (Dank et al. 2014;
Carpenter and Gates (2016). Those gangs with more international reach also often use the need to pay back so-called smuggling debts as leverage to press individuals into trafficking situations on arrival into the United States (US v. Montes et al. 2017, U.S. v. Najera et al. 2012; U.S. v. Espudos et al. 2011). The nature of international trafficking requires structure and cooperation between many parties within and outside the gang, given the perilous and complex nature of facilitating border crossings.

Additional indictments describing networks that share cooperative behavior include U.S. v. Adan, et al. 2010 (Somali gang, Minneapolis, MN); U.S. v. Campbell et al. 2007 (African American gang, Kansas, no sex trafficking but other criminal enterprises); U.S. v. Najera et al. 2012 (Hispanic Nortenos gang, Kansas); U.S. v. Espudos et al. 2011 (Nortenos gang, San Diego); and People v. Lam 2006 (Asian gang, Monterrey, CA). Regarding the dynamics of cooperative behavior, conflicts between gangs seem to be changing from clique-based to race-based, with more murders and competition occurring along racial lines (Lugo 2016). Thus, the lines are less clear now between African American gangs. Interviews conducted by Dank et al. (2014) confirm this.

Several other structural differences between gang networks are evident as well. U.S. v. Morsette, a Native American gang case with one defendant, was reservation-based and appeared to be centrally directed by one person enforcing very harsh rules, while U.S. v. Francisco et al. in Arizona was a larger, flatter Native American gang that identified with the Bloods, with nine defendants prosecuted. Asian gangs with large memberships, such as the “Black Dragons” in People v. Lam (3 indicted, 40–50 identified), were involved with extortion from existing brothels, a venue also common among Hispanic gangs but not among African American gangs.

Twenty-nine individuals from three cliques that engaged in a tightly coordinated operation were indicted in U.S. v. Adan et al., a Somali gang in Tennessee and Minnesota that trafficked very young girls (aged 14 and under) in apartment-based exploitation and by taking them to college parties called “African parties.” The Somali pimps set up all the dates via phone calls out to clients, rather than making victims drum up their own business via the Internet, but they provided all transportation – at times picking minor girls up from school to do dates. They also took on gang aliases similar to African American gangs. So, the Somali gang shared some structural characteristics with African American gangs, but their trafficking venues and business practices were different.

One of the most violent cases of all was the Caucasian Hell’s Angels motorcycle outlaws case in Florida prosecuted in United States v. Starrett, 1995. Means of control and business practices here were highly regimented and extremely violent. The Hell’s Angels had cooperative business practices between network members and strict rules of the game, like African American gangs. But, the rules were different with the Hell’s Angels as far as who a member’s “old lady” could talk to, where she could go, and how her movements were controlled. According to the indictment, there was less love-bombing of victims with Hell’s Angels than outright kidnapping or forcing into slavery, and far more victims in the Hell’s Angels case were found murdered for breaking the rules or attempting to escape.
While deeper comparative study is certainly the next step, this initial look shows that specifics around network structure, business practices, means of control with victims, and inter-clique cooperation are most similar between African American gangs, with some parallels that can be drawn with other gang network types on the basic structural level. However, differences tend to appear along the lines of gangs’ ethnic origins and cultures. There may be less role specialization in smaller gangs, like the Black Dragons and African American gangs that cooperate only opportunistically. More specialization may occur among Hispanic gangs that have a more military structure; while the Espudos et al. indictments did not involve sex trafficking, they described a sophisticated business enterprise with specialized accounting, “tax” collection, strict command and kick-back structures, and more. Levels of violence used to control victims (or other network members, if not a sex trafficking case) vary as well. However, with slight regional variations, the differences in gang culture related to their ethnic origins and structures seem to hold across different areas of the United States.

Other Types of Sex Trafficking in the United States

Branching out from this comparison of a sample of indictments, the literature shows that other types of organized sex trafficking are also prevalent in the United States. One of the largest is the Asian Massage Parlor type, which exists all over the country, in which victims often live on site, have their documents confiscated, and have their movement severely restricted (Dank et al. 2014; Polaris 2015, 2016b). These massage parlors are often commercial front brothels. This type is highly organized and engages in long-term resource and financial planning, as well as money laundering. This type tends be characterized by more formal organized crime.

Latino brothels, another type of commercial front brothel in the United States, typically does not allow customers of other ethnicities due to concerns about detection (Polaris 2015). Trafficking in bars and cantinas, however, where commercial sex is offered as a service in the back of the restaurant, tends to serve a wider range of clientele (Polaris 2016a; Dank et al. 2014). Gangs may or may not be involved in both of those types. Latino trafficking tends to be more organized than the American Pimp model, especially the brothels, and they often remit money to their origin countries (Dank et al. 2014). Additional commonly reported venues for US pimp-controlled sex trafficking, besides hotel and street locations, include truck stops (L. Smith and Vardaman 2010), escort services, and strip clubs (Polaris 2015, 2016b). Within all of these types, but especially in street prostitution, exploited victims may be female, male, or part of the lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities, with each sub-market also exhibiting specific variation (Estes and Weiner 2001).

Sex trafficking perpetration in these venues is under-researched by academics at this time (Choo et al. 2010; Countryman-Roswurm and Bolin 2014; Hepburn and Simon 2010; Srikantiah 2007). However, the growing prevalence of gangs in the American pimp scene, beyond the role of providing security for hire, is noted as an important change in the domestic commercial sex market (Dank et al. 2014; Levitt...
and Venkatesh 2007; Raphael and Myers-Powell 2010). While they previously focused more on drugs, more gangs are now getting into a wider variety of money-making activities (Dank et al. 2014). With regard to sex trafficking, they are learning which “gangbanging” practices work in that industry and which do not – hence the newer practice of setting aside some previous rivalries in order to make more money, since the risk of apprehension is far lower than with drugs, robbery, and other crime types (Dank et al. 2014).

**International Gang Sex Trafficking Types**

**Balkans/Albania**

Shelley (2007, 2010) identifies a global typology of six network types with different characteristics, of which the American Pimp model is one. First is the “violent entrepreneur” Balkan-Albanian model. They are often family-based, borne of war, violent during transport of victims, and often recruit through the “love-bombing” or “Romeo” model common elsewhere that involves feigning love so that the recruit will submit. These victims work the greatest number of hours, suffer the most violence during exploitation, and the traffickers use proceeds more for conspicuous consumption and sending money home to family rather than re-investing it in the business (see also Leman and Janssens 2008). It is not unlike the US African American gang type with respect to victimization techniques, but operations are more sophisticated due to money laundering operations and the international nature of activities. Lines between gangs, organized crime, and former government officials participating are also blurry (Surtees 2008).

**Post-Soviet Russia**

The post-Soviet Russian model is more organized, recruiting through legitimate and illegitimate employment agencies, with participants taking on more specialized functions. These traffickers are often educated, former military, and use proceeds to fund gangs, terrorist groups, and sometimes reinvest in the business (see also Leman and Janssens 2008). Both the Balkan and post-Soviet types have been shifting from ethnically based family relationships to more transnational, interethnic ties as the increase in business and the need to outsource due to geographical spread demand it (e.g., using the Camorra family in Italy for money laundering and moving operatives as needed throughout Europe) (Shelley 2007, 2010).

**China and Asia**

Shelley’s third model is the trade and development model exemplified by the Chinese, which Shelley describes as being highly organized, concerned with long-
term investment, and less violent than other models (Shelley 2007, 2010). Zhang (2014) clarifies the “highly organized” descriptor, depicting a horizontally based network of individuals and small groups that organize around transactions, based on skills that each brings to the table. Chin and Finckenauer (2012) further specify that, while organized, this manifestation of trafficking does not normally attract gangs because the profit is not high. Gangs typically do not have the patience required. Those involved are typically family men involved for business reasons only, and because they may want to remain suppliers of services over the long term, do not want to develop a bad reputation. “Triads” and other Chinese gangs are more likely to stick to gambling (Chin and Finckenauer 2012).

More widely in East Asia, human trafficking within migration channels is highly intra-regional and is typically for forced labor, sex, adoption, or marriage (J. J. Lee 2005). Trafficking in brides is especially prevalent in China, where the one-child policy has left a gender imbalance, and organized gangs have moved into this space; likewise, Yakuza-associated gangs have been involved in sex trafficking vulnerable women and girls from several East Asian countries into Japan’s robust sex industry (J. J. Lee 2005). Yakuza also have a high level of formal organization but do not represent as large a proportion of traffickers into Japan as popular lore might suggest (J. J. Lee 2005).

**Mexico/Central America to the United States**

The Mexico-US “supermarket model” operates smuggling networks that contain some human trafficking within the larger, more voluntary coyote smuggling operation (Shelley 2010). These networks can be violent and have been known to abandon people in the desert en route to destination. Heil (2012), in her ethnography of trafficking in Immokalee, Florida, describes how women may be trafficked for sex to serve male migrants who were smuggled or may have been trafficked for labor themselves. She also describes a chain-like network of interconnected gangs, with means of control including violence, misrepresenting work and living conditions, confiscating documents, and threatening deportation.

Fifth, Shelley (2007, 2010) describes the “American Pimp” type. The inner workings of this type are described in detail in the first part of this chapter. Gangs operating in this fashion seem to be fairly unique to the United States. Gangs in other parts of the world are quite different and are more akin to loosely organized crime.

**Dutch/The Netherlands**

Sixth and finally, Shelley describes the Dutch attempt to regulate the legitimate prostitution market as a way to reduce trafficking, which is still illegal. However, Huisman and Kleemans (2014) note that trafficking still occurs there despite legalizing prostitution. Further, cheaper prices for sex acts from trafficked individuals and higher operational costs from complying with regulations are driving down wages
and simply causing displacement of trafficking rather than reducing it, forcing organized crime groups and gangs to move the trafficking nature of the activity further underground (Huisman and Kleemans 2014).

**The Middle East**

Another important type is trafficking and smuggling as they manifest in the Middle East. This type is characterized by small ethnic, family, and friendship networks that operate on kinship and trust bonds, span several countries and thousands of miles (Icduygu and Toktas 2002), and operate in sort of a chain formation similar to the cartwheel structure of the Snakehead network that smuggles individuals from China to the United States (Zhang 2014). In both cases, both trafficking and smuggling often occur in the same network. In this structure, small groups of operators are connected by brokers, but no single person knows too many people outside the next step in the chain (Zhang 2014; Icduygu and Toktas 2002). The Middle Eastern form has more personal and family connections, where Snakehead network connections may be more reputation-based due to the network’s global reach. Division of labor is complex and more regimented, with transporters, document forgers, people providing shelter, recruiters, money managers/launderers, and many others providing specific functions, sometimes for more than one group. Tasks are shared with far less division in African American gangs, for example, where everyone does a bit of everything outside of a few main roles. Role specialization seems to diversify in proportion to the geographic spread of a trafficking network.

The Middle East is the largest destination area for trafficked persons worldwide (UNODC 2014) and is also an area that takes a long view of history and thus thinks of modern national borders as an irrelevant, artificial construction (Icduygu and Toktas 2002). The Nigeria-Morocco/Italy network is also structured similarly to these Middle Eastern networks, but their practices include deception about work opportunities like the post-Soviet model, and perpetrators use threats that prey on victims’ religious beliefs about voodoo as a specific means of control (Monzini 2005; Campana 2016).

**Islamic State (ISIS)**

Human trafficking is often a moneymaker for gangs in unstable areas, and it was a chief activity for the Islamic State (ISIS) for both making money and instilling fear (Welch 2016). Trafficking exploits borders that are weak not only with regard to trafficking flows, but weak for protecting against terrorism, disease, weapons trafficking, and more. Gangs of various sizes and levels of organization had traditionally facilitated trafficking, creating openings in the Middle East for ISIS to move into the space, especially in areas where people have been displaced by conflict. Members of ISIS were reported selling women and others in open, public marketplaces for sexual and other servitude (Welch 2016).
Human trafficking for ransom occurs along smuggling flows from Eritrea into the Sinai Peninsula, Ethiopia, Egypt, Libya, and Sudan, perpetrated by gangs associated with the Eritrean military and government (Van Reisen and Mawere 2017). Vulnerable refugee adults and children are kidnapped, held, and tortured until ransom is paid by the victim’s family. Human trafficking for organ harvesting and activities associated with terrorism are also prevalent. Sometimes, one military- or Rashaida-associated gang will sell a victim to another gang before the victim can be released pursuant to the first ransom payment, and then the ransom process begins all over again between the family and the new gang. “Creation of a widespread illicit internal and cross-border black market, together with stringent controls on the movement of people [that include a shoot-to-kill policy at the Eritrean border],” has led to an environment where human trafficking flourished and became embedded in the system (Van Reisen and Mawere 2017). Technology contributes by enabling electronic communications with families and money transfers for payment of ransom, as well as logistics coordination, thus allowing the practice to spread geographically to other countries in Africa.

Implications for Research

Understanding the different types of gang sex trafficking has implications for both research and practice. While this chapter began with a description of trafficking by African American gangs as a reference point for comparing/contrasting the others, the sheer amount of variation between types leads to the conclusion that the sex trafficking operations of different types of gangs are only comparable to a point, hence the usual divisions into typologies (Shelley 2010; Dank et al. 2014; M. Lee 2013). Recent work has begun to take a social network analysis approach to understanding sex trafficking networks and has begun to identify ways to compare them based on personal and business relationship types between network members (Cockbain et al. 2011; Morselli and Savoie-Gargiso 2014; Campana 2016; Mancuso 2014). But, even these show that interpretation of those results varies based on the underlying cultures in each network. For example, a relationship dynamic such as brokerage, or being the person who facilitates connections between others in the network, will confer certain benefits in one network but can mean something very different in another depending on what, culturally, that relationship means in each context (Lugo 2016). This has theoretical implications as well as implications for practice.

Implications for Practice

Grasping the differences between sex trafficking network types, how each type operates and is motivated, and how many resources its operations may also share with non-trafficking-related prostitution (gang network members engaged in both
forms of the activity, shared money, trafficking victims being made to work with non-trafficked sex workers, etc.) is also critical for successful law enforcement strategies and to help survivors appropriately and in culturally competent ways. Some gangs, like African American gangs, are motivated more by the ability to signal status, especially in disadvantaged communities, and the ability to make a lot of money quickly and easily. There is also some motivation to exert dominance not only in the gang, but over the women and girls both in the gang and in the stable. This is not to say that the women and girls are completely powerless – they still make important choices from within their highly constrained circumstances – but there is strict enforcement of the “rules of the game” both physically and through coercion to maintain that power imbalance and control over those being trafficked. All of these motivations have implications for law enforcement and service provision for survivors, especially if they have children.

There is minimal sophistication in operations, though organizational learning does happen, and gangs tend to grow in sophistication as they mature. However, contrast this with a more highly regimented Hispanic gang that tends to stay more closed off from outsiders and is thus more difficult for law enforcement to penetrate; an Asian Massage Parlor network that is highly sophisticated, secretive, and controlled; and the Caucasian Motorcycle gang that exerted extreme violence with impunity; and it becomes clear that law enforcement techniques must vary to find each network type’s cultural and operational vulnerable points. There is no one-size-fits-all description, and there must be as much nuance in law enforcement and victim services approaches as exists between the gangs themselves.

Globally speaking, the line between the definition of “gangs” and “organized crime” is less clear. While most use the Europol definition of a gang, which largely parallels the definition given at the beginning of this chapter (see also Klein 1995), the literature consulted for this piece did not always follow it closely when differentiating between gangs and organized crime. This was especially evident between scholars from different countries who seemed to blur the two, particularly in cases where state sanctioned violence was also intimately involved (Van Reisen and Mawere 2017; Adepoju 2005; Ryazantsev et al. 2015). This has implications for international responses, particularly in cross-border cases where organizations may also be taking advantage of gaps in the interstate system such as lax borders, briiable officials, or lax financial controls between certain countries to facilitate operations and increase profits (Williams 2008). Understanding the differences in motivations, methods, and the environments in which different types of gangs perpetrate sex trafficking can make a big difference in curtailing gang trafficking activity.

References


The Human Trafficking of Men: The Forgotten Few

Justin Trounson and Jeffrey Pfeifer

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Abstract

Human trafficking is an important humanitarian issue that demands continued attention from the international community. A review of the available literature in relation to human trafficking reveals a clear emphasis in regard to understanding and documenting the issues related to the trafficking of adult females and children. Although it may be argued that there is clear evidence supporting the prioritization of investigating the human trafficking of females and youth, it may also be argued that the investigation of adult male trafficking is comparatively lacking in terms of systematic and empirical attention. This chapter, therefore, aims to explore the issue of adult male human trafficking through the lens of the forgotten few. Through a review of the current literature, this chapter will attempt to clarify what we currently know in relation to the experience of adult male victims of trafficking, the motivations underlying this practice, and the range of specific issues related to trafficked men across a variety of jurisdictions. It is argued that sustained research into the trafficking of men is required to illuminate the forms of exploitation they are exposed to and to inform the development of effective policy and practice to ensure their protection.

Keywords
Males · Adult · Slavery · Forced labor · Trafficking

The traditional notion that human trafficking is primarily a sex crime against females harms the collective good by facilitating the neglect of hundreds of thousands of male victims who suffer from sex crimes or forced labor – Jones (2010 pp. 1146)

Introduction

Human trafficking is an important humanitarian issue that is recognized as a global problem impacting an estimated 20.9 million people worldwide (International Labor Office 2012). The breadth of this issue has led to a significant amount of international attention directed toward gaining a better understanding of human trafficking in regard to (1) victim demographics (e.g., who they are, where they are from, where they are transported to), (2) the motivational factors driving the practice (i.e., gaining a better understanding of why individuals commit human trafficking offenses), (3) the strategies for assisting with the investigation and prosecution of the practice, and (4) developing policies and programs to better assist the victims (UNODC 2016).

Interestingly, however, a review of the existing literature appears to indicate that although a significant amount of research has been conducted on the trafficking of adult females and children (both male and female), comparatively little attention has been directed toward understanding the issue of human trafficking as it relates to adult male victims (Godziak and Bump 2008; Jones 2010). It should be acknowledged that there are important and identifiable reasons for the lack of parity in attention paid to adult males when compared to adult females and children. For
instance, global statistics indicate that adult females are by far the most common group of human trafficking victims (UNODC 2016). Furthermore, statistics consistently suggest that children are also far more likely to be identified as victims of trafficking than adult males (US Department of State 2017). It has also been argued that the lack of attention may be, at least in part, due to the general belief that adult males are less vulnerable and less likely to be exploited or become victims of trafficking (Hebert 2016; Tien 2013).

Despite the above it is important to also acknowledge the existing and growing evidence of adult male trafficking and encourage the global community to invest in research and the subsequent development of interventions to assist this population. It may be argued that the current lack of accurate information may be contributing to the perceived magnitude of the problem and obstructing the development of appropriate responses. If left unattended, adult male victims may experience increased negative consequences due to a lack of responsive policies, laws, and support services (Tien 2013).

In order to assist with closing this gap in the literature, this chapter will explore the current knowledge base regarding the trafficking of adult males. Particular attention will be paid to clearly documenting the demographics related to this issue (i.e., who is being targeted), identifying the motivational elements underlying the crime (i.e., why adult males are targeted), and reviewing the policy and practices that have been developed to address this situation. It is also hoped that this chapter will provide impetus for a more intensive and comprehensive discussion around how the global community may increase its capacity to assist adult male victims of human trafficking. Specifically, it is suggested that any progression toward more effectively meeting the complex and unique needs of adult male victims must begin with (1) working toward a global definition of adult male trafficking, (2) gaining an understanding of the specific types of adult male trafficking which occur internationally, (3) identifying and implementing systematic processes for recording the incidences and particulars of adult male trafficking both intra-jurisdictionally and inter-jurisdictionally, and (4) the need for the developing effective policies and support systems designed to assist adult male victims of human trafficking. It is argued that these foundational elements are paramount to ensuring that the international response to adult male trafficking is empirical, strategic, and coordinated.

**Defining and Contextualizing Adult Male Trafficking**

Over the past few decades, interest in human trafficking has increased substantially (Hebert 2016). However, despite this surge the experiences of men and boys are rarely featured in the media, academic writing, and activist campaigns, distorting our conceptualization of victims and concealing the male victims of human trafficking. In her review of the extant literature, Hebert noted that of 651 articles relating to the trafficking of humans, only 20 (3%) were primarily focused on male victims of human trafficking and of these more than a third related to child soldiering. A similar lack of acknowledgment and attention was also identified by Dennis (2008) in his
review of existing sex trade research. Of the 161 articles identified for review that were published between 2002 and 2007, only 10% of these articles focused on men with most articles failing to acknowledge the existence of male sex workers. Hebert argued that the archetype of human trafficking is so deeply embedded in our collective conscious that trafficked persons who are not female victims of sexual exploitation are barely seen or counted. Hebert also highlighted that the concept of male victimhood is, within many cultural contexts, at odds with society’s understanding of the privileged and often powerful position of men, making it difficult to conceive that men can be victims of coercion and exploitation. Hebert emphasized that it is imperative that we begin to acknowledge their vulnerability as they represent a considerable proportion of those that are trafficked. Furthermore, neglecting to do so directly impacts our ability to develop effective and inclusive laws and policies that can protect and support victims of trafficking.

A review of the existing literature on adult male trafficking indicates that, compared to our empirical knowledge of adult female and child victims, there is a clear lack of information relating to the definition and contextualization of this issue. The need for a specific definition for adult male trafficking is underscored by international data indicating that although the majority of trafficking victims are adult females and girls (UNODC 2016), the profile of trafficking persons appears to be changing. More specifically, males have begun to make up a larger and ever-increasing proportion of those identified as trafficking victims (US Department of State 2017). Although it may be argued that this shift is partly due to increased global understanding and awareness about the issue of adult male trafficking as well as changes in the way trafficking is conceptualized by the international community, it highlights the importance of ensuring a global definition is employed.

It may be argued that early definitions of human trafficking largely overlooked adult male victims and the forced labor trade, instead focusing more directly on females and the issue of sexual exploitation (Sylwester 2014). These early definitions often specified women and children as trafficking victims, overlooking the fact that adult males may also be victims of this crime (Tien 2013). According to the literature, it appears that adult males were often considered simply within the context of forced labor discussions and males working within the illegal sex trade were often perceived as willing participants rather than as potential victims of exploitation (Figlewski and Brannon 2013). Among other things, this conceptualization of adult males as invulnerable to exploitation has resulted in male victims often not being afforded the same protections available to adult female victims, leaving them in the dark, exposed, and without a voice (Hebert 2016).

Given the above situation, it is not surprising that adult male victims are more likely than adult females and/or children to find themselves penalized, fined, detained, or deported without provision of adequate support when coming to the attention of authorities (US Department of State 2017). It is only recently that adult male victims have been legitimized and considered as potential victims in need of protection and support (Jones 2010). This legitimization can be seen, for example, in the very purposeful use of gender-neutral language used within the Traficking Victims Protection Act (TVPA), one of the most important anti-trafficking laws to
be passed in recent times. It can also be seen in the United Nations 2009 report on human trafficking in which it states that trafficking in males is rarely represented in official national statistics (Jones 2010). Although the move to legitimize these men is a step in the right direction, there remains little global consensus on how to effectively identify, protect, and support male victims.

As formal acknowledgment of this group of victims increases, the need for a clear universal definition becomes increasingly important. Men are often omitted from trafficking data due to lack of acknowledgment as potential victims, making current statistics highly inconsistent and often unrepresentative concealing of the true size of the problem. For example, in 2006 the Department of Justice recognized that the data on adult men were excluded from trafficking estimates (Jones 2010). As we move toward the development of a definition of adult male trafficking, it is important to note that contemporary definitions of human trafficking frequently involve reference to the recruitment, movement, and exploitation of people (Sylwester 2014; UNODC 2016). However, establishing a global age of majority to incorporate into such a definition may be more controversial. Although the age of majority continues to differ between nations, most nations consider 18 years of age as being the commencement of legal adulthood. As such, in line with the definition of human trafficking afforded by the UNODC, adult male trafficking may be defined as “any situation that involves the recruitment, movement or harbouring of males, 18 years or older for exploitative purposes, 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 exploitative purposes.”

Once a global definition is finally adopted, we can then begin to move toward increasing our ability to better identify the data related to the definition. Currently, there is no true consensus in relation to the number of adult male victims around the world and even less systematic documentation regarding the experiences of this cohort. In 2014, the United Nations Office on Drugs and Crime (2016) reported that 21% of detected victims of trafficking were male. Furthermore, the report indicated that the number of males identified appears to be increasing (see Table 1). Statistics indicate that the trafficking of males is not a regional phenomenon, with accounts of male trafficking observed all around the world. The percentage of males among identified trafficking victims by global region in 2014 can be seen in Table 2. According to the UNODC, 53% of male victims identified in 2014 were within Eastern Europe and Central Asian regions, with an additional 34% identified in North Africa and the Middle East. However, the UNODC reported that the high rates observed in North Africa and the Middle East may be linked to frequent detections of trafficking for forced labor across these two regions.

It should be acknowledged that these statistics can be misleading as they only provide a snapshot of the problem of human trafficking in relation to identified victims and do not account for those individuals that are not formally identified as victims. Interestingly, it appears that adult male victims are often overlooked despite clear evidence that it is a human rights violation impacting a substantial number of both men and boys (Surtees 2008). The most frequently cited global statistics
regarding human trafficking indicate that men and boys likely make up almost half the number of human trafficking victims (US Department of State 2017). Despite this, the identification and care of male victims remains a substantial global challenge.

Table 1  % of men among detected victims of trafficking

<table>
<thead>
<tr>
<th>Year</th>
<th>% of Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>13</td>
</tr>
<tr>
<td>2006</td>
<td>12</td>
</tr>
<tr>
<td>2009</td>
<td>14</td>
</tr>
<tr>
<td>2011</td>
<td>17</td>
</tr>
<tr>
<td>2014</td>
<td>21</td>
</tr>
</tbody>
</table>

Table 2  % of men among detected trafficking victims by region, 2014

- Western and Southern Europe
- Central and South-Eastern Europe
- Eastern Europe and Central Asia
- East Asia and the Pacific
- South America
- Central America and the Caribbean
- North America
- Sub-Saharan Africa
- North Africa and the Middle East
Identifying the Specific Types of Adult Male Trafficking

Although numerous types of adult male trafficking have been identified, a review of the international statistics (see Table 3) related to this issue indicates that forced labor may be the most common form (Tien 2013). More specifically, it has been estimated that adult males comprise nearly two thirds of forced labor victims in common low-skilled labor sectors (Pocock et al. 2016). Between 2012 and 2014, for example, it was estimated that 63% of trafficking victims for the purposes of forced labor were male (Tien 2013). Review of the literature indicates that trafficked men engage in a range of forced labor contexts, most commonly in the fields of construction, agriculture, fishing, and mining (see Chap. 101, “Labor Trafficking of Men in the Artisanal and Small-Scale Gold Mining Camps of Madre de Dios: A Reflection from the “Diaspora Networks” Perspective”). However, according to the US Department of State (2017), adult male victims of forced labor have been found in nearly all work sectors, suggesting that this crime may be expanding beyond the initial low-skilled labor sector.

The above statistics are particularly concerning as they may also be confounded by the fact that adult male forced labor is an extremely underreported form of trafficking, making it particularly difficult to ascertain the true extent of the problem (Tien 2013). Although there are likely to be numerous explanations for the underreporting of forced labor as a form of human trafficking, it has been suggested that this underreporting may be at least partly due to the fact that (1) the criminalization of forced labor is a relatively new global development, (2) both the public and

<table>
<thead>
<tr>
<th>Table 3</th>
<th>Forms of exploitation among detected male trafficking victims (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other forms of exploitation</td>
<td>5%</td>
</tr>
<tr>
<td>Organ removal</td>
<td>10%</td>
</tr>
<tr>
<td>Sexual exploitation</td>
<td>15%</td>
</tr>
<tr>
<td>Forced labor</td>
<td>80%</td>
</tr>
</tbody>
</table>

Source: UNODC (2016)
law enforcement tend to relate human trafficking to sexual exploitation, (3) male victims when identified are often deported without consideration of being a victim of trafficking, and (4) forced labor is often difficult to detect due to the fact that it often occurs outside of the public eye (Tien 2013).

In addition to forced labor, a number of other types of adult male trafficking have been recently identified. For example, according to the UNODC, 6.8% of adult male victims identified in 2014 were victims of sexual exploitation. Although this may seem a small proportion of those identified, it has been argued that the sex trafficking of both adult men and young males remains obscured and underreported (Dennis 2008). However, there is evidence to suggest that the sex trafficking of males may occur in many countries (US Department of State 2017). According to Figlewski and Brannon (2013), in some countries the practice of keeping boys or young men can be seen as common and tolerated. In the United States, men have also been identified as victims of trafficking for sexual exploitation. In a study conducted across New York City examining commercial sexual exploitation, the research team reported expecting to attain a largely female sample through a snowball sampling technique. However, they were surprised to attain a sample consisting almost half of adult males (48%) suggesting that the commercial sexual exploitation of males may be more prevalent than they first imagined. The findings of the qualitative interviews conducted with these men suggested that homosexual or bisexual young adult males and boys may be particularly vulnerable to commercial sexual exploitation. According to Jones (2010), adult males and boys experience the harm of trafficking acutely because of gender structures and pressures imposed on them, assumptions that they always desire sex and the fact that they are less likely to report trafficking.

In addition to the above, there is some indication that other types of adult male trafficking are emerging. For example, statistics suggest that adult males make up the vast majority of identified victims of trafficking for the purpose of organ removal. Between 2012 and 2014, 82% of people identified as being victims of trafficking for organ removal were adult males (UNODC 2016). According to Yea (2015), adult male victims often find themselves trafficked for organ removal due to their economic vulnerability and their desire to attain financial security for their families. There is also some evidence of adult males being trafficked for domestic servitude and forced begging (US Department of State 2017).

**Recording Adult Male Trafficking Internationally**

Over the past two decades, there has been an increase in research focus toward adult male victims of human trafficking. Consequently, there have been a number of noteworthy publications that have detailed and discussed the issue of the trafficking of men. This section provides a simple summary of some of the recent research and statistics that have emerged from across the globe. This is an important preliminary step toward the eventual development of cross-jurisdictional strategies and initiatives aimed at impacting this phenomenon.
Europe

Surtees (2008) compiled a report examining the human trafficking of adult males in Belarus and Ukraine. According to the report, male victims comprised 28.3% and 17.6% of the International Office of Migration (IOM) assisted caseload in Belarus and Ukraine, respectively, between 2004 and 2006 (Surtees 2008). Of this sample, the men ranged in age from 18 to 44, with two thirds of the Ukrainian males being married or living with a partner prior to being trafficked. One third of the trafficked Belarusian males were married, and half were single. According to the report, at least half have children, and many cited the need to support their children as a reason for migration. The vast majority were recruited with promises of employment, and the men reported the processes appeared to be in line with legal migration processes, many making what they believed were legally binding agreements with an agency or recruiter. Most were trafficked for forced labor, and the primary destination for men from both countries was Russia.

United Kingdom

A few reports have emerged that have attempted to document and detail the experiences of trafficked men in the United Kingdom (UK). In a recent report by The Salvation Army (2017), it was estimated that between June 2016 and July 2017, The Salvation Army supported 1002 female and 549 male victims of modern slavery in the United Kingdom suggesting that around half of identified victims in the United Kingdom are male. This is largely in line with statistics attained by the National Crime Agency (2017) who reported that of the 5145 referrals of potential victims received by the National Referral Mechanism (NRM), 52% were males. According to the report, the majority of adult males referred to the service were trafficked for labor exploitation.

Southeast Asia

As with many other global regions, research exploring the trafficking of men in the Southeast Asian region is sparse (Kiss et al. 2015). Although there are many explanations for the lack of research into the phenomenon, it should be noted that in some Southeast Asian countries, adult males have only recently been acknowledged as potential victims of human trafficking (Feingold 2005). For example, it was only in 2009 during the fifth session of the XII National Congress, Vietnam revised Article 119 of the Penal Code to include wording that allowed males to be considered as victims of trafficking (Tucker et al. 2009). In a report published by the Australian Institute of Criminology (Larsen et al. 2013), examining data from the International Organization for Migration (IOM) Counter Trafficking Module Database, 10% of identified trafficking victims within Indonesia were male. According to
the report, the majority of males and females were recruited via agents; however, males were more likely than females to have been recruited by a family member.

Kiss et al. (2015) conducted a study in which they interviewed 1102 identified victims of trafficking across Thailand, Cambodia, and Vietnam. Of the 1102 participants in the study, 29.85% were male (n = 303). According to their findings, adult males were mainly exploited in fishing and factory settings, with more than half in trafficking situations for 7 months or more. Almost half the men reported physical violence (49.1%) and working more than 10 h per day, and 73.1% reported extreme restriction of movement. Compared to the reports made by women and children, a higher proportion of men reported experiencing poor living conditions, weight loss, and memory problems. Furthermore, many men reported experiencing depressive (60.7%), anxiety-related (48.4%), and post-traumatic stress symptoms (46.3%). It should be noted, however, that only individuals who had utilized post-trafficking services were interviewed as part of this study and interviews were not conducted with individuals that were deemed by caseworkers as too unwell to participate. In a more recent study of 446 male trafficking victims in the Southeast Asian region, Pocock et al. (2016) found that 35.5% of male victims had been injured while trafficked and 29.4% reported receiving no personal protective equipment. The most common injuries reported were deep cuts and skin injuries for which fewer than a quarter reported receiving medical care.

These findings are echoed in Sylwester’s study examining the trafficking of men from Myanmar to Thailand to engage in forced labor. Sylwester (2014) documented the experience of 14 men promised employment in factories with good conditions only to be subjected to 6 months unpaid work aboard 3 Thai fishing vessels. These men endured 24 h working days and physical assault and witnessed the murder of a fellow laborer. According to Sylwester, the influx of Myanmarese fleeing political persecution has met the demand of the Thai fishing industry’s need for cheap labor, with Human Rights Watch estimating that at least 250,000 migrants from Myanmar work within the Thai fishing industry. This is also true within the construction industry and other industries that rely on cheap labor to be profitable. Sylwester argues that there are particular factors that may make these individuals more vulnerable to exploitation. Specifically, being migrants and being male, they easily fall outside of regulatory oversight and conventional protections for human trafficking victims (Sylwester 2014).

Forced labor, however, is not the only reason for the trafficking of men throughout the Southeast Asian region. Trafficking for the removal of organs is a substantial illegal market that disproportionately impacts adult males. Despite the seriousness of this issue and the fact that men are particularly vulnerable to this type of trafficking, there is very little research that explores the issue of trafficking for organ removal purposes as it relates to adult males. In one of the few studies examining victims of trafficking for the purpose of organ removal, Yea (2015) described the plight of economically marginalized Filipino men who engage in the organ removal process often to attain some level of financial security for their families. Unfortunately according to Yea, the process regularly results in only short-term financial gain and long-term health complications.
Africa

South Africa is one of the few African nations that can be considered primarily a destination country for trafficked men, women, and children (US Department of State 2017). According to Allais (2013), however, reports of male trafficking victims in South Africa are arguably rare as men have traditionally been overlooked as potential victims. This lack of trafficking reports does not infer that the trafficking of men is uncommon in the African region but is more likely indicative of the lack of identification of male victims. In a report for the IOM, Horwood (2009) concluded that there was little clear evidence of the trafficking of men from East Africa or the Horn of Africa to South Africa. However, the research did highlight the large-scale smuggling of men, as well as allegations of severe human rights violations and exploitation.

The distinction between smuggling and trafficking is arguably slight, with the main difference being that individuals who are smuggled across a border have procured services to assist in the illegal entry. Some trafficked persons, however, might begin their journey agreeing to be smuggled only to be deceived, coerced, or forced into an exploitative situation upon arrival. Alternatively, a trafficker may offer services that appear to be smuggling to potential victims while intending from the outset to exploit them. Although Horwood’s distinction between these terms in the report may be accurate in the case of the movement of men from East Africa and the Horn of Africa to South Africa, the observation and recording of severe human rights violations and exploitation suggest a similar trajectory and level of impact as experienced by trafficked men elsewhere around the globe.

Examination of the little data available in regard to African men indicates that the vast majority of these victims are trafficked for forced labor in construction, agriculture, fishing, and mining (Allias 2013). These findings are echoed by Bermudez (2008) in an earlier report on internal trafficking of persons in South Africa for the International Organization for Migration. The report provided evidence that men and boys were being recruited across South Africa to work on farms under false promises of pay and suitable accommodation. According to the report, migrant men from Mozambique and Zimbabwe were found to be particularly vulnerable and prone to exploitation. These men were considered particularly vulnerable due to their low economic status and lack of official documentation. It should be noted, however, that South African nationals were also targeted, particularly those residing in regions of endemic poverty. Allais (2013) also highlighted that identifying appropriate support services for trafficked men is particularly challenging as existing victim support services in Southern Africa focus almost exclusively on women and children and little sustained research is being conducted that examines the experience of male victims in Africa.

Responding to the Needs of Adult Male Trafficking Victims

What is abundantly clear from the available literature is that victims of trafficking are at a heightened risk of experiencing a wide range of negative physical and psychological conditions associated with their exploitation. High rates of depression,
anxiety, and post-traumatic stress disorder (PTSD) have been identified in surveyed male survivors. Furthermore, it is common for male survivors to report substantial physical injuries and health concerns, with one study finding 21% of the male survivors surveyed reporting ongoing injuries and 8% reporting diagnosed sexually transmitted diseases (Oram et al. 2016). Forty percent of the men in this study reported high levels of depression, anxiety, or post-traumatic stress disorder symptoms. Unfortunately, it has been argued that current services designed to respond to the need of trafficking victims are not effectively catering for the unique needs of adult males (Omole 2016).

As with all complex social problems, however, there are several barriers to providing protection and care of adult male trafficking victims. Omole (2016) argued that the global issues of poverty, unemployment, social inequality, and globalization all present significant challenges to stopping the illegal trade of humans. However, in the case of adult males, there are arguably less complex barriers that may impede the effective support of these victims. These include but are not limited to a lack of accurate statistics, failure to effectively identify male victims, lack of redress, general suspicion of innocent male victims, a lack of tailored programs for men, and a lack of training for health professionals to help these men (Jones 2010).

Attaining robust global statistics is hampered by the hidden nature of trafficking crimes, global events, shifts in government policy, and a lack of uniformity in national reporting structures. Without effective accounting, it is particularly difficult to implement targeted responses with any real confidence that services and policies will result in positive outcomes for male victims of trafficking. Establishing a clear, standardized, global definition of male trafficking would assist in the collation of more accurate and robust statistics that can inform national and international responses.

There are several ways that we as a global community may be able to counter the challenges faced in regard to the trafficking of adult males. For example, the effective identification of adult male victims can be increased by assisting community and health professionals to raise their awareness of the plight of trafficked men (Hemmings et al. 2016). In one study surveying health professionals in the United Kingdom, 95.3% of participants reported being unaware of the scale of human trafficking in the United Kingdom, with 76.5% also reporting being unaware that calling the police could put victims in more danger. In a systematic review of the existing literature, Hemmings et al. (2016) found that there were several potential indicators of exploitation that health professionals should look out for including signs of physical/sexual abuse, inability to speak to local language, absence of official documents, fear of deportation, inconsistencies in presentation (e.g., dates, names, and addresses), and attending with a controlling companion. The review suggested that to encourage disclosure, health professionals should ensure individuals are assessed privately, that interpreters are engaged where possible, and that health professionals build trust with potential victims of trafficking. In relation to the provision of care, the review suggested that health professionals take a trauma-informed and culturally sensitive approach to working with potential victims, conduct comprehensive health assessments, and collaborate with law enforcement and relevant support services. There is some evidence to suggest that when concerted and
sustained efforts have been made to increase awareness in regard to the plight of trafficked men, the identification of trafficked males has increased (Tien 2013).

Unfortunately, the general lack of awareness and understanding of trafficked men observed within the health sector has meant that current support services are rarely tailored to the unique needs of trafficked men (Tien 2013). Those working in healthcare professions and other social professional roles need to be educated regarding how a trafficking victim may present and relating to their unique care needs (Barrows and Finger 2008). However, research emerging from the United Kingdom examining national healthcare professionals found that 71% of respondents lacked confidence in making appropriate referrals for men who had been trafficked (Ross et al. 2015). In response to this lack of health professional knowledge, there have been calls to increase the training of health professionals (Hemnings et al. 2016) and integrate curricula on human trafficking into medical education and residency training programs (Grace et al. 2014).

Research aimed at informing practice and policy is also hampered by the lack of assessment tools designed to cater for trafficked men and women. In fact, review of the literature indicates that there is a shortage of validated and culturally appropriate assessment tools available for mental health research with trafficked men (Doherty et al. 2016). Without such tools there will likely remain a lack of evidence to inform mental health service provision.

**Conclusion**

In summary, although many governments have made positive progress toward improving their responses to the issue of male trafficking, there is still a long way to go before services, policy, and law can be considered effective and truly responsive to the phenomenon. Until recently, male victims of human trafficking have been largely neglected, not identified in current statistics and not adequately covered in definitions of trafficking nor by anti-trafficking laws or by reactive support services. Male victims are often not identified by health professionals, and many men may have difficulty self-identifying as victims. It is imperative that male victims are provided culturally appropriate and specifically tailored support to meet their needs including housing, medical care, mental health support, and legal representation. The global community needs to begin to develop clearer strategies aimed at protecting, assisting, and supporting male victims of human trafficking, or they will simply remain the forgotten few in the fight against the illegal trade of people.

**Cross-References**

- Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation
- Criminal Justice System Responses to Human Trafficking
Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses

Health and Social Service-Based Human Trafficking Response Models

Human Trafficking in Supply Chains and the Way Forward

It’s Your Business: The Role of the Private Sector in Human Trafficking

Labor Trafficking of Men in the Artisanal and Small-Scale Gold Mining Camps of Madre de Dios: A Reflection from the “Diaspora Networks” Perspective

Psychological Care and Support for the Survivors of Trafficking

The Failing International Legal Framework on Migrant Smuggling and Human Trafficking

The Investigation and Prosecution of Traffickers: Challenges and Opportunities

The Swedish Approach to Prostitution and Trafficking in Human Beings Through a Gender Equality Lens

UN Palermo Trafficking Protocol Eighteen Years On: A Critique

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References


Part IV

Human Trafficking and Response Mechanisms
The Swedish Approach to Prostitution and Trafficking in Human Beings Through a Gender Equality Lens

Gunilla S. Ekberg

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Abstract

In January 2019, it is twenty years since the law that prohibits the purchase of sexual services came into force in Sweden. The introduction of this legislation was the conclusion of many years of struggle by the Swedish feminist movement to integrate a feminist analysis into the legal and policy framework on prostitution and trafficking in human beings for sexual purposes and ultimately to visibilize and denounce the behavior of men, who purchase and sexually abuse women and girls through prostitution. The chapter provides an overview of the current legal, policy, and strategical framework on prostitution and human trafficking for the purpose of sexual exploitation in Sweden, while giving insights into the current jurisprudence and historic events. It also aims to give an understanding about what a gender equality approach entails and counteracts some of the criticism that has been directed toward Sweden by pro-prostitution advocacy groups since the introduction of the legal and policy actions to discourage the demand.

Keywords

Gender equality · Feminism · Prostitution · Male violence against women · Trafficking in human beings · Law reform · Discrimination against women and girls · Prostitution users · Demand · Sexual services · Pro-violation advocacy · Human rights · Criminal offence

Introduction

This chapter describes the development in Sweden toward a gender equality-based approach to prostitution and trafficking in human beings for sexual purposes, and provides a comprehensive overview of the legal, policy, and strategical framework with a focus on measures that aim to discourage the demand. Part one of the chapter presents the offence that prohibits the purchase of a sexual service, discusses core aspects of the definition of the offence, and gives examples of the relevant jurisprudence. Part two discusses the importance of situating the struggle to eliminate prostitution and trafficking in human beings for sexual purposes in a feminist analysis. The third part of the chapter explores the current situation in Sweden, twenty years after the introduction of the prohibition on the purchase of a sexual service and provides core data on its implementation. The fourth part of the chapter presents and refutes some of the criticism that has been directed toward the Swedish approach by pro-violation groups. Finally, the chapter presents the key features that guarantee that a gender equality-based approach to prostitution and trafficking in human beings for sexual purposes can be sustained over time.

In May 1998, the Members of the Swedish Parliament voted to pass a Government Bill, the Anti-Violence Act – “Kvinnofrid,” which included a large number of measures in law and policy to prevent and eliminate violence against women (Government Bill 1997/98:55).

The Government Bill was a core part, long in coming, of the ongoing work toward gender equality in Sweden and, in many ways, the peak of over twenty
years of feminist advocacy by the Swedish women’s movement to end oppression of women in the private and public spheres. This activism was reflected in the Government Bill:

Male violence against women is not compatible with the efforts towards a gender equal society and must be tackled in all ways possible.

In addition to new offences that criminalized male violence against women in intimate relationships, a stronger rape offence, and more effective legislation against sexual harassment at work, the majority of the Members of Parliament also voted to adopt a number of comprehensive measures to prevent and eliminate prostitution (Protokoll 1997/98:114). As was explained in the Government Bill:

In such a [gender equal] society, it is also against human dignity, and unacceptable for men to obtain casual sexual relations with women for compensation. (Government Bill 1997/98:55 at 22)

As a result, on 1 January 1999, the law that prohibits the purchase of sexual services came into force (Lag 1998). The law, which was integrated into the Penal Code in 2011 as an offence under its chapter on sexual crimes, is phrased in simple, but unambiguous terms. It states that:

A person who, in other cases than previously stated in this chapter, obtains a casual sexual relation in exchange for payment shall be sentenced for the purchase of a sexual service to a fine or imprisonment for at the most one year.

What is stated in the first paragraph also applies if the payment has been promised or made by someone else (Penal Code, Chapter 6, Section 11).

**Definition**

In 2004, the Government explained that a “casual sexual relation” means “intercourse and other forms of sexual relations” (Government Bill 2004/05:45). This was further clarified in a court case from 2012, involving a 41-year-old man. The accused had unbuttoned his trousers and started to touch a prostituted woman when the police approached his car and arrested him. His action was considered a “casual sexual relation,” and he was convicted for the offence of the purchase of a sexual service (Stockholms tingsrätt 2012a at 3).

**Sites of Application**

The offence applies to all forms of sexual services, whether they are purchased in street prostitution, in apartment brothels, in a hotel or a massage parlor, in the home of the prostitution user, or in other similar circumstances.
Attempts to Purchase a Sexual Service

Importantly for the successful enforcement of the legislation, the courts agreed that attempts to purchase a sexual service are also punishable under the criminal law provision, and have convicted such prostitution users for the purchase of a sexual service. For a prostitution user to be considered responsible for an attempt, he must have initiated the commission of the crime, and there must be a danger that the crime would be completed (Hovrätten över Skåne och Blekinge 2002, 2000 at 4).

In a 2012 case, the Stockholm District Court provided one example of what is considered an attempt to purchase a sexual service:

Both police witnesses declared that XX [name redacted] told the female police officer that he wanted to have sex, and then asked her how much it would cost. No circumstances have emerged that give reason to question the reliability of this information. It is, thus, confirmed that XX attempted to buy a sexual service. . . . XX will therefore be sentenced in accordance with the charge. (Stockholms tingsrätt 2012b at 3)

Another example in the jurisprudence of attempts that have been successfully prosecuted is when a prostitution user paid for a sexual service but had not yet initiated the casual sexual relation (e.g., Solna tingsrätt 2012 at 3). The same year five more men, who attempted to purchase a sexual service in similar circumstances, were convicted in different courts across the country.

Aiding and Abetting

Since 2004, the offence also criminalizes the act when a third person or group of individuals purchase a sexual service for someone else. This situation can, for example, occur when a sexual service is offered as a gift to a future groom in the context of a stag party or when corporations offer a sexual service as a business benefit for male business associates. So far, no businesses have been implicated in such action, which is not a guarantee that these situations do not occur.

The courts have convicted several individuals for the crime of aiding and abetting a purchase of a sexual service. A typical situation is when a friend ordered (with the knowledge and agreement of the prostitution user), booked, requested delivery, or picked up and transported a prostituted woman to the main perpetrator for the purpose of exploitation in prostitution or accompanied the main perpetrator to the location of the prostituted woman. In several of these cases, the argument of the aider and abettor is that the main perpetrator either was “too shy,” did not speak the language understood by the prostituted woman, or that he did not know how to gain access to women in prostitution. So far, the courts have not considered such actions as aggravating circumstances. As a result, the penalty has been negligible; usually set at the lowest level of day fines. One example on point is a case determined in 2011, where a man living in the Swedish northern border town of Haparanda requested that a male friend travel to the town of Keminmaa in Finland, a well-known prostitution location, “to pick up and bring back a woman.”
The lower court convicted the male friend of procuring because he had benefitted economically by ensuring that another person could have a casual sexual relation, but suspended the sentence with a fine (Haparanda Tingsrätt 2011 at 6). The male friend appealed the decision. The Appeals Court for Northern Norrland struck down the verdict for procuring, but concluded that:

[the retrieval and transport of the woman to XX’s home contributed significantly to the commission of the crime. Therefore, this act is not a minor infraction. Consequently, XX cannot escape responsibility for aiding and abetting the purchase of a sexual service. The penalty for [the male friend] should be determined to a low number of day fines. (Hovrätten för övre Norrland 2011 at 6)]

**Penalties for the Purchase of a Sexual Service**

The courts pronounced early on about the penal value for the purchase of a sexual service, taking into consideration “the harm, the indignity and the danger that was caused by the act when assessing the penal value for an offence” (Penal Code, Chapter 29, Section 1).

In 2001, the Supreme Court of Sweden upheld the decision of the Court of Appeal for Skåne and Blekinge, in a case from 1999, that the minimum level of fines for a regular purchase of a sexual service should be set at fifty day fines (Högsta domstolen 2001 at 2). The number of day fines indicate the seriousness of the crime, and their size is adapted to the financial situation of the offender.

This case involved a man in his early thirties, who paid SEK 300 for a blow job, which the prostituted woman had to perform while in his car (Malmö tingsrätt 2000 at 2). The decision by the Supreme Court, which was precedent setting, has been criticized, in particular by Swedish feminists, as being regressive and underplaying the seriousness of the harm to the prostituted woman. The decision, they argue, is based on outdated attitudes, where the prostituted woman, not the man that purchased and sexually exploited her, is apportioned the blame.

In its judgment, the Appeals Court first discusses the penal value of the offence, noting that the law makers intended it to be “lower than the penal value for the offence seduction of youth,” which at the time was at the most six months in prison, and that the age and other circumstances of the victim could be considered. The Court of Appeal concluded that the penal value should generally remain the same for all breaches, and that this would include attempts to purchase a sexual service (Hovrätten över Skåne och Blekinge 2000 at 4).

The Court of Appeal supported the conclusion of the lower court that:

[It is in the nature of the law [that prohibits the purchase of a sexual service] that consent is a prerequisite for the existence of the crime. There is no indication in the law, as it is in the law against female genital mutilation, that consent does not free the perpetrator from responsibility. The way which the prohibition is formulated leads [the court to] believe that the act is not to be seen as a crime against the person, but rather as a crime against public order. (Malmö tingsrätt 2000 at 4)]
The assessment that the offence should be regarded as a crime against public order led the Court to conclude that there was no reason to further delve into the social situation of the prostituted woman, or to find out whether the perpetrator was aware of her circumstances.

The Court determined that it was “obvious that the punishment for a breach of the law in question normally should be fines,” that the penal value should be at the lower end of the penal scale, but somewhat higher than the lowest number of day fines, i.e., to be set at fifty day fines (Hovrätten över Skåne och Blekinge 2000 at 5). The Supreme Court upheld unanimously these findings, and noted that the punishment was well-balanced (Högsta domstolen 2000 at 2).

These pronouncements stand in stark contrast to the principled statement about the inherent subordination of women in prostitution by prostitution users set out in the 1998 Government Bill, and supported by the Swedish Parliament, that:

... it is not reasonable to also criminalize the individual that in most cases is the weaker part, who is exploited by others, who want to satisfy their own sexual drive. (Government Bill 1997/98:55 at 104)

In 2008, in a decision by the Court of Appeal in Western Sweden, the discussion about the appropriate penal value was further developed. The Court concluded that a purchase of a sexual service, which takes place in the context of organized prostitution (in this case, in connection with gross procuring involving four accused) is to be considered aggravated, and, hence, the offender should be sentenced to a conditional sentence and fines.

She found herself in an unknown place in a strange country, whose language she did not understand. Both men were older than her and completely unknown to her. ... [S]he found herself at such a disadvantage to the two men that it must have appeared as virtually impossible for her to refuse intercourse with the second man, or to influence the situation in general. Her situation was used by XX and XY. The circumstances are, thus, so aggravated that the punishment cannot be set at a fine. (Hovrätten i västra Sverige 2008 at 9–10)

This latter decision by the Court of Appeal has not been applied consistently to later cases with similar or same circumstances. As the Chancellor of Justice noted in her 2010 Commission of Inquiry report from the review of the effects of the ban on the purchase of a sexual service, which proposed an increase of the maximum prison sentence from six months to a year:

The current penalty level for certain purchases of sexual services does not stand in proportion to the seriousness of the crime. (Commission of Inquiry 2010 at 241)

In July 2011, through a Government Bill, the maximum prison sentence for a purchase of a sexual service was increased from six months to one year based on the recognition that:

[i]n our society, prostitution is an unacceptable phenomenon, which results in harm both to the individual and to society at large. Therefore, to prevent and combat prostitution is of
urgent societal importance. In this work, the offence that prohibits the purchase of a sexual service is an important instrument. (Government Bill 2010/11:77 at 6)

Despite this unequivocal direction from the Government, framed in established feminist and human rights principles, the courts have yet to sentence a prostitution user under the offence that prohibits the purchase of a sexual service to serve time in prison.

**Gender Equality Is a Core Element in the Struggle to Eliminate Prostitution and Trafficking in Human Beings in Sweden**

Since the beginning of the twentieth century, the international community has developed international treaties and policy agreements to prevent and combat prostitution and trafficking in human beings (e.g., through the League of Nations, the United Nations, the Council of Europe, and the European Union).

Many of the earlier international treaties, and importantly, the United Nations Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), firmly establish that prostitution and trafficking in human beings for the purpose of sexual exploitation are not just crimes against the victims, whose dignity, rights, lives and opportunities are affected, but also deeply affront efforts to create societies where women are not discriminated against, and where they can participate in all areas, at the minimum on equal terms with men (CEDAW articles 2 and 6 and General Recommendation No. 35).

The development of the Swedish approach came about as a result of the efforts of a strong feminist movement to end all forms of male violence against women and girls with the recognition that the acceptance of prostitution activities in a society subordinates the position of all women, and creates barriers to their ability to engage in the democratic process as full citizens.

Early on, feminists, whether members of the autonomous women’s anti-violence movement or active in the political parties supporting this reform, recognized that for this cultural shift to be sustainable, it was and still is not sufficient, albeit necessary, to solely focus on actions that involved criminal law reform.

As a result, Sweden was the first country to fully integrate a comprehensive gender equality and human rights approach, in popular terms today named the Nordic Model, into the work against prostitution and trafficking in human beings for sexual purposes.

In Sweden, it is understood that any society that claims to defend principles of legal, political, economic, and social equality for women and girls must reject the idea that women and children, mostly girls, are commodities that can be bought, sold, and sexually exploited by men.

To do otherwise is to allow that a separate class of ...women and girls, who are economically and racially marginalized, is excluded from these measures, as well as from the universal protection of human dignity enshrined in the body of international human rights instruments developed during the past 50 years. (Ekberg 2004 at 1188)
Implementation of the Swedish Approach to Prevent and Combat Prostitution and Trafficking in Human Beings

The successful introduction and twenty years of enforcement of the offence that prohibits the purchase of a sexual service has been accepted as the ultimate proof that a cultural shift in patriarchal societies is possible, with long-reaching effects on the debate about criminal law reform in many countries around the world. However, the work to prevent and eliminate prostitution and trafficking in human beings for sexual purposes in Sweden involves so much more than just the proper enforcement of a Penal Code provision, albeit a radical application of criminal law.

Background

To ensure effective, long-term progress toward substantive gender equality in Sweden, informed by the obligations under the Convention for the Elimination of All Forms of Discrimination of Women, early on, the Minister for Gender Equality was charged with the coordination of gender mainstreaming measures into all government ministries and political areas.

Substantive gender equality in this context means that:

- the identification… of power differences between men and women in society is required, no matter their backgrounds, that the discriminatory effects and impact of these power differences should be determined, and that the goal should be to transform these conditions, rather than solely secure equal rights.
- It also means that women have a right to differential treatment when a law, policy, strategy or action that on its face is gender neutral, has a disproportional and disadvantageous impact on women. (Ekberg 2016)

In the early 2000s, this responsibility was expanded to also include the coordination and oversight of the development of the Swedish approach to prevent and eliminate prostitution and trafficking in human beings. The Swedish Government appointed a special advisor on prostitution and trafficking in human beings based in the Government Division for Gender Equality. The advisor was charged with the task to develop and coordinate a multitude of actions within the Government ministries, but also with the responsible statutory agencies, including the National Police Authority, and with specialized social services agencies, women’s equality-seeking associations, and other civil society and human rights organizations, and to oversee their implementation.

Hence, between 1999 and 2007, concerted work was carried out to implement not just the legislation but also a large number of actions across all policy areas to ensure systemic, normative, and practical changes aiming toward a gender equal society of substance where “[n]o woman or girl is for sale, and no man or boy buy another person for sexual purposes” (Winberg 2002). Politically, the work to prevent and eliminate prostitution and trafficking in human beings for sexual purposes was, and
still is, twenty years later, part of the overall actions, through laws, policies, strategies, and concrete measures to ensure and mainstream substantive gender equality in Sweden.

What Is the Situation in Sweden Today, Twenty Years After the Introduction of the Prohibition on the Purchase of a Sexual Service?

Today, twenty years after the watershed moment in May 1998 when the Swedish parliament overwhelmingly voted to criminalize those who purchase sexual services, the approach is generally working well.

Who Are the Men that Purchase Sexual Services?

The characteristics of the men and boys that encourage and sustain prostitution activities in Sweden through their purchases or attempts to purchase sexual services in Sweden have mostly remained the same over time, with some changes to their age span and ethnic backgrounds, reflecting changes over time in demographics in Sweden as a whole. Law enforcement agencies make no difference based on social, economic, or professional status in how they investigate and pursue men that purchase a sexual service. Hence, since 1999, men from all economic, social, and ethnic backgrounds have been apprehended, fined (if they plead guilty), prosecuted (if they do not), and convicted.

A long list of men in high-status professions have broken the law by purchasing and sexually exploiting mostly girls and women, but also young men and boys. This list includes a number of judges at all court levels, of which one was a Supreme Court judge at the time of his arrest. Others include a chief prosecutor, several soccer, ice hockey, and other sports stars, parliamentarians from all parties, priests, other men in clerical positions, medical doctors, teachers and school leaders, police officers and at least one high-ranking police chief, and a number of business executives including several leaders of transnational companies. And then, there are all the other men, who purchased a sexual service, who are from working and lower middleclass backgrounds with “regular jobs,” the unemployed, and those men that are on short visits from other countries, often for work purposes, and the newly arrived (National Rapporteur 2018 at 9).

The men – heterosexual and gay – are married with or without children, newly married, about to be married, cohabiting with a woman or with a man, divorced, about to be divorced, widowed, or single. Many of these boys and men find inspiration to purchase and sexually exploit women and girls through their regular use of pornography (Unizon 2016).

Research shows that a majority of the Swedish men, who have purchased or attempted to purchase sexual services, have done so on one to three occasions, whereas ten percent of the prostitution users have purchased a sexual service on
more than ten occasions, most often in connection with job-related travels (Svedin et al. 2012 at 5).

A large number of men stated that their latest purchase of a sexual service took place outside Sweden, and Swedish men are still regular sex tourists on industrialized prostitution markets in countries such as Thailand, and in cities in Europe where prostitution activities are tolerated or legalized, and the behaviors of prostitution users are encouraged (Sweden’s Fair Travel Network 2018). Since 1999, more than 7500 men and boys have been reported for having purchased a sexual service from an adult, mostly women, and another 1700 men and boys having purchased a sexual act from a child under 18 years of age (Brå 2018). Many more have been cautioned and reminded that it is, in fact, illegal to purchase sexual acts in Sweden.

Data on the number of reported offences under the Penal Code, Chapter 6, Sections 11 and 9

<table>
<thead>
<tr>
<th>Year</th>
<th># of reported offences – purchase of a sexual service (section 11)</th>
<th># of reported offences – purchase of a sexual act from a child under 18 years of age (section 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999–2017</td>
<td>7622(^a)</td>
<td>1691(^b)</td>
</tr>
<tr>
<td>2017</td>
<td>563</td>
<td>96</td>
</tr>
<tr>
<td>2016</td>
<td>603</td>
<td>191</td>
</tr>
<tr>
<td>2015</td>
<td>523</td>
<td>134</td>
</tr>
<tr>
<td>2014</td>
<td>607</td>
<td>98</td>
</tr>
<tr>
<td>2013</td>
<td>544</td>
<td>150</td>
</tr>
<tr>
<td>2012</td>
<td>551</td>
<td>103</td>
</tr>
<tr>
<td>2011</td>
<td>765</td>
<td>131</td>
</tr>
<tr>
<td>2010</td>
<td>1277</td>
<td>233</td>
</tr>
<tr>
<td>2009</td>
<td>352</td>
<td>150</td>
</tr>
<tr>
<td>1999–2008</td>
<td>1837</td>
<td>405</td>
</tr>
</tbody>
</table>

Datasource: The Swedish Crime Prevention Council, Brå
\(^a\)All reported offences between 1999 and 2017 were perpetrated by men or boys.
\(^b\)The offence prohibiting the purchase of a sexual act from a child under 18 years of age was introduced in 2005 (Government Bill 2004/05:45 at 90).

The Offence that Prohibits the Purchase of a Sexual Service as a Deterrent

The 2010 review noted that the prohibition of the purchase of a sexual service acts as a deterrent for prostitution users. Individuals with experience in prostitution as well as the police and social workers conclude that prostitution users are more cautious, and that the demand has decreased considerably since the legislation came into force in 1999 (Commission of Inquiry 2010). These findings are consistent with a recent study of prostitution users in Belgium, which reported that the most effective deterrents would be legislation, information about their prostitution behavior reaching partners, and the publication of this information on, e.g., social media (Ekberg and Werkman 2016).
Survivors and Victims of Prostitution and Trafficking in Human Beings for Sexual Purposes

In 1918, after the determined lobbying over several decades by the Feminist movement of the time, the Swedish parliament voted to repeal legislation that regulated women in prostitution and allowed municipalities to administrate prostitution activities. Since then, victims of prostitution and trafficking in human beings for sexual purposes have not been criminalized, except through the use of vagrancy laws, which were repealed in the early 1960s. These laws, although frequently applied to women in prostitution, did not specifically target these women, but applied to everyone, who loitered from place to place without “earning an honest living” or who led a life which was a danger to public safety, order, or morality (Svanström 2006).

In 1995, a Government-appointed investigator produced a report in which she proposed that both prostitution users and women in prostitution should be criminalized – women, she suggested, because an offence would function as a deterrent for them to enter into prostitution and make it easier to exit once engaged (Commission of Inquiry 1995 at 30). The latter proposal was soundly rejected during the public consultation, as lacking understanding that sanctions would impede rather than support prostituted women from exiting prostitution (Government Bill 97/98:55 at 101).

Today, and although not conclusive across the country, there are strong indications that the Swedish approach has affected the number of women exploited in street prostitution. The ten year review concluded that the number of victims of prostitution and trafficking in human beings had remained stable since the introduction of the law that prohibits the purchase of sexual services (Commission of Inquiry 2010 at 35). A recent analysis by the Stockholm Regional Police Prostitution Team (SRPPT) also shows a clear decrease during the past four years. Most of the prostituted women are not residents of Sweden, with the majority being citizens of Romania, one of the poorest Member States of the European Union, and Nigeria.

Number of women in street prostitution in Stockholm 2014–2017

<table>
<thead>
<tr>
<th>Year</th>
<th># of individuals per year</th>
<th>Approx. # of individuals per evening</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>66</td>
<td>14</td>
</tr>
<tr>
<td>2016</td>
<td>85</td>
<td>14</td>
</tr>
<tr>
<td>2015</td>
<td>97</td>
<td>14</td>
</tr>
<tr>
<td>2014</td>
<td>112</td>
<td>15</td>
</tr>
</tbody>
</table>

Data source: National Rapporteur on Trafficking in Human Beings (2018 at 20)

Since the mid-1970s, exit services are available for victims of prostitution and human trafficking for sexual purposes in Sweden. Today, these services include sheltered accommodations, financial assistance, interpretation and psychosocial support, and specialized victim services with street-based and online outreach programs. Victims of prostitution and trafficking in human beings are also given access to court appointed lawyers, who support victims that decide to testify against the
facilitators of prostitution activities and traffickers. Third country victims can obtain temporary residence permits during investigations and judicial processes, and criminal injuries compensation is available to all victims through a dedicated statutory agency.

**Capacity Within the Justice System to Investigate and Prosecute Prostitution and Human Trafficking Offences**

The efforts of the justice system aim to prosecute the full chain of perpetrators – traffickers, pimps, and organized crime networks – with an explicit focus on the men that attempt to or purchase sexual services from adults and/or sexual acts from children under the age of 18. Since the reorganization of the police authority in 2015, six of the seven police regions have appointed specialized investigative anti-trafficking teams, with all police officers across the authority required to take part in thematic capacity building courses (National Rapporteur 2018 at 59).

In 2018, the Prosecution Authority consolidated the three existing international prosecution chambers into a National Unit Against International and Organized Crime. The National Unit is responsible for the prosecution of cross-border criminality and national organized crimes, which includes the prohibition on the purchase of a sexual service/sexual act from a child under 18 years of age when linked to human trafficking.

Data on the number of reported offences under the Penal Code, Chapter 6, Section 12, and Chapter 4, Section 1a

<table>
<thead>
<tr>
<th>Year</th>
<th># of reported procuring offences</th>
<th># reported offences involving trafficking in human beings for sexual purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999–2017</td>
<td>1534</td>
<td>531</td>
</tr>
<tr>
<td>2017</td>
<td>136</td>
<td>82</td>
</tr>
<tr>
<td>2016</td>
<td>102</td>
<td>81</td>
</tr>
<tr>
<td>2015</td>
<td>82</td>
<td>58</td>
</tr>
<tr>
<td>2014</td>
<td>109</td>
<td>31</td>
</tr>
<tr>
<td>2013</td>
<td>108</td>
<td>40</td>
</tr>
<tr>
<td>2012</td>
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<td>21</td>
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<tr>
<td>2011</td>
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<td>2010</td>
<td>120</td>
<td>32</td>
</tr>
<tr>
<td>2009</td>
<td>94</td>
<td>31</td>
</tr>
<tr>
<td>1999–2008</td>
<td>602</td>
<td>152</td>
</tr>
</tbody>
</table>

Data source: The Swedish Crime Prevention Council, Brå

Over the years, the legal framework that concerns prostitution and trafficking in human beings has been strengthened several times to respond better to the criminal intentions and violent actions of the men, who purchase sexual services, and to reflect the increase in “know-how” about the situation of and impact on victims. Hence, the maximum sentence for someone, who purchases a sexual service for
themselves or for someone else, was increased to one year in 2011, a reform that allows the arrest of the prostitution user and the search of his mobile phone.

In July 2018, the maximum sentence for aggravated procuring was extended to ten years in prison to reflect the seriousness of the crime when a perpetrator “make[s] a profit by ruthlessly exploiting another person, often women and sometimes children,” and offences in relation to trafficking in human beings were further strengthened (Government Bill 2017/18:123 at 13).

Today, prosecutors not only charge prostitution users under the offence that prohibits the purchase of sexual services, but also actively pursue prosecution for related crimes. An analysis by the SRPPT in 2017 concluded that 13 percent of the 144 arrested prostitution users had committed other crimes in connection with the purchase of a sexual service such as common assault, rape, unlawful threats, sexual harassment, and taking offensive and intrusive photos of women in prostitution. Of these men, 16 percent had prior convictions for a number of serious crimes including theft, assault, drug offences, fraud, drunk driving, and purchases of a sexual act from a child (National Rapporteur 2018 at 24).

A case from 2016 illustrates well this troubling development. A 21-year-old man contacted and paid for a sexual service from a young woman from Poland, who had stayed two days in a hotel in southern Sweden, during which she earned the equivalent of €1,300 from prostitution activities. During the sexual act, the man received a mobile phone call. Afterwards, when the prostituted woman escorted him to the door, another man known to the first man entered the room, dragged her to the bed and started to strangle her, while demanding to know where her money was stashed. The two men realized that the money was locked in the room safe, and demanded that the woman provide the code. When she refused, the man again proceeded to strangle her. Eventually, the men stole her money and left, and the woman asked the hotel reception staff to call the police. The court of first instance in Malmö convicted one of the men for the purchase of a sexual service, and for robbery to one year and nine months in prison. The second man was convicted of robbery and drug dealing to two years and three months in prison. Both men were required to pay damages to the woman of €4,500 jointly to compensate for the harm she suffered. The judge underlined that:

> [t]he crime she suffered involved a very serious violation of her personal integrity. She was attacked by two people when she sold sexual services, with one of the perpetrators having sexual intercourse with her as part of the criminal plan. (Malmö tingsrätt 2016 at 20)

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**The Purchase of Sexual Services in Another Country Is Still Not Prohibited**

Not all calls for the continuing consolidation of the Swedish approach are heard or acted upon. In 2009, when the purchase of a sexual service was criminalized in Norway, the Norwegian parliament agreed — after pressures from women’s
organizations and the trade unions – that the legislation also should apply to prostitution users residing in Norway, who purchase sexual services outside the country.

Although this aspect of the offence is rarely applied (Svendsen 2011), it is clear from a 2014 evaluation of the effects of the Norwegian legislation on men’s attitudes that it, in fact, establishes a positive norm for men to abstain from purchasing sexual acts, and that “for a prostitution buyer, who gets caught, a purchase of a sexual service is seen as an enormous loss of status” (Rasmussen et al. 2014 at 13 and 66). Under the current Swedish offence, a Swedish court is only competent to sentence a person residing in Sweden for the purchase of a sexual service, which he committed in another country, when the act is also a criminal offence in that country. Women’s organizations have pressured the government to make similar changes to the Swedish offence since the Norwegian law reform in 2009. They argue that:

> [e]ven if the law has had positive effects in Sweden, we know that Swedes still purchase sex [sic] abroad. . . . Something seems to happen with the understanding of gender equality when we [sic] travel away from Sweden. (Sveriges Kvinnolobby 2014)

In October 2014, the newly elected Social Democrat/Green Party government coalition made a commitment in its Statement of Government Policies to criminalize the purchase of a sexual service by a Swedish resident outside Sweden, whether or not this country has a similar criminal law provision, and to allow prosecution of these crimes in Sweden (Regeringsförklaringen 2014 at 9). In June 2015, the Minister of Justice commissioned an earlier appointed sole investigator sitting as a Commission of Inquiry (Commission of Inquiry 2014) to consider whether individuals, who purchase sexual services outside Sweden, could and should be prosecuted in Swedish courts (Press release 2015). An interim report was presented in June 2016, in which the investigator concluded that the offence should not be exempted from the requirement of dual criminality set out in Chapter 2 of the Penal Code (Commission of Inquiry 2016 at 106). To the exasperation of the women’s organizations, the Government later retracted its commitment citing the lack of support in the Parliament. In particular, the four parties in the conservative alliance let it be known that they intended to vote down the amendment citing problems of implementation as a reason (Aftonbladet 2018a). Although more urgent than ever (Sweden’s Fair Travel Network 2018), there is no indication from the Government that the offence would be amended in the near future to allow international application.

In January 2015, the Minister of Justice commissioned an inquiry into a strong criminal law protection in cases of trafficking in human beings and the purchase of a sexual act from a child, with a sole investigator appointed in 2014 to consider whether individuals who purchase sexual services outside Sweden could and should be prosecuted in Swedish courts (Press release 2015). Although more urgent than ever (Sweden’s Fair Travel Network 2018), there is no indication from the government that the offence would be amended to allow international application.
Criticism of the Swedish Approach

The cultural shift to ensure a feminist application of laws, policies, and strategies to prostitution and trafficking in human beings for sexual purposes still draws, after twenty years of implementation, the attention of governments, parliamentarians, and advocacy groups around the world. Much of this attention is positive – over the years, many human rights advocates, politicians, law enforcement and media representatives from all corners of the world have visited Sweden to study, in situ, the impact and effectiveness of the Swedish approach. Swedish officials and community organization representatives have also travelled extensively around the world to present the results of the implementation of the legal and policy framework aimed to eliminate the demand.

But this approach has also drawn the ire of activists and academics within Sweden and across the globe that lobby for the legalization or decriminalization of prostitution activities in their own countries. A critical examination of the contemporary debate and initiatives to prevent and combat prostitution and human trafficking internationally shows a widening gap between recognized universal human rights norms and the approaches taken by certain countries, and supported by some international human rights bodies and organizations and national advocacy groups.

National Debate

This development is also reflected in the national debate about the effects and impact of the gender equality-based approach to prostitution and trafficking in human beings in Sweden. Since the beginning of the 2000s, a small number of “pro-sex work” advocates have taken active part in the media debate to denounce the Swedish approach.

One organization that has lobbied actively and consistently over the past two decades for the repeal of the offence that prohibits the purchase of a sexual service is the sex-worker organization, Rose Alliance. Rose Alliance was founded in 2003 “...as a reaction to the law that prohibits the purchase of sexual services” with the purpose, according to one of its cofounders, to become a strong lobby organization. She did, however, later underline in an interview that this purpose was never attained, due to “insufficient resources” (Skarsgård 2013).

The objective of Rose Alliance rests on six principles; two of which are directly relevant to their advocacy work. Firstly, members believe that “sex work is work and should be governed by and protected by the same labour laws as other work.” The organization is also “against all criminalisation of sexual services for compensation that takes place between consenting adults as well as being against criminalisation of third parties” (Rose Alliance Undated). Their representatives are vocal on the international arena, mostly through their membership in the Edinburgh-based Global Network of Sex Work Projects (NSWP), through research reports based on their analysis of the impact of the Swedish approach, and through their participation in...
public fora in some of the countries that have followed in or debate whether to follow in the footsteps of Sweden.

However, their impact in Sweden has been limited. There are several reasons for why their arguments have not taken hold in the Swedish debate. In 2013, it was revealed by a journalist in one of the Swedish web based dailies that the then-leader of Rose Alliance had been a member of the board of one of the few strip clubs still in existence in Sweden, responsible for the management of its work schedule, raising doubts about her integrity as an advocate for the well-being of “sex workers” (Skarsgård 2013). A significant reason for why the arguments by advocacy groups such as Rose Alliance have never taken hold in Sweden also lies in the considerable public support for the offence that prohibits the purchase of a sexual service, and the underlying principles of gender equality and human rights (Kuosmanen 2011 at 252–254).

International Debate

Other pro-prostitution advocacy groups, including several of the most respected international human rights organizations such as Amnesty International, have higher ambitions. Through their lobbying efforts on the international arena, these organizations with allies have attempted to modify the interpretation of core international agreements that pertain to prostitution and the trafficking in human beings for sexual purposes, e.g., article 6 of the CEDAW. This article recognizes that prostitution and trafficking are forms of discrimination of women, and makes it mandatory for United Nations Member States to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

In 2016, after a membership consultation process, Amnesty International published a policy paper discussing its organizational standpoint on the obligations of states to respect and protect sex workers. In the policy paper, the organization argues not only for the importance of states to “[r]epeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration,” but also to repeal those [laws] “which make the buying of sex from consenting adults or the organization of sex work (such as prohibitions on renting premises for sex work) a criminal offence” (Amnesty International Policy 2016a at 2 and 13).

As a result, this otherwise respected and most outspoken of the many international human rights organizations voted to reject the “Nordic Model,” aka the Swedish approach for the prevention and combat of prostitution and trafficking in human beings.

Notably, Amnesty International not only rejects outright the comprehensive work done in Sweden over twenty years to prevent and counteract prostitution and trafficking in human beings for sexual purposes. The human rights organization also disputes the multisource, verified evidence widely available that supports the positive individual and societal impacts of the Swedish approach, especially in
In its May 2016 international policy on sex worker rights, the organization outlines several reasons for why its membership firmly rejected a gender equality-based, human rights approach to prostitution and trafficking in human beings for sexual purposes, in favor of a sex work-focused approach.

The organization argues that laws that prohibits the purchase of a sexual service “can harm sex workers,” because “sex workers have to take more risks to protect buyers from detection by the police.” This argument has been soundly refuted by women and men with experience in prostitution in Sweden and in other countries, but also by the 2010 Commission of Inquiry, and in a recent European Commission report on the gender dimension of trafficking in human beings (Walby 2016 at 134).

Amnesty International goes on to state (without providing any robust evidence) that “sex workers,” who operate under a Nordic Model regime “can also face difficulties in securing accommodation as their landlords can be prosecuted for letting premises to them. This can lead to forced evictions of sex workers from their homes” (Amnesty International Q&A 2016b). This is a common criticism directed against the Swedish approach, which has been disproved by Swedish prostitution survivor groups, and repeatedly by law enforcement agencies in Sweden that, by law, may not target or otherwise criminalize women or others in prostitution.

In fact, the human rights organization aims higher than just to reject the Swedish approach; it throws its considerable ethical and political weight, with some limited reservations, behind arguments put forward by pro-violation advocacy groups that promote the legalization or decriminalization of prostitution activities:

Amnesty is not opposed to legalization per se; but governments must make sure the system respects the human rights of sex workers. . . There is no reliable evidence to suggest that decriminalization of sex work would encourage human trafficking. (Amnesty International Q&A 2016b at points 8 and 9)

However, despite these efforts to undermine the Swedish approach, their success has been limited. The gender equality-based approach to the prevention and elimination of prostitution and trafficking in human beings for sexual purposes has clearly stood the test of time, and is increasingly being adopted internationally.

What Are the Key Features that Guarantee that a Gender Equality-Based Approach to Prostitution and Trafficking in Human Beings Can Be Sustained Over Time?

The Engagement of a Committed Women’s Movement
The late 1960s and early 1970s represented a profound political transformation for women in Sweden with the rise of the autonomous women’s liberation movement. Increasingly, women became engaged in mainstream politics in order to gain
political power to affect substantive long-term positive changes to the conditions of and opportunities for women and girls.

Notably, women with experience in prostitution and survivors of other forms of male violence were closely involved in the advocacy to criminalize those men, who purchase sexual services, leading up to the positive decision in the parliament in 1998, and are still active advocates. Women with experience in prostitution participated shoulder by shoulder with other women to push the political agenda-of-the-day to include actions that were based on the understanding that prostitution is a serious violation of women’s human rights, is male violence against women, and is an affront to the work to guarantee substantive gender equality in Sweden.

At the time, survivors (with some pertinent exceptions) were not speaking out publicly about their individual experiences in the prostitution industry. There were a couple of reasons for this silence. Despite a general understanding in Swedish society that the majority of women and girls, who are drawn into prostitution by pimps and prostitution users are from marginalized groups and often have experienced other sex-specific forms of male violence, societal attitudes toward these women were often negative. Notably, women with experience in prostitution could risk discrimination in, e.g., employment, education, and intimate relationships, or suffer retaliatory violence at the hands of pimps, traffickers, or prostitution users for speaking out, especially when they attempted to move away from the prostitution industry. It was also evident to the women’s movement that relying heavily on survivor testimony as the clinching method to convince policy makers and the public to change attitudes and reform laws and policies on prostitution and human trafficking would not be a sound or long-term, sustainable political strategy.

It was recognized that prostitution is not just about the individual experiences of women of sexualized harm by men, who have the power to sell, control, purchase, and sexually exploit individual women. The women’s movement recognized that a systemic, political analysis of male violence as a barrier to the full participation of women and girls in society was necessary to create substantive change. Hence, to be effective, this struggle required the use of political methods and strategies that strike directly against the systemic oppression of all women and girls.

Today, some of these discriminatory attitudes still remain in Swedish society. However, due to the feminist efforts to visibilize the culpability of, and hold accountable, the perpetrators, while uncovering the multiple harms done to victims, more women, who have experience in prostitution, are speaking out publicly. Many of these women cite the inspiration drawn from the emergence of the #metoo movement against sexual violence and sexual harassment, which spread through social media across the world in 2017. As one of the founding members of the network #intedinhora [#notyourwhore] stated recently:

My work in #notyourwhore is not about helping young women leave prostitution. My work in #notyourwhore is about working for political measures and structural changes so that no one ever will have to end up in prostitution. I do this together with hundreds of other competent, brave, strong and fantastic people with experience of prostitution and other forms of commercial sexual exploitation. (Aftonbladet 2018b)
A Strong Political Vision
The development toward a new “gender-equal” society – or, in radical feminist terms, a society where the oppression of women and girls by individual men and men as a class is eliminated – involved imagining the kind of society women as individuals and as a class wanted to live in, and to formulate concrete political goals. By necessity, one of the most urgent objectives was and is to create a society where women and girls could live full lives free from male violence, including being free from prostitution.

Clearly Formulated Ideological Principles
A political vision and its implementation are only as strong as their underlying ideology. As was done early on in Sweden, core principles of feminism and human rights were identified and agreed upon, and the ideological base for how to reach the political objectives was identified. Women gathered and developed strategies based on these principles that would bring maximum benefit to women in prostitution and to society at large, with a focus on holding perpetrators accountable.

Political Priority and Will for Action
Core to the consistent implementation and amelioration of the Swedish approach since 1999 has been the engagement of successive governments to make the implementation of the approach an absolute political priority, with key individuals in the government, statutory agencies, in academia and in civil society, and, in particular in the women’s movement expressing a strong will to act to make this approach work and be sustainable long-term.

The Removal of Market Incentives
The Swedish approach also involves the rejection of measures that fuels the demand by allowing the existence and growth of a local prostitution industry, where men, unhindered, demand and purchase sexual acts, and where those that are exploited in prostitution are seen as “willing participants.” There is a consensus that such reactionary measures create serious obstacles to the advancement of a society free of discrimination in which men and women are treated as equals with equal opportunities and responsibilities (Government Communication 2003). These strategies, in combination with a robust public debate, have resulted in that Sweden, today, stands in the forefront of a revolutionary law and policy reform project to prevent and counteract prostitution and trafficking in human beings, firmly rooted in feminist and international human rights principles, which has inspired law makers and civil society representatives in a number of countries around the world.

The approach holds strong public support in Sweden, and has brought about significant positive changes in attitudes, showing, as was one of the original objectives, that the approach has normative as well as direct effects on the reduction of the demand. The positive direct, indirect and normative effects of the Swedish approach have inspired other countries in the European Union and beyond to develop similar approaches such as Israel (2018), the Republic of Ireland (2016), France (2016),
Northern Ireland and Canada (2014), and Norway and Iceland (2009). Consultations on whether to pass legislation that fully prohibits the purchase of a sexual act or sexual service are under way in, e.g., South Africa, England and Wales, Scotland, and Finland.

**A Strong and Gender Equality-Based Coordination Mechanism**

The long-term sustainability, quality, and effectiveness of a comprehensive approach to prevent and counteract prostitution and trafficking in human beings is strongly dependent on it being grounded in substantive gender equality principles to eliminate all forms of discrimination against women and girls. In concrete terms, this means that responsible government agencies incorporate such principles in their implementation of all actions, and that the implementation is closely coordinated and monitored for accountability.

In July 2008, under a new conservative government alliance, the responsibility for the coordination of national measures to prevent and combat prostitution and all forms of human trafficking was moved from the Minister of Gender Equality, to a regional public authority, the Stockholm County Administration Board (Government Communication 2008 at 27). Although all statutory agencies in Sweden are required to mainstream gender equality throughout all actions, the move resulted in a loss of the necessary gender equality expertise, with a direct and negative impact on the quality and impact of the coordination measures. In January 2018, under the Social Democrat/Green Party government, to enhance long-term efficiency, and to counteract fragmentation, the responsibility for the coordination was transferred to a newly specialized public authority for gender equality, the Gender Equality Agency, with the overarching objective to “contribute to the strategic, coherent and long-term governance and effective implementation of the national gender equality policies and strategies” (Government Communication 2016 at 97).

**Ongoing Independent Monitoring**

Finally, consistent, independent monitoring and evaluation of the impact, benefits, and drawbacks is core to the successful and sustainable retention of a gender equality-based approach to prostitution and trafficking in human beings for sexual purpose. To ensure its gradual improvement, and the adaptation of legislation, policies, strategies, and interventions to changing “market” trends, the cooperation between state agencies and feminist and human rights community organizations is necessary.

Regular assessment and annual publication of evidence-based data is also important in the light of the controversy that this approach still can raise. Sweden was the first country in the European Union to appoint an independent National Rapporteur on Trafficking in Human Beings following a joint declaration, The Hague Ministerial Declaration, of the European Union in 1997. The National Rapporteur investigates, monitors, and analyzes the character, state, and scale of prostitution and trafficking in human beings for all forms of exploitation to, within, and from Sweden. The National Rapporteur was given the authority and resources to request information and to collect nonidentifiable, sex-disaggregated data from public...
authorities and representatives of community organizations on different aspects of the Swedish approach. Importantly, the results are published in annual reports that also include recommendations to the government, statutory agencies, and to civil society, often proposing radical changes to the current system (National Rapporteur 2018).

**Conclusion**

The Swedish approach to the prevention and elimination of prostitution and trafficking in human beings for sexual purposes and its effects are very different than the image that the national and international pro-violation advocates promote. The Swedish approach rests on solid political ground. Its radicality is guaranteed by the ongoing engagement of a strong feminist movement. The commitment of individual politicians, political parties, and a responsible government are core to its sustainability. Importantly, an ongoing and healthy public debate in media and local communities is core to its success. Key actors in the justice system have set aside their earlier reservations about the functionality of the legislation, and, through education and hands-on learning, have increased their understanding of the harm of prostitution. Today, law enforcement agencies and the prosecution services focus their interventions on ensuring accountability of the chain of perpetrators – prostitution users, pimps, and traffickers – no matter their social status and background.

The Swedish approach to prevent and eliminate prostitution and trafficking in human beings for sexual purpose may not be flawless, but it is slowly fulfilling the political vision of its initiators – that no woman and girl, man and boy should be subjected to sexual exploitation and human trafficking.

**Cross-References**

- A Comprehensive Gender Framework to Evaluate Anti-trafficking Policies and Programs
- Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation
- Developing a Universal Standard of Care for Victims of Trafficking Under the Guiding Principles of Non-state Torture
- From the Street Corner to the Digital World: How the Digital Age Impacts Sex Trafficking Detection and Data Collection
- Health and Social Service-Based Human Trafficking Response Models
- “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal
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Judgments


Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation

Jennifer Middleton and Amber McDonald

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Abstract

The Sanctuary Model® is an evidence-supported, trauma-informed, and trauma-responsive organizational culture approach to addressing the needs of individuals who have been exposed to overwhelming and usually repeated and sustained exposure to maltreatment, violence, and systematic dehumanization. Victims of sex trafficking and commercial sexual exploitation have experienced profound moral

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injury, and repair must be a fundamental component of healing. The objective of introducing an organizational culture approach is to enable a program, a system, or even an entire community to organize itself around a shared vision, knowledge foundation, set of values, language, and practice in service of creating a total service delivery environment to counter the complex effects of traumatic exposure. As a result of the scarcity of literature pertaining to evidence-based, trauma-informed treatment for survivors of sex trafficking, and the potentiality of a trauma-informed organizational and systems intervention to reduce stigma and promote healing, this chapter will describe the Sanctuary Model, outline the four major pillars of the model, and discuss its application for enhancing the system of care for survivors of sex trafficking and commercial sexual exploitation.

**Keywords**

Trauma-informed care · Commercial sexual exploitation · Treatment · Organizational change · Sanctuary model

**Introduction**

An individual’s involvement in the sex industry (e.g., voluntarily or forced) is an incredibly abstruse phenomenon to understand. This is typically due to the complexity found within the relationships among people within the sex industry, as well as the social and systemic inequities, power, and vulnerabilities that people bring with them to each relationship. Regardless of agency or circumstance, involvement in the commercial sex industry can be dangerous both physically and emotionally (Rekart 2006). For example, there are increased physical health risks for people involved (e.g., sexual transmitted infection, physical violence resulting in physical injury, etc.; Decker et al. 2011; Hossain et al. 2010; Muftic and Finn 2013) and risk for serious mental health problems such as psychiatric hospitalizations and substance abuse issues (Greene et al. 1999; Halcon and Lifson 2004). Particularly, victims of sex trafficking and commercial sexual exploitation endure profound moral injury as opposed to their peers who enter the sex industry in other ways. Individuals who have experienced force, fraud, or coercion in entering sex work exhibit poorer health outcomes than those who enter willingly (Decker et al. 2011). Additionally, those who are involved in commercial sex at a younger age are susceptible to poorer health outcomes than those who enter as adults (Decker et al. 2011; Hossain et al. 2010; Muftic and Finn 2013).

Post-traumatic stress disorder (PTSD) is the most common primary mental health diagnosis of young people exiting sex trafficking, followed by depression (Twill et al. 2010). Individuals involved in sex trafficking report contemplating suicide, psychological abuse, and struggling with mental health problems while involved (Hom and Woods 2013). Additionally, many individuals report physical abuse, anxiety, and struggles with disassociation (Hom and Woods 2013). Due to the profound amount of physical and moral injury experienced by sex trafficking victims, repair of the individual is a fundamental component to healing (Bloom...
2018). Specifically, repair must include reestablishing safety and stabilization. It can be very difficult to know how to stabilize an individual who has experienced such profound trauma, thereby relying on the skills and competencies of the clinical professional is not enough. Ensuring that the individual has access to a highly skilled clinical professional, as well as psychoeducation and an organization that is trauma informed are key components to healing (Fisher 1999).

The purpose of this chapter is to discuss the Sanctuary Model®, an evidence-supported, trauma-informed, and trauma-responsive organizational culture approach to addressing the needs of individuals who have been exposed to overwhelming and repeated and sustained exposure to maltreatment, violence, and systematic dehumanization. This chapter begins by providing the reader with a foundational understanding and definition of trauma and how it impacts a person. Next, a review of the current literature on the importance of and evidence behind the use of trauma-informed approaches in treatment for trauma survivors is provided. Specific approaches to treatment for survivors of sex trafficking are outlined, and the Sanctuary Model is introduced as one organizational model for treatment to consider. The four core elements of the Sanctuary Model are described in detail for the reader, followed by a discussion about how organizations and systems often reenact trauma in a parallel process similar to the traumatized populations they serve. This chapter concludes by highlighting implications for the Sanctuary Model in creating a trauma-responsive system of care for survivors of sex trafficking.

Trauma

Through establishing a common definition for trauma, clinical professionals and mental health practitioners benefit from sharing a common language and framework when treating individuals who have experienced sex trafficking. For the purposes of this chapter, Saakvitne et al. (2000) work is relied upon in establishing a definition. Thus, trauma is identified as a unique experience tied to an individual that has endured an event or conditions in which the individual’s ability to integrate his/her/their emotional experience is overwhelmed and the experience (either objectively or subjectively) poses a threat to his/her/their life, bodily integrity, or that of a caregiver or family member (Saakvitne et al. 2000). When experiencing a traumatic event, an individual may become so overwhelmed that they are unable to effectively respond to what is occurring (i.e., run away, fight back, etc.), and traumas typically occur within interpersonal relationships (Blaustein and Kinniburgh 2010). As a result, experiencing a trauma can have long-term effects on people. For example, people who have a trauma history report feeling a loss of control and a general sense of vulnerability within their lives, a changed perception related to their sense of self and expectations of the world around them, as well as their ability to be flexible in their thinking (i.e., open-minded to different ways of being) and feeling secure (Blaustein and Kinniburgh 2010).

Approximately 33% of children living within the USA experience multiple traumas prior to their 18th birthday (Copeland et al. 2007); therefore trauma plays
a complex role in sex trafficking. Childhood maltreatment such as experiencing sexual abuse (Bagley and Young 1987) has been associated with involvement in the sex industry. Also, emotional abuse has been linked directly to youth involvement in sex trafficking (Roe-Sepowitz 2012). One route through which individuals become exploited and trafficked, within a cycle of trauma, is through involvement in the foster care system. Placement in foster care is largely associated with childhood trauma. As such, victims and survivors of sex trafficking are subject to the effects of complex trauma as a result of previous adverse life experiences and vulnerabilities (Courtois 2004). Recent evidence suggests that survivors of sex trafficking experience significantly higher levels of trauma compared to other vulnerable populations, and this trauma often stems from their childhood. For example, one study found that sex trafficked homeless youth were more likely to report child maltreatment and adverse childhood experiences versus non-trafficked homeless youth (Middleton et al. 2018).

Accordingly, clinical professionals and mental health practitioners have been strongly encouraged [through the literature] to rely upon trauma-informed approaches in guiding their treatment of survivors of trauma – particularly individuals who have endured multiple traumas (Ahn et al. 2013; Covington 2008; Hom and Woods 2013; Konstantopoulos et al. 2013; Ko et al. 2008; Miller and Najavits 2012). Due to the often violent and coercive nature of sex trafficking, survivors of sex trafficking likely will present to professionals with multiple, complex traumas, thereby warranting a trauma-informed approach to intervention and treatment. Pointedly, trauma-informed practices have shown to increase coping skills among cisgender women with co-occurring disorders and trauma histories (Gatz et al. 2007).

**A Trauma-Informed Approach**

Trauma-informed service approaches to care are distinctly different than trauma-specific treatment models. Trauma-informed service approaches realize the impact of trauma, recognize the signs and symptoms of trauma in individuals, respond by fully integrating trauma knowledge into policies, practices, and procedures, and work diligently to avoid re-traumatization of the individual through contact with the provider and/or agency (SAMHSA n.d.). Trauma-informed services seek “safety first” and commit themselves to “do no harm.” The SAMHSA-funded Women, Co-Occurring Disorders, and Violence Study (1998–2003) provides evidence that trauma-informed approaches can enhance the effectiveness of mental health and substance abuse services. On the other hand, trauma-specific treatment models have a more focused primary task: they are specifically designed to treat trauma symptoms and facilitate trauma recovery (Fallot and Harris 2009). While an increasing number of promising and evidence-based treated models address PTSD and other consequences of trauma (e.g., trauma-focused cognitive behavioral therapy), only a small portion have been tested with trafficked populations.

The integration of trauma-informed service approaches into systems of care for individuals who have experienced trauma increases the likelihood of meeting
meaningful objectives when addressing problematic behavior. For example, one study identified that the combination of trauma treatment and staff commitment to trauma-informed practices lowered levels of recidivism for criminal behavior and increased physical health outcomes and service utilization among clients (Ko et al. 2008). Further, a unique need has been identified for cisgender women who have been exposed to trauma (as opposed to cisgender men who also have trauma histories) including increased rates of exposure to violence and other types of abuse. Accordingly, specific trauma-informed treatment approaches that are gender-responsive have shown to be effective in supporting women through treatment (Covington 2008).

Frequently individuals involved in sex trafficking accrue criminal charges (e.g., using or selling drugs, theft, recruitment of others into the sex industry) because of their work in the sex industry (US Department of State 2016). Trauma-informed practices have been shown to be effective when working with populations of cisgender women who are have been labeled as victims of a crime and offenders within the judicial system. One study showed that treatment for one of the identified behaviors or experiences was not sufficient (Miller and Najavits 2012). Thus, reliance on a trauma-informed practice approach complimented the trauma-specific treatment in that it addressed the problematic behavior and the root causes (i.e., trauma) allowing for the individual to reach their treatment objectives (Miller and Najavits 2012). It has been well established within the literature that trauma-informed practices are the gold-standard practice for treatment when working with survivors of trauma (Ahn et al. 2013; Elliot et al. 2005; Konstantopoulos et al. 2013; Hom and Woods 2013).

**Trauma-Informed Care: Service Approaches for Sex Trafficking Survivors**

To date, minimal literature exists, which evaluates specific trauma-informed service approaches with survivors of sex trafficking. One study highlights the importance of integrating trauma assessments with the practice of trauma-informed care. This approach allowed the professional to highlight the strength and resilience of the survivor, and normalize behaviors associated with being involved in the sex industry (Hopper 2017). Importantly, trauma-informed practices for survivors of sex trafficking require moving away from a “rescue” approach to supporting victims (Countryman-Roswurm and DiLollo 2016). This is of profound importance because how survivors respond to leaving the sex industry is key to their future health and survival.

Many survivors have a strong mistrust of others, and this makes the work of those attempting to help very difficult. A trauma-informed care approach is the broader term used to include a systemic way of responding to victims of trafficking. A trauma-informed care approach to organizational and systems change is built on the five core values of trauma-informed care: safety, trustworthiness, choice, collaboration, and empowerment (Fallot and Harris 2009). This approach includes all of the
systems involved in the lives of the victims, including judicial, law enforcement, health care, education, and family (Bloom 2011, 2018). If an organization or system can demonstrate that its culture reflects each of the five values in every contact, relationship, and activity, and that this culture is evident in the experiences of staff as well as consumers, then the organization can be considered trauma-informed (Fallot and Harris 2009). In order to achieve this, all members of the responding communities need to be trained in the signs and symptoms of trauma and in the essential elements of serving trafficking victims and survivors.

In line with the tenets of trauma-informed care, safety is a critical element to address for survivors of sex trafficking. Survivors have not been safe and need every aspect of their recovery to attend to their concerns regarding their sense of safety. Trust is a core aspect of treatment and needs to be built slowly with survivors, as they may not have been able to trust the people around them or the situation in which they found themselves. This includes strategies to ensure that survivors are not retraumatized while in recovery. Empowerment, choice, and inclusiveness are also strong components of a trauma-informed approach (Fallot and Harris 2009). Survivors need to be an integral part of their treatment planning with their culture, gender, and personal history always in mind (US Department of State 2016). For all who are a part of the restorative community for trafficking victims and survivors, it is important to understand the trauma-informed approach as a continual learning process, individualized to each and every deserving survivor (Bloom 2018).

Despite the paucity of research available on trauma-informed practices with survivors of sex trafficking, a recent systematic review identified and highlighted the importance of trauma-informed approaches for survivors of sex trafficking. Specifically, the review pointed to the importance of organizational standards of trauma-informed care practices that allowed for efficient multiagency work and well-defined referral pathways for clients (Hemmings et al. 2016). The Sanctuary Model is one trauma-informed care practice that encompasses all the elements needed to effectively treat survivors of sex trafficking. The following outlines, in detail, the core elements of the Sanctuary Model and how it can be applied to systems of care for trafficking survivors.

**The Sanctuary Model®**

Based on the concept of therapeutic communities, the Sanctuary Model® represents a theory-based, trauma-informed, value-driven, evidence-supported (National Child Traumatic Stress Network 2008; Rivard et al. 2005), whole-culture approach that has a clear and structured methodology for creating or changing an organizational culture (Esaki et al. 2013). The objective of such a change is to more effectively provide a cohesive context within which healing from physical, psychological, and social traumatic experience can be addressed. As an organizational culture intervention, the Sanctuary Model is designed to facilitate the development of structures, processes, and behaviors on the part of staff, clients, and the community as a whole that can counteract the biological, affective, cognitive, social, and experiential
wounds suffered by the victims of traumatic experience and extended exposure to adversity (Bloom 2011).

The Sanctuary Model facilitates this organizational culture intervention process through the use of four core elements. These elements are also known as the Pillars of the Sanctuary Model and include (a) trauma theory, an overview of information about how traumatic experiences affect the brain that therefore influence thoughts, feelings, and behaviors; (b) the Seven Commitments, philosophical underpinnings of the Sanctuary Model that describe the ways in which community members agree to behave with each other and the values to which the organization prescribes; (c) S.E.L.F., an acronym for the organizing categories of safety, emotion management, loss, and future, which is used to formulate plans for client services or treatment as well as for interpersonal and organizational problem-solving; and (d) the Sanctuary Tool Kit, a set of ten practical applications of trauma theory, the Seven Commitments, and S.E.L.F., all of which are used by all members of the community at all levels of the hierarchy to reinforce the concepts of the model (Esaki et al. 2013).

Trauma Theory

Trauma theory provides community members with a common understanding regarding how traumatic experiences affect the brain. The Sanctuary Model is unique in that it not only focuses on what happens to human brains exposed to adversity and chronic stress but it also calls attention to what happens to workers, organizations, and human service systems when exposed to adversity and chronic stress. This approach allows community members to better understand what happens to individuals when they are hurt, recognize behaviors as survival skills, and make sense of organizational problems from a trauma perspective (Bloom 2011; Esaki et al. 2013).

The Seven Commitments

The Seven Commitments are a set of common values that community members aspire to – the way community members agree to be in relationships with each other and treat each other in order to mitigate the effects of trauma on individuals and the community as a whole (see Table 1). The commitments serve as universal guidelines for creating strong and healthy, respectful, and high-functioning communities (Bloom 2011; Esaki et al. 2013).

S.E.L.F.

S.E.L.F. represents the common language community members use to understand problems and solve them without blaming themselves or others. S.E.L.F. is a way of organizing conversations in a nonlinear, nonhierarchical, and non-blaming way using language that is not dependent on jargon. Specifically, S.E.L.F. represents
the four categories that define the most significant impairments that people face when exposed to trauma and how we measure healing:

- **Safety**: Traumatized people often struggle with their own safety and the safety of others.
- **Emotions**: Traumatized people often have difficulty managing their feelings and tend to misread the feelings of others.
- **Loss**: Traumatized people often have arrested grief and unresolved losses that contribute to emotions that are challenging to manage.
- **Future**: Traumatized people often have a foreshortened sense of future or a limited belief in their own abilities to create a future for themselves.

When individuals recover from trauma, they have a restored sense of safety, are able to manage their feelings, have integrated their losses in ways that give them their proper due without being overwhelmed by them, and have a sense of empowerment to shape their futures (Bloom 2011; Esaki et al. 2013).

---

**Table 1** Sanctuary Model seven sanctuary commitments

<table>
<thead>
<tr>
<th>Nonviolence</th>
<th>The community works toward ensuring that all members are safe and refrain from hurting each other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional intelligence</td>
<td>Recognizing and anticipating the influence that emotions have on behavior and using that information to guide practice</td>
</tr>
<tr>
<td>Democracy</td>
<td>Encourages community members to share decision-making in whatever ways are most appropriate for their group. This is based on the premise that diversity of opinion yields a better result and that people are more likely to support something they have helped create</td>
</tr>
<tr>
<td>Open communication</td>
<td>Members agree to be aware of how they communicate with each other. Community members agree to talk about issues that affect the whole community, no matter how difficult they may be, and to do so in a direct and open way. Leaders practice transparency in regard to decisions or issues that affect everyone. All community members have the information they need to be successful</td>
</tr>
<tr>
<td>Social responsibility</td>
<td>Agreement that the community will take care of itself and its members. Members share responsibility for doing good work, adhering to the rules of the community, and being accountable for their behaviors and decisions</td>
</tr>
<tr>
<td>Commitment to social learning</td>
<td>Creating an environment that allows people to learn from each other, their experiences, and their mistakes</td>
</tr>
<tr>
<td>Growth and change</td>
<td>The belief that individuals, groups, and systems can grow and heal. We create situations that promote growth out of our comfort zones and create a sense of disequilibrium that forces movement. Growth and change are achieved through inquiry, self-reflection or assessment, and the acquisition of knowledge</td>
</tr>
</tbody>
</table>
Toolkit

The Sanctuary Model toolkit includes ten daily practices that reinforce the theory, the values, and the language. The tools are a range of practical skills that enable individuals and organizations to more effectively deal with difficult situations, build community, develop a deeper understanding of adversity and trauma, and develop a common practice (see Table 2). The use of the toolkit highlights the importance of giving individuals replacement practices, especially if they will be asked to “give up” certain other practices as part of organizational change and improvement processes. The toolkit offers practices that can be used by both clients and staff alike (Bloom 2011; Esaki et al. 2013).

Typical implementation of the Sanctuary Model consists of an initial 5-day training on the model for key leaders in an organization. The leaders are then tasked with returning to their agency and forming a Core Team, a representative group of

<table>
<thead>
<tr>
<th>Table 2</th>
<th>Tools in the Sanctuary Model toolkit</th>
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<tbody>
<tr>
<td><strong>Core team</strong></td>
<td>Primary vehicle for implementation of the sanctuary model, which consists of a cross section of staff from all levels of the organization’s hierarchy charged with executing the implementation steps</td>
</tr>
<tr>
<td><strong>Supervision</strong></td>
<td>Individual or group meetings to review performance that include opportunities to discuss issues of vicarious trauma, self-care, and updating safety plans</td>
</tr>
<tr>
<td><strong>Training</strong></td>
<td>Ongoing support to staff in use of the sanctuary model concepts through educational materials and interactive learning opportunities</td>
</tr>
<tr>
<td><strong>Community meetings</strong></td>
<td>All community members begin meetings by answering three questions designed to promote feelings identification, a focus on future, and a connection to community</td>
</tr>
<tr>
<td><strong>Team meetings</strong></td>
<td>Way to structure meetings among staff members that allows them to reflect on the work, discuss team functioning, and service delivery issues</td>
</tr>
<tr>
<td><strong>Self-care planning</strong></td>
<td>Practice of identifying and committing to practice a set of activities that one can do to manage stress both inside and outside the workplace</td>
</tr>
<tr>
<td><strong>Red flag reviews</strong></td>
<td>Response to critical incidents that follows a protocol to focus on solutions over problems</td>
</tr>
<tr>
<td><strong>Safety plans</strong></td>
<td>Visual reminders of emotion management practices represented as a list of activities, techniques, or skills to be used in situations that may trigger inappropriate behaviors</td>
</tr>
<tr>
<td><strong>S.E.L.F. service planning</strong></td>
<td>Framework for organizing service planning meetings and documents that explores functioning, challenges, goals, and progress in the areas of safety, emotion management, loss, and future</td>
</tr>
<tr>
<td><strong>Sanctuary psychoeducation</strong></td>
<td>Educational materials about the effects of trauma; the sanctuary tools and concepts delivered to clients and families</td>
</tr>
</tbody>
</table>
employees from all levels and departments, who are the primary change agents to work with colleagues to implement the model. The Core Team is provided technical assistance from an experienced Sanctuary Model faculty person during a 3 year implementation period. After 3 years, the agency may choose to undergo a certification process in which they are evaluated on how well the model has been implemented. A detailed description of the Sanctuary Model, along with a logic model illustrating linkages between model activities and expected outcomes, is provided in Esaki et al. (2013).

**Understanding Organizational Problems from a Trauma Perspective**

**Trauma Reenactment**

Survivors of cumulative trauma, such as trafficking survivors, often experience trauma symptoms such as hypersensitivity to threats, even minor threats, extremist thinking, aggression and impulse control (e.g., fight or flight), and attention to threat while ignoring less threatening but important information (Cloitre et al. 2008). A trauma-informed approach teaches helping professionals to view these symptoms or behaviors as survival skills. However, another manifestation of trauma is reenactment, and the traumatic reenactment can play out in relational dynamics between people as they replay their trauma with others, rather than just in their own behaviors. Traumatic reenactment is essentially about power. Many children and adults who have experienced trauma and chronic stress reenact specific aspects of their trauma history but also reenact abusive power dynamics in general. Because helping professionals are human, they can fall into these patterns too, both as individuals and as a system (Bloom 2011). Individuals and organizations are vulnerable to reenactment for a number of reasons. Reenactment scenarios may represent familiar patterns that helped the individual survive in other relationships, or they may serve to reinforce the notion that the world is predictable (e.g., predictability may safer, even if it is negative). For example, a trafficking survivor may view their relationship with their pimp or trafficker as “safe” because expectations are clearly spelled out by the person in control and it is predictable, as opposed to the chaotic, unstable home environment they may have left behind. Reenactments often give the trauma survivor a sense of mastery over their original hopelessness and may even allow them to vent frustration, anger, or anxiety. When a reenactment occurs in relationships, it typically takes the form of a triangle that includes three roles (Fig. 1).

**Recognizing Reenactment: Rescripting**

In order to intervene and step out of the reenactment triangle, it is important to first recognize that reenactment is occurring. A helping professional should ask themselves
the following questions when working with or interacting with a trauma survivor or a traumatized organization:

- Am I helping the person (or organization) to change?
- In what ways?
- If not, are we reenacting something?
- How do we change the outcome?

In order to step out of the trauma reenactment triangle, the reenactment story must be rewritten. Changing the story, also known as rescripting, requires innovation. Helping professionals and the organizations and systems they work within often find this challenging because innovation cannot be planned or predicted – it emerges over time, it emerges from the bottom up, and it is often viewed as inefficient. Therefore, leaders must create the time and space for innovation to emerge and for team members to build on their collaborators’ ideas. The Sanctuary Model can help create the common language, values, and tools necessary to recognize reenactment and promote rescripting. It is important to note that reenactment is not always at play and should not be used as a way to excuse bullying or abusive behavior where injustice needs to be confronted. There are instances in which the Persecutor is knowingly and
maliciously persecuting another person. If this is the case, then the Persecutor is no longer “playing the role” as persecutor but operating from a place of conscious awareness, and the injustice should be confronted by the entire community as part of their practice of the commitment of social responsibility (Bloom 2011).

**The Parallel Process**

It order to fully understand the application of the Sanctuary Model to the system of care for trafficking survivors, it is important to understand the parallel process by which organizations reenact trauma, stress, and adversity similar to survivors of trauma. Understanding the parallel process requires looking at things from multiple angles. Look at the figure below (Fig. 2) and note what you see.

Most people will say that they see a horse in this first image. Now look at the figure below (Fig. 3) and note what you see.

Most people will see the frog in this second image, although some will still see the horse. What a person sees depends on which direction they are looking from. Depending on a person’s perspective, this could be one of two very different animals. It would be very bad news for the frog if you were treating it like a horse – imagine trying to put a saddle on it and expecting to ride it. While somewhat humorous, this illustrates an important point. Using Sanctuary,

![Fig. 2 What do you see?](image-url)
practicing trauma-informed care, and understanding the parallel process require looking at things from multiple angles (Bloom 2011). Appreciating the complex ways that trauma exposure manifests itself in organizations means being open to changing your perspective.

When contemplating the impact of trauma exposure on individuals and organizations, it is also important to understand and consider the universality of those traumatic experiences and the vulnerability of our brains to that trauma. Therein begs the question: *If traumatic stress has such an adverse impact on the people we serve, what is it doing to me and the place I work?* Organizations are made up of people, so they are going to act like people do in the face of chronic stress and adversity. The section above discussed what those symptoms look like—and they look very similar in organizations. Much like the clients we serve, organizations are complex, living systems, vulnerable to stress, particularly chronic and repetitive stress, as well as trauma (Bloom 2011).

What causes organizational stress? Anything that compromises safety and security for the system can contribute to organizational stress. Organizations, and the systems they work within, all experience stress. These types of organizational stress are often interrelated and overlapping. Because of the organic nature of organizations, their experiences and responses to trauma and stress are much like the responses of the individuals and families they work with. These experiences and responses across systems interact with one another, and this complex interaction is known as the parallel process.

In this way, much like the individuals and families they work with, organizational stress and trauma can act as a barrier to organizational change. Additionally, if
organizations are not inoculated against the impact of trauma, the organization will begin to reflect the trauma-reactive functioning of the client it serves in its own functioning. Specifically, a trauma-organized system, similar to a trauma-organized person, may experience a lack of basic safety and trust, loss of emotional management, problems with cognition communication problems, problems with authority, a confused sense of justice, and an inability to grieve and anticipate the future (Bloom 2011).

Many of the organizations that serve trafficking survivors experience significant and chronic stress, and many exist within a context of constant or chronic crisis, which results in chronic organizational hyperarousal. Once an organization is hyperaroused, its members experience a lack of safety (e.g., physical safety, psychological safety, social safety, moral safety) and a loss of basic trust. When people do not feel safe, they begin to act defensively. A triggered or hyperaroused organization often exhibits defensive behaviors that perpetuate feelings of mistrust, which may be observed as silence, glaring, abruptness, insults, blaming, discrediting, aggression, controlling, threatening, yelling, secrets, mixed messages, aloofness, and even unethical conduct (Bloom 2011). Once people feel unsafe and trust is lost, communication breaks down. As communication structures become more compromised, important topics become “undiscussable,” spoken about only in the “meetings after the meetings.” As a result, the issues that are associated with the greatest emotional charge are separated from normal organizational functions, in a process referred to as organizational alexithymia (Bloom 2011). As a result, conflicts increase and are not resolved, which leads to impoverished relationships. When relationships are damaged, people and teams often begin to work in silos, and organizational dissociation sets in. Then, the organization stops learning from itself and organizational memory is lost, which is also known as organizational amnesia (Bloom 2011).

As discussed previously, organizational stress potentially increases conflict. Conflict is very important to pay attention to, as it is the “alarm bell” of the social immune system. Ignored and unresolved conflict can eventually lead to aggression in various forms. When organizational stress and conflict are high, feedback loops break down, and failure is repeated. This type of systematic error is also known as reenactment, within the context of trauma theory with primary trauma survivors. This repetition of poor decisions and poor problem-solving approaches leads to a loss of democracy and loss of participation. The staff and the organization begin to feel helplessness about problems, and learned helplessness sets in. As staff began to feel helpless and useless, this results in a loss of critical thinking skills, which ultimately impacts decision-making at every level of the organization (Bloom 2011).

Because trauma symptoms do not just happen in individuals, but also in groups of people, an organization may exhibit parallel symptoms such as a state of high alert, inability to think clearly, extreme thoughts, attention to threat, intense and prolonged anxiety, and a drive to take action. In this way, the whole system can manifest the symptoms of trauma through commonly held values, beliefs, assumptions, practices, policies, and laws. When this occurs, clients may be exposed to the same toxicity that brought them to us for help (Bloom 2011). The figure below depicts the parallel process within which trauma symptoms can play out in organizations (Fig. 4).
Creating a Trauma-Responsive System of Care

So what can organizations do, particularly those who serve trafficking survivors? They can change their approach. Organizations that serve trafficking survivors can start with changing the way that they approach, assess, and diagnose their clients. They can promote a trauma-sensitive culture and recognize symptoms as survival skills, not only in their clients but also within themselves and their organizations. In doing this, they can strive to give their clients a different experience.

In summary, the objective of introducing an organizational culture approach such as the Sanctuary Model is to enable a program, a system, or even an entire community to organize itself around a shared vision, knowledge foundation, set of values, language, and practice in service of creating a total service delivery environment to counter the complex effects of traumatic exposure (Bloom 2018). Survivors of sex trafficking and commercial sexual exploitation who have experienced complex, cumulative trauma continue to suffer from suboptimal physical and mental health. Yet, research demonstrates that survivors of trauma can be resilient if they are connected to positive, caring service providers (Harney 2007; Larkin et al. 2012). Unfortunately, high turnover and emotional exhaustion among staff who work with traumatized individuals threatens to create an environment in which it is difficult for survivors to build meaningful connections with providers. The Sanctuary Model aims to reverse these trends through a common language, common values, and a set of tools that create an emotionally and physically safe environment for traumatized clients and everyone connected with them. Although more rigorous evaluation of the Sanctuary Model is needed, the emerging research demonstrates that it is a promising approach for creating a healthy environment that promotes...

![Fig. 4 The parallel process (Bloom 2011)]
emotional health and well-being for agency personnel and the clients they serve (Rivard et al. 2005; Stein et al. 2011). By protecting the emotional health of agency personnel, the Sanctuary Model creates a context in which service providers can be emotionally available to each other and their clients, resulting in positive relationships that create the conditions for resilience.

Cross-References

▶ A Comprehensive Gender Framework to Evaluate Anti-trafficking Policies and Programs
▶ Breaking Bondages: Control Methods, “Juju,” and Human Trafficking
▶ Developing a Universal Standard of Care for Victims of Trafficking Under the Guiding Principles of Non-state Torture
▶ Family-Based Non-state Torturers Who Traffic Their Daughters: Praxis Principles and Healing Epiphanies
▶ How Lifelong Discrimination and Legal Inequality Facilitate Sex Trafficking in Women and Girls
▶ “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal
▶ Psychological Care and Support for the Survivors of Trafficking
▶ Strategies to Restore Justice for Sex Trafficked Native Women
▶ The Application of the Non-punishment Principle to Victims of Human Trafficking in the United States

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Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses

Julie Kaye, Hayli Millar, and Tamara O’Doherty

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Abstract

Responses to human trafficking are situated within a transnational criminal law framework that aims to address criminal actions through prosecution, while promoting the inclusion of human rights to prevent trafficking and protect and assist victims of trafficking. Responses to trafficking have been critiqued for overemphasizing criminal prosecution at the expense of human rights. This chapter explores the limits of enforcement-based and prosecution-oriented approaches from a human rights lens. Beyond a simple dichotomy between human rights versus prosecution, the chapter considers how anti-trafficking

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notions of prevention and protection also reinforce enforcement-based responses that result in ongoing violations of human rights.

**Keywords**

Human rights · Criminalization · Racialization · Gendered · Crimmigration · Migrants · Refugees · Commercial sex work · Precarious labor

**Introduction**

Conceptions of human trafficking and international response mechanisms have gained significant traction in the past quarter century, particularly since the adoption of the United Nations’ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000). Such anti-trafficking responses have been widely critiqued for their weak human rights framing and especially for failing to adequately safeguard the rights of individuals and communities in situations of vulnerability. This chapter provides an overview of the human rights provisions that have been incorporated into anti-trafficking agreements and discusses the limits of existing international anti-trafficking responses. Despite sustained critique and clear efforts to integrate human rights, our analysis reveals that anti-trafficking notions of prevention and protection serve to reinforce enforcement-based anti-trafficking frameworks globally.

Anti-trafficking legal efforts and responses have been unable to take up the transformative changes necessary to move beyond crime suppression and prevention agendas that create, rather than mitigate, the rights violations experienced by persons victimized by human trafficking. In global contexts of structural inequalities, such as post- and settler-colonial realities, neoliberal models of crime control contribute to the reproduction of ongoing gendered and racialized oppressions (Hua 2011; Kaye 2017; Suchland 2015). Accordingly, broader transformative changes, such as decolonial uncoupling of rights and enforcement, are required for anti-trafficking efforts to have any effect on the systemic violence at the heart of systems and societies characterized by ongoing oppressions.

Beyond such wider critiques, it is evident that even within international response models that have integrated protection and prevention alongside prosecutorial emphasis, there are severe restrictions that hamper the actualization of rights provisions and corresponding efforts to provide assistance to victimized persons. In response to critiques of the harms of enforcement-driven anti-trafficking responses, international proclamations assert that anti-trafficking efforts should not adversely affect the rights and dignity of trafficked persons and others affected by anti-trafficking responses. In spite of extensive work to incorporate provisions of prevention and protection and to ground anti-trafficking in a human rights framework, such provisions are predominantly voluntary and weak and are lacking in necessary oversight. As a result, the border maintenance and crime control roots of anti-trafficking responses continue to result in rights violations of persons in situations
of vulnerability, especially internally displaced persons, migrants, refugees, and asylum seekers, and those who work in precarious labor sectors.

**International Agreements and Ineffective Protections: Human Trafficking as a Transnational Crime**

The UN General Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (hereinafter the *Trafficking Protocol or Protocol*) on 15 November 2000, with the agreement entering into force on 25 December 2003. The *Trafficking Protocol* is one of three optional protocols (treaties) supplementing the *United Nations Convention against Transnational Organized Crime* (hereinafter the *Convention*). At the time of adoption, the *Convention* was seen as a new crime suppression agreement intended to establish an international legal framework to enhance interstate cooperation to combat serious transnational crimes committed by organized criminal groups.

The *Trafficking Protocol* draws on a lengthy history of international agreements designed to suppress transnational trafficking in persons (see, e.g., Morcom and Schloenhardt 2011; Simm 2004). Reinforcing the priorities of the nation-state, the *Protocol* builds on a legacy of racialized and gendered approaches to preventing (white) women’s involvement in prostitution and slavery, such as the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* which built on previous anti-slavery and anti-trafficking instruments (e.g., Bernstein 2010; Doezema 2010; Gallagher 2010; Kaye 2017; Kempadoo 2005). The *Protocol* also emerged alongside international treaties to prohibit forced and exploitive labor (e.g., International Labor Organization (ILO) *Conventions* 29, 105, 138, and 182) and to promote human rights with particular reference to ending discrimination against women (e.g., Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, article 6) and children (e.g., Convention on the Rights of the Child (CRC), article 35). Linked to globalization and neoliberalism in the 1980s and 1990s, the UN General Assembly established an intergovernmental Ad-Hoc Committee of the UN Crime Commission, a law enforcement body, to formulate a comprehensive convention to combat transnational organized crime and to enact international agreements on various forms of trafficking. The Ad-Hoc Committee was formed in the context of heightened international concern about the growth and adverse consequences of transnational organized crime and growing unease about the irregular movements of migrants from developing countries and economies in transition (Chuang 2010; Gallagher 2001; UN General Assembly 1998).

Along with its parent *Convention*, the *Trafficking Protocol* was formally negotiated over a roughly 2-year period by the representatives of more than 80 governments, alongside numerous NGO and intergovernmental representatives. During these negotiations, two divergent blocs of (female dominated) NGO lobbying alliances sought to influence the (predominantly male) government and intergovernmental representatives negotiating the *Protocol* (Ditmore and Wijers 2003). The first
bloc, a Human Rights Caucus, representing a human and labor rights perspective and opposing any form of criminalization of adult consensual participation in sex industries, was seeking to ensure the Protocol addressed the conditions of forced labor or abusive working conditions in all work sectors, including the commercial sex sector. The opposing neo-abolitionist US-led bloc, the Coalition Against Trafficking in Women (CATW) and its partners, represented a perspective that all prostitution is slavery and a violation of women’s human rights and sought to have the Protocol abolish trafficking and the sex industries by criminalizing clients and third parties who manage, facilitate, or profit from commercial sex (Bernstein 2010; Chuang 2010; Desyllas 2007; Ditmore and Wijers 2003; Doezema 2004; Kotiswaran 2014; Outshoorn 2005; Simm 2004). The CATW bloc were strongly aligned with a neoliberal (individualized responsibility) crime control model whereby they view the most effective way to prevent and combat trafficking is through the criminalization of trafficking perpetrators (including the clients of sex workers) and by treating all sex workers as “victims” (see, e.g., Leidholdt 2003). This resonated with the perspectives of many of the governments negotiating the Protocol, especially the USA. The USA has subsequently controlled, to a large extent, the neo-abolitionist global anti-trafficking agenda through its foreign policy that conditions foreign aid on achieving a particular rank in its controversial unilateral annual anti-trafficking ranking system (see, e.g., Chuang 2006).

The Trafficking Protocol and its compromise definition of trafficking in persons are very much a reflection of these polarized divisions between the coalition mobilized around sex worker and migrant rights and the neo-abolitionist coalition. The ultimate prioritization of crime control by the governments negotiating the protocol resulted in a missed opportunity to instill strong human rights protections within the Trafficking Protocol. The Human Rights Caucus sought various protections for trafficking victims that would be available irrespective of their cooperation with legal authorities, such as the right to safe shelter and various forms of government-provided social, medical, and legal assistance, the ability to recover lost wages and sue for damages, the provision of residency and work permits during judicial proceedings, and a broad nondiscrimination clause (Chuang 2010; Ditmore and Wijers 2003; Gallagher 2001). While some of these protections are included in a restricted capacity in the Protocol, they are included as non-legally binding – i.e. discretionary – obligations on States parties. In particular, intergovernmental and NGO human rights proponents were not successful in lobbying for the inclusion of (1) a non-prosecution (and non-punishment) clause for individuals victimized by trafficking for status or related criminal offenses, such as undocumented migration, working without proper state documentation, or engaging in sex work; (2) a legally binding obligation on the safe and voluntary return of trafficked persons rather than immediate repatriation; (3) a legally binding obligation to allow trafficked persons a reflection period and to remain temporarily or permanently in a receiving country; (4) a requirement that States parties use a proceeds of crime fund to compensate trafficking victims; or (5) legislative guidance identifying who should be labeled as a trafficking victim and therefore entitled to specific protections otherwise unavailable in the context of criminalized migration (Gallagher 2001; Office of the United
Alongside the exclusion of compulsory protections, human rights advocates were also unsuccessful in their interventions to reframe several of the draft Protocol’s preventive provisions. In particular, preventative provisions such as those focused on strengthening border controls can be used by States parties to limit freedom of movement, especially in discriminatory ways against women and girls, and can negatively impact internationally recognized rights of asylum (OHCHR/UNICEF/IOM 2000). Rather than uphold the rights of migrants, such notions of “prevention” serve to reinforce state-based interventions and enforcement-based responses that result in ongoing human rights violations by further restricting and criminalizing migratory movements.

There are varying reasons why the human rights proponents were unsuccessful in pressing for the inclusion of stronger human rights protections. For one, their concerns were largely sidelined by the polarizing (year-long) policy debate over the legal definition of trafficking in persons; and two, some of the concessions being sought were considered to potentially undermine state sovereignty interests in controlling both commercial sex and migration flows (Ditmore and Wijers 2003; Gallagher 2001). However, the de-prioritization of human rights protections was short-sighted. Given the centrality of victim cooperation to identifying and prosecuting human traffickers, the failure to achieve these minimal human rights protections arguably has undermined the effectiveness of the Protocol as a law enforcement instrument. There are few, if any, incentives for victimized persons to come forward and cooperate with authorities. Indeed, there is little to prevent trafficked persons and witnesses from being deported before criminal proceedings have commenced or been completed. A lack of legislative guidance on how trafficked persons should be identified and the inability of States parties to promptly and accurately identify human trafficking in practice also means that the Protocol is unlikely to afford trafficked persons the minimal human rights and assistance protections it proclaims to provide. The resulting Protocol is widely recognized as a crime control and border securitization instrument – not a human rights instrument (Gallagher 2001; Jordan 2002). It also emphasizes individual criminal responsibility as opposed to broader structural conditions that contribute to human trafficking and criminalized migratory movements. Its primary aim is to facilitate law enforcement cooperation between States parties in the interests of preventing and prosecuting those who traffic in persons, especially women and children, while simultaneously protecting state sovereignty (Protocol Art 2; Convention Art 4). While its scope of application is the investigation and prosecution of transnational trafficking committed by an organized criminal group, domestic anti-trafficking laws are expected to penalize cross-border and domestic trafficking offenses committed by both organized criminal groups and individual traffickers (Jordan 2002). As a crime control instrument, the Protocol requires that States parties criminalize trafficking when committed intentionally, as well as related offenses (including incomplete offenses and other modes of participation such as an accomplice, organizing or directing
(Art 5)). Notably, Article 5 on criminalization is the only unambiguously legally binding article of the Protocol. (The specific language is “states shall adopt such legislative and other measures... to establish as criminal offences.”) Jordan (2002) asserts that, in the absence of a non-prosecution clause, this provision can also be used to prosecute trafficking victims for status offenses (such as working or traveling without documentation required by States parties) or for participating or assisting in their own trafficking.

While a secondary aim of the Protocol is to protect and assist trafficked persons “with full respect for their human rights” and the Protocol includes some important victim assistance and protection provisions (Articles 6–8), these provisions are soft obligations, framed in vague or permissive language. (e.g., the articles employ such phrasing as “in appropriate cases,” “to the extent possible under domestic law,” “shall consider implementing” and “shall endeavor,” “contains measures,” or “shall preferably be voluntary.”) Nevertheless, some of the parent Convention provisions are more robust and may provide better avenues for trafficked persons to access certain protections, namely, Convention Articles 25.1 and 25.2 on victim and witness protection and access to compensation and restitution (Gallagher 2001; Jordan 2002).

The Protocol references human rights in its preamble, and its Article 2(b) stated the purpose. Attention to human rights protections is also mentioned in relation to developing or strengthening training programs for law enforcement and immigration officials, and in the savings clause, which ensures that the Protocol does not alter the existing international legal obligations of States parties, including international human rights and humanitarian law and refugee law extending to the principle of non-refoulement (Articles 10.2 and 14.1). (UNHCR (1977) proclaims non-refoulement as the most essential component of refugee and asylum status by protecting against return to a country where there is a reasonable fear of persecution.) Article 14.2 also sets out a cursory nondiscrimination clause for trafficked persons, which seeks to protect trafficked individuals on some internationally recognized prohibited grounds (race, religion, nationality, sex). However, key forms of discrimination, such as occupational status (sex worker) or in relation to sexual orientation and gender diversity, are not explicitly protected (Jordan 2002). Such provisions also do not account for state-based interventions that reproduce systemic inequalities and the conditions whereby trafficking and other rights violations emerge.

In brief, the Protocol is justifiably criticized for the weak framing of its assistance and protection assurances to trafficked persons, which essentially render these provisions as discretionary recommendations rather than binding obligations for States parties. They fall short of existing international legal obligations, particularly in relation to the provision of legal information to crime victims and a victim’s right to an effective remedy (Global Alliance Against Traffic in Women (GAATW) 2007; OHCHR/UNICEF/IOM 2000). There are equally serious concerns about the prevention provisions of the Protocol, which, in addition to their permissive wording, arguably place too much emphasis on border securitization with consequent ramifications in limiting freedom of movement, especially for women and girls. Further critiques include too little emphasis on the responsibility of States parties to address...
the complex structural economic (poverty, unemployment, debt), social and cultural (gender violence and discrimination), political and legal (inadequate laws, lack of justice system capacity, government corruption), and international (feminization of migration and restrictive immigration policies) forces that lead to trafficking in persons (OHCHR/UNICEF/IOM 2000).

Finally, consistent with other crime suppression treaties but contrasting with the more vigorous independent monitoring and complaint mechanisms for human rights treaties, the Protocol lacks accountability measures and monitoring mechanisms. Article 32 of the Convention provides for the establishment of a “Conference of the Parties to the Convention” whose main role is to improve state capacity to combat transnational crime, followed by promoting and reviewing implementation of the Convention and making recommendations for its improvement (Gallagher 2001). In establishing priorities for the Conference of Parties and its various working groups, clear prioritization has been given to definitional issues (years 1–2) and criminalization (years 3–4), while victim assistance and protection have been relegated to years 7–10 (Conference of the Parties to the United Nations Convention against Transnational Organized Crime 2016).

Still, the general and specific recommendations of the Working Group on Trafficking in Persons have addressed various victim assistance and protection matters in relation to and beyond the minimal assistance and protection provisions of the Protocol (Gallagher 2015), including the non-prosecution and non-punishment of trafficking victims, adopting a human rights approach, rights to legal aid, legal information and consular assistance, and discouraging the use of detention centers (Working Group on Trafficking in Persons 2009; 2010; 2011; 2017; 2018). In addition, the United Nations Office on Drugs and Crime (UNODC) provides technical support to States parties implementing the Convention and its Protocols. In this capacity, it has developed a range of tools, training materials, technical papers and reports, as well as a knowledge portal. While continuing to give primacy to criminalization and border control, as of 2012, the UNODC has committed to strengthen victim assistance and protection measures including intensifying human rights protections (UNODC website).

**Additional Human Rights Protections Outside of the Protocol**

In view of critiques regarding its comparatively minimal victim assistance and human rights protections, the UN General Assembly, the UN Human Rights Council, the UN Office of the High Commissioner for Human Rights (OHCHR), and other UN agencies such as UNICEF and the United Nations High Commissioner for Refugees (UNHCR) have adopted various resolutions and decisions and introduced supplementary guidelines and coordinating mechanisms that aim to further promote and protect the human rights of trafficked persons. (These stand in addition to a wide array of regional instruments and mechanisms that are beyond the scope of the present analysis. We also omit other important special procedures of the Human Rights Council (such as the Special Rapporteurs on Violence against
Women, the Human Rights of Migrants, the Sale of Children, and Contemporary Forms of Slavery) and treaty monitoring bodies (such as the CEDAW, CRC, Human Rights Committee, Committee on Migrant Workers, Subcommittee on the Prevention of Torture, and Committee on the Right of Persons with Disabilities) that directly and indirectly monitor human rights and trafficking. Nor do we consider the ILO conventions relevant to trafficking, including important instruments adopted in 2011 and 2014 concerning decent work for domestic workers and forced labor.)

In particular, the OHCHR introduced the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (OHCHR Recommended Principles) in 2002. These principles and guidelines recognize trafficking in persons as a particularly abusive form of migration and provide “practical, rights-based policy guidance” on the prevention of trafficking and the protection of trafficking victims for government, intergovernmental, and nongovernment organizations (OHCHR Recommended Principles: 2). A set of four recommended principles clearly prioritize the primacy of human rights and the human dignity of trafficked persons, migrants, internally displaced persons, refugees, and asylum seekers vis-à-vis preventing trafficking, protection and assistance, and criminalization, punishment, and redress. The prevention principles stress the importance of addressing the root causes of trafficking including the demand for cheap labor and services and factors such as poverty, inequality, and discrimination. The protection and assistance principles emphasize the importance of the non-prosecution and non-punishment of trafficking victims and unconditional access to physical protection and psychosocial care services. They also recognize the importance of legal assistance, the proper recognition of child trafficking victims and child rights, the provision of protection and temporary residence to victims who participate in legal proceedings, as well as safe and, to the extent possible, voluntary return. The recommended criminalization, punishment, and redress principles emphasize that, to the extent possible, confiscated assets (proceeds of crime) shall be used to compensate trafficking victims and that States ensure trafficked persons are afforded access to effective legal remedies. Likewise, the 11 recommended guidelines position the promotion and protection of human rights as the foremost guideline. In contrast to the *Protocol*, which applies to the actions of States parties or governments that have ratified or acceded to the *Protocol*, the recommended principles and guidelines are intended to guide the actions of governments, as well as intergovernmental and nongovernment organizations. (This wider application is particularly important since not only governments but also nongovernment organizations have been implicated in violating the rights of trafficked persons in the context of “well-meaning” anti-trafficking interventions (see, e.g., GAATW 2007; Hua 2011; Kaye 2017).)

The OHCHR further reaffirmed that anti-trafficking measures should not adversely affect the human rights and human dignity of trafficked persons, migrants, internally displaced persons, refugees, and asylum seekers in their extensive commentary on the recommended principles and guidelines in 2010 (OHCHR 2010). A number of other UN agencies, intergovernmental and international organizations, have proposed rights-based guidelines (e.g., UNICEF 2006; UNHCR 2006; World

In terms of additional political commitments on the human rights of trafficked persons, the UN General Assembly has convened thematic debates and dialogues on trafficking in persons (e.g., in 2008 and in 2009) and adopted resolutions that have addressed, inter alia, the protection of trafficked persons. (We examined UN General Assembly Resolutions on trafficking in persons from 1947 onward, focusing mainly on resolutions between 1993 and 2018. In addition to the three noted themes, a 1972 resolution explicitly addressed exploitation of labor through illicit and clandestine trafficking and then appears to have shifted to the traffic in women and girls in 1994.) At the same time, the UN General Assembly has consistently emphasized the need to “enforce and strengthen effective measures to combat and eliminate all forms of trafficking in persons in order to counter the demand for trafficked victims and to protect the victims” (World Summit Outcome Document, para 112). Its high-level dialogues on migration in 2006 and 2013 have recognized the feminization of migration and the need to combat gender-based violence, in addition to reiterating its commitments to prevent and combat trafficking in persons and to protect trafficking victims while encouraging Member States to ratify and implement relevant international instruments (Summary 2006; Declaration of the High-level Dialogue on International Migration and Development 2014). The New York Declaration for Refugees and Migrants similarly recognizes the special needs of all persons in situations of vulnerability, including women at risk, children, and trafficked persons, and the need to take steps to address those vulnerabilities. The declaration commits to vigorously combat human trafficking with a view to its elimination and to disrupt and eliminate the criminal networks that are involved.

In relation to implementing its various political commitments, the UN General Assembly mandated the establishment of an Inter-Agency Coordination Group against Trafficking in Persons (ICAT) to improve policy coordination and share information and good practices on anti-trafficking initiatives in 2007. The ICAT consists of 12 UN and international organizations (the OSCE, UNAIDS, Interpol, UN Peacekeeping, UNICRI, UN Women, UNICEF, UNODC, UNHCR, OHCHR, IOM, and ILO) and is intended to facilitate a comprehensive approach to preventing and combating trafficking in persons, including protection and support for victims, and an approach that is human rights-based and gender- and age-sensitive. Toward this end, the ICAT has published a number of reports, some jointly with the UNODC, on various dimensions of trafficking (Inter-Agency Coordination Group against Trafficking in Persons website). In the same year, six UN and international agencies (ILO, OHCHR, UNICEF, UNODC, IOM, and OSCE) launched the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) to promote the “global fight against trafficking” by increasing awareness, promoting rights-based responses, building capacity, and encouraging partnerships (United Nations Global Initiative to Fight Human Trafficking website).

Importantly, in 2010 the UN General Assembly adopted a Global Plan of Action to Combat Trafficking in Persons aimed at translating these various political commitments into concrete actions. In addition to stressing the centrality of human rights
in all efforts to prevent and combat trafficking in persons and to protect, assist, and provide redress to victims, the action plan expands on human rights protections for trafficking victims and sequentially prioritizes such protections ahead of prosecution and international legal cooperation. Among other actions, it reafirms that human rights and measures to combat trafficking in persons are complementary and mutually reinforcing and urges governments to ensure that trafficked persons are not penalized; that their privacy, identity, and safety are protected; that psychosocial services are provided; that there are options for temporary or permanent residency; that return is safe and preferably voluntary; that there is access to compensation, redress, and legal information; and that victims are provided with a reflection period. The action plan also established a UN Voluntary Trust Fund for Victims of Trafficking in Persons, although in practice it has been underfunded and does not provide direct financial assistance to trafficking victims (UN General Assembly Resolution 2010).

In terms of monitoring how the human rights of trafficking victims are protected in practice, the (then) UN Commission on Human Rights appointed a Special Rapporteur on trafficking in persons in 2004. The Special Rapporteur was originally mandated to focus on the human rights aspects of trafficking victims, especially women and girls, with an expectation its work would reference the Recommended Principles and Guidelines on Human Rights and Human Trafficking. In 2011, this focus was expanded to additionally examine the human rights impacts of anti-trafficking measures with a view to recommending adequate responses and avoiding the revictimization of trafficking victims (Human Rights Council 2011, Resolution 17/1). Thematic reports of the Special Rapporteur have focused attention on various concerns ranging from the rights of victims to assistance, protection, and support to human rights in the context of criminal justice responses to trafficking in post-conflict situations and in the context of mixed migration movements (Special Rapporteur on Trafficking, especially Women and Children website). One of the most significant contributions of the Special Rapporteur has been the articulation of Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons, although these principles have yet to be endorsed by either the UN General Assembly or the Human Rights Council (Ezeilo 2014). In relation to this and its other special procedures, the UN Human Rights Council has adopted several of the Special Rapporteur’s resolutions.

Quite controversially, the progress of individual governments in implementing anti-trafficking measures is unilaterally monitored by the US Department of State, Office to Monitor and Combat Trafficking in Persons. A main focus of these monitoring efforts is the criminalization and prosecution of traffickers; the human rights impacts of anti-trafficking efforts do not feature prominently in the annual reports and country narratives (2001–2017). In fact, Gallagher (2015) has observed these reports only acknowledged the negative impacts of anti-trafficking interventions in 2009 and that such coverage continues to be uneven given that the “harms” of anti-trafficking interventions are not part of the formal US evaluation criteria.
Critical Analysis of Frameworks of Protection in an Enforcement-Based Context

The few assessments of the Protocol’s implementation and impacts in the now 18 years since its adoption and 15 years of coming into force are mixed. As Gallagher and Surtees (2012) observe, there has been limited evaluation of the effectiveness or impacts of anti-trafficking interventions despite significant economic investments by governments, intergovernmental organizations, and NGOs in countering trafficking. Positive reflections note the importance of the Protocol as a landmark or agenda-setting agreement for cooperative international law enforcement to combat trafficking in persons, the significance of the Protocol’s internationally agreed definition of trafficking in persons, and that the Protocol affords some emphasis in protecting the human rights of trafficked persons (Bhabha 2015; Ezeilo 2015; Gallagher 2015). Definitionally, the Protocol also marked a significant departure from the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others that equated all prostitution and various prostitution-related activities as trafficking irrespective of the consent of the person. Although emphasizing trafficking in women and children, the Protocol definition is lauded for being gender-inclusive and comprehensive in relation to the various types of trafficking that are contemplated (at minimum including the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs), as well as including coercion as a core definitional element.

Yet, the Protocol is a crime suppression treaty; it is intended to facilitate law enforcement cooperation between States and is not a human rights agreement. As Boister (2002) has observed, crime suppression treaties are not known for their protection of the human rights of criminal defendants, let alone crime victims, and have the potential to significantly threaten individual human rights such as privacy, liberty, fair trial rights, and in relation to the state confiscation of private property (proceeds of crime). Boister (2002) further argues it is faulty to assume that human rights will be protected via existing human rights instruments and mechanisms. The UNODC-sponsored treaty remains focused on government interests to combat the growth in transnational organized crime (and irregular migration) at the expense of human rights protections and victim assistance (Chuang 2010; Jordan 2002). There are no requirements for States parties to adopt rigorous human rights protections for trafficking victims and arguably many disincentives to do so, not only in terms of the associated fiscal costs of such interventions (such as state funding for temporary residence and compensation schemes) but also in relation to limiting state sovereignty and security interests, especially in relation to a State’s ability to control irregular migration and commercial sex.

The Trafficking Protocol is the most widely ratified of the Convention’s three supplementary agreements with 117 signatories and 173 state parties (as of 18 September 2018). There is also a high degree of government compliance with the criminalization obligations of the agreement, with 95 percent of those countries
ratifying or acceding to the Protocol having introduced or strengthened domestic laws specifically criminalizing some or all forms of trafficking in persons as defined by the Protocol (UNODC 2016). At the same time, most assessments of the Protocol’s impact at the national level consistently point to the fact that comparatively few trafficked persons have been identified and the number of prosecutions remains low with few convictions of traffickers (Farrel et al. 2014). While the available research suggests that a low number of prosecutions and convictions may result from a number of factors – the relative newness of anti-trafficking offenses at the national level, the hidden nature of the crime, public corruption in criminal justice systems, low rates of incidents (Farrel et al. 2014; Gallagher 2016; Kangaspunta 2015), complex evidential issues in trafficking cases (UNODC 2017) (Research examining some of the complexities involved in prosecuting trafficking offenses demonstrates several evidentiary challenges, including the need for corroborative physical evidence and significant victim cooperation; yet victim credibility challenges are common in these types of cases. In addition to the definitional issues we note, these evidential concerns make it difficult to make any firm assertions about the rates of instances of human trafficking in any country, the degree of “success” of any state efforts in prosecuting such cases, and whether the Trafficking Protocol itself is being effectively implemented and employed to combat human trafficking. On evidential issues, see UNODC 2017; Millar and O’Doherty 2015.); or the search for ideal or iconic victims (Srikantiah 2007) – it is difficult to escape the Protocol deficiencies in providing more comprehensive and legally binding commitments to protect the human rights of trafficked individuals. As it stands, unless national laws and policies exceed the minimum protections of the Protocol, there are few, if any, incentives for trafficked persons to come forward and cooperate with legal authorities or to prevent victims and witnesses from being deported before criminal proceedings commence or can be completed since such proceedings may be many years in duration (Jordan 2002). Moreover, controversies with trafficking prosecutions remain serious. In cases that have been prosecuted, scholars have noted the significant political pressure to prosecute resulting in violations of the rights of criminal suspects, including wrongful prosecutions, unfair trials, and inappropriate sentencing (Gallagher 2016). Other critiques include violations of the rights of trafficked persons, such as making residency and citizenship assistance conditional on cooperation, the disproportionate targeting of the sex sector and criminalization of sex workers within anti-trafficking approaches, and the near-exclusive focus of governments on prosecutions versus protections and assistance (see, e.g., GAATW 2007 and the Anti-Trafficking Review, 2015, special issue assessing 15 years of the UN Trafficking Protocol). Indeed, most monitoring efforts have focused on ratification, criminalization, prosecutions, and convictions, which are easy to measure. It is far less clear how States parties are implementing human rights and victim assistance and protection measures at the national level (see, e.g., UNODC Global Reports 2009, 2012, 2014, 2016), and there seems to be a dichotomous expectation that nongovernment organizations rather than States parties will monitor any adverse human rights impacts of anti-trafficking campaigns and interventions.
The lack of an effective monitoring mechanism has contributed to uneven implementation of the Protocol’s political commitments at the domestic level since States parties have considerable latitude to interpret and choose which obligations to implement (Allain 2014; Gallagher 2015). In this regard, it was widely surmised that States would choose to implement those obligations that are least expensive (criminalization and some of the prevention obligations like training and awareness raising) over those that are more expensive (complex assistance to victimized individuals and protection and human rights). In particular, and contrary to its intended purpose, the Protocol has not produced definitional uniformity among States parties. In view of its complexity and the widely held perception that the three definitional elements would provide too exacting a standard for prosecutors to prove in domestic courts, States parties have been encouraged to incorporate the “essence of the definition” in national legislation. More specifically, according to Jordan (2002), States have been encouraged to adopt a definition of trafficking in persons as the “recruitment, transportation, transfer, harboring or receipt of persons, by any means, for forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs,” which obviates the coercive means as a core defining element of trafficking. Allain (2014) demonstrates that national legal definitions of trafficking in persons vary, which serves to undermine the main intent of the Protocol to facilitate interstate cooperation in combating trafficking in persons via harmonized legal definitions. A lack of agreement between States parties about what constitutes trafficking in persons also makes it exceptionally difficult to measure the extent of trafficking globally or regionally (including but not limited to the number of identified victims, investigations, prosecutions, and convictions) and whether the Protocol and its implementation at the national, regional, and international levels are actually having any effect in reducing trafficking.

Nor has the Protocol definition resolved long-standing divisions on issues of consent or agency. The inclusion of “exploitation of the prostitution of others,” which could refer to pimping and/or procuring, remains contentious and seemingly intractable prostitution policy debates about forced versus voluntary participation in adult sex work remain. The Protocol’s emphasis on “trafficking in persons, especially women and children” continues to be contentious for inviting gender bias and obscuring differences in agency between adults and children, which together with the overt dichotomous definitional divisions between exploitation in sexual versus nonsexual labor contexts, arguably, have contributed to the expansion of neo-abolitionism and a reductive narrative in how the Protocol has been implemented at the national level (see especially Allain 2014; Chuang 2010). Sex workers and migrants speak of being subject to increased state surveillance, workplace raids, and sting operations, often resulting in the detention and deportation of undocumented persons without due regard to their safety or access to legal information and redress (see, e.g., GAATW 2007). There is also growing concern about the failure of governments to prevent human trafficking and address the complex structural economic, cultural, social, and political factors that contribute to trafficking in persons. Almost all state efforts to reduce demand at the national level have focused on reducing the demand for prostitution via the asymmetric criminalization
of clients, third parties, and advertising with little attention to reducing demand in non-sex labor sectors (Special Rapporteur on trafficking in persons, especially women and children 2013). In this regard, there is an apparent disconnect at the national level where anti-trafficking laws are increasingly used to police domestic sex work, often with few evident connections to organized or transnational crime, via a proliferation of asymmetric criminalization models and despite ongoing serious concerns about prohibitionist models for regulating sex work (Chuang 2010). Equally troubling, the Protocol’s victim protections have been translated into protectionism that sees all women and children in migration situations as “vulnerable” and lacking agency resulting in the introduction of gender-biased national laws and policies limiting the mobility of women and girls to leave or to enter another country on the pretense of preventing their abuse and exploitation (see, e.g., Chacón 2010; GAATW 2007, 2010) (A number of States now deny exit or entry visas for persons wishing to migrate but who are (arbitrarily) deemed at risk of trafficking or exploitation in the workplace. These laws and policies are gendered (directed at women and girls) and are occupation specific (directed at commercial sex work) resulting in a limitation on women and girl’s mobility rights, which was a main concern when the Protocol was being negotiated, that it not adversely affect mobility rights or result in gender discrimination. Problematically, there is an absence of data on how these measures are being enforced in practice. See, e.g., Daly’s 2017 analysis of Canada’s controversial Preventing (Migrant) Workers from Abuse and Exploitation immigration regulations permitting visa officials to deny temporary work visas and which are clearly directed at “protecting” foreign national women and girls ages 15–21 who are thought to be vulnerable to trafficking (i.e., suspected to be coming to Canada to work in the commercial sex sector broadly defined) from migrating). For these reasons, the UN Special Rapporteur has recommended the removal of the “especially women and children” language from the Protocol (Ezeilo 2014).

Finally, in view of prioritizing criminalization over the human rights of victims, the few empirical evaluations that have been conducted raise serious concerns about the unintended effects or harms of the Protocol and national anti-trafficking laws and measures on the human rights of trafficked persons (see, e.g., O’Doherty et al. 2018).

Although there is some intergovernmental guidance (e.g., UNODC and IOM), a lack of clear and consistent legislatively prescribed guiding criteria to identify and distinguish trafficking victims from smuggled persons and the absence of non-prosecution laws and policies in most countries have resulted in the arrest, prosecution, detention, and deportation of trafficked persons and migrants (Chuang 2010; GAATW 2007; 2010; Gallagher 2015). Governments and some NGOs have been implicated in aggressive and racialized law enforcement (raid, rescue, and rehabilitation) campaigns resulting in the traumatization and criminalization of trafficking victims (Ahmed and Seshu 2012; Bernstein 2010; Chuang 2010; Ditmore and Thukral 2012; GAATW 2007; Gallagher 2015; Kaye 2017; Kotiswaran 2014; Soderlund 2005). Both state and non-state actors have been implicated in the forcible detention of trafficking victims in several countries (GAATW 2007; Gallagher and Pearson 2008). There is little evidence that trafficked persons are being afforded the right to an effective remedy, especially restitution and compensation. And, the
provision of state support and assistance is often conditional on a victim’s cooperation in criminal proceedings (Ezeilo 2014; ICAT 2016). Consequently, a number of jurisdictions have introduced laws permitting trafficking victims to seek legal remedies by privately suing their traffickers and others (e.g., businesses) profiting from their exploitation in civil proceedings. Some trafficking victims have now successfully sued governments for human rights violations associated with aggressive enforcement and/or a failure to provide protection and assistance (see, e.g., ECHR 2018). To date, few governments have introduced recovery or reflection periods or offer temporary or permanent residency options to trafficked persons (ICAT 2016). There continue to be major concerns around safety, privacy, and the secondary victimization of trafficking victims in criminal proceedings and the forced return and revictimization of victims who are repatriated to their country of origin (GAATW 2007; Gallagher 2015; Wijers 2015).

As was also expected, the Protocol’s preventative border control measures have contributed to numerous countries implementing tighter border controls making safe migration more difficult (Kempadoo et al. 2017), potentially contributing to irregular migration and trafficking in persons (GAATW 2007). Some scholars assert that anti-trafficking laws are being used as a pretext for increased criminalization and border controls (Kempadoo et al. 2017). The unfortunate and paradoxical result is that such controls likely increase smuggling and trafficking, as well as surveillance of immigrants and refugees (Hathaway 2008). The convergence of criminal and immigration law, referred to as “crimmigration” increases criminal consequences of immigration law including deportations, employing criminal consequences for immigration-related conduct, expanding the grounds for exclusion of refugees and other would-be migrants, the use of detention with limited due process guarantees, and even restrictions on health and other benefits to immigrants and refugees (Stumpf 2006). Crimmigration is also notable in the heavily criticized distinction between human smuggling and human trafficking: law enforcement and border officials can subjectively and arbitrarily determine who is “trafficked” and therefore entitled to protections and who is “smuggled” or undocumented and therefore subject to detention and deportation (see, e.g., Chacón 2010; Chuang 2010; GAATW 2007, 2010).

Determinations are often based on a subjective and rigid definition of “consent” without consideration of the constraints and vulnerable contexts in which some migrants make risky choices and without consideration of changing relationships whereby a person can move from a consensual participant in an irregular border crossing to a situation of labor exploitation and unsafe working conditions once in a country with precarious or no legal status. Border securitization and criminal-type consequences that hinge on initial consent increase the position of power over vulnerably situated laborers and decrease the likelihood of reporting trafficking or other forms of exploitation or violence to the authorities (see, e.g., Chuang 2010).

Individually and collectively, these various deficits associated with the Protocol and its national implementation are now prompting an international discussion of a state obligation to “exercise due diligence” in preventing trafficking; to investigate, prosecute, and punish traffickers; and to “rescue” victims and provide for their protection and access to remedies while not violating their human rights and
fundamental freedoms. There is also growing international and national interest in combating trafficking and exploitation in the context of global supply chains.

**Summary**

The politicization of law is glaringly apparent under all debates about the effectiveness and utility of the Trafficking Protocol. The Protocol is perceived by some as aligned with a neo-abolitionist expansion of anti-immigrant and anti-prostitution criminal prohibitions. Article 9.5 calls on States parties to adopt or strengthen legislative or other measures “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking,” and the foreign policy efforts of the USA via its Office to Monitor and Combat Trafficking in Persons are known to have exerted political pressure on countries to adopt neo-abolitionist laws. These laws contribute to the ongoing stigmatization and a lack of safety for sex workers. Criminal prohibitions prevent sex providers from properly screening potential clients and drive the industry further underground, lower violence reporting rates, and create barriers for sex workers to access civic, human, labor, and health rights (Kempadoo et al. 2017). Further, anti-prostitution or neo-abolitionist laws support an anti-trafficking reductive (and dichotomous) narrative focusing on sex sector trafficking to the exclusion of other forms of trafficking.

Equating trafficking with prostitution allows for the pursuit of the abolition of prostitution under the banner of trafficking (GAATW 2010). This is problematic for many reasons, but at its core, it oversimplifies trafficking and inappropriately represents this complex human rights problem. Simplistic anti-trafficking messaging distorts the structural globalization problems related to migration, labor, and unequal access to socioeconomic and political rights and opportunities as a moralized and individualized problem of sexual violence against women and girls (Cruz 2018). This allows States to engage in aggressive criminal justice and immigration responses while ignoring the need for a broader range of interventions, such as better (safe) migration and labor rights frameworks or socioeconomic policies to counter the negative effects of globalizing trends that drive people to undertake risky migration projects in the first instance and that impact marginalized and disadvantaged persons at significantly higher rates than others.

Rather than resulting in a decline in human trafficking and improvement in the lives of victimized persons, the available evidence only demonstrates individualized and ever-expanding criminalization of mostly sex sector activities and migratory movements. Sex workers report increased interventions and surveillance, the closing of safer spaces in which to work, fewer options for communication about their work, and increased marginalization. Enforcement patterns are clearly racialized and gendered (Cruz 2018; Hua 2011; Hunt 2015; Kaye 2017; Kim and Jeffreys 2013). Nonsexual labor exploitation, which is estimated to be more prevalent than sex trafficking (ILO 2012), and failure to address sexual exploitation in other labor sectors (widely documented in relation to migrant labor in the agriculture and domestic work sectors) further demonstrate the inherent limitations of the current
anti-trafficking regime. Criminal law is a notoriously blunt instrument to address highly complex social problems; moreover, criminal justice responses intersect with immigration laws to increase risk and vulnerability in the migration processes, particularly for would-be migrants in contexts of vulnerabilities.

Unfortunately, the harms associated with anti-trafficking legal efforts simply do not outweigh States parties’ concerns about border security and sovereignty. If States parties and the international community are serious about human rights protections, then they must acknowledge the conflict that exists when seeking to advance human rights within systems of enforcement and crimmigration. As a starting point, alternative mechanisms that decriminalize the lives of migrants, sex workers, precarious workers, and other individuals facing heightened forms of insecurity from anti-trafficking interventions are needed alongside sustained interrogation of vulnerabilities (re)produced in a neoliberal and inequitable capitalist global structure.

Cross-References

▶ An Attempt to Control Human Trafficking from a Human Rights-Based Approach: The Case of Spain
▶ Criminal Justice System Responses to Human Trafficking
▶ How Lifelong Discrimination and Legal Inequality Facilitate Sex Trafficking in Women and Girls
▶ State-Level Interventions for Human Trafficking: The Advocates for Human Rights
▶ The Failing International Legal Framework on Migrant Smuggling and Human Trafficking

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UN Palermo Trafficking Protocol Eighteen Years On: A Critique

Silvia Scarpa

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Abstract

The chapter describes the process that led to the adoption of the UN Trafficking Protocol as an instrument of transnational criminal law and comments on its most debated aspects, including the adoption of the first definition of trafficking in persons in an international treaty, the thin line separating trafficking in persons from the smuggling of migrants, and the scarce measures aimed at protecting victims. The problematic aspects, loopholes, and lack of effectiveness and consistency in the UN Trafficking Protocol are discussed.

Keywords

Trafficking in persons · Exploitation · Definition of trafficking · Protection of victims · Smuggling of migrants

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The Adoption of the UN Trafficking Protocol as an Instrument of Transnational Criminal Law

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (hereinafter the UN Trafficking Protocol) annexed to the Convention against Transnational Organized Crime was opened for signature at the High Level Political Signing Conference – attended by delegates from 148 countries – held in Palermo (Italy) in December 2000. It entered into force only 3 years after, namely, on 25 December 2003. The Convention against Transnational Organized Crime (CTOC) entered into force on 29 September 2003 and it was also supplemented by the UN Protocol against the Smuggling of Migrants by Land, Sea, and Air (hereinafter the UN Smuggling Protocol) that entered into force on 28 January 2004. A third additional Protocol on Trafficking in Firearms was also added to the CTOC, but it is not taken into consideration by this study.

As of 14 December 2018, the CTOC has reached quasi-universal coverage; with 189 States Parties, the UN Trafficking Protocol follows with 173 ratifications and the UN Smuggling Protocol has collected 147 instruments of ratification. In October 2018, when opening the ninth session of the Conference of the Parties to the CTOC, Yury Fedotov, Executive Director of the United Nations Office on Drugs and Crime (UNODC), urged States Parties to strengthen their cooperation in this field, but also indicated that “the Convention and its Protocols have more than stood the test of time” (UNODC 2018). Besides the considerations on the overall framework, which is not examined by this study, it is also undeniable that the new anti-trafficking regime has generated much discussion, with scholars being divided among some who severely criticize it (Hathaway 2008; Chuang 2014; Allain 2014; Kotiswaran 2017) and others who fiercely defend it (Gallagher 2009). Therefore, 18 years after the adoption of the new anti-trafficking regime and 15 years after its entry into force, the time seems right for an overall assessment of its consistency, effectiveness, and of its shortcomings.

The process that led to the adoption of the CTOC and of its Protocols was set in motion by the 1994 Declaration of the Ministerial Conference of Naples, recognizing the need to adopt an international convention against transnational organized crime. As a follow-up, the General Assembly appointed in 1997 an Open-Ended Intergovernmental Group of Experts entrusted with the task of preparing a draft convention (General Assembly 1997) and subsequently decided to establish an Open-Ended Intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime that, by the end of 2000, would elaborate a treaty against transnational organized crime and would further discuss the elaboration of treaties dealing with “...trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea.” (General Assembly 1999: 3). It is noted that the focus of the mandate given by the UN General Assembly to the Ad Hoc Committee was ambiguous in regard to human trafficking and to what was later labeled the smuggling of migrants; the same term – namely, trafficking – was, in fact, used to identify
both the offences (Scarpa 2008). Moreover, it was also unfortunate that the drafting of a human trafficking treaty was not to be conducted under the slavery or human rights umbrellas but under the one of the fight against transnational organized crime. Eloquently, the UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy, expressed her concerns about this issue, stating that:

[T]he first modern international instrument on trafficking is being elaborated in the context of crime control, rather than with a focus on human rights. [This is] a failure of the international human rights community to fulfil its commitment to protect the human rights of women. (UN Special Rapporteur on Violence against Women 2000: 7)

During the negotiations process, a preliminary draft of the UN Trafficking Protocol was initially submitted by the United States of America and it was subsequently integrated with additional elements proposed by Argentina (General Assembly 2000). This draft text was used by the delegations for finding consensus on a final document. It is also important to remember that the negotiations of the UN Trafficking Protocol generated much interest in non-governmental organizations (NGOs) and some of them participated in the negotiations of the UN Trafficking Protocol. They were subdivided into two groups: the International Human Rights Network and the Human Rights Caucus (Scarpa 2008). The two groups – namely, the radical feminist and the sex workers ones – promoted two different feminist approaches to prostitution, to the relationship between prostitution and the exploitation of prostitution and, consequently, to trafficking in persons for the purpose of sexual exploitation. Therefore, the NGOs included in the International Human Rights Network lobbied for a radical feminist view to be incorporated into the UN Trafficking Protocol by claiming that it is not possible to distinguish between forced and voluntary prostitution, since prostitution always amounts to a forced activity that, therefore, colludes with human trafficking (Raymond 2002). Within this view, even an adult cannot consent to prostitution, since the latter is in itself a violation of human rights akin to slavery (Scarpa 2008). Therefore, the International Human Rights Network lobbied to obtain a definition of trafficking in persons that would not have distinguished between victims who can demonstrate they were forced and those who cannot. Consequently, they sustained the irrelevance of adult victims’ consent when one of the improper means (including not only force, but also other lesser situations of vulnerability) had been used (Raymond 2002). On the other hand, the Human Rights Caucus promoted the sexual workers approach and lobbied for maintaining the distinction between free and forced prostitution (Scarpa 2008). This approach favors a view of prostitution as free sex work. For this reason, this group of NGOs lobbied to consider consent as a relevant issue and to omit the term “victim” from the text of the Protocol, substituting it with “trafficked person” as a form of empowerment (Ditmore and Wijers 2003; Doezema 2002).

The different feminist approaches to prostitution and the corresponding positions of States was an issue that was debated at length during the negotiation process of the UN Trafficking Protocol. States’ representatives were also divided between these
two divergent views. However, it was also widely felt that it was necessary to avoid that the UN Trafficking Protocol would end up attracting a limited number of ratifications as it had happened to the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others adopted by the United Nations in 1949, which promoted an abolitionist approach against prostitution (Scarpa 2008). Therefore, according to Gallagher, “States merely agreed to sacrifice their individual views on prostitution to the greater goal of securing an agreed definition and maintaining the integrity of the distinction between trafficking and migrant smuggling” (Gallagher 2010: 28–29). Whether the two “greater goals” indicated by Gallagher represent good results is, however, questionable and it is further analyzed below.

Thus, it is not surprising that the final text of the UN Trafficking Protocol is a compromise treaty only composed by 20 Articles and that it surely constitutes the least achievable common denominator among the States that participated to the drafting process. The next sections discuss the most debated elements of the UN Trafficking Protocol, namely, the definition of the phenomenon and its distinction from the smuggling of migrants and the measures aimed at assisting trafficking victims. It is worth noting that protection measures are part of the UN Trafficking Protocol’s so-called 3/4-Ps approach, which also includes common measures designed to prevent and combat human trafficking and to promote co-operation among States Parties. However, since these measures were not subjected to serious criticism, they are not examined in this study.

The Definition of Trafficking in Persons

The adoption of the UN Trafficking Protocol in December 2000 introduced the first internationally recognized definition of the concept of trafficking in persons. The definitional complexity inherent in the UN Trafficking Protocol is immediately apparent if one considers that actually two definitions are respectively adopted for trafficking in adults and for child trafficking and the difference between them has to do with vitiated consent and the connected improper means used by traffickers on victims. Therefore, Article 3(a) of the UN Trafficking Protocol defines trafficking in adult persons as a process comprising:

1. The “recruitment, transportation, transfer, harbouring or receipt of persons”;
2. the use of improper means – namely, “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”;
3. the purpose of exploitation. Among the forms of exploitation, the trafficking definition specifically mentions “... 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.”
Article 3(b) further clarifies that if one of the means set forth in Article 3(a) is used, it is irrelevant whether the persons expressed their consent or not. The issue of consent was a difficult one to overcome during the negotiations of the UN Trafficking Protocol because of the above-mentioned different positions of States on the issue of prostitution/the exploitation of prostitution. The prevailing idea was, in the end, considering consent irrelevant only if one of the means listed in the definition is used to convince an adult victim (Scarpa 2008). Consequently, the Legislative Guide for the Implementation of the UN Trafficking Protocol acknowledges that: “Once it is established that deception, coercion, force, or other prohibited means were used, consent is irrelevant and cannot be used as a defence” (UNODC 2004). On the contrary, the definition of trafficking in minors contained in Article 3(c) does not take into consideration the issue of consent and improper means, so that the two-phases process of the recruitment, transportation, transfer, harboring and receipt of a child for the purpose of exploitation amounts to child trafficking.

The definition of human trafficking is problematic for various reasons. First of all, the use of the term “trafficking” suffers from the complexity of its historical heritage and strict connection with only one form of exploitation that is sexual exploitation and the thorny issue of consent in prostitution. The concept of “trafficking” constitutes in fact an evolution of the term *traffic*, which since early in the nineteenth century had been used to refer to the *white slave trade or traffic* phenomenon, namely, the abduction of European adult women and young girls, their transportation abroad, and their final exploitation in brothels. Four main international treaties were adopted early in the twentieth century for the purpose of fighting against this phenomenon, namely: the 1904 International Agreement for the Suppression of the White Slave Traffic; the 1910 International Convention for the Suppression of the White Slave Traffic; the 1921 International Convention for the Suppression of the Traffic in Women and Children; and finally the 1933 International Convention for the Suppression of the Traffic in Women of Full Age. None of them provided a definition of white slave trade or traffic, but they all referred to the procurement of women for “immoral purposes,” which was their common denominator. Significantly, none of the white slave trade or traffic conventions dealt with prostitution per se, which remained a matter of national jurisdiction (Scarpa 2008). Moreover, the 1921 and 1933 Conventions were adopted under the auspices of the League of Nations, which had also promoted the adoption of the 1926 Convention on Slavery aimed at fighting slavery and the slave trade.

The white slave traffic conventions’ scope was consolidated and extended by the 1949 Convention for Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, whose adoption was promoted by the United Nations. However, this Convention has only been ratified by 82 States and is regarded by some as being “obsolete and ineffective” (European Parliament 1996). Particularly contested was its choice of the abolitionist model to manage prostitution, so that prostitution per se is prohibited alongside with trafficking for the purpose of sexual exploitation, victims’ penalization is prohibited and consent is always considered irrelevant. Article 1 of the 1949 Convention requires in fact States Parties to: “punish any person who, to gratify the passions of another: (1) Procures, entices or leads
away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person.” Therefore, the different consideration given to the issue of consent clearly distinguishes the 1949 Convention from the UN Trafficking Protocol.

While eight States ratified the 1949 Convention in the last decade, so that this treaty cannot be considered as fully obsolete, its regime remains in place only among a minority of the States of the world. The ethical debate centered on the possibility to distinguish between free and forced prostitution is a key element when discussing the UN Trafficking Protocol’s definition of human trafficking. The different points of view of groups of feminists – the radical feminists and the sex-workers one – and also of States on the issue were hardly reconcilable. Therefore, States Parties remain free to set the boundaries in this area since prostitution is treated as a matter of internal affairs that fully remains within the States Parties’ jurisdiction, leading to an evident lack of consistency in the universal legal approach (Scarpa 2018). This applies equally regionally, since Article 3 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, Article 2 of the 2015 Association of Southeast Asian Nations (ASEAN) Convention against Trafficking in Persons, Especially Women and Children, as well as Article 2 of the EU Directive 2011/36/ EU on prevention and combating trafficking in human beings and protecting its victims include definitions of trafficking based on the one included in the UN Trafficking Protocol.

However, the policies in the field of prostitution of the States Parties to the UN Trafficking Protocol might affect human trafficking for the purpose of sexual exploitation, so it would be wrong to believe that the two issues can be kept fully separated. This has been particularly evident in Europe, where countries have adopted different models aimed at dealing with prostitution (Scarpa 2017; Scarpa 2010). Recently, Cho and others conducted an empirical analysis with a cross section of up to 150 countries in which prostitution is legal and concluded that the legalization of prostitution increases trafficking in persons for the purpose of sexual exploitation (Cho et al. 2013). In this respect, it is important to highlight how the recent report by Walby and others at the request of the European Commission proposes that:

Wherever there are legal sanctions to regulate prostitution, the presumption should be that the burden of compliance and of sanctions should be borne first by those that take profits (or rents or fees) from prostitution and second by those that purchase sex, avoiding wherever practical placing sanctions for non-compliance on the sellers of sex. (Walby et al. 2016: 197)

According to the authors of the study, this first step is to be followed by a decriminalization of the sale of sex “as being necessary in order . . . to allow for the reaching of victims to provide them with assistance and to facilitate the prosecution of traffickers and other criminal exploiters” (Walby et al. 2016: 197). A harmonization of States’ legislations along these lines would constitute a first important step not only at the European level but also eventually at the global one, within the framework of the States Parties to the UN Trafficking Protocol.
Secondly, another issue which lacks proper consideration by the UN Trafficking Protocol, as well as more generally by universal and regional efforts aimed at tackling human trafficking, is whether the lack of consistency in the global approach to prostitution, the exploitation of the prostitution of others and other forms of sexual exploitation and human trafficking for the purpose of sexual exploitation – if summed up to the diversity of national laws and policies and to other technical, political, economic and social factors – might indirectly risk contributing to the proliferation of side effects, such as inter alia an increase in sexual exploitation of children in travel and tourism. The role of other factors is clearly emphasized by Capaldi in an ECPAT International’s Report:

The use of new ICTs and other technical and socio-economic developments have also contributed in recent years to a boom in the travel and tourism industries in many regions of the world. Despite a growing awareness of the sexual exploitation of children in travel and tourism, the opening up of new tourism destinations such as in Southeast Asia, Eastern Europe and Latin America is providing new locations for child sex offenders (including the prostitution of street-based boys which is often found as a significant problem in certain tourist resorts). . . . Recent research has shown that travelling sex offenders are moving away from major cities to more remote locations where awareness about sexual abuse and exploitation is lower and a traditional ‘culture of silence’ can contribute to victims and their families not speaking out. (Capaldi 2015: 12)

The link between the lack of a consistent universal approach and the various national frameworks in place in this field would instead require to be further studied and subjected to increased attention by the States Parties to the UN Trafficking Protocol.

Thirdly, the use of improper means necessary to vitiate the consent of adult trafficking victims applies equally to all the forms of exploitation included in the definition, such as slavery, practices similar to slavery, forced or compulsory labor, servitude, the exploitation of the prostitution of others, and other forms of sexual exploitation and the removal of organs. However, it is to be noted that the trafficking framework includes for the first time various prohibitions having both an absolute and relative nature under international law in a process-oriented crime. While in fact slavery and the practices similar to slavery are defined in the 1926 and 1956 Conventions as absolute prohibitions, the prohibition of forced or compulsory labor is relative, since relevant exceptions are included in Article 2(2) of the ILO Convention No. 29 – including military service for work of purely military character, normal civic obligations, work of convicted prisoners, work in emergencies and other minor communal services – as well as in Article 8.3(b) and (c) of the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 4.3 of the 1950 European Convention on Human Rights (ECHR), and Article 6.3 of the 1969 American Convention on Human Rights (ACHR). Moreover, such distinction between absolute and relative prohibitions is also mainstreamed in international human rights law since no interference, limitation or exception is allowed to the prohibitions of slavery and servitude and they are considered nonderogable even in situations of public emergency threatening the life of the State by Article 4.2 ICCPR,
Article 15.2 ECHR and Article 27.2 ACHR (see Chap. 9, “The Nebulous Definition of Slavery: Legal Versus Sociological Definitions of Slavery”). Notwithstanding this distinction, an analysis of these practices shows potential clashes between the ways in which the definition of trafficking in adults takes into consideration the issue of consent and how they are defined or interpreted according to international treaty law (Scarpa 2013). In particular, if the focus tends to be disproportionally placed on consent, the inclusion of practices—such as slavery, the practices similar to slavery and servitude—that are founded on absolute prohibitions among the forms of exploitation becomes extremely problematic (Scarpa 2013). On one hand, in fact, slavery, debt bondage, and serfdom are defined in the 1926 and 1956 Conventions in such a way so that they include both voluntary and involuntary practices; servitude is left undefined by international treaty law, but still it is worth remembering how, during the drafting process of the 1948 Universal Declaration of Human Rights, the Third Committee of the General Assembly of the United Nations believed that it was necessary to eliminate servitude whether it was voluntary or not, as a way to avoid offering to slave holders the possibility of arguing that their victims had voluntarily accepted such a condition (General Assembly 1948). On the other hand, the practices regarding women included in Article 1(c) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery are defined in such a way so that the decision regarding their fate is taken by someone else and, secondly, that the final outcome of the decision—the marriage, the transfer or the inheritance of the woman—cannot be challenged by them, so that consent is absent. These conclusions clash with the definitional framework of trafficking in adults, given the inclusion of a second element of vitiated consent and the use of improper means (Scarpa 2013). In addition to this, additional problems arise with legal concepts having a relative nature, such as forced or compulsory labor; if in fact coercion and involuntariness are already elements of the crime of forced or compulsory labor, the relevance of the other improper means included in the trafficking framework is deemed to be scarce or nonexistent (Scarpa 2013). Moreover, given its specificity and fundamental difference from all the other exploitative practices, the issue of organ removal should have deserved more attention during the drafting process and the provision of additional measures within the UN Trafficking Protocol. While the Council of Europe recently adopted the 2015 Convention against Trafficking in Human Organs, as a way of filling in many of the loopholes existing in this field, the treaty—which is open for signature and ratification by both CoE Member States and Non-Member States—has so far only collected six ratifications.
States Parties to the Trafficking Protocol are aware of the complexity of the issue of consent. In 2010, the Working Group on Trafficking in Persons established by the Conference of the Parties to the Convention against Transnational Organized recommended that clarifications be provided inter alia on this issue (Working Group on Trafficking in Persons 2010). This led to the adoption by UNODC of an issue paper on consent drafted by Gallagher, which confirms the problematic nature of this issue, the variety of approaches adopted by States Parties and the impossibility for the victim to consent when his/her inalienable rights are at stake; according to the author these include rights to the prohibitions of slavery, servitude, and forced labor (Gallagher 2014).

Fourth, the first element of the trafficking definition, namely, the action, comprises various activities, including the “recruitment, transportation, transfer, harboring, or receipt of persons.” None of these terms is defined in the UN Trafficking Protocol, which is in itself a problematic issue, but – as stated above – each one of them is sufficient if combined with the purpose of exploitation (for minors) and with both an improper means and purpose of exploitation (for adults) for establishing the offence of human trafficking (UNODC 2004). In this respect, the inclusion of concepts (such as recruitment, harboring, and receipt) that are not connected with the idea of “movement” is considered as positive (Scarpa 2008; Gallagher 2010). In this way, cases in which victims are not moved but simply recruited or harbored or received from others – if the other elements of the definition are also met – are to be considered as human trafficking ones. However, scholars such as Allain (2014) and some States Parties to the UN Trafficking Protocol fail to recognize this issue. Consequently, the definition’s potential broad interpretation that goes beyond movement is to be promoted. Unfortunately, it is to be noted that since movement was intrinsic in the concept of traffic/trafficking used at the supra-national level before the adoption of the UN Trafficking Protocol, the promotion of a new broader interpretation might prove challenging.

Fifth, the interpretation of the improper means, namely, “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” included in the second part of the definition of trafficking in adults also generated much discussion (Gallagher 2010). None of them are defined in the UN Trafficking Protocol and limited guidance has been offered to States Parties on how to reproduce them into their national legal frameworks.

Sixth, the UN Trafficking Protocol’s trafficking definition also suffers from the complexity inherent in the fact that – besides the exploitation of the prostitution of others – it incorporates various other exploitative practices, including slavery, the practices similar to slavery, forced or compulsory labor, servitude, and the removal of organs. None of them is defined by the Protocol, even if at least some of them (including, slavery, the practices similar to slavery, and forced or compulsory labor) were already defined by other treaties. However, the interpretations of all the definitions – for both defined and undefined concepts in international treaty law – are problematic and contours as well as overlaps among the various concepts remain
unclear (Scarpa 2018). Issues arise also in terms of the status of the prohibitions of these practices from the point of view of the sources of international law, with only the prohibition of slavery being widely considered as a peremptory norm of international law (*jus cogens*). Given this already problematic framework, the Trafficking Protocol’s definition connects for the first time these concepts with a *process-oriented crime*. This process, however, can be long and actions can happen in different moments and places – as including across borders – thus potentially rendering the prosecution of trafficking cases more complex than, for instance, the one of slavery or forced labor issues (Scarpa 2018).

Additionally, the concept of “exploitation” included in the UN Trafficking Protocol remains undefined and the list of exploitative practices listed in the definition is nonexhaustive (Scarpa 2008). Consequently, it is clear that the door remains open for further exploitative practices to be eventually added at universal, regional, and national levels. While, on one hand, the possibility of amending the definition included in the UN Trafficking Protocol exists, it is not believed that it is an appropriate solution to the definitional challenges existing in this area of international law. However, on the other hand, it is possible that in the near future a universal customary concept of exploitation different from the one included in the UN Trafficking Protocol is developed. At the European subregional level, Articles 2 (1) and 2(3) of the Directive 2011/36/EU have already broadened the UN Trafficking Protocol’s concept of exploitation by adding other forms, namely, begging and criminal activities to the list. Moreover, the Preamble of the Directive also refers to illegal adoptions and forced marriages. Finally, practices that might be included in the definitional framework of human trafficking at the national level are, for instance, early and forced marriages; serious labor exploitation in agriculture, construction, mines, factories, fishing, etc.; the use of the victims in illicit activities, in circuses, races, etc.; forced street begging; domestic exploitation; the use of victims in armed conflicts; practices of child illegal adoptions for exploitative purposes; the use of women for forced commercial surrogacy (Scarpa 2008; European Parliament 2016; European Parliament 2011). On a parallel level, it is, however, legitimate to ask whether only severe practices deserve to be included in the definition of trafficking or if States Parties remain free to set the boundaries of the concept of “exploitation,” with an evident risk of diluting the nature of the prohibition of a serious crime (Kotiswaran 2017). This issue clearly contributes to increasing the complexity of the trafficking framework and further diluting its consistency too.

Finally, highly debated was the fact that Article 4 of the UN Trafficking Protocol inevitably limited its scope of application “to the prevention, investigation, and prosecution of the offences established in accordance with Article 5 . . . where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.” The UN Trafficking Protocol was initially criticized for narrowing human trafficking only to the situations where these two elements are met. Therefore, both internal trafficking without any transnational element, which is widespread in some countries of the world, and the one organized by individuals or groups of two people or by groups that cannot be
considered as structured ones would have risked being excluded from the UN Trafficking Protocol. However, the UNODC Legislative Guide clarified that “the Trafficking in Persons Protocol also applies to the protection of victims regardless of transnationality and involvement of an organized criminal group” (UNODC 2004). The same conclusion can be reached by jointly taking into consideration Article 34 CTOC and Article 1 of the UN Trafficking Protocol. This implies that States Parties shall introduce in their criminal legislations the crime of human trafficking, regardless of transnationality or the involvement of criminal organizations and they cannot discriminate between victims of internal and transnational trafficking, as well between the ones exploited by a structured group – as defined by the Convention against Transnational Organized Crime – or by an individual or any other kind of group. The minimum protection – examined below – provided by the UN Trafficking Protocol shall, consequently, be granted to all victims of human trafficking. Notwithstanding the UNODC Legislative Guide’s clarification, it is evident that the trafficking definition and anti-trafficking action both suffer from the framework within which they were promoted. The latter is based not only on “an interest in suppressing crimes against the person, such as enslaving or trafficking a person, but [on] a preoccupation with irregular migration and a determination to prioritize crimes related to migration, rather than focusing on the rights of migrants or even violations of the human rights of migrants” (Dottridge 2017: 63). This issue continues to severely affect the implementation of the UN Trafficking Protocol.

The UN Trafficking Protocol’s definition represents a complex compromise among the States’ representatives that participated in the negotiations. The concept of human trafficking for multiple forms of exploitation has the potential to be broadly interpreted as covering the greatest majority of exploitative practices existing today (Scarpa 2008; Gallagher 2010). However, a rigid interpretation of such a framework that places too much emphasis on vitiated consent (for adults), and focuses more on the process than on the exploitative outcome does not support the aim of including most of the forms of exploitation existing today within the human trafficking umbrella and instead risks its being undermined (Scarpa 2018). Moreover, the UN Trafficking Protocol’s definition extends the boundaries of the phenomenon, recognizing that trafficking is connected to various forms of exploitation and that men, women, and children can be trafficked. While the boundaries of the definition remain fuzzy and unclear, the trafficking framework founded on the UN Trafficking Protocol’s definition stands today as one of the three fundamental regimes – including the ones on slavery and practices similar to slavery and on forced and compulsory labor – against serious forms of exploitation. It is also to be acknowledged that the interpretation of the concept has not so far been devoid of politicization; especially in some countries, such as the United States, an “exploitation creep” has been noticed, so that:

... diverse advocates have appropriated the “trafficking” label so that the activities covered by the term trafficking remain very much in the eye of the beholder. The definitional muddle has resulted in indiscriminate conflation of legal concepts, heated battles over how best to address the problem, and an expanding crowd of actors fervently seeking to abolish any conduct deemed “trafficking.” (Chuang 2014: 610)
Finally, the various forms of exploitation included in the trafficking framework have received various degrees of attention. Sexual exploitation has been the predominant issue in trafficking discourse for almost a decade since the adoption of the UN Trafficking Protocol. Subsequently, “[f]rom around 2012 onwards, trafficking became increasingly reframed in terms of both slavery and forced labour” (Kotiswaran 2017: 18), with increased attention for labor exploitation and global supply chains. However, many other forms of exploitation connected to human trafficking are still waiting to receive the necessary level of attention which would be needed for seriously tackling them.

The (Thin) Line Between Trafficking in Persons and the Smuggling of Migrants

As stated supra, the UN Convention against Transnational Organized Crime is also supplemented by a Protocol on the smuggling of migrants by land, sea, and air. Article 3(a) of this treaty defines the smuggling of migrants as: “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” The adoption of the UN Smuggling Protocol was determined by the deficiencies in the universal system of international law aimed at targeting those who profit from the facilitation of irregular migration at a time in which some States, including in particular those in Western Europe and North America, were increasingly worried about this phenomenon (Gallagher 2015).

While certain key differences are clearly apparent from the comparison between the definitions of human trafficking and migrant smuggling, the “theory” in this field does not fully match the reality, so that serious overlaps between the two exist (Bhabha and Zard 2006; Scarpa 2008). UNODC clarifies that there are three main differences between the two definitions and they have to do with consent, exploitation and transnationality. As regards the first issue, namely, consent, as stated above, the UN Trafficking Protocol’s definition presupposes that consent of adult trafficking victims is vitiated by the use of improper means. However, consent is considered irrelevant in the case of minors. Consequently, the UN Trafficking Protocol considers trafficked persons as “victims.” Differently, the UN Smuggling Protocol considers smuggled persons as migrants who freely decide to buy an illegal transportation service from a smuggler to reach their desired destination while crossing borders irregularly. Moreover, the UN Smuggling Protocol’s definition of smuggling presumes that the relationship between the smuggler and the smuggled migrant ends once the latter arrives at destination. Exploitation is another key difference: the UN Trafficking Protocol’s definition considers the latter as the ultimate outcome of the trafficking process and a fundamental element within that framework. The UN Smuggling Protocol’s definition instead does not include any reference to exploitation, assuming as stated above, that the relationship between smuggler and smuggled person ends once that migrants arrive at their destination. However, Article 6.3(c) of the UN Smuggling Protocol allows States Parties to introduce aggravating circumstances for the criminal offence
of smuggling of migrants and includes exploitation among them. Finally, the last difference between the two offences is that smuggling in migrants always takes place across national borders, although this is not always the case for trafficking in persons. Therefore, smuggled migrants are always irregular immigrants while trafficked persons can both be trafficked internally and transnationally and in the latter case, they may have entered into the State of destination both legally or irregularly.

Even if theoretically the above-mentioned three elements should allow to clearly distinguish between trafficking in persons and the smuggling of migrants, in reality the two phenomena may well overlap, as there is a considerable grey area between them. Traffickers and smugglers might adopt the same routes for their illegal activities, so that “clients” and “victims” may travel together and the difference between them may not be apparent to border guards. Furthermore, it is always possible that smuggled migrants may find themselves in difficulties leading to a condition of exploitation. On the other hand, trafficked victims travelling across borders risk being conflated with irregular/smuggled migrants, so that if they are not properly identified they lose access to the minimum protection measures included in the UN Trafficking Protocol (Scarpa 2008; Gallagher 2010). The UN Smuggling Protocol in fact contains on a comparative perspective lesser measures dealing with the protection of smuggled migrants. Moreover, smuggled migrants might end up being trafficked and/or exploited at their destination because of their irregular entry and the consequent lack of documents, which does not allow them to apply for regular jobs. Therefore, it is believed that the two phenomena should be considered as partially intersecting, with full consideration of their unclear contours and serious overlaps (Scarpa 2008).

The (Scarce) Protection of Trafficking Victims

Given that the UN Trafficking Protocol is a transnational criminal law instrument primarily designed to punish human traffickers, it should not be surprising that it contains only three articles dedicated to victims’ protection and they do not create strong obligations for States Parties. The main reasons behind the discretionary language used in many protection measures are connected with the lack of interest by States’ delegates to enhance the protection of trafficked victims, who were mainly considered as a financial burden or as witnesses deserving only minimum rights. The division between the two groups of NGOs – namely, the Human Rights Caucus and the International Human Rights Network – lobbying during the negotiations was also undermining the final result in terms of victims’ protection (Scarpa 2008).

The provisions on the protection of trafficking victims are included in Section II of the UN Trafficking Protocol, entitled “Protection of Victims of Trafficking in Persons” that comprises articles 6, 7, and 8. Four years after the adoption of the UN Trafficking Protocol, the Legislative Guide adopted by UNODC intervened on the discretionary character of some of these provisions on the protection of trafficked victims. Unfortunately, the Guide clarified that Article 6, paragraphs 3 and 4 on social assistance, victims’ protection, and the special needs of children and Article 7 on the status of victims are optional provisions with no binding effect on the States
Parties. The distinction was made along the lines of first and second generations’ human rights, so that according to the Legislative Guide:

Generally, the provisions of the Protocol setting out procedural requirements and basic safeguards are mandatory, while requirements to provide assistance and support for victims incorporate some element of discretion … The nature of the social obligations reflects concerns about the costs and difficulties in delivering social assistance to all victims (or indeed, the general population) in many developing countries. (UNODC 2004: 283)

Article 6 is the core provision of the Section and it is composed of six paragraphs stating that the Contracting Parties: (1) consider both protecting the identity and privacy of trafficked victims and making legal proceedings related to such offence confidential; (2) if appropriate, adopt in their domestic legal or administrative systems measures designed to provide trafficking victims with information on relevant proceedings and assistance to enable them to testify against their traffickers; (3) examine the possibility of guaranteeing to trafficking victims physical, psychological, and social recovery and, in particular appropriate housing, counselling, and information in a language that they can understand at least on their legal rights, medical, psychological, and material assistance, education, the opportunity to find an employment, and to attend professional courses; (4) take into account the age, gender, and special needs of trafficking victims, particularly those of children, especially relating to housing, education, and care; (5) make efforts to provide for the physical safety of the victims residing in their territory; (6) introduce measures in their domestic systems to guarantee that trafficked victims may obtain compensation for damage suffered. Article 7 suggests that States Parties consider adopting measures to guarantee trafficking victims the right to remain within their territory, temporarily or permanently, giving consideration to “humanitarian and compassionate factors” and, finally, Article 8 contains a set of measures to facilitate the return of trafficked persons to their State of nationality or of permanent residence. The limited approach of Articles 7 and 8 of the Protocol, which is based on a presumption that trafficking victims are irregularly present in the countries of destination, is self-evident.

Even if it is included in the last section of the Protocol, namely, Chapter IV, Article 14, which is dedicated to saving clauses, should also be mentioned among the protection measures. Its first paragraph provides in fact that the UN Trafficking Protocol does not affect existing rights and obligations under international law and, in particular, those provided by international humanitarian law and international human rights law. Specific mention is made of the 1951 Convention relating to the Status of Refugees, of its 1967 Protocol and of the principle of non-refoulement. The latter is a fundamental principle of international refugee law, which is enshrined in Article 33.1 of the 1951 Convention relating to the Status of Refugees, and it provides that States shall not return a refugee or asylum seeker against his/her will to a territory where he/she fears persecution. However, the principle is also included in some international human rights treaties. It is worth mentioning, at the universal level, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibiting return when there is a fear
that the returned individual might be subjected to torture and Article 16 of the
International Convention for the Protection of All Persons from Enforced Disap-
pearance (ICPPED) for risks of enforced disappearance upon return. At the regional
one, the principle is included in Article 22.8 ACHR if the “right to life or personal
freedom [of the returned individual] is in danger of being violated because of his
race, nationality, religion, social status, or political opinions,” and Article 19.2 of the
Charter of Fundamental Rights of the European Union for risks of death penalty,
torture or other inhuman or degrading treatment or punishment upon return. The
second paragraph of Article 14 of the UN Trafficking Protocol contains a non-
discrimination clause, ensuring that trafficking victims are not discriminated against
and that the UN Trafficking Protocol is interpreted consistently with the well-
established international principles of non-discrimination.

However, the lack of a specific provision on the identification of trafficking
victims in the UN Trafficking Protocol – given the evident risk especially in irregular
transnational trafficking that if not properly identified they might end up being
considered as irregular or smuggled migrants – is evident (Scarpa 2008). Moreover,
the trafficking protection framework has been implemented in some States – includ-
ing in particular, the United States and European countries – through the promotion
of a very limited rescue framework. The latter might work for some trafficking victims,
including in particular, those irregularly within the country of destination who escape
from sexual exploitation and ruthless traffickers, but it does not fit victims possessing
other statuses (citizens, refugees, etc.) and exploited in other sectors.

Conclusion

The UN Trafficking Protocol has been widely criticized for having been adopted
within the framework of the fight against transnational organized crime, to the
detriment of other relevant approaches. The interest of many States Parties, which
is not “merely an interest in suppressing crimes against the person, such as enslaving
or trafficking a person, but a preoccupation with irregular migration and a determi-
nation to prioritize crimes related to migration, rather than focusing on the rights of
migrants or even violations of the human rights of migrants” (Dottridge 2017),
dermines the potential of the trafficking framework.

The problematic nature of the definition of human trafficking and the lack of
clarity on its contours and interpretation add further issues, diluting consistency and
leading to “alternative understandings at the global, national and local levels” (Merry
2017). Scholars, judges, and professionals working in this field have an important
responsibility and role to play worldwide while interpreting the definition, for the
purpose of guaranteeing greater consistency, as well as effectiveness of the global
framework on the fight against human trafficking.

Moreover, since human trafficking is a multifaceted and complex issue, it is
problematic that certain dimensions were not appropriately taken into consideration
by the UN Trafficking Protocol through specific additional measures. These issues
include intersections between human trafficking and (transnational and internal)
migration and refugee protection, the protection of victims’ human rights, children’s rights and gender mainstreaming, concerns about various forms of labor exploitation and their connection to global supply chains, as well as clarifications on organ removal.

However, demonizing the regime by claiming that it is “flawed” (Allain 2014) brings with it many risks, given the outdated nature of the two Slavery Conventions and the limited number of ratifications, namely, 27, received so-far by the new Protocol of 2014 to the Forced Labour Convention.

Notwithstanding all the limitations identified in this chapter, it should also be acknowledged that, on the (limited) positive side, the UN Trafficking Protocol surely represents a landmark achievement if compared to the previous white slave trade or traffic conventions that for nearly a century had condemned the practice but had never defined it. Moreover, it is important to note that the Conference of the Parties to the Convention against Transnational Organized Crime, which was established pursuant to Article 32.1 CTOC, created a Working Group on Trafficking in Persons and, with its resolution 7/1, decided that this is a permanent element of the Conference (Conference of the Parties 2014). The Working Group has been so far actively involved in promoting consistency in the implementation of the UN Trafficking Protocol by the States Parties. Moreover, a process aimed at establishing a reporting mechanism for reviewing implementation of the Convention against Transnational Organized Crime and the Protocols is ongoing; this might constitute an important aspect for favoring a more consistent and coherent approach by the States Parties.

Finally, it is worth noting that, according to Article 18 of the UN Trafficking Protocol, 5 years after its entry into force, any State Party may propose amendments to it. The proposals shall be voted on by the Conference of the Parties and if approved, the amendments are subject to ratification, acceptance, or approval by the States Parties. Therefore, this author fully supports the introduction of additional protective measures for trafficking victims in the near future. These measures could be easily framed, keeping into consideration the ones included in European instruments, such as the Council of Europe Convention on Action against Trafficking in Human Beings and the European Union Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. In this way, existing loopholes within the universal protection system currently in place with the UN Trafficking Protocol might be eliminated.

Cross-References

▶ A Complex Systems Stratagem to Combating Human Trafficking
▶ Combatting Trafficking in Human Beings: A Step on the Road to Global Justice?
▶ Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses
▶ Historical Evolution of the International Legal Responses to the Trafficking of Children: A Critique
▶ Human Trafficking: An International Response
Is It Time to Open a Conversation About a New United Nations Treaty to Fight Human Trafficking That Focuses on Victim Protection and Human Rights?

The Failing International Legal Framework on Migrant Smuggling and Human Trafficking

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Criminal Justice System Responses to Human Trafficking

Amy Farrell and Brianne Kane

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Abstract

The criminalization of human trafficking has been a primary anti-trafficking response by nations around the world. Despite the promise of laws designed to

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promote the prosecution of human trafficking crimes, global reports indicate small numbers of prosecuted offenders. This chapter examines the numerous challenges criminal justice systems face combating human trafficking, with specific focus on the difficulties of identifying victims, investigating human trafficking crimes, supporting victims through the criminal justice system process, and prosecuting and holding offenders accountable.

**Keywords**
Human trafficking · Sex trafficking · Labor trafficking · Legal reform · Police · Prosecution

**Introduction**

Since the adoption of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* in 2000, the international community has recognized trafficking in persons as a criminal offense. Since the passage of the UN Protocol, 158 countries have adopted laws that specifically criminalize trafficking in persons (United Nations Office on Drugs and Crime 2016). Critical to the success of these legislative efforts is the ability of criminal justice system authorities to enforce laws against trafficking, necessitating the proper identification of potential victims, effective investigation of offenses, and the prosecution of offenders. This chapter examines the numerous challenges criminal justice systems around the globe face in effectively implementing laws that criminalize trafficking in persons.

**Criminalization Frameworks and Legal Responses**

Human trafficking has primarily been understood by political elites and policymakers across the globe as a crime and security problem. Although early efforts to raise awareness about sex and labor trafficking focused on human rights violations, particularly the harms brought to women and children who had been forced into prostitution (Bryjak 1995; Farrell and Fahy 2009; Jahic and Finckenauer 2005), these concerns had little public resonance. By the mid-1990s, activists and politicians seeking to bring attention to the problem of human trafficking expanded the original definition which focused on forced prostitution to include consensual forms of prostitution as well as labor trafficking (Stolz 2005, 2007). The problem itself was recast as a crime problem involving nefarious predators with connections to transnational crime networks who perpetrate crimes by exploiting vulnerable people (Charnysh et al. 2015). Government officials around the globe have attempted to draw connections between the transnational aspect of human trafficking with efforts to address terrorism and protect national security (Shelley 2002). As a result, human trafficking became intertwined with both criminal control and homeland security efforts (Aradau 2004; Chacon 2006).
Media coverage of human trafficking problems overwhelmingly focuses on issues of sex trafficking and commercial sexual exploitation, overshadowing other forms of trafficking such as labor trafficking and organ trafficking (Farrell and Fahy 2009; Gulati 2012; Marchionni 2012; Sandford et al. 2016). Furthermore, females and children remain the prominent victims of human trafficking portrayed by the media (Sandford et al. 2016). Sex trafficking and the protection of women and girls also dominate the attention and efforts of legislators and policymakers (UNODC 2014; Weitzer 2007, 2015). Public concern can affect what issues are prioritized by legislation and law enforcement (Dahl 1989; Page 1994; Page and Shapiro 1993; Stimpson et al. 1995). As such, perceptions held by the public about the harms of sex trafficking and the threats to women and children have influenced the distribution of resources and attention of law enforcement efforts to prioritize the identification and interdiction of human trafficking crimes.

Governments around the world have responded to public concern about human trafficking through the passage of laws that criminalize human trafficking offenses and support the criminal justice system in the detection and neutralization of criminal threats. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the United Nations Transnational Organized Crime Convention was adopted in 2000 and by 2016 had been ratified by over 170 countries (UNODC 2016). The UN Protocol defines trafficking in persons as “the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN Protocol, Article 3, 2000). The protocol specifies that the consent of a victim to the trafficking acts is irrelevant if any of the means discussed (i.e., force, coercion, abduction, fraud, deception, abuse of power, position of vulnerability) have been employed and the trafficking of a child under the age of 18 is assumed regardless of the means utilized to facilitate the recruitment, transportation, transfer, harboring, or receipt of the person. The protocol establishes a framework for countries to respond to human trafficking as a crime and commits ratifying states to prevent trafficking in persons, protect and assist victims of human trafficking, and prosecute human trafficking offenders.

As of 2016, 158 countries have passed laws that specifically criminalize trafficking in persons in line with the UN definition (UNODC 2016). Most countries in Western and Southern Europe, the Americas, and East Asia and the Pacific criminalized trafficking in persons between 2000 and 2005. Countries in Northern Africa and the Middle East passed law criminalizing trafficking in persons between 2008 and 2012 (UNODC 2016). In 2000, US Congress introduced the Trafficking Victims Protection Act (TVPA 2000) which federally criminalizes sex and labor trafficking. By 2014, all 50 states had followed suit and enacted laws against human trafficking. Under the TVPA, trafficking in persons is defined as “trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or recruitment, harboring, transportation,
provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” (TVPA 2000, Section 103, 8a-b). Similarly, the Protocol to Prevent, Suppress and Punish Trafficking in Persons was adopted by the United Nations General Assembly in 2000 with intentions to create human trafficking legislation throughout the UN. The UN Protocol provided the framework for the Council of Europe Convention on Actions Against Trafficking in Human Beings. The Council of Europe provisions specify protection and support for trafficking victims, including a period of reflection which allows foreign national victims time to escape the influence of traffickers as they decide whether or not they will cooperate with law enforcement authorities (Council of Europe 2006).

Despite its criminalization, human trafficking appears to be under-policed by law enforcement worldwide. The UN Global Report on Trafficking indicates that of the 136 countries that reported data between 2012 and 2014, only 29% of countries had investigated more than 50 cases of human trafficking per year, 23% investigated between 11 and 50 cases, 11% investigated 10 or fewer cases, and 37% either investigated no case or no information was available about investigations (UNODC 2016). The criminal cases identified by law enforcement around the globe follow similar patterns. An overwhelming majority of the victims identified through these investigations were women. Between 2012 and 2014, countries reported over 60,000 identified victims, over 70% of which were female (UNODC 2016). Children are the second most common group of victims identified globally. Although global trends reflect the way human trafficking is framed by the media and political elites, there are some important regional differences that suggest variation in public attention and police enforcement of anti-trafficking laws. In countries of Eastern Europe, Central Asia, and the Middle East, a higher proportion of men are identified as human trafficking victims compared to the global averages, suggesting that civil society and the police identify and recognize more cases of labor trafficking than we see in other regions of the world (UNODC 2016).

Offenders being criminally charged and/or convicted of trafficking in persons crimes are even scarcer. Roughly a quarter of the individuals investigated for a trafficking in person crime are convicted of these criminal acts (UNODC 2016). As a result, countries report few convictions for human trafficking crimes. Of the 136 countries that reported data to the UN for the 2012–2014 period, 40% reported fewer than 10 convictions for trafficking in persons offenses, and 15% did not record a single conviction for trafficking (UNODC 2016). Below we discuss the challenges that face criminal justice institutions in responding to new legal mandates and arresting, charging, and convicting trafficking in persons offenders.

**Challenges to Police Identification of Human Trafficking**

Despite the existence of anti-trafficking laws, police in most countries fail to use these new legal tools. Few human trafficking offenders are identified by the police globally, and even fewer are charged or convicted of human trafficking specific
offenses. In all countries, the disconnect between the estimated number of victims and the number of human trafficking incidents identified and interdicted by the police is significant (UNODC 2016). The police play a vital role in the fight against human trafficking. They identify victims and facilitate their connection with appropriate services and resources, directly deter trafficking offenders through arrest and detention, and dismantle trafficking networks to prevent future victimization. The police play a critical role in disrupting and dismantling human trafficking operations, yet there are a number of challenges within police agencies that impede the identification of human trafficking incidents and complicate efforts to arrest and hold offenders accountable. These challenges include confusion regarding human trafficking legislation and definitions, training gaps, the necessity of proactive investigations, and issues of corruption and complicity with traffickers.

New Mandate for Local Law Enforcement

The passage of new anti-trafficking laws is only the first step to addressing human trafficking. Legislation does little to directly affect the actions of law enforcement, and research on American policing confirms that the police have historically been resistant to legislative change (Bittner 1980; Crank and Langworthy 1992; Edelman 1990, 1992; Grattet and Jenness 2005; LaFave 1965; Lipsky 1980; Manning 1997). Not surprisingly, police officials have received new legal mandates to identify and investigate trafficking in persons with suspicion (Farrell et al. 2014). Research in Europe suggests that government officials have similarly been reluctant to acknowledge trafficking problems in local communities (Arsovskaa 2008). While some of this resistance is a result of a limited capacity to change due to lack of resources and training, these are not the only causes. Police often perceive new laws as “a reflection of political whims, the politicization of law enforcement, and a distraction from basic ‘good police work’” (Jenness and Grattet 2005, p. 337). If agencies do not view legislative changes as legitimate, then they will be less likely to incorporate such changes into their work environment. For human trafficking, this means that despite the passage of new laws criminalizing trafficking offenses, police departments around the globe have not made trafficking enforcement an institutional priority.

Because local citizens often do not perceive human trafficking as a significant issue within their local communities and instead tend to think that trafficking problems are more severe “elsewhere” (see Bouché et al. 2015 for examples of public perceptions in the United States), police officials do not receive significant pressure from the community to identify and rescue human trafficking victims, particularly in comparison to other types of violent and property crimes. Outside of legislative changes, local police officials receive little external pressure to make anti-trafficking efforts a priority.

Additionally, police are less likely to perceive trafficking in persons as a priority when there is little pressure within the agency to change practices. Local police agencies have generally committed few resources to support anti-trafficking efforts. A 2008 survey in the United States indicated that roughly 20% of law enforcement
agencies had received any training on human trafficking, less than 10% had developed internal policies or operating procedures to guide the investigation and response to trafficking in persons, and less than 7% assigned any specialized personnel to investigate human trafficking cases (Farrell et al. 2010). Without the commitment of leadership within a police agency, officers are unlikely to invest the resources and person-hours to identifying crimes that are a low priority.

Police resistance to legal change is not unique to human trafficking. When police have been given legal mandates to respond to new crime problems such as domestic violence and bias-motivated crimes (hate crimes), it has been important for policymakers to ensure accountability measures such as data collection and reporting to overcome institutional resistance and promote the enforcement of new laws (Buzawa and Buzawa 2002; Ferraro 1989; Jenness and Grattet 2005; Nolan and Akiyama 1999). Training is another critical step in facilitating enforcement and improving perceptions among rank and file police officers of the importance of new anti-trafficking laws.

Training Gaps

Despite the creation of anti-trafficking legislation, police remain unfamiliar with the legal definitions of human trafficking provided by the legislative acts (Farrell and Pfeffer 2014; Newton et al. 2008). Confusion regarding human trafficking definitions may lead police to overlook victims or misidentify trafficking cases as other types of offenses (Farrell and Fahy 2009; Srikantiah 2007). In addition to failing to train frontline officers about the basic definitions of human trafficking to help them identify potential victims or criminal incidents, most agencies lack specialized training to prepare officers to properly investigate these crimes. Human trafficking investigations can be more complicated than many crimes facing local authorities (Verhoeven and Van Gestel 2011). Trafficking in persons is a complex crime due to the highly adaptive, multifaceted, and often transnational nature of the offense (Van der Watt and van der Westhuizens 2017). As a result, police responses to human trafficking must similarly be fluid, flexible, and responsive to the changing nature of the criminal enterprise, which may involve partnering with non-traditional stakeholders and cross-border sharing of information and intelligence (Araujo 2011). Such responses are not possible without the proper and necessary training.

Very few agencies have trainings in place to address human trafficking responses (Farrell et al. 2010; Newton et al. 2008). For those agencies that do implement trainings, they are often limited to a select few officers, leaving patrol officers and officers from other departments untrained on the topic (Renzetti et al. 2015). As a result, untrained officers may fail to identify human trafficking even when they are faced with it. Additionally, trainings vary greatly. For example, within the United States, there is significant variation across states in both legal mandates to train the local law enforcement officials and the content and nature of police training on trafficking in persons where it is available (Wilson et al. 2006).
The Need for Proactive Identification

Human trafficking crimes rely on the hidden and often invisible nature of victimization itself. Victims are often prohibited from leaving situations of exploitation or communicating to others about their need for assistance by traffickers making it difficult to alert authorities of their abuse (Srikantiah 2007). Even when victims do become free of situations of exploitation, they often have experienced significant trauma that makes it difficult for them to seek out assistance and provide information to law enforcement (Zimmerman et al. 2008). In other cases, victims fear that contacting the police will result in retaliation by traffickers and/or deportation by local law enforcement authorities. In turn, few victims come forward to report their crimes to the police. Additionally, as human trafficking operations are complex and increasingly professional, victims may not have sufficient information about criminal networks to develop criminal investigations (Gallagher and Holmes 2008). In response to these challenges, police must engage in proactive investigative strategies in order to identify cases of human trafficking. This includes intelligence-generated and police-led investigations that are less reliant on the testimony of a trafficking victim (UNODC 2016). Research in the United States suggests that most police agencies rely on reactive as opposed to proactive approaches. These often include responding to tips received from community members, victim service organizations, and hotline calls (Farrell et al. 2014). Reliance on reactive strategies necessitates strong public awareness and even in the best of circumstances will lead to the identification of only a small number of victims.

Corruption and Complicity with Traffickers

Corruption further undermines law enforcement responses to trafficking in persons in some contexts. The police and other criminal justice system officials may both facilitate and benefit from human trafficking activities (Hughes and Denisova 2001). Corrupt officials promote trafficking through a variety of means. They may allow crimes to remain hidden and unidentified. Research has found that police are sometimes bribed by traffickers with money to overlook the illegal activities going on in their businesses. As McCarthy (2010) found in her study of police responses to human trafficking in Russia, brothel owners may bribe officers with free sexual services. Similarly, investigators, prosecutors, and judges may also be bribed as a way to discourage the investigation and prosecution of trafficking cases (Shelley and Orttung 2005). These actions hide trafficking operations and shield traffickers from being punished even once cases are identified. These actions also affect victim perceptions of police, making them less trusting of law enforcement after seeing officers being serviced as clients, receiving bribes from traffickers, or returning victims to their traffickers (McCarthy 2010; Surtees 2007).

Corruption is a worldwide problem. Among those countries perceived to be the most corrupt, human trafficking efforts are extremely low, and governments are not making significant efforts to improve (Transparency International 2014; US
Department of State (2017). This suggests that corruption is correlated with response efforts. For example, in Mexico, a country ranked by the US State Department as having made efforts to combat trafficking but not yet achieving success, corruption facilitates trafficking in persons operations and shields it from justice. Mexican law specifically prohibits government complicity with human trafficking, but the government has not reported any prosecutions of government employees who were complicit in human trafficking since 2010 (US Department of State 2017). Since corruption likely exists in all countries to some capacity, the identification and investigation of human trafficking cases can be severely undermined by corrupt officials.

Challenges to Investigation

Police are considered the frontline when it comes to identifying victims and perpetrators of human trafficking (De Baca and Tisi 2002). However, their ability to successfully investigate, gather and prepare evidence, and effectuate arrests to hold offenders accountable is more limited.

According to institutional theory of criminal justice, the success of agencies is influenced by their surrounding environments (Crank 1994, 2003; Crank and Langworthy 1992). As such, a lack of institutional resources and external pressures can greatly inhibit the investigation of human trafficking. Some institutional factors that limit the investigation of human trafficking include lack of resources, challenges to victim cooperation, limited ability to address victim needs, and corruption.

Lack of Resources and Need for Multiagency Coordination

As discussed earlier, human trafficking requires a proactive investigative approach. However, a lack of resources limits trainings and agencies’ ability to be proactive. Furthermore, due to human trafficking cases being resource-intensive, police agencies are more likely to focus their efforts on addressing other crimes, opposed to human trafficking, for which they have the resources and training necessary to do so (Farrell et al. 2014). When resources are scarce, trafficking investigators may not be able to pursue strategies which would allow them to gather information on complex criminal networks, instead focusing investigations and interdiction efforts on lower-level criminal operators such as pimps, street-level facilitators, or labor operators as opposed to tackling the principal players in complex criminal networks (Van der Watt and van der Westhuizen 2017).

Additionally, trafficking in persons investigations often begin in the community or country where a victim is identified as being exploited. Important evidence about the recruitment or movement of that victim into the situation of exploitation likely exists in another community or another country where the victim was originally recruited. Gathering such information requires interagency partnerships across regions and international borders. One example of such partnerships is the
US-Mexico Bilateral Human Trafficking Enforcement Initiative. Through this program, law enforcement on both sides of the US-Mexico border share information about trafficking networks, and agencies participating in the effort have apprehended suspects and collaborated to ensure successful extradition (US Department of State 2017).

Multijurisdictional partnerships are also important within a country. In the United States, multijurisdictional anti-trafficking task forces have been utilized to promote training and specialization in the investigation and prosecution of trafficking in persons crimes and to facilitate information sharing across regional partners (Bureau of Justice Assistance n.d.). Research has found that agencies with such task forces or those located within states that have federally funded task forces are more likely to identify cases of human trafficking and make arrests (Farrell et al. 2010). Centralized coordination can also facilitate collaboration across agencies. The human trafficking responses in the United Kingdom are led by the Modern Slavery and Human Trafficking Unit (MSHTU) within the National Crime Agency. The MSHTU coordinates with the Home Office, border police, local police and constable agencies, international law enforcement partners, and nongovernmental organizations to provide technical expertise in human trafficking investigations, analyze data from referrals provided through the National Referral Mechanism to proactively identify human trafficking targets, and support ongoing investigations (National Crime Agency n.d.). These examples suggest cautious optimism that increased resources and dedicated, specially trained personnel can improve the investigation of human trafficking.

The Need for Specialized Investigators

Human trafficking cases are complex. Acts of human trafficking usually are not single events but rather processes that involve multiple offenders sometimes operating in different communities and across country borders.

Despite the potential complexity of trafficking in persons crimes, traditionally police have utilized simplistic investigative tactics, generally drawn from more traditional street crime activities. For example, vice tactics are utilized commonly to expose sex trafficking operations by agencies that do not have specialized or specially trained human trafficking investigators. The utilization of such tactics limits investigations to traditional venues such as the streets, hotels, and the Internet. Not only do these tactics ignore cases that may exist in other venues, they miss connections that exist between street-level offenders and others in the criminal network. Vice tactics also overlook labor trafficking entirely (Farrell et al. 2014). As a result, without specialized investigators involved in proactive investigations, labor trafficking cases almost entirely depend upon tips from community members, victim service providers, and hotline calls in order to reactively investigate concerns about forced labor or labor trafficking (Farrell et al. 2014). These investigative strategies are also less likely to yield information and evidence necessary to support prosecution on trafficking in persons charges.
Securing Victim Cooperation

Because police traditionally rely on reactive investigation strategies to identify victims of human trafficking, the investigation and future prosecution of human trafficking offenders are commonly contingent upon victim cooperation and testimony. This means police are working with victim who in many cases have been underserved by, or had poor relationships with, law enforcement (e.g., migrants, immigrant community member, and poor women and girls).

Police face many challenges when it comes to victim cooperation during human trafficking investigations. Language barriers between victims and law enforcement may create challenges (Baldwin et al. 2011; McCarthy 2010). Additionally, foreign victims may be reluctant to cooperate out of fear of deportation (Farrell et al. 2014; Farrell and Pfeffer 2014). Police sometimes perceive victims as criminals who have engaged in a crime, even if it was the result of their victimization experience (Farrell et al. 2014), and correspondingly treat victims with suspicion during the investigation process or during questioning. Police can become frustrated when victims return to their traffickers after law enforcement has gotten involved or the victim has been removed from the situation of exploitation for a period. Some police express concern about the reliability of victims, especially if they have a drug addiction or have immigrated illegally (Farrell et al. 2014). As a result, not only are victims already resistant to cooperating, but police attitudes may further hinder this willingness to cooperate.

Even when appropriately supported, victims may not be able to provide credible testimony about their experiences because victims of trauma are often not able to recall facts accurately (Women’s Commission for Refugee Women and Children 2007). Without proper training in interviewing techniques for traumatized victims, police can become frustrated when victims change their testimony and may demand additional interviews to clarify inconsistencies. Unfortunately, retelling one’s story to the police in successive interviews can cause additional trauma, consecutively damaging one’s ability to think analytically (Sadruddin et al. 2005). Human trafficking victims often have other problems that make the information they provide less credible. Such compounding issues can include a history of substance abuse, long-term engagement in prostitution, or illegal immigration. Because of these challenges, law enforcement may be unwilling to prioritize such investigations.

Victim-Centered/Trauma-Informed Approach

The experiences of trafficking victims leave them vulnerable and create additional challenges to investigations. Many victims of trafficking suffer from posttraumatic stress disorder (PTSD), depression, and anxiety as a result of their victimization (Hossain et al. 2010; Zimmerman et al. 2008). To properly interview these vulnerable individuals, police need to use trauma-informed and victim-centered techniques. However, most police lack training on such techniques which “negatively affects their ability to interview potential victims or infiltrate organized criminal
networks involved in labor and sex trafficking” (Farrell et al. 2014). Although victim advocates can assist in finding services and shelter for victims during investigations, most police agencies do not have victim advocates and also do not collaborate with outside services providers (Farrell et al. 2014; Farrell and Pfeffer 2014). As a result, some victims return to their traffickers or disappear from services which impedes investigations and creates challenges when it comes to time for prosecution. Feeling as though they only have one tool to increase victim cooperation and decrease risk to victims, police sometimes arrest victims to keep them safe or secure their testimony. While this practice may solve an immediate problem, detention creates greater harms for victims in the long run and breeds deeper distrust of law enforcement. To avoid this, many states in the United States have recently enacted “Safe Harbor” laws that focus on decriminalizing juvenile prostitution so victims cannot be prosecuted and providing services and specialized programs to juvenile victims (Geist 2012). Elsewhere, around the world, countries have adopted laws that make it illegal to buy sex but decriminalize the selling of sex. The decriminalization law adopted by Sweden in 1999 has been applauded by many anti-trafficking activists, and similar laws have been passed in Canada (2014), Northern Ireland (2015), France (2016), and Ireland (2017). These laws divert police attention toward the apprehension of sex trafficking facilitators and buyers.

Despite efforts to protect victims, service providers remain reluctant to notify police of known victims out of fear that the police will only bring further trauma and harm to these individuals (Caliber Associates 2007; Women’s Commission for Refugee Women and Children 2007). This is particularly true for undocumented victims or victims perceived to be irregular migrants. Unless victims are willing to cooperate with the police and/or provide legal officials with information about the perpetrator who harmed them and their experiences as victims, they face risk of deportation. It is difficult for law enforcement to build successful human trafficking investigations when victim is deported because of the loss of key victim-witness testimony.

**Challenges to Prosecution**

As with identification and investigation, the criminal justice system faces significant challenges in prosecuting trafficking in persons crimes and holding traffickers accountable. Globally the number of individuals prosecuted for human trafficking crimes is low. Only 14% \((n = 19)\) of the countries reporting data in the 2012–2014 study period reported prosecuting more than 100 human trafficking cases, and only 11% \((n = 15)\) reported prosecuting between 51 and 100 cases (UNODC 2016). One fourth of the countries \((n = 34)\) reported no prosecutions, or no data were available. Human trafficking convictions were even rarer. In this same period, 15% of countries \((n = 20)\) reported convicting 50 or more offenders in a single year during the 2012–2014 period (UNODC 2016) and 30% of countries \((n = 40)\) reported fewer than 10 convictions or no data on convictions were available. The UNODC report suggests a strong connection between the length of time a country has had
anti-trafficking legislation and the number of successful prosecutions in that country. The countries that were the earliest to criminalize human trafficking through national law had the highest numbers of both prosecuted and successfully convicted cases (UNODC 2016). It is quite likely that there is a relationship between the magnitude of the real (or perceived) human trafficking problem in a country and the readiness of that country to criminalize and respond to the problem. In these cases, countries with more trafficking problems were the first to reform law and correspondingly have the most cases to prosecute. However, the pattern of human trafficking prosecutions across the globe suggests that countries who first criminalized trafficking offenses likely committed resources to support anti-trafficking responses and over time have acquired the expertise to investigate cases that can successfully be prosecuted. Research on prosecution of human trafficking lags behind examination of other aspects of the criminal justice system response, but the discussion below highlights challenges that have been identified as impeding the prosecutorial efforts to hold human trafficking offenders accountable.

**Uncertainty About the Evidence Necessary to Prove a Case**

It is not surprising that prosecutors are cautious in charging human trafficking offenders with trafficking in person-related crimes. Research on prosecutorial decision-making has long suggested that prosecutors make charging decisions based on the likelihood of conviction (Albonetti 1987; Frohmann 1997). A prosecutors’ assessments of whether cases are likely to result in a conviction are primarily based on legally relevant factors, such as the strength of the evidence against the accused, though some studies suggest that the characteristics of the suspects and victims, particularly the nature of the relationship between the two, influence prosecutorial charging decisions (Beichner and Spohn 2012; Spears and Spohn 1997). Research on human trafficking prosecutions in the United States finds that state prosecutors infrequently utilize human trafficking charges, even in cases where defendants are known to be engaged in human trafficking activities (Farrell et al. 2016). Prosecutors interviewed for this study were often the first in their state to prosecute a human trafficking case using state anti-trafficking laws. They expressed concern about charging trafficking offenders on charges that had not been well litigated and where evidentiary standards were not well established. Additionally, prosecutors expressed concern about how to best secure evidence that proved the intent of the defendant was to exploit victims in commercial sex or labor without relying on the testimony of traumatized victims. These prosecutors were often operating on their own with little sources of legal guidance or expertise in human trafficking prosecutions. In the United States, the National Association of Attorneys General recently constituted a committee on human trafficking prosecutions. This professional organization has developed educational material aimed at enhancing state prosecutor knowledge of human trafficking laws and the challenges of developing human trafficking cases (NAAG n.d.).
Reliance on Victim Witnesses

The ability of victims to testify before a grand jury or at trial about the nature of their victimization is essential to prosecuting a case of human trafficking. Although prosecutors may gather physical or digital evidence that corroborates elements of the trafficking crime, a victim or multiple victims are often required to prove the elements of force, fraud, or coercion of the victim. As a result, trafficking victims are often the primary witnesses, and, in some cases, their testimony provides the most compelling evidence against the trafficker. Despite the importance of victim witnesses in human trafficking cases, victims are often reluctance to participate in the criminal justice process (Andrevski et al. 2013; Farrell et al. 2014). Victims of human trafficking suffer from a number of trauma-related conditions that require significant support from victim service providers including health and mental health services (Aron et al. 2006).

Creating trust with victims is often paramount to a successful prosecution. In the United States, victim-witness coordinators are deployed by prosecutors to help build rapport and trust with victims. Victim-witness coordinators also refer victims to services and sometimes even send them to programs in other states that specifically serve victims of human trafficking. In many countries, housing is a primary need of sex and labor trafficking victims. This need includes access to both emergency shelter and long-term housing that will keep victims safe from retaliation by their traffickers. Traditional housing strategies for victims such as domestic violence shelters or group homes for juveniles are often insufficient to meet the needs of human trafficking victims.

Institutional Infrastructure to Support Prosecution

Designation of specialized prosecutors who manage anti-trafficking cases, train local law enforcement officials, and oversee proactive investigations is essential to ensuring that human trafficking laws are enforced and prosecutions are successful. Specialized human trafficking prosecutors have been designated in some countries to develop human trafficking cases and oversee and coordinate human trafficking investigations. As one example, the National Prosecuting Authority in South Africa has assigned prosecutors to oversee, lead, and train provincial anti-trafficking taskforces (US Department of State 2017).

Specialized prosecutors are critical because they understand the nature of human trafficking crimes and particularly the needs of human trafficking victims. While an inexperienced prosecutor would see a reluctant and potential unreliable victim as impeding prosecution, a specially trained prosecutor would understand and expect that a victim may initially lie to police about the facts of the case due to a trafficker who succeeded in controlling the individual so that he or she does not trust law enforcement (US Department of State 2017). The specialized prosecutor would be able to connect victims to service providers and others who may be more successful in stabilizing a victim and preparing them to have future conversations with prosecutors to assist in the building of a criminal case.
Conclusion

Although the criminal justice system has been activated in many countries to respond to crimes of trafficking in persons, the number of arrests and particularly prosecutions remains low. There are a number of institutional factors that impede criminal justice agents from successfully identifying, investigating, and prosecuting human trafficking cases. In particular, police must develop capacity to identify a broad range of human trafficking crimes in their local community. This includes partnering with agencies locally to develop intelligence on areas of risk, including labor inspectors and regulatory agencies and nongovernmental organizations that have access to populations at greatest risk.

Prosecutorial authorities must guide local trafficking in persons investigations to ensure that the investigations conducted by law enforcement partners support successful prosecutions. Trafficking cases require local officials to gather evidence to corroborate victim testimony. This is often a time-consuming and laborious process requiring that law enforcement officials are trained on the correct ways to gather evidence to prove that a defendant intended to exploit a person through commercial sex or labor. Guiding such investigations requires understanding and responding to the complexity of human trafficking cases and developing proactive investigations that secure evidence beyond victim testimony. Without such leadership, human trafficking investigations will be poorly prepared and lead to unsuccessful prosecutions that ultimately fail to protect those victims who seek justice.

Cross-References

▶ An Attempt to Control Human Trafficking from a Human Rights-Based Approach: The Case of Spain
▶ A Complex Systems Stratagem to Combating Human Trafficking
▶ An Examination of Counter Trafficking Responses in the Asian Region: Hong Kong and Singapore
▶ Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses
▶ Regional Responses to Human Trafficking in Southeast Asia and Australasia
▶ The Role of the Border and Border Policies in Efforts to Combat Human Trafficking: A Case Study of the Cascadia Region of the US-Canada Border
▶ UN Palermo Trafficking Protocol Eighteen Years On: A Critique

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Multisector Collaboration Against Human Trafficking

Kirsten Foot

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Abstract

The complexity of the crime human trafficking requires coordinated action across borders and in every sector of society to end it. However, effective collaboration is difficult. Several forms of multisector collaboration occurring around the world are discussed, and four collaboration-catalyzing initiatives of the US government are summarized. Leveraging insights from interorganizational relations and the sociology of organizing, three key challenges in multisector collaboration against human trafficking are identified: (a) differences in the power, status, and financial resources of the organizations attempting to collaborate; (b) tensions between differing, sector-based values and priorities; and (c) power dynamics stemming from the majority/minority gender and ethnic/racial patterns that vary by sector in

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some countries. Finally, promising practices for building, repairing, and sustaining multisector partnerships to counter modern slavery are offered.

**Keywords**

Partnership · Collaboration · Task force · Coalition · Interorganizational · Cross-sector · Multisector · Tensions · Practices

**Introduction**

Since well before the United Nations’ 2000 adoption of the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, people working in a variety of sectors in many countries have been striving to stop the trafficking of persons and help those who have been trafficked. It is widely agreed that collaboration is necessary between organizations in the public, private, and civil society sectors due to the scope and complexity of the crime and the multiple forms of harm caused to victims (Cockayne 2015; Foot 2016; van der Watt and van der Westhuizen 2017). Organizations in all of these sectors are actively engaged in counter-trafficking efforts in many countries, although there are differences across national contexts due to political, economic, and cultural factors. However, collaboration is a complex interaction between human agency, interpersonal dynamics, and the wider social, political, and economic contexts in which it takes place. In view of the power structures and dynamics in these contexts, cross-sector engagement, much less multisector collaboration, is not always possible – neither can it be assumed to be inherently beneficial to the parties involved or the intended beneficiaries of their efforts.

Since 2000, there has been a marked increase in actions by governments and nongovernmental organizations (NGOs) around the world intended to end human trafficking and to serve those who have been harmed by it (Foot et al. 2015). Many attempts at collaborative partnerships on human trafficking emerge organically, typically through the professional contacts and initiative of organizational leaders. However, not all partnerships are initiated and structured by their member organizations. Some partnerships begin through the stipulations of funders. For example, in the USA, some government agencies and several private foundations have made structured collaborations a requirement for grant funding and have designated funds to support the coordination of multisector partnerships.

There are many survivors of human trafficking working alongside those who have never been enslaved in anti-trafficking efforts. Some publicly identify themselves as survivors, while others choose not to do so. Some work in what they term “survivor-led organizations”; others work independently or in other types of organizations. Some survivor-leaders in anti-trafficking efforts choose not to publicly disclose that information.
Origins and Forms of Multisector Collaborations Against Human Trafficking

The earliest efforts at large-scale collaboration were led by International Labour Organization (ILO), founded in 1919 and organized as a UN agency in 1946. The ILO continues to lead multisector efforts against all forms of labor exploitation around the world, including those associated with human trafficking, by engaging governments, employers, and workers across industries and in all regions of the world.

Individual leaders of counter-trafficking efforts from within the private, academic, and civil society sectors have founded several counter-trafficking initiatives focused on influencing and enrolling businesses – often by creating nonprofit umbrella organizations. Examples of these include the Coalition of Immokalee Workers founded in 1993; GoodWeave International, founded in 1994 as RugMark; Truckers Against Trafficking, founded in 2009; Shift founded in 2011; and Businesses Ending Slavery and Trafficking and the Global Business Coalition Against Trafficking, both founded in 2012. Each of these organizations is doing groundbreaking and exemplary work to prevent and end human trafficking in and by businesses, but only the latter two have corporations as members per se. Since human trafficking occurs within businesses and their supply chains, direct participation in – and collaborative leadership by – businesses is essential to the success of counter-trafficking efforts both within the private sector and between the private sector and other sectors.

In some countries, government agencies have initiated multisector task forces into which some municipal, county, and state government agencies, individual businesses, industry associations, and/or NGOs are invited to participate. In the USA, the Enhanced Collaborative Model task force grants awarded jointly by the Bureau of Justice Affairs and the Office for Victims of Crime to municipal or intrastate regional “multidisciplinary” task forces with “core teams” of enforcement agencies and NGO providers of victim services have catalyzed cross-sector collaboration. These task forces are discussed in greater detail below.

It appears that in many, perhaps most, countries, efforts to coordinate counter-trafficking actions are primarily taking place through alliances or coalitions initiated and constituted mainly by NGOs. One likely factor is that membership in multi-NGO coalitions and multisector coalitions is actively encouraged across the aid industry, including in the counter-human trafficking realm (Davy 2013a). NGO leaders around the world involved in counter-human trafficking efforts have articulated strong desire for governments and businesses to partner with them in preventing and ending human trafficking. They express hopes that collaborative engagement with government agencies and businesses would result in greater awareness of the crime and the plights of victims; greater stability, legitimacy, and safety for their NGOs; increased funding for counter-trafficking efforts; and enhanced effectiveness. Such hopes are consistent with findings from other studies.
regarding the value of cross-sector partnerships (Koschmann et al. 2012). However, extant scholarship on NGO networks addressing other issues in some countries indicates that these hopes are fraught with fears that engaging with – and particularly accepting funding from – businesses or government agencies risks the independence, credibility, and/or moral position of NGOs (Alidu and Asare 2014; Ashman 2015).

**US Government Efforts to Initiate and Sustain Domestic Multisector Collaboration Against Human Trafficking**

The US government has arguably done more than any other national government to catalyze interagency coordination and multisector collaboration. Since the early 2000s – during the G.W. Bush, Obama, and Trump administrations – it has invested significantly in training and funding what it terms “multidisciplinary task forces” to counter human trafficking. To further underscore the necessity of collaboration, in 2009, the US Department of State added “Partnership” to the “3P” framework of prevention, prosecution, and protection employed by itself and many governments. The stated rationale for that addition was that partnership catalyzes progress on the other “Ps.” Subsequently, the 2010 *Trafficking in Persons Report*, issued annually by the US State Department since 2000, included partnership as the fourth “P” for the first time and articulated an expansive conceptualization of multiple forms of partnership, including:

> Combating human trafficking requires the expertise, resources, and efforts of many individuals and entities. It is a complex, multi-faceted issue requiring a comprehensive response of government and nongovernment entities in such areas as human rights, labor and employment, health and services, and law enforcement. It requires partnerships among all these entities to have a positive impact.

Partnerships augment efforts by bringing together diverse experience, amplifying messages, and leveraging resources, thereby accomplishing more together than any one entity or sector would be able to alone. Examples of existing partnerships governments use to facilitate prevention, protection, and prosecution include:

- Task forces among law enforcement agencies that cooperate to share intelligence, work across jurisdictions, and coordinate across borders
- Alliances between governments and business associations that seek to craft protocols and establish compliance mechanisms for slavery-free supply chains
- Regional partnerships among nations, such as the anti-human trafficking efforts of the Organization of American States (OAS) or the European Union (EU). (US Department of State 2010).

Yvonne Zimmerman (2013) notes the expanded range of entities and sectors named as important partners in anti-trafficking efforts and contends that the addition of the term partnership “into core elements that structure and guide the United States’
anti-trafficking policy . . . confirms the more collaborative diplomatic posture of the United States’ anti-trafficking stance” during the Obama administration.

Under the mandate of the US Trafficking Victims Protection Act (TVPA), passed originally in 2000, multiple federal agencies have funded and facilitated collaboration against human trafficking in many ways. Four significant efforts are summarized here. First, the TVPA’s creation of the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), a cabinet-level entity chaired by the Secretary of State, proved foundational in coordinating the efforts of federal agencies against human trafficking.

Second, the TVPA stipulated the allocation of federal funds to offer multi-year, renewable grants to qualified governmental and nongovernmental entities to support coordinated counter-trafficking efforts and services for victims – an effort begun in 2004 by the US Department of Justice (DOJ) through its Office of Justice Programs, Bureau of Justice Assistance (BJA), and Office for Victims of Crime (OVC). Initially, the BJA grants supported multiagency law enforcement anti-trafficking task forces in selected cities across the country. Correspondingly, between 2003 and 2009, the OVC offered grant funds to qualified victim service provider organizations in some cities that had a multiagency law enforcement task force. The purpose of the OVC funds during those years was to provide services to foreign nationals whom service providers believed to be victims of trafficking. Beginning in 2010, BJA and OVC began to jointly fund grants via an Enhanced Collaborative Model of “multidisciplinary” task forces across the country, which included support for victim service agencies and law enforcement agencies to take a comprehensive approach to investigating all trafficking crimes and providing services to trafficking victims regardless of citizenship or age. Proposals for “Enhanced Collaborative Model to Combat Human Trafficking” grants must be developed collaboratively between at least one law enforcement agency (LE) and one victim service provider organization (VSP). Grantees are also expected to work collaboratively with the local US Attorney’s Office. At the peak of this grant program, task forces in 42 US cities received DOJ funding (Foot 2016).

Third, the US government’s significant investment in collaboration was evidenced in its landmark 5-year federal “Strategic Action Plan” (SAP) on services for people trafficked in the USA (US government 2014). The development of the 80-page plan itself required major collaboration between the 3 entities that co-chaired the plan development process (the Departments of Justice, Health and Human Services, and Homeland Security) and the 17 other federal agencies which contributed to it. In addition, input from other stakeholders including nongovernmental organizations and trafficking survivors was elicited at several points during the development process, and public comments on the draft plan were invited during a 45-day period in mid-2013. The plan ambitiously details many ways that federal agencies will partner with stakeholders in a diverse array of sectors in the future.

A fourth significant initiative by the US government to catalyze collaboration in counter-trafficking efforts was the development and publication of a “Human Trafficking Task Force e-Guide” by the DOJ’s Office for Victims of Crime Training and Technical Assistance Center. Published online originally in 2011 and updated in
2014, the e-Guide was coproduced by the BJA and the OVC with input from law enforcement and victim service providers. The updated e-Guide acknowledged a wide array of organizations from diverse sectors that could be sources of referrals and support for law enforcement and service providers:

Increased public awareness of the existence of human trafficking within communities often generates the interest and the benevolence of nontraditional supporters of law enforcement and service provider partnerships. Members can increase human trafficking case referrals from, and improve public awareness within, local faith-based groups, homelessness organizations, migrant farm worker groups, pro bono and immigration attorneys, sexual assault and domestic violence advocates, civic and cultural groups, restaurant and hotel employees, school and medical officials, as well as regulatory inspectors, routine patrol officers, truck drivers, and utility workers, among others. By providing outreach specifically tailored to the needs and circumstances of each group, the stakeholders learn how to contact the task force for help. (US Office for Victims of Crime Training and Technical Assistance Center 2014)

Elsewhere in the e-Guide, a more detailed list is of potential partners that include victim impact/survivor consultants, academics with expertise on human trafficking, low-wage workers’ rights groups, sex workers’ rights groups, and immigrant advocacy groups, along with others. Despite the anti-trafficking efforts of some businesses and industry associations, the private sector was largely – and notably – missing from this list of potential partners.

The e-Guide acknowledges “common cultural gaps” between sectors engaged in counter-trafficking efforts and some reluctance to share information between investigators and prosecutors and between federal and local authorities. It also acknowledges historically patterned forms of competition between different law enforcement agencies, between state and federal agencies, and between service provider organizations. It identifies each of these sectors as suffering from intra-sector, anti-collaborative dynamics which must be overcome. Long-standing tensions between the law enforcement and victim service sectors are also acknowledged; these are characterized as impeding collaboration. In naming these internal and cross-sector tensions, the e-Guide is remarkably forthright. Its recommendations regarding task force leadership and strategies for managing conflicts between law enforcement and victims service providers are well-grounded in the experiences of task forces from across the USA. However, the utility of the e-Guide’s recommendations for handling the challenges of multisector collaboration is limited not only by its primary focus on the law enforcement and victim service sectors but also by the absence of attention to an array of other systemic tensions in multisector anti-trafficking efforts – which are the focus of the next section.

Challenges in Multisector Collaboration to Counter Human Trafficking

Many multisector collaborations have failed or dissolved before accomplishing their aims, and every such effort faces significant challenges that are largely systemic in nature. Descriptions of such challenges have been included in published analyses of
counter-trafficking collaboration efforts in Europe (Konrad 2008; Limanowska and Konrad 2009), Southeast Asia (Algeri 2012; Davy 2013b), and the USA (Foot 2016; Jones and Lutze 2016). Common types of challenges in counter-trafficking collaboration efforts stem from (a) differences in the power, status, and financial resources of the organizations attempting to collaborate; (b) tensions between differing, sector-based values and priorities; and (c) power dynamics stemming from the majority/minority gender and ethnic/racial patterns that vary by sector in some countries. Each of these is discussed below.

**Differences in Power, Status, and Financial Resources**

Within every sector and between sectors, funding increases status, and status increases influence. So multisector partnerships against human trafficking are shaped by power based on money, as well as forms of power that are based on other organizational or sector characteristics, such as legal mandates and constraints, and governance norms, protocols, and regulations. Perceived or actual differences in these characteristics of each organization and sector influence how they function in interactions with others regarding trafficking in persons. For example, NGO-led counter-trafficking coalitions have been found to face challenges in their interactions with government agencies and businesses in part due to typically weaker position politically and less-stable funding vis-à-vis organizations in the public and private sectors (Foot et al. 2018). Such coalitions vary in their cross-sector interaction aims and the membership and partnership structures they have developed in relation to public and private sector entities. The engagement strategies employed by the leadership of NGO coalitions in relation to government agencies and businesses vary, but many NGO leaders articulate a desire for substantive interaction about efforts to counter trafficking in persons with leaders in government and businesses. In their perception, that desire is not reciprocal because NGOs have less status and fewer resources than government agencies and businesses.

**Tensions Due to Differing Values, Beliefs, and Priorities**

Beliefs, values, and priorities are held and enacted by both individuals and collectives in every line of work. They are often unconscious, often shaped by a person’s or an organization’s history and culture. Beliefs can be understood as ideas about what is good and real and how the world works. Values are ideals about what matters. Collectively held values can be powerful forces in multisector interactions: when actors align on them, they coalesce more easily; when they do not, collaboration may be more turbulent.

Tensions arising from differing values, beliefs, and priorities exist within and between every sector. Both the foundational beliefs and guiding values of organizational leaders shape the aims, priorities, and cultures of organizations and therefore also shape how organizational representatives interact with each other. It could be said that the more bureaucratic the organization, the less influence wielded by
individual leaders’ beliefs and values. Nonetheless, when leaders in any organization establish focal priorities for a team or shape a group’s approach, their personal values and beliefs are inextricably intertwined with organizational and broader professional or sector-based values and beliefs – and these carry over into interorganizational, cross-sector interactions.

Huxham and Vangen (2005) explain that three corresponding sets of aims play into and are produced through multilevel conversations in interorganizational relations: collaborative aims (shared between partnering organizations), organizational aims, and individual aims. Collaborative aims pertain to what organizations aspire to achieve together and how they will work together. In the context of interorganizational collaboration, organizational aims are what each partnering organization hopes to gain for itself from participating in the collaboration. Individual aims reflect the aspirations of the participating individuals and typically relate to career progression or what Huxham and Vangen call “personal causes,” which are likely to stem from personal beliefs and values. Moreover, an individual’s values, beliefs, and priorities may influence his or her choice to work within a particular organization, profession, and sector. It is also the case that as individuals are schooled, trained, and socialized into an organization, profession, and sector, the historically patterned values, beliefs, and priorities of the collective entities influence the individuals within them.

The dynamics of differing individual and collective ideas about what is real and true – and ideals about what matters – course through interactions between representatives of anti-trafficking organizations and agencies. This creates challenges in collaboration. A common manifestation of misalignment between values is evident between the law enforcement and victim service provider sectors. A common manifestation of differing beliefs is evident between faith-based and areligious organizations. The following brief discussion of each example draws out their implications for multisector collaboration.

Example: Conflicting Sector-Based Concepts of a Victim-Centered Approach to Human Trafficking

In the law enforcement sector, the strong presence of sector-wide values of individual (and agency) autonomy and achievement and the pursuit of justice – combined with a lack of understanding of the predominant values of victim service provider sector and the absence of regard for collaboration – create barriers to cross-sector collaboration with victim service providers (Foot 2016; Vanek 2015). More specifically, the differences between these sectors in their concepts of a “victim-centered approach” to human trafficking evidence how differences in values and beliefs create tensions in collaborations between them. Since at least the mid-2000s, the US Departments of Justice, State, Health and Human Services, and Homeland Security have used the term “victim-centered” to characterize their ideal approach to human trafficking. State and local governments have adopted the term, as have many NGOs. Hundreds of webpages, pamphlets, and personnel-training media produced by law enforcement and victim service providers employ the “victim-centered” phrase.
Even though both sectors use the term “victim-centered,” because of differences in some of each sector’s core values, they conceptualize it differently and emphasize different aspects of it. The core values of the law enforcement sector center on truth and justice, manifested in both the safety of the victims and the successful prosecution of the trafficker. In contrast, the core values of the victim service provider sector center on confidentiality and victim empowerment.

To elaborate, LE conceptualizes victim-centeredness as an approach that values “identifying and stabilizing victims” and on “investigating and prosecuting traffickers” equally, with inherent tensions between these values. NGO-based victim service providers, in addition to using the term “victim-centered,” also typically describe their work as “client-directed” or “client-driven” and prioritize a victim’s wishes, safety, and well-being over the pursuit of justice. Because they value the choices of a victim/client above all else, victim service providers tend to not experience the dilemma of law enforcement between conflicting values of supporting victims and bringing traffickers to justice.

Example: Tensions Between Faith-Based and Areligious Organizations

Tensions abound between faith-based organizations (FBOs) and areligious organizations engaged in counter-trafficking efforts (Foot 2016; Zimmerman 2013). Many of these tensions stem from differences in beliefs and/or values. Although FBOs are by no means homogenous in their beliefs or in the values that shape their efforts, they tend to articulate organizational values, priorities, and sometimes specific activities and programs in relation to their religious beliefs, thereby demonstrating that those beliefs hold strong value for them. In contrast, areligious organizations tend to characterize their organizational values, priorities, and sometimes even their activities and programs, in relation to beliefs or principles regarding human rights – specifically, that human rights are good and real and how the world works, or at least how it should work. For many areligious organizations, beliefs about human rights hold strong value for them. Although religious beliefs and human rights beliefs are by no means mutually exclusive, they do provide two different points of orientation. Such differences in belief and values shape collaboration dynamics. The consequences of the tensions that stem from differences in beliefs and values may be that mutual distrust is growing right when and where it needs to recede in order to foster the larger-scale, longer-term structural changes necessary to eradicate slavery.

Gender and Race

The dynamics of race and gender are generally overlooked in analyses of multisector collaboration, but they influence the way many collaborations function, and they do so in anti-trafficking efforts (Foot 2016). A seminal study by Jon Miller and co-authors demonstrated stratification by race and gender among members in six multiagency “systems” for social service provision (Miller et al. 1981). Every individual involved in interorganizational collaboration experiences that process through interactions with particular, embodied others. When organizations collaborate, it is these people who
work together in ways that integrate the individual, group, organizational, and sector levels in which their work is situated. So the characteristics and sense of identity carried by individuals are consequential to multisector interactions. Although markers of professional and class distinctions are not always apparent, race and gender demographics are generally more obvious, and they elicit a range of subconscious as well as conscious responses that affect multisector collaborations. Patterns in gender and racial dynamics become ingrained over time in organizations, professions, and sectors.

When representatives of sectors that have large and differing gender and/or racial/ethnic majorities interact, tensions are likely to arise. This is because the internal sense that all people have about what their gender and race means to them, and what others’ genders and races mean for them, is culturally shaped and deeply rooted in individual and (semi-)collective psyches. Consciously and subconsciously, everyone carries culturally and historically shaped ideas, norms, and expectations of race and gender into multisector collaboration, that is, into interactions as organizational representatives with representatives from other organizations. For example, there are differences between individuals’ ideas about what it means to be men or women and about what is “normal” or “appropriate” or “good” behavior for men and women in various contexts. When such differences surface during collaboration attempts, they can cause short-term or long-lasting breakdowns in a partnership.

This is especially apparent when the professional roles themselves are traditionally gendered. The term “gendered organization” was coined by Joan Acker to refer to the underlying logic and dynamics of organizations that have historically been populated primarily by one gender (Acker 1990). The concept of gendered organizations has been extended to networks and professions as well (Williams et al. 2012). For example, in the USA, a large majority of licensed social workers are female and white, and a large majority of law enforcement agents are male and white. In contrast, federal analyses of cases of trafficking in the USA show that across all forms of trafficking, victims who have been identified by law enforcement agencies or victim service providers are disproportionately non-Caucasian and female. So law enforcement can be understood as a male-gendered profession, and social services can be understood as a female-gendered profession.

It is not unusual for female victim service providers to describe feelings of being subordinated by the law enforcement representatives with whom they are expected to collaborate – and not solely because of the authority held by the law enforcement sector. The law enforcement sector as a whole operates within a paramilitary structure with a hierarchy of ranks and protocols. The structure of the sector has been widely critiqued as patriarchal, that is, as a system where men hold greater power and where male-oriented norms are considered the most acceptable. That does not mean that everyone who works in law enforcement personally supports patriarchy. But it is not surprising that some victim service providers express a sense of chagrin about the gendered assumptions they think some male law enforcement representatives hold.
Just as there are particular patterns of interaction within and between gendered organizations and professions, there are also patterns of race-based interaction in and between organizations and professions in which a large majority of members share a common ethnicity. People from the minority race or ethnicity as well as from the minority gender face an array of challenges when trying to collaborate with those in the majority.

When people feel they are being subordinated, they do not see themselves as partners building or sharing a mutual identity. They do what they must, but they are neither willing nor able to invest in the collaboration beyond what is required; instead, they look for ways to minimize interacting with those from the other organization or sector who evoke fears for them. The partnership may continue, particularly if it is mandated by funders or other external requirements, but it will not become robust or generative. Such dynamics, when unaddressed, can doom a promising collaboration. Collaborations that avoid gender- and race-based power imbalances are likely to be more generative.

**Promising Practices**

Fundamentally, the tension between the tendency toward mutual suspicion and the need to build trust is a systemic paradox in many multisector collaborations. Such tensions can provoke reflection among leaders of anti-trafficking efforts in every sector on their own organization’s biases about and contributions to collaboration opportunities. This reflection can also lead to particular practices for leading, communicating, and organizing that can catalyze collaboration-building despite the inevitable challenges.

Communication and mediation skills are essential for negotiating functional partnerships despite differences in the core values by which each sector operates. Promising practices of multisector collaboration include the following:

1. Acknowledging perceived power differentials, whether due to differences in political economic positions or in the demographics of the people who represent a sector in a particular setting, and agreeing explicitly on how these will be mitigated in collaborative work.
2. Openly discussing ways that leadership structures and communication processes can be democratized in multisector coalitions.
3. Collectively reflecting on the variety of motives and values that bring actors into counter-trafficking efforts, shape their aims, and influence how they work.
4. Developing shared norms for multisector interactions. Such practices can be employed in starting, repairing, sustaining, and enhancing counter-trafficking collaborations.

These collaboration practices require investments of time and resources to plan and to implement plans consistently from the beginning of a multisector coalition.
Such practices become more costly when attempts at collaboration break down. Sustaining a carefully designed and well-led coalition is easier than mending one that has seized up or fallen apart. It is no simple matter to overcome disillusionment over failed collaborations, to reshape counterproductive patterns such as retreating into intra-sector interactions, or to expand functional alliances that were built around “like-minded” organizations across sectors but end up becoming exclusionary.

Collaborating only with same-sector organizations or sectors that share key characteristics is undeniably easier, but it has two major drawbacks. First, in many instances, it simply will not solve the problem at hand. Second, much is gained by working with people who offer different perspectives. So in addition to the overarching reality that human trafficking will not end without large-scale systemic changes which require everyone’s best efforts, the more immediate reason to strive to diversify collaborations against trafficking is that the range of potential solutions will be limited without the perspectives that are underrepresented.

Once a decision has been made to build a diverse collaboration, or to diversify an existing one, it is vital that existing partners think broadly together about their collective strengths and limitations and about the kinds of perspectives, ideas, and expertise that would enrich the collaboration. There must be some kind of value offered to the invitee(s) to motivate them to accept. Further, any invitee considering joining an existing collaboration in which the prior partners have a lot in common, or even just one or two very important things in common, will want to hear what is expected and assess the extent to which leadership (and responsibilities) will be shared. Few people are willing to be a “token,” platformed but not empowered, as, say, the only survivor-activist on a conference planning committee, the one woman on a law enforcement task force, or the sole person of color on an all-white leadership council. It is particularly important to note that survivor-leaders have expressed the need for greater cooperation between survivors and non-survivors and for more survivors to be included in leadership of anti-trafficking efforts that have not been initiated by survivors.

Conclusion

It is well-established that the kinds of societal changes that are necessary to counter problems like human trafficking require the engagement of leaders from every part of society, every sector. A growing array of organizations dedicated to fostering multisector collaboration on complex societal problems are gaining audiences among leaders in business, government, and civil society. Examples include the Intersector Project, FSG Consulting, and the Collective Impact Forum.

Cross-References

- ACT Alberta: A Canadian Case Study of a Collaborative and Evidence-Based Approach to Address Human Trafficking
- EU Anti-trafficking Coordinator: Trajectory of a Unique Mandate
- Soroptimist International’s Work in the Prevention of Modern-Day Slavery: Wales as a Good Practice Example of Partnership Working

References

Health and Social Service-Based Human Trafficking Response Models

Natalya Timoshkina

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Abstract

Drawing on a comprehensive review of the international literature, this chapter will examine health and social service-based human trafficking response models, with focus on those developed in the industrialized countries. It will discuss the four main building blocks of a service-based response model; will highlight key elements to successful service delivery, as well as the primary challenges and barriers associated with service provision to trafficked persons; and will offer suggestions for ongoing and future initiatives.

Keywords

Human trafficking response models · Service-based response models · Services for trafficked persons · Trafficking in persons

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Introduction

The awareness of human trafficking has been building for several decades. Special laws, policies, strategies, and initiatives have been implemented worldwide to combat the problem, and many lessons have been learned in the process. Arguably the most important outcome of this learning was the recognition that trafficking in persons (TIP) is an extremely complex phenomenon, which cannot be addressed by a single organization or institution (US Department of State 2011, 2018). As a result, a plethora of multipronged human trafficking response models emerged around the globe.

Also known as “referral mechanisms,” human trafficking response models can be described as cooperative frameworks through which various stakeholders, including government agencies, health and social services, criminal justice system, and community members, coordinate efforts in a strategic partnership designed to assist and protect trafficked persons (Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights [OSCE/ODIHR] 2004). These models are quite diverse in terms of their geographic scope, legal and conceptual frameworks, structures, governance schemes, and funding sources. Some response models address all forms of human trafficking (see Table 1), while others focus on a particular category, most commonly sex trafficking, e.g., model developed in York Region, Ontario, Canada (Timoshkina 2013). Some may have an even more specific emphasis, such as combating sexual exploitation of children and youth – for instance, models developed by the Province of Manitoba, Canada (Tracia’s Trust 2008), and the states of Georgia and Minnesota in the USA (Georgia Governor’s Office for Children and Families 2009; Schauben et al. 2017). Some models have been built from the grassroots, in response to the recognized needs of the local communities, e.g., the London and Ontario model; others have been initiated from the top, by government agencies, e.g., the UK model (see Table 1). Most response models bring together both secular and religious organizations, but some are expressly faith-based, e.g., international models under the auspices of the Coalition of Catholic Organizations Against Human Trafficking (n.d.), Faith Alliance Against Slavery and Trafficking (2018), Christian Action and Networking Against Trafficking in Women, and The Salvation Army Initiative Against Sexual Trafficking (Elliott 2005).

Informed by the “4Ps” (prevention, protection, prosecution, partnerships) paradigm (US Department of State 2011), human trafficking response models comprise a broad spectrum of activities, including, but not limited to, advocacy, research, awareness-raising campaigns, the apprehension and prosecution of traffickers, and the provision of health and social services to trafficked persons. The focus of this chapter is on the service-based models. The author’s goal is to offer a useful, practical resource for current and future service providers, especially in the areas where human trafficking responses are yet to be developed or are in need of refinement.
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<td>“Reclaiming Freedom, Rebuilding Lives” Anti-Human Trafficking Coalition of Simcoe County</td>
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<td>Refugee Services of Texas (RSTX)</td>
<td>Non-profit organization</td>
<td>CTCAHT website <a href="http://ctcaht.org/index.html">http://ctcaht.org/index.html</a>; Refugee Services of Texas website <a href="https://www.rstx.org/programs">https://www.rstx.org/programs</a></td>
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<td>National Capital Region (Ontario, Canada)</td>
<td>Ottawa Coalition to End Human Trafficking (OCEHT)</td>
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<td>Unincorporated, volunteer-based entity without charitable status, comprising community members and professionals from multiple sectors (core non-profit agency)</td>
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<td>The United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)</td>
<td>Regional project managed by the United Nations Development Programme (UNDP)</td>
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The Building Blocks of a Service-Based Human Trafficking Response Model

This section examines four main building blocks of a health and social service-based human trafficking response model that were identified through the review of relevant international literature: (1) coordinating body, (2) set of guiding principles and values, (3) victim identification procedure, and (4) referral and assistance protocol for streamlined service delivery. Recommendations for ongoing and future initiatives are provided throughout the text.

Coordinating Body

Literature addressing the development of service-based human trafficking response models (Davy 2015; Gerassi et al. 2017; Home Office 2014; Kim et al. 2018; Laboratory to Combat Human Trafficking [LCHT] 2013; Muraya and Fry 2016; Perdue et al. 2012; Ricard-Guay and Hanley 2014; Timoshkina 2013; Timoshkina et al. 2015; US Department of State 2018; Vijendran 2017) paints the following picture. The model-building process typically starts with the coming together of several organizations and individuals concerned about the problem of TIP in their community and beyond. Key stakeholders usually include law enforcement, nonprofit social service organizations, health-care providers, faith-based groups, government agencies, educational institutions, researchers, and community activists. An antihuman trafficking coalition, network, committee, or task force is then formed. Members of this new entity meet regularly to discuss an action plan. The membership and meeting attendance may fluctuate, but a dedicated core group soon emerges, and one of the member organizations assumes leadership role, sometimes via official government designation. This role may be taken on by a women’s shelter, a rape crisis/sexual assault center, a faith-based organization, law enforcement, victim services, child and family services, an agency working with immigrants and refugees, or a government office. In some instances, two or three organizations may be chosen as co-leaders/co-chairs. The collaborative entity becomes the primary body responsible for coordinating human trafficking responses in a selected catchment area.

It is common for the coordinating body to capitalize on already existing collaborative professional relationships (Kim et al. 2018; Timoshkina 2013). The entity may operate on a purely voluntary basis or establish paid positions upon receiving funding, usually through a government grant (Timoshkina et al. 2015). As the model evolves, the entity may become a stand-alone, incorporated/registered organization.

It is advisable that the coordinating body develop a clear structure to help sustain systematic collaborations and to weather inevitable changes in membership and leadership (International Organization for Migration [IOM] 2015; LCHT 2013; Timoshkina et al. 2015). Having task-specific committees and subcommittees, and a full-time, paid coordinator, who will facilitate networking and timely information
sharing among the stakeholders, is strongly recommended as the enthusiasm of even the most passionate volunteers tends to fade away with time due to the demands of their regular jobs (Davy 2015; Timoshkina et al. 2015). Where possible, the coordinator should personally visit all of the partner organizations to familiarize herself/himself with their workings and to get introduced to the staff.

Stakeholders “should receive training in interagency collaborative best practices to counteract obstacles suggested to jeopardize effective interagency collaboration such as turfism, agency dominance, and ineffective leadership” (Jones and Lutze 2016: 170). In addition, each participating organization should provide ongoing human trafficking awareness and response training to its staff and should consider putting in place formal internal protocols for working with trafficked persons.

Further, it is very important for the coordinating body to develop guiding policies and procedures and to clearly articulate them in written documents, such as a mission statement, terms of reference, bylaws, code of conduct, strategic framework, and/or interagency memoranda of understanding (IOM 2015; LCHT 2013; Timoshkina et al. 2015). For government-driven, large-scale and transnational models, legally binding partnership and collaboration agreements will be a requirement (Home Office 2014; IOM 2007). These documents should address the exact nature and scope of the proposed initiatives, membership criteria, rules and expectations regarding meeting attendance, decision-making process, committee service, members’ roles and responsibilities, each organization’s time, financial, human resources and other contributions, as well as key principles and values that all responders will be required to adhere to (Kim et al. 2018; Ricard-Guay and Hanley 2014).

Adopting the aforementioned measures will help to identify and address deficiencies in service provision, to avoid knowledge gaps and duplication of efforts, and to increase efficiency (Kim et al. 2018; Ricard-Guay and Hanley 2014).

**Guiding Principles and Values**

Service-based responses to human trafficking should be informed by a specific set of humanistic principles and values, which may be presented as an overarching conceptual framework, an underlying philosophy, an ideological platform, as theoretical underpinnings, or as a spiritual mandate. Clearly stating these mutually agreed-upon principles and values is paramount as they will guide all aspects of the collaborative response, affecting how trafficked persons are viewed and treated and subsequently determining survivor outcomes (Timoshkina et al. 2015).

Feminism, anti-racism, anti-oppression, strength-based approach, and “do no harm” are some of the terms commonly found in the documents adopted by responders (IOM 2007; Timoshkina et al. 2015; US Department of State 2018). While the wording may vary, human rights and social justice emerge as the core concepts (Global Alliance Against Traffic in Women [GAATW] 2000; Timoshkina et al. 2015; US Department of State 2018). They encompass such principles as
nonjudgment, inclusivity, informed consent, empowerment, transparency, safety, privacy, and confidentiality (Muraya and Fry 2016; Steiner et al. 2018; Timoshkina et al. 2015). These principles underpin person-centered model of care (see Fig. 1), which ensures the provision of individualized, trauma-informed, culturally competent services to trafficked persons and is recognized internationally as the best practice (Steiner et al. 2018; Timoshkina et al. 2015; US Department of State 2018). In essence, it is about meeting people where they are at, valuing their experiences, respecting their right to self-determination, and helping them to make informed choices and to take back control of their lives (Nsonwu et al. 2018; Ricard-Guay and Hanley 2014; Steiner et al. 2018).

Although virtually all response models appear to endorse principles and values of social justice and human rights, there are significant differences in how these concepts are being understood, articulated, and operationalized, which is manifested in the actual definitions of human trafficking and trafficked persons adopted by responders. As one vivid example, responses to sex trafficking reflect a wide spectrum of opinions regarding the commercial sex trade. Neo-abolitionists view prostitution as a crime and a gross violation of human rights, calling for its ultimate abolition, and neo-abolitionist models may equate all forms of the commercial sex trade with human trafficking and consider all persons involved in the sex industry to be trafficked (Gerassi and Nichols 2018; Soderlund 2005; Timoshkina 2014). Conversely, “sex-positive” responders distinguish between sex trafficking and consensual sex work and argue that the latter should be recognized as legitimate labor and people should have the right to work safely in the sex industry (Gerassi and Nichols 2018; Soderlund 2005). Others occupy the middle ground and contend that many people involved in the sex trade may not be trafficked according to conventional definitions yet should have access to various supports (GAATW 2000; Gerassi
et al. 2017; Ricard-Guay and Hanley 2014). Similar disagreements are apparent in responses to other forms of human trafficking (Cockbain et al. 2018; Ricard-Guay and Hanley 2014). Responders also take different stance on women’s reproductive rights and the rights of sexual minorities, particularly in secular versus faith-based models (Gerassi and Nichols 2018).

The divergent interpretations of humanistic principles and values translate into different approaches to service provision. In some models, responders may favor raid-and-rescue approach and advocate for the persons’ immediate and permanent liberation from trafficking (Ahmed and Seshu 2012; Gerassi et al. 2017; Soderlund 2005). Other models adopt harm reduction approach, with responders providing support to persons who are unable or unwilling to exit trafficking (e.g., due to fear, financial need, or attachment to the traffickers) and assisting survivors who decide to work in the sex industry or informal economy post-trafficking (Gerassi et al. 2017; International Labour Organization [ILO] 2009; Timoshkina et al. 2015). Within the harm reduction model of care, trafficked persons who have become dependent on substances also are not required to be clean and sober to receive services, while services provided through other models may include complete abstinence from drugs and alcohol as an eligibility criterion because responders may believe this to be the most effective approach to recovery from addiction and thus in the survivors’ best interests (LCHT 2013). Faith-based models, often described as restorative (i.e., aimed at restoring persons to wholeness as they have lost part of themselves because of trafficking), may prioritize religious principles and values and may use prayer and participation in religious ceremonies or broader spiritual programming as tools in victim rehabilitation and partnership-building (Perdue et al. 2012). This is not the case in secular models. In some models, whether secular or faith-based, responders may employ controversial tactics, such as negotiating with traffickers and buying victims out (Harrelson 2010).

Response models also differ in their stance on the trafficking survivors’ involvement in the design and delivery of services. Some models actively draw upon insights of the survivors and view their participation in all aspects of response efforts as essential and empowering (Clawson et al. 2009; Timoshkina et al. 2015; US Department of State 2018). Others consider such approach ethically suspect and decide against it out of concern of causing harm by inadvertently over-exposing, re-traumatizing, and re-exploiting survivors and due to apprehension regarding the survivors’ lack of relevant professional skills (Ottawa Coalition to End Human Trafﬁcking 2016; Wachter et al. 2016). Yet others welcome survivor participation in select activities, such as peer mentorship and educational programs, but not in fundraising or direct practice (Ricard-Guay and Hanley 2014; Wachter et al. 2016).

Differences in principles and values espoused by responders may depend on the driving forces behind their models. Community-based models are more likely to be person-centered and to utilize harm reduction approach, while models led by the law enforcement and government agencies have more restrictive mandates and may prioritize the prosecution of traffickers over the protection of the trafficked.
Agreeing on the principles and values that will guide human trafficking response model requires serious conversations and negotiations between all participating entities. Addressing points of contention and reaching consensus or compromise is necessary in order to avoid derailing collaborative efforts. Response model stakeholders are advised to put effort into creating and maintaining a respectful, collegial culture, in which conflicting opinions are seen as a source of strength rather than a threat: Presence of various perspectives at the table allows for deeper and more nuanced analyses of the issues and cases at hand and leads to more competent service provision (Gerassi et al. 2017; Steiner et al. 2018; Timoshkina et al. 2015). Dialogues about the underlying causes of human trafficking, such as poverty and discrimination on the basis of class, gender, race, ethnicity, sexual orientation, etc., are essential. Stakeholders are encouraged to revisit the agreed-upon principles and values on a regular basis to ensure that they are being followed in practice and to determine if any amendments or revisions should be made. If partners find themselves at an ideological or conceptual impasse, their collaborative may be divided into separate entities, which may or may not stay connected (Gerassi et al. 2017; Ricard-Guay and Hanley 2014; Timoshkina et al. 2015).

**Victim Identification Procedure**

Identification of trafficked persons is a difficult task, considering that few people self-identify as trafficked. In fact, many have never heard the term “human trafficking” or lack full understanding of the concept and do not believe that it applies to their situation (US Department of State 2018). Even those who come forward and seek help may have to be officially certified as victims of TIP in order to qualify for various supports, particularly for financial assistance and a special visa or residence permit (Dewan 2014; Home Office 2014; Macy and Jones 2011). This can be a drawn-out and delicate process as the circumstances of many trafficked persons are quite complicated and nuanced: They may be involved in a codependent relationship with their traffickers, may be facing criminal charges themselves, may be under the influence of substances, and may be too scared, ashamed, or traumatized to communicate their stories in a coherent manner and to disclose all the necessary details, which is often compounded by the language barriers (Clawson et al. 2009; Home Office 2014; Nsonwu et al. 2018). Further, helping professionals may lack specialized training necessary to recognize the signs of human trafficking (IOM 2015; US Department of State 2018). There is a common misconception among both professionals and members of the general public that trafficking victims possess a universal set of characteristics that make them easily identifiable. In reality, trafficked persons come from all walks of life. It is thus imperative for human trafficking responders to develop a clear procedure for victim identification and certification. This involves choosing relevant human trafficking indicators and developing appropriate tools and methods for data collection.
Reviews of the existing resources (see Appendix A; Hemmings et al. 2016; Macy and Graham 2012; Stoklosa et al. 2017a, b) suggest that response model stakeholders should consider five categories of human trafficking indicators (also referred to as identifiers, markers, red flags, warning signs, and risk factors). They include:

1. **Demographic indicators** such as gender, age, ethno-racial background, religion, and the level of education.
2. **Physical appearance indicators** such as the signs of physical trauma (e.g., broken teeth, broken jaw, cigarette burns, unexplained bruises, cuts, and scrapes), “branding” tattoos, and clothing and accessories suggestive of involvement in (street) sex work or inappropriate for weather/season or occasion.
3. **Behavioral indicators** such as a person acting scared, very nervous, hyper-vigilant, looking lost, confused, or appearing to be drugged (incoherent). A minor may exhibit submissive or inappropriately sexualized behavior around adults or act out in other alarming ways.
4. **Language indicators** such as inability to communicate in a majority language and the use of certain slang (e.g., indicative of involvement in the sex trade).
5. **Situational/circumstantial indicators**, which have to do with a specific form and context of TIP. They can range from the overarching macro risk factors, such as being from a country with an oppressive regime, high level of corruption, and socioeconomic and political instability or from a region ravaged by an armed conflict or environmental disaster, to poverty and homelessness and gender inequality and to more specific details of person’s employment, immigration and family situations, health status, and living arrangements. Among the latter, some of the most reliable indicators include:
   - Signs of control, such as person having no freedom of movement, no control over their finances, and being accompanied by a controlling companion
   - Person being misled about the nature or conditions of the job or promised a job that does not exist
   - Person being unable to provide home or work address and not knowing their way around
   - The lack of documentation
   - History of child sexual abuse
   - History of involvement with the child welfare system and running away

The human trafficking indicators data can be collected in several ways:

- Via direct observation only, usually when there is no real possibility to engage with presumed trafficked persons (e.g., surveillance)
- Via observation and informal conversations (e.g., during street outreach)
- Via formal interview/questioning and observation (e.g., at a port of entry, in police custody, in immigration detention center, at a social service agency, in a hospital emergency room)
- Via indirect observation and analysis (e.g., by working with case files)
As can be seen from the examples in Appendix A, depending on specific context and method of data collection, some of the aforementioned indicators may be grouped into even broader categories, such as **visual** or **observable**. Some behavioral indicators may be labeled **attitudinal**, which may be particularly useful for identifying minor victims of sex trafficking who usually exhibit sudden and drastic changes in their attitudes toward family and friends. Situational/circumstantial indicators can be broken into categories of **social, health, and other indicators** or can be aligned with the key terms used in the United Nations (UN) Palermo Protocol definition of TIP that delineates three essential dimensions of human trafficking: **acts** (recruitment, transportation, transfer, harboring, or receipt of persons), **means** (the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person), and **purpose** (exploitation) (UN 2000, Article 3).

One of the main challenges for the responders is the development of appropriate tools to help identify trafficked persons. Fortunately, many such tools already exist and are available in public domain (see Appendix A). To avoid reinventing the wheel, response model participants are advised to build on the known resources by adapting them to their needs.

There are four categories of human trafficking identification tools that responders can choose from:

- **Lists and inventories of human trafficking indicators**, which may or may not be grouped into several sets. The presence of one or more of these indicators suggests that a person might be trafficked, and it is worth looking further into their situation. Such lists serve as basic educational resources for professionals and community members, as well as self-identification tools for potentially trafficked persons.
- **Open-ended interview guides** designed for interviewing clients in medical, social service, and other professional settings.
- **Checklists and structured questionnaires** requiring yes/no answers.
- **Standardized assessment/screening instruments**, which assign a score or a qualitative label (e.g., strong, medium, and weak) to each TIP indicator or a set of indicators and require the subsequent calculation of the overall score, on the basis of which a person can be classified as trafficked or not trafficked (See Appendix A).

Responders may also consider utilizing a traffic light evaluation system (Home Office 2014) wherein persons are classified into categories using traffic light color coding: red (“trafficked”), amber (“potentially trafficked, more information is needed”), and green (“not trafficked”). An additional status color may be introduced for specific organizational purposes.

Since TIP trends and patterns and people’s experiences are not linear, human trafficking indicators are dynamic and are likely to change over time and across different geographic areas, although some indicators may remain consistent.
Consequently, human trafficking identification tools and procedures are most reliable when tailored for a specific setting, scenario, or situation. A structured tool may be appropriate in one context, yet counterproductive in another, when the conditions are highly fluid and professionals need to keep an open mind and expect the unexpected, rather than tick boxes on a standardized checklist. Most importantly, the efficacy of any identification tool depends on its proper use (Vera Institute of Justice 2014).

Referral and Assistance Protocol

The needs of trafficked persons are multiple and diverse, encompassing physical and mental health, legal, socioeconomic, and spiritual domains. Meeting those needs requires the establishment of a strong chain of support, which will ensure the continuum and continuity of the necessary services. The term *continuum* refers to the spectrum of services, while *continuity* implies consistent, around-the-clock support that will prevent trafficking survivors from falling through the cracks in the system. Conceptually, the chain of support starts with the responders’ first contact with the presumed trafficked person and ends when the survivor achieved self-sufficiency.

Referral and assistance protocol (RAP) is meant to provide an infrastructure for seamless service delivery to trafficked persons by delineating the roles and responsibilities of the response model participants. The protocol typically emerges as a result of extensive consultations, community asset mapping, and formalized interagency partnership and collaboration agreements (IOM 2015; Timoshkina 2013; US Department of State 2018). It presents the chain of support either in a single flow chart (see Fig. 2) or in several charts for various stages/categories of response and/or different groups of trafficked persons. RAP is understood to be a living document – coordinative rather than prescriptive – flexible enough for the adjustments to be made quickly to reflect changes in the situations and resources (Timoshkina et al. 2015).

RAP should allow trafficked persons multiple points of entry, such as self-referrals, formal referrals from the police, social service organizations, health-care practitioners, government offices, law firms, immigration and court services, as well as informal referrals from family, peers, and members of the public (Home Office 2014; Timoshkina et al. 2015). Referrals can be made via a designated human trafficking hotline and a digital application or by contacting a specific responder. Responders can also establish contact with trafficked persons via outreach to at-risk groups and in known hotspots.

Upon identification, each survivor should be assigned a case manager; in some scenarios, case manager may be responsible for doing intake. The case manager is a crucial link in the chain of support as she/he ensures trafficked persons access to comprehensive services by guiding them through an often complicated and fragmented support system: she/he spends time building trust and rapport with the trafficked persons, serves as the liaison between them and responders from different
sectors, advocates for the victims/survivors, offers them ongoing emotional support, and frequently functions as an interpreter/translator and a communicator of the individuals’ cases to different professionals to prevent re-traumatization of the trafficked persons who are often forced to tell their stories numerous times (Clawson and Dutch 2008; Macy and Jones 2011; Nsonwu et al. 2018). Because survivors may resent being viewed as “cases” that need to be “managed,” the term primary contact or system navigator can be used instead of case manager. The involvement of this single point of contact with each trafficked person should be consistent throughout all stages of response (Clawson and Dutch 2008; Nsonwu et al. 2018).

RAP should cover four stages of response: immediate/crisis, short term/interim, intermediate, and long term.

**Immediate/crisis response (first 72 h–1 week).** At this stage, the responders are focused on meeting the immediate needs of trafficked persons, such as escape and protection from traffickers, emergency accommodation, basic necessities (food, clothing, personal hygiene products, footwear, access to phone and other means of communication), transportation, medical and legal assistance, and translation/interpretation services (Macy and Jones 2011; Muraya and Fry 2016; Ricard-Guay and Hanley 2014). It is recommended that service providers prepare first response bags containing toiletries and other basic supplies (Timoshkina et al. 2015; Vijendran 2017). Survivors may be exhausted and sleep deprived and thus may need 2–3 days of undisturbed rest in a safe place (Macy and Jones 2011; Muraya and Fry 2016; Ricard-Guay and Hanley 2014). Situations in which multiple victims are referred to

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**Fig. 2** Human trafficking response model: Referral and assistance protocol (RAP)
responders simultaneously – e.g., following the police and immigration raids on suspected human trafficking sites – may necessitate the involvement of a designated multidisciplinary crisis/rapid response team and utilization of the triage approach to determine and prioritize the most critical cases (Muraya and Fry 2016; Timoshkina et al. 2015). Special provisions will be required for underage victims: A child welfare agency or a specially designated government office/program (e.g., Unaccompanied Refugee Minors program in the USA) will have to take the lead on their cases (International Labour Organization [ILO] 2006; IOM 2015; Muraya and Fry 2016). During this period, victims of all ages are particularly vulnerable and are at the highest risk of falling back into the situations of trafficking (Ricard-Guay and Hanley 2014; Timoshkina 2013). An ongoing connection with them is therefore imperative. Case manager and first responders may find themselves being on call 24/7 (Clawson et al. 2009; Timoshkina et al. 2015).

Short term/interim response (next 3–4 months). The survivors’ next few months of involvement with the support system are about contemplation and stabilization (Macy and Jones 2011). During this period, case manager should conduct needs assessments, work with each survivor to develop individualized safety and care plans, and refer survivors to the necessary services (Clawson and Dutch 2008; Macy and Jones 2011; Muraya and Fry 2016). It is important to set goals that are realistic and appropriate for where the survivors are at and to avoid overwhelming them with too much information: the primary focus should be on meeting their acute needs (Aron et al. 2006; Davy 2015; ILO 2009). Minors will require legal guardianship, foster, kinship or residential care placement, permanency planning services, specialized physical and mental health care, and other child-specific services (ILO 2006; IOM 2007, 2015). Survivors will have to decide if they wish to testify against their traffickers. Internationally trafficked persons also will have to determine whether to go back to their native country or to stay in the host nation. If survivors choose to return home, responders should offer assistance with repatriation and reintegration, which entails building connections with service agencies in sending countries (IOM 2007, 2015; Muraya and Fry 2016). Transparency is vital during this response stage: Survivors should be fully informed about their rights, limits to confidentiality, the potential safety risks, the estimated length of the legal proceedings, the lack of guarantees regarding conviction of the traffickers, as well as the pathways and prospects of obtaining permanent residence in the host country and bringing over family members (IOM 2007; Macy and Johns 2011; Surtees 2013).

Intermediate response (next 8 months). Intermediate needs of the survivors most commonly include secure shelter and transitional housing, information and referral services, financial assistance, medical and dental care, clinical counseling, emotional support, legal and immigration assistance, child care, life skills training, and help with job search (Davy 2015; IOM 2007; Macy and Jones 2011; Ricard-Guay and Hanley 2014; Steiner et al. 2018). The role of the case manager as the system navigator is particularly important during this period (Clawson and Dutch 2008). Responders may consider employing a multidisciplinary case management
team approach to dealing with particularly challenging cases (Muraya and Fry 2016; Timoshkina et al. 2015).

Long-term response (after 12 months). In the long run, the survivors will need stable and affordable housing, ongoing physical and mental health care, access to education and vocational training, life skills and financial literacy training, economic empowerment, assistance with finding employment, family reunification, and community (re)integration (Davy 2015; ILO 2006, 2009; IOM 2015; Macy and Jones 2011; Muraya and Fry 2016; Ricard-Guay and Hanley 2014; Steiner et al. 2018; Surtees 2012, 2013). International survivors will have additional needs, such as immigration and language assistance. Some survivors may be involved in protracted criminal cases and immigration proceedings and require specialized services, such as accompaniment at court hearings (Clawson and Dutch 2008; Perdue et al. 2012; Ricard-Guay and Hanley 2014). It is not uncommon for the survivors at this stage to struggle with the issues of identity and finding their place in society and be in need of continual emotional support beyond clinical counseling (Clawson and Dutch 2008; Timoshkina 2013).

Throughout all stages of response, service providers should be mindful of the impact of trauma on trafficked persons that often manifests in self-harming behavior and suicidal ideation and should carefully avoid potential triggers (IOM 2007; Timoshkina et al. 2015; US Department of State 2018).

There may be differences in the labels and timelines of the response categories, as well as the nature of services offered to trafficked persons. Some models, for example, may include pre-crisis initiatives, providing support to persons who are not yet in a position to exit trafficking (Timoshkina et al. 2015; Vijendran 2017). In other models, the immediate response category may encompass crisis and short-term responses. A three-phase response model may include rescue, recovery, and reintegration services, with voluntary repatriation for international victims incorporated throughout (Muraya and Fry 2016). Responses also may be aligned with specific government policies and regulations, especially when it comes to international victims/survivors. In the USA, for instance, programs funded by the federal and state governments under the 2000 Trafficking Victims Protection Act (TVPA) have two standard phases: pre-certification period between the time trafficked persons are identified until they are officially certified as TIP victims (about 9 months), during which individuals can receive basic services and post-certification period (about 4 months), during which survivors qualify for a full range of services (Clawson et al. 2009; Dewan 2014). The UK offers trafficking victims a 45-day reflection and recovery period, giving them access to various forms of assistance (Home Office 2014). In Canada, survivors without legal immigration status can apply for a 180-day Victims of Trafficking in Persons Temporary Resident Permit (VTIP TRP), which makes them eligible for interim federal health care, social assistance, open work permit, and a longer-term or subsequent TRP (Canadian Council for Refugees [CCR] 2018). Survivors who chose to be repatriated can be offered pre-departure and post-arrival (re)integration services (IOM 2007, 2015).
As the needs of trafficked persons vary greatly and evolve over time, it is imperative to deal with them on a case by case basis: one-size-fits-all, cookie-cutter approach to working with this population will be ineffective (Home Office 2014; ILO 2009; Ricard-Guay and Hanley 2014). Some persons will require a wide array of services, others only a few. Some of the survivors’ needs will be very specific and unique – e.g., culturally appropriate food and clothing, “branding” tattoo removal, gender reassignment services, non-Western forms of medical treatment, and spiritual healing (Hemmings et al. 2016; IOM 2007; Macy and Jones 2011). Further, survivors will require not only different types but also different levels of intensity of services, and not every individual’s journey will follow the linear immediate to long-term needs-and-responses trajectory (Macy and Jones 2011; Timoshkina 2013). Some victims may be involved with the responders for weeks while deeply entrenched in a trafficking situation. Others may come forward after having been out of the situation of trafficking for months and even years and seek assistance due to the ongoing struggles with psychological trauma, social isolation, and the lack of economic opportunities. People may be in and out of the situations of trafficking multiple times. Each survivor’s recovery from trafficking and (re)integration into community and society will be influenced by a myriad of factors, including, but not limited to, the severity of the trafficking experience, the individual’s age, health status, personality and resilience, the availability and strength of support networks, family dynamics, general economic situation in the country of residence, and the sociocultural norms and expectations (Gill 2017; ILO 2009; IOM 2015). To be effective, RAPs – and response models in general – should be developed with the understanding that not only is each trafficked person unique but that, for most, the process of reclaiming freedom and rebuilding their lives will be lengthy and trying, marred by setbacks, and that survivors may remain in need of holistic support for years (Chab Dai 2018; Macy and Jones 2011; Timoshkina et al. 2015).

Discussion

The growing body of research on health and social-service-based responses to human trafficking suggests three key elements to their success: collaboration, coordination, and centralization (3Cs).

Because the needs of trafficked persons are numerous and complex, the provision of assistance to this population calls for prolonged, competent collaboration between multiple stakeholders from different sectors. To ensure that the chain of support offered to trafficked persons does not break, collaborative entities will require meticulous coordination, which entails structure, democratic leadership, and joint applications for funding to avoid competition. Centralization encompasses person-centered model of care, central point-of-contact case management approach, and central node for information exchange, the role of which may be played by a single coordinator who will keep abreast of the partnership activities or by the coordinating body’s central/lead organization. In geographical areas where
services are few and far between, central agency may need to function as a “one stop shop” for trafficked persons in terms of the delivery of core services.

Furthermore, to ensure their effectiveness, health and social-service-based human trafficking response models should have built-in monitoring and evaluation mechanisms, and participating entities should be open to refining their practices based on evidence.

Unfortunately, a number of internal and external challenges and barriers consistently impede the effectiveness of human trafficking responses and successful outcomes for the survivors.

Sustaining productive counter-human trafficking collaborations is a monumental task. It involves dealing with a slew of administrative issues, balancing competing individual and organizational ideologies and priorities, and managing intricate group dynamics. There are inevitable tensions, power struggles, and conflicts, which may lead to the dissolution or inactivation of partnerships.

Internal challenges are compounded by external barriers. Chief among them is the scarcity of stable, adequate (government) funding for counter-human trafficking initiatives (Ricard-Guay and Hanley 2014; Steiner et al. 2018; Surtees 2013). Without it, partnership entities are unable to hire much-needed coordinators, and member organizations end up competing for grants rather than collaborating and are frequently forced to bend their programming to satisfy funding criteria, irrespective of the goodness of fit (Gerassi et al. 2017; Timoshkina et al. 2015). Consequently, trafficked persons may receive only rudimentary supports – and even those may disappear abruptly with shifting political winds (Steiner et al. 2018; Surtees 2013; Timoshkina et al. 2015).

Service-providing organizations also have difficulty attracting and retaining qualified personnel. Work with trafficked persons is intense and long term in nature, with little room for error: It requires not only tremendous dedication and often 24/7 responsibility but a unique set of professional and soft skills, particularly when it comes to case management (Clawson et al. 2009; Surtees 2013; Timoshkina et al. 2015). Because of chronic underfunding, many agencies can offer neither competitive wages, nor job security. Additionally, services to trafficked persons are often delivered in undesirable areas (e.g., “bad” neighborhoods, remote locations). Service providers face risks to personal safety and the safety of their families and are vulnerable to vicarious trauma and compassion fatigue (Andrees 2008; Nsonwu et al. 2018; Rosenberg 2008). All of this results in high levels of staff burnout and turnover, compromising the quality of service- and relationship-based collaborations (Clawson et al. 2009; Kim et al. 2018).

The persistent lack of knowledge and understanding regarding human trafficking across relevant sectors, combined with the lack of specialized professional training, presents another serious challenge as it leads to trafficked persons being routinely misidentified, criminalized, and deported (US Department of State 2018). Sometimes organizations wishing to assist trafficked persons are well-meaning, yet lack professional expertise and ethical standards of care: In the attempts to play saviors and to rescue “poor victims,” they end up patronizing trafficked persons and making decision for them, not with them, causing more harm than good (Ahmed and Seshu 2012; Surtees 2013; Wachter et al. 2016). When trafficked persons’ agency and right
to self-determination are not respected, the chain of support created for them can easily turn into shackles.

Other challenges and barriers to success include the general paucity of the necessary health and social services, especially outside the large cities, and limited access to services due to wait lists, fees, absence of transportation, restrictive eligibility criteria, and stigma (Macy and Jones 2011; Surtees 2013; Timoshkina et al. 2015). Finding suitable housing for different groups of trafficked persons – from emergency shelter to transitional safe house to affordable permanent accommodation – is a major and continual problem (Davy 2015; Macy and Johns 2011; Timoshkina et al. 2015). So is the provision of financial assistance, culturally competent interpretation, and long-term medical, dental, and mental health care (Davy 2015; Hemmings et al. 2016; Timoshkina et al. 2015). There is a critical shortage of services for trafficked children, particularly unaccompanied and separated minors, for nonheterosexual and transgender trafficking victims/survivors, and for those with criminal records and substance abuse issues (IOM 2015; Nichols 2018; Surtees 2013). Overworked and underpaid, service providers may be slow in responding to the needs of trafficking survivors. Not surprisingly, survivors may feel disillusioned and betrayed by the system and simply give up on trying to get help (Aron et al. 2006).

Arguably the most serious barrier is the dearth of economic opportunities for the survivors, especially in the economically disadvantaged countries. Survivors face numerous obstacles to labor market (re)integration, as they usually lack education, employment history, work, life and/or language skills; have no documents; are in ill health; and may be facing criminal charges (Chab Dai 2018; IOM 2015; Macy and Johns 2011; Ricard-Guay and Hanley 2014; Surtees 2012, 2013). With a few options to make a living, and often mired in debt, survivors remain vulnerable to re-trafficking and other forms of exploitation.

That said, the progress achieved in developing service-based responses to human trafficking should not be underestimated. Over the past two decades, responders around the world have made great strides in delivering services to trafficked persons and helping to create positive, tangible changes in their lives. While much more needs to be done, responders should not get discouraged: they should continue their service and advocacy efforts, learn from their mistakes, build on their successes, and celebrate their accomplishments.

**Conclusion**

Drawing on a review of the international literature, this chapter examined health and social service-based human trafficking response models, with focus on those developed in the industrialized countries. It discussed the four main building blocks of a service-based response model: (1) coordinating body, (2) set of guiding principles and values, (3) victim identification procedure, and (4) referral and assistance protocol for streamlined service delivery. It then highlighted the “3Cs” of successful service delivery and the primary challenges and barriers associated with sustaining collaborative responses and providing services to trafficked persons. Practical suggestions for ongoing and future initiatives were offered throughout the chapter.
## Appendix A. Examples of human trafficking identification tools

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<td><strong>Lists and inventories of TIP indicators</strong></td>
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| The United Nations Office on Drugs and Crime ([UNODC] n.d.) | Generalist | Any | A two-page information sheet that lists, in a bullet-point format, six sets of mainly situational/circumstantial TIP indicators:  
• General indicators  
• Child trafficking  
• Sexual exploitation  
• Labor exploitation  
• Domestic servitude  
• Begging and petty crime |
| B.C.’s Office to Combat Trafficking in Persons ([OCTIP] 2014) | Generalist | Any | A five-page information sheet, which provides bulleted lists of primarily situational/circumstantial human trafficking indicators/red flags, as well as some behavioral, physical appearance and language indicators.  
The indicators are divided into six sets:  
• Abuse and control  
• Sexual exploitation  
• Domestic servitude  
• Child trafficking  
• Child recruitment for sexual exploitation  
• International trafficking  
The presence of one or more of these indicators suggests it is worth looking further into the situation. |
| MCIS Language Solutions (2014) | Generalist | Service providers | A one-page information sheet that lists, in a bullet-point format, five sets of mainly situational/circumstantial TIP red flags, with several key physical appearance and behavioral indicators:  
• General signs  
• Signs of commercial sexual exploitation  
• Signs of child trafficking  
• Signs of forced labor  
• Signs of domestic servitude |
<p>| UNODC (2009) | Generalist | Criminal justice practitioners | Embedded in a comprehensive anti-TIP manual is a general inventory of situational/ |</p>
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|        |       |                 | circumstantial human trafficking indicators, as well as select demographic, physical appearance, and behavioral indicators. These indicators are first described in nine narrative sections:  
- Age  
- Gender  
- Location of origin  
- Documentation  
- Last location  
- Transport  
- Circumstances of referral  
- Evidence of abuse  
- Assessment of the referring agency  
These sections are supported by bulleted lists of indicators for:  
- General human trafficking  
- Child trafficking  
- Trafficking for the purpose of domestic servitude  
- Trafficking for the purpose of sexual exploitation  
- Trafficking for the purpose of labor exploitation  
- Trafficking for the purposes of begging and committing petty crimes |
| Purchased (n.d.) | Generalist | Service providers  
General public | Web-posted list of mainly situational/circumstantial TIP indicators, combined with a few physical appearance and behavioral indicators. Indicators are divided into two sets – social and health – and presented in a bullet-point format. These indicators are complemented by the “Questions to Keep in Mind” section. |
| Sarnia-Lambton Committee Against the Trafficking of Women and Children ([SLCATWC] 2015: 15–16) | Generalist | Service providers  
Community members | Embedded in a community TIP response guide, a two-page section “Recognizing Signs of Human Trafficking” lists, in a bullet-point format, two sets of situational/circumstantial indicators: health characteristics of trafficked persons and “other” indicators. |

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| Stoklosa et al. (2017b: 192)                                | Generalist             | Health care workers              | “HT Assessment” pocket tool lists, in a bullet-point format, core physical appearance, and situational/circumstantial TIP indicators, which are divided into three sets:  
• Eight physical indicators (e.g., signs of physical trauma)  
• Nine red flags/warning signs (e.g., inconsistent or scripted history)  
• Seven control indicators (e.g., controlling person doesn’t allow patient to answer questions)  
If at least one indicator is present, action needs to be taken.  
Four action steps are outlined in a clear, succinct manner. |
| Fraser Health Authority (2014)                              | Generalist             | Health care workers General public | An online training program, designed to help identify and respond to potential victims of human trafficking who present in a hospital emergency department, offers a list of primarily situational/circumstantial and language indicators divided into three sets:  
• Social indicators  
• Inconsistent explanations  
• Presence of a controlling companion  
• Lack of personal documents  
• Language                                                                 |
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<tr>
<td>Washington Coalition of Sexual Assault Programs (2015: 8–9)</td>
<td>Sex trafficking of children and youth</td>
<td>Educators Parents Community members</td>
<td>Embedded in a brief TIP prevention and intervention resource guide, a two-page section “Warning Signs to Help Identify Victims” lists, in a bullet-point format, a combination of behavioral, physical appearance, language, and health indicators specific to sexual exploitation of children and youth.</td>
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| Children of the Street Society (n.d.) | Sex trafficking of children and youth | Parents | This comprehensive prevention and early intervention toolkit for parents provides three sets of warning signs:  
  • Attitudes  
  • Behaviors  
  • Physical abuse  
Highlighted are risk factors specific to the most vulnerable population groups:  
  • Indigenous people  
  • LGBTQ+  
  • New immigrants  
  • Adopted youth and youth in care |
| SAFE Action Project (2016) | Child sex trafficking | Hotel staff Airport staff | Online training toolkit, available in English and Spanish. Offers several information sheets listing primarily visual child sex trafficking warning signs for:  
  • General hotel staff  
  • Housekeeping and maintenance staff  
  • Front desk and reservations staff  
  • Guest services staff (concierge, bellman, valet)  
  • Food and beverage staff  
  • Security staff  
Downloadable posters and “bystander” cards listing general warning signs for child sex trafficking in hotels are provided for airport staff. |
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<td>Native Women’s Association of Canada ([NWAC] 2015: 5–6)</td>
<td>Sex trafficking of women and girls</td>
<td>Presumed trafficked persons</td>
<td>A one-page “Warning Signs” section, embedded in a comprehensive handbook on helping sexually exploited indigenous women and girls, provides a short list, in a bullet-point format, of situational/circumstantial sex trafficking indicators for self-screening.</td>
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<tr>
<td>MOSAIC, West Coast Domestic Workers’ Association (n.d.)</td>
<td>Labor trafficking of foreign workers</td>
<td>Presumed trafficked persons</td>
<td>A two-page pamphlet aimed to raise awareness and assist foreign workers who may be trafficked. Provides a short bulleted list of situational/circumstantial TIP indicators for self-screening. Is available in five languages: English, Chinese, Filipino, Punjabi, and Spanish.</td>
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<td><strong>Open-ended interview guides</strong></td>
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<td>National Human Trafficking Resource Center ([NHTRC] 2011)</td>
<td>Generalist</td>
<td>Service providers</td>
<td>A comprehensive tool designed for assessing clients for potential signs of TIP. Outlines general TIP assessment tips and safety check guidelines. Focus on situational/circumstantial indicators aligned with the terminology of the UN (2000) definition of TIP. Provides several types of open-ended assessment interview guides aimed to elicit narrative answers: • General trafficking assessment questions - Fraud questions - Coercion questions - Debt-monetary questions - Force questions • Sex trafficking assessment questions</td>
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| Anti-Slavery International (2005)  | Generalist    | Front-line responders: Police officers, Immigration officers, Detention center workers, Service providers | This comprehensive protocol and training kit for identification and assistance to trafficked persons offers open-ended interview guides, with questions structured around situational/circumstantial indicators and aligned with the terminology of the UN (2000) definition of TIP. The questions are divided into eight key areas:  
  - The situation prior to and on entry into the country or situation (if internal trafficking), and the individual’s expectations.  
  - Their working conditions.  
  - Their living conditions.  
  - How the person got out of the situation (if he/she did) and what help is needed now.  
  - Threats and coercion.  
  - How the person concerned sees his/her situation. |

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| Indiana Protection for Abused and Trafficked Humans Task Force ([IPATH] 2015) | Sex and labor trafficking     | Law enforcement Service providers | A basic screening tool to be utilized by entities likely to encounter human trafficking victims. Contains three open-ended interview guides:  
• Initial screening questions  
• Sex trafficking assessment questions  
• Labor trafficking assessment questions  
Provides a “Human Trafficking Report” template. |
| Checklists                                                           |                               |                           |                                                                                                                                                                                                           |
| The Civil Society Anti-Human Trafficking Task Force Hong Kong (2018) | Generalist                    | Service providers Other professionals who may encounter trafficking victims | This comprehensive handbook on initial victim identification and assistance to trafficked persons offers an interview guide with questions structured around situational/ circumstantial indicators aligned with the three inter-related elements of TIP as defined by the UN (2000):  
• Acts  
• Means  
• Purpose  
For an adult to be considered trafficked, the answer should be “Yes” for at least one key question in each section.  
For a minor to be considered trafficked, the “Yes” answer is required for at least one key question only in two sections - “Acts” and “Purpose.”  
In addition to the interview guide, the handbook provides: |

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| Canadian Council for Refugees ([CCR] 2015) | Generalist | Service providers | This Canadian National Human Trafficking Assessment Tool, available online in English and French, offers an extensive Yes/No checklist of situational/circumstantial indicators aligned with the terminology of the UN (2000) definition of TIP. The indicators are divided into three sections:  
• Actions  
• Means  
• Purpose  
If “Yes” box is checked for at least one indicator in each section, the client is potentially been trafficked. |
| Anti-Slavery International (2005) | Generalist | Front-line responders: Police officers Immigration officers Detention center workers Service providers | This comprehensive protocol and training kit for identification and assistance to trafficked persons offers a two-page checklist of situational/circumstantial indicators aligned with the terminology of the UN (2000) definition of TIP and presented in the form of statements. The indicators are divided into six sections:  
• Recruitment  
• Personal documents and belongings  
• Freedom of movement  
• Violence or threat of violence  
• Working conditions  
• Living conditions |

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If the assessor ticks one or more statements in each section, it is reasonable to suspect that this might be a trafficking case.

Standardized assessment/screening instruments based on a scoring system

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| Covenant House New York (2013: 22–28) | Generalist Service providers Medical professionals Law enforcement Researchers | Human Trafficking Interview and Assessment Measure (HTIAM-14) – a brief questionnaire that allows to determine if a person is a victim of TIP in about 20 min:  
• Questions are divided into sections A (personal info), B (for non-US citizens only), C, D, and E.  
• The focus is on situational/circumstantial indicators, particularly person’s working conditions.  
• For every answer to the questions, a score ranging from 0 to 3 is assigned to indicate the degree/evidence of trafficking activity – e.g.,  
  0 = No evidence  
  1 = Slight evidence  
  2 = Moderate evidence  
  3 = Strong evidence  
• Responses that indicate trafficking activity receive a minimum score of 2.  
• Then scores are calculated for every section.  
• The interviewer is given space to write notes on the interviewee’s nonverbal indicators.  
• At the end of the interview, the assessor has to assign a score between 0–3 to the question, “Do you believe this person is a victim of human trafficking?” and to identify the type of TIP (check all that apply):  
  __Non-Victim  
  __Victim: Labor  
  __Victim: Sex (all ages; force, fraud, coercion)  
  __Victim: Sex (under 18; no force, fraud, coercion)  
  __Survival Sex (over 18; no force, fraud, coercion)  
  __Other |

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| International Labour Office (2009) | Labor and sex trafficking | Researchers Practitioners Labor inspectors | This scientifically tested tool offers four sets of a total of 67 operational indicators for adult and child victims of trafficking for labor and sexual exploitation, aligned with the terminology of the UN (2000) definition of TIP. Each set is a structured list of indicators relevant to the following dimensions of the TIP definition:  
• Deceptive recruitment (or deception during recruitment, transfer and transportation): 10 indicators  
• Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators  
• Recruitment by abuse of vulnerability: 16 indicators  
• Exploitative conditions of work: 9 indicators  
• Coercion at destination: 15 indicators  
• Abuse of vulnerability at destination: 7 indicators  
Within each set, each indicator is qualified as either strong, medium, or weak. A single indicator can be strong for children, yet medium for adults, or strong for sexual exploitation, yet weak for labor exploitation.  
For each potential victim, each of the six dimensions of the trafficking definition is assessed independently from the others. The result of the assessment is positive if the dimension is present for the potential victim, negative if not. In order to be assessed as positive, a dimension must include at least:  
• Two strong indicators  
• One strong indicator and one medium or weak indicator  
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| Vera Institute of Justice      | Sex and labor trafficking          | Researchers Service providers | This scientifically validated tool focuses on situational/circumstantial TIP indicators. The questions/indicators are divided into four domains:  
  • Migration  
  • Work  
  • Living and/or working conditions  
  • General health  
  Research demonstrated that this screening tool accurately measures several TIP dimensions and is highly reliable in predicting victimization for both sex and labor trafficking across diverse subgroups, including those divided by age, gender, and country of origin.  
  Statistical validation determined that a short version of the tool consisting of 16 questions (about 50% of the questions tested) also accurately predicts victimization for both sex and labor trafficking cases.  
  The tool can be further shortened if an interviewer suspects a specific type of trafficking victimization (sex or labor) based on circumstances. |
| Love Justice International     | Generalist                         | Service providers         | A set of standardized tools aimed at identifying and intercepting trafficked persons at the Nepal-India border.  
  Available in hard copy and as software.  
  Includes color-coded “Victim Interview Form,” “Interception |
A sophisticated scoring system is used to screen potential TIP victims. These tools are currently being piloted and adjusted for the purpose of identifying trafficked persons at the international airport in Johannesburg, South Africa.

References


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The Investigation and Prosecution of Traffickers: Challenges and Opportunities

Rosemary Broad and Julia Muraszkiewicz

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Abstract

This chapter will draw on the literature, policy, and research to consider the processes of investigating and prosecuting human trafficking activities across three jurisdictions. The chapter will be split into the following three sections:

1. The United Nations Office on Drugs and Crime Toolkit to combat human trafficking and themes from the UN regarding approaches to perpetrators
2. International initiatives that have developed including those within the European Union, Canada, and the United States
3. A case study of investigation and prosecution in the United Kingdom

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These sections are drawn together by identifying learning through the development of best practice along with the challenges that exist in the investigation and prosecution of human trafficking offences.

**Keywords**

Human trafficking · Prosecution · Modern slavery · Investigation

**Introduction**

The investigation and prosecution of those responsible for trafficking in human beings is a complex process which involves a delicate balance between securing a successful prosecution and protecting and supporting the needs of those victimized by the activity. These tensions require sensitive, multiagency approaches that operate within a framework which allows for victims’ needs to be prioritized. This is the case with many crimes, although it is heightened in relation to human trafficking based on the multiple vulnerabilities faced by many victims of human trafficking. However, it is often the case that security has been of central focus in legislative and operational approaches to tackling human trafficking, which can leave victim support underdeveloped or difficult to achieve in the context of security, particularly when linked to immigration. Having been a global priority since the mid-1990s, there has been some progress made in understanding how best to coordinate strategy to both successfully prosecute traffickers and appropriately support their victims. Concurrently, challenges remain in achieving the best outcome for all involved.

The aim of this chapter is both to identify the progress that has been made in investigative and prosecutorial processes and to highlight the challenges that remain. The chapter begins at a global level, in firstly considering the themes that initially emerged from the United Nations’ (UN) direction. The next section addresses exemplar initiatives at the European Union (EU) level and national initiatives from Canada and the United States (US) that have derived from this direction and draws out parallels between these approaches that have resulted in common problems with securing successful prosecutions. The final section provides a case study of the United Kingdom (UK) experience which considers the more detailed practical implications, the impact on victims and the challenges encountered by criminal justice professionals in investigating and prosecuting these cases.

**The United Nations Office on Drugs and Crime (UNODC) Toolkit (2008) and United Nations’ Themes**

In 1998, in an attempt to develop a binding structure on transnational crimes, the UN tasked an ad hoc committee with building a new international legal framework which has become known as the Vienna process (Gallagher 2001). This eventually gave rise
to Resolution 55/25 of November 15, 2000, and the adoption of the Convention against Transnational Organized Crime, which sought to tackle organized crime through outlining how states could cooperate on issues such as joint investigations or mutual legal assistance regarding transnational organized crime. The Convention has three additional protocols: (1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; (2) the Protocol against the Smuggling of Migrants by Land, Sea and Air; and (3) the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

The motivation for the United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (henceforth the 2000 UN Trafficking Protocol), was to ensure criminalization of human trafficking. While the 2000 UN Trafficking Protocol was regarded as groundbreaking, as it was the first international instrument to define human trafficking (Obokata 2015), it has also been criticized for its over-zealous focus on prosecution over victim protection (Reiley 2006). This chapter also acknowledges that whilst human rights concerns played a role in the negotiations, the question of security was the primary motive for the Protocol (Gallagher 2001). In brief, many states were troubled by the impact that traffickers and smugglers were having on domestic issues. However, the 2000 UN Protocol on Human Trafficking is more than just a tool for protecting state interests. As effectively summarized by Raymond “it creates a global language and legislation to define trafficking in persons, especially women and children; assist victims of trafficking; and prevent trafficking in persons. The anti-trafficking protocol also establishes parameters of judicial cooperation and exchanges of information among countries” (Raymond 2002: 498).

Regarding prosecution of traffickers, Article 5 of the 2000 UN Trafficking Protocol obliged states to adopt legislative and other measures that may be necessary to establish human trafficking as a criminal offence, including participation as an accomplice and the organization or direction of other persons to human trafficking. In addition, subject to the basic concepts of a state’s legal system, attempting to commit the crime is also to be criminalized. Although the Protocol does not prescribe a minimum or maximum sentence, the UNODC (United Nations Office on Drugs and Crime) Model Law against Trafficking in Persons states that “sanctions should fulfil at least the threshold set for trafficking in persons to constitute a serious crime as defined in the Convention, that is, punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (Article 2 (b) of the Convention (UNODC 2009)).

The UNODC has played an imperative role in elucidating and supporting the 2000 UN Trafficking Protocol and thus, among other things, advising on the process of how best to investigate and prosecute the crime of human trafficking. This has partly been achieved through the UNODC Toolkit to Combat Trafficking in Persons of 2008 (2nd edition), which collected and disseminated successful practice in order to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers, and members of the civil society working at different levels toward the overall aim of preventing and combating human trafficking, protecting trafficked persons, and promoting international cooperation.
The key lessons learned from the operationalization of the toolkit (for not all the findings can be echoed and analyzed here, see Perrin 2010) are threefold (UNODC 2008). Firstly, it is the narrative of the toolkit that all law enforcement responses must be holistic, taking into consideration a range of issues, from the rescue of victims and the protection of witnesses to the prosecution of traffickers. As such, all law enforcement persons should cooperate with other relevant stakeholders such as civil societies working with victims, local authorities who may house victims, or labor inspectors.

Secondly, the toolkit (UNODC 2008) signposts that direct witnesses of a crime are a crucial element of a successful prosecution. Consequently, most national and international documents addressing human trafficking recognize that the process of building a case and delivering a successful prosecution are more effective when the victim has continued presence in the country. Thus provisions are made to enable residence for victims, who are irregular migrants. There is an understandable truism in that much of the evidence rests on what the trafficked persons say, and that is why trafficking investigations and prosecutions require that law enforcement officials work to establish a trusting relationship with the victim. However, this is not without challenges due to distrust of law enforcement agencies and fear that they may be prosecuted for crimes they were compelled to commit in the course of the trafficking situation (discussed further below). Some victims refuse to cooperate, some are too traumatized, and they disappear or are re-trafficked. To address this, there are moves to run “victimless prosecutions,” which in the United Kingdom have been used in cases of domestic violence (see Lee Stewart Barnaby v The Director of Public Prosecutions [2015] EWHC 232). At the time of writing, there was one case in the United Kingdom of a victimless prosecution under the Modern Slavery Act, concerning human trafficking for the purposes of sexual exploitation (see Open Minds Foundation 2016 for a discussion on this point).

Lastly, the toolkit (UNODC 2018) places increased emphasis on training and training resources to reinforce law enforcement and peacekeepers’ ability and capacity to respond to human trafficking. This is now an accepted practice. However, it is important to acknowledge that training is required far beyond the law enforcement domain. Undeniably, a large group of persons remain outside the “authorities’ field of vision” (Rijken and Koster 2008: 6). Yet an important aspect in reducing human trafficking is precisely the ability to recognize it, support those affected, and find an appropriate and long-term approach for their recovery. It is consequently suggested that a professional likely to be working with a potential trafficked person needs to “be aware of what facts may point to the client having been trafficked and to be aware of what to do when they are alerted to the possibility that this may be the case” (Drew 2009: 3). This is pertinent to frontline staff, such as medics, teachers, and staff from local authorities and those working on distribution of benefits. They are often the first to see victims. Thus, they need to be equipped with up-to-date knowledge and skills surrounding the crimes, to optimally respond to potential victims. This is evidenced by the European Directive 2012/29/EU (Art. 25) and Directive 2011/36/EU, which recommend the adoption of training and education mechanisms for workers in sectors most likely to meet potential victims/perpetrators. In turn, this may help with the investigation and prosecution of traffickers, although the onus largely remains on victim evidence and participation.
(Resultant) International Initiatives

This section is focused on the way in which the global framework has translated into approaches on a smaller scale. The discussion below is shaped around EU, US, and Canadian approaches to prosecution to highlight shared challenges and successes in building frameworks to successfully respond to human trafficking as well as identifying divergence in these initiatives.

The EU

Significant investment of resources and time, through consultations and drafting, has been dedicated to respond to a crime that the European Commission (EC) has described as “a serious crime against persons” (European Commission 2005: 1). Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims represents the focus of the EU strategy to addressing human trafficking. It is based on the three P-paradigms: prosecution, protection, and prevention; and resultant state obligations in the directive concern all three aspects. The Directive is progressive in an increased focus on victim protection (Art. 8, 11–17) and action to prevent the crime (Art. 18). Article 2 which provides the definition of human trafficking obliges states to take the necessary measures to ensure that human trafficking is punishable. The Directives return to investigation and prosecution in Article 9 which obliges states to ensure that investigation into or prosecution of human trafficking is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement. Again, this showcases the importance of due diligence in gathering evidence and a departure from the initial global emphasis, described above, where the victim was key to prosecutions. This is essentially making him/her more of a witness than a person deserving of rights. It is argued here that law enforcement and prosecutors need to move beyond “traditional” investigation, and as stated by Gallagher, “due diligence may also require that investigators do not just rely on complaints from victims but actually go out and investigate on their own” (Gallagher 2010: 384).

The Directive’s approach does appear to distance itself from linking victim protection with compulsory assistance, from the victim, in the prosecution process. Paragraph 18 of the Recital states that “a person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness.” The same is found in Art. 11(3): “Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.” This importantly limits the discretionary powers of the states in which assistance and support can only be granted if the victim cooperates with the authorities in criminal proceedings. However, as above, Article 11(3) also states that unconditional access to support is
without prejudice to Directive 2004/81 or any similar national rules. In short, Directive 2004/81 grants a temporary residence permit to third-country nationals who are a victim of human trafficking and who cooperate with the authorities. This means that based on this Directive, trafficked victims can only access support and assistance provided in accordance with this Directive if they cooperate with the authorities and is limited to the duration of criminal proceedings only. This seems to be in full contrast with the unconditional access articulated in Article 11 (3).

Further, Paragraph 14 of the Recital reads that the aim of the non-prosecution and non-punishment principle (found in Art. 8) “is to safeguard the human rights of victims, to avoid further victimization and to encourage them to act as witnesses in criminal proceedings against the perpetrators” (emphasis added). It seems incongruous to, on one hand, state that protection is not linked to prosecution and on the other state that protection is carried out to encourage successful prosecutions.

Troublingly for the EU, successful prosecution of trafficking cases remains a challenge. The European Commission’s 2016 report on the progress made in relation to human trafficking analyzes the main actions undertaken by states (report as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims). According to the report, the level of prosecutions and convictions remains worryingly low, especially when compared to the number of victims identified (European Commission 2016). The cases are often complicated and have a transnational aspect and poor evidence. To facilitate successful prosecution, the Commission encouraged Member States to establish national multidisciplinary law enforcement units on human trafficking which should closely cooperate with Europol and be able to exchange information with local, regional, and national law enforcement units (European Commission 2016). Furthermore, Member States are encouraged to increase cross-border police and judicial cooperation in trafficking cases and make use of all relevant avenues for such cooperation and in particular the establishment of joint investigation teams (JIT) and using Europol and Eurojust (the European Union’s Judicial Cooperation Unit). The European Commission (2016) also encouraged the use of corroborative evidence including financial investigations, which should be proactively conducted in all trafficking cases. These recommendations have the potential to shift the burden of successful prosecution away (or at least to share it with) trafficked victims toward a broader spectrum of evidence.

Canada

Human trafficking has become a significant policy issue for successive Canadian governments. A review of legislation in 2005 found that the legislation favored “preventative and prosecution measures but fail[ed] to provide protection to the basic rights of trafficking victims” (Oxman-Martinez et al. 2005a: 30). This reflected the global focus on security as opposed to human rights although an early review of the situation in Canada highlighted the need to work effectively with countries of destination to target the “structural causes of human trafficking” (Bruckert and
Parent 2002: 26). Canada was among the first set of countries to ratify the Protocol, and the 2012 National Action Plan to Combat Human Trafficking (the Action Plan) (Government of Canada 2012) represented the first action plan of this kind for Canada, formally documenting Canada’s anti-trafficking approach. The Canadian government began by developing tools for the prosecution of traffickers, in line with the recommendations of the Protocol (Oxman-Martinez et al. 2005b). In 2012 the legislation was introduced to prosecute Canadians for human trafficking offences while not in Canada (Bill C-310 Criminal Code of Canada) building on legislative amendments in 2010 which increased minimum sentences from 2 to 5 years. A former private member’s bill was introduced into the Canadian legislation in early 2017 which amended previous anti-trafficking legislation with the aim of giving “law enforcement and prosecutors new tools to better investigate and prosecute human trafficking offences” (Government of Canada 2017a). One of these tools in this recent legislation facilitates the proving of the element of control over a victim through evidence of the perpetrator living with the victim or being habitually with them as evidence of control. The legislation also placed the onus on traffickers to prove that their property was not proceeds of crime and made it easier for proceeds of crime to be seized.

The Action Plan and the Criminal Code of Canada recognized the necessity of measures to “make testifying less traumatic for victims” (Government of Canada 2012: 8) and introduced testimonial aids such as the ability to testify from an alternative location to the court room and support of other people (such as victim support representatives) while testifying. Trafficked victims are not required to provide evidence in court to gain temporary or permanent residence. Additionally, free legal advice was introduced for victims in Ontario in 2018 (Malo 2018) having been previously recommended by victim service providers (Oxman-Martinez et al. 2005a).

In relation to prosecution, the Action Plan highlighted targeted training and the establishment of a dedicated integrated investigative team (the importance of cross-sector collaboration has also been highlighted in research elsewhere; see Winterdyk 2017). This multiagency model reflects policy developments in the United States and the United Kingdom discussed below that are considered to strengthen anti-trafficking initiatives. The Action Plan acknowledged the small number of convictions at the time of publication which numbered 25 convictions specifically for human trafficking offences between 2005 and the publication of the Action Plan in 2012.

The first successfully prosecuted human trafficking case in Canada is known as the Domotor case and was “hailed as a significant milestone in the fight against human trafficking in Canada” (Hastie and Yule 2014: 83). The case involved a large group of “organized” criminals who exploited 19 known victims in their construction company. However, Hastie and Yule (2014) were cautious regarding the impact of and successes highlighted in this case. They identified gaps in the response to human trafficking cases revealed by the case: the lack of victim support for male victims and issues related to the provision of interpreters and translators during the criminal justice process. The case particularly highlighted the focus of the Action Plan as “nearly entirely on a crime-control approach...and makes no commitment in respect of service provision” for victims (Hastie and Yule 2014: 91).
Since its inception, the Action Plan has been reviewed annually to evaluate and monitor the progress made. The 2016–2017 horizontal evaluation of the Action Plan identified progress in terms of awareness raising and victim support. However, investigation and prosecution remained more challenging areas due to constraints across different jurisdictions such as differences in local practice and information sharing and difficulties in gathering evidence (Government of Canada 2017b) further complicated by the investigation and prosecution of trafficking cases at a provincial and federal level. The Action Plan was evaluated against the aims of establishing a dedicated integrated enforcement team, providing training and education for criminal justice professionals, and enhancing intelligence collection and coordination. The evaluation found that the number of charges, prosecutions, and convictions remained low (a similar problem to the EU, as above): there were 307 human trafficking cases from 2012 to 2016 and 45 human trafficking-specific convictions. The difference between the number of cases and convictions represents patterns elsewhere and exemplifies the challenges for law enforcement in pursuing human trafficking investigations. The evaluation found that victims remained “reluctant to testify for fear of reprisals by the traffickers” (Government of Canada 2017b) despite progress made in terms of victim support. However, the Action Plan does not identify any specific and measurable action points in relation to investigation and prosecution.

In common with other jurisdictions, “despite the adoption of legal mechanisms, Canada has faced major challenges when prosecuting human trafficking” (Winterdyk 2017: 223). Millar et al. (2017) identified several problems with both researching the investigation and prosecution process (lack of available information, lack of understanding of human trafficking by criminal justice professionals, and lack of consistency in definitions in reporting offences) as well as with the process itself. Trying to discern information relating to the progress of the case from charge to prosecution illustrated “how challenging it is to obtain and triangulate primary legal data in Canada” (Millar et al. 2017: 48), the experience of which has been reflected in the United Kingdom (see Gadd et al. 2017). Given the low numbers of convictions and issues with prosecution, “Canadian trafficking case law developments are in their early stages” (Millar et al. 2017: 34). Police have encountered “significant barriers to obtaining cooperation from victimized individuals” particularly as the individual often faces job loss and deportation (Winterdyk 2017: 222).

The Trafﬁcking in Persons Report (2018: 130) identiﬁed Canada as a tier 1 country stating that the Canadian government had “continued to demonstrate serious and sustained efforts during the reporting period.” However, the report also identiﬁed problems in relation to convictions by the Canadian government, particularly with regard to convictions for labor-related exploitation, noting a “continued imbalance in the government’s anti-trafficking efforts, with greater attention to and understanding of sex trafficking versus forced labor”(2018: 131). As in other places, the dominant construction of human trafficking as a problem of the sexual exploitation of women and girls has caused problems for the identiﬁcation and investigation of other types of trafﬁcking (Winterdyk 2017; Spencer and Broad 2012). The continued focus on sexual exploitation noted here in Canada and reﬂected in other areas is problematic as where victim experiences “fall outside the narrow criminal
justice mandate and resource allocation. . .[they] may not be able to access services that are tied. . .to some form of criminal investigation” (Winterdyk 2017: 228).

Despite a long-standing commitment to the problem of human trafficking, Canada has continued to encounter problems at a practical and legal level relating to successful prosecutions for specific trafficking offences. The progress has been made in relation to the development of multiagency approaches, but the continued centrality of law enforcement in anti-trafficking discourse is problematic. “Despite a legally untested definition and a limited number of criminal cases, law enforcement and criminal justice actors have largely shaped discussions of human trafficking and responses to trafficking in Canada” (Winterdyk 2017: 221). There therefore remains a need for increased coordination with other agencies (Kaye et al. 2014).

The United States

The Trafficking Victims Protection Act (TVPA) was passed in 2000, and the TVPA Reauthorization Act 2008 required states to legislate for criminal prosecution of trafficking to continue any humanitarian and assistance to those states, further incentivizing those states to take positive action. The US Government encouraged the development of state-level anti-trafficking legislation such that all states now have relevant trafficking laws to “give the local police the tools necessary to be actively involved in the detection, arrest and prosecution of traffickers” (Schauer and Wheaton 2006: 159). The Annual Trafficking in Persons (TIP) Reports produced by the US Department of State (see US Department of State 2018 for the most recent report at the time of writing) categorize countries into tiers based on the extent to which human trafficking is recognized as a problem, the efforts made to address the problem of human trafficking, and the extent to which the countries’ efforts meet the minimum requirements of the TVPA. In 2007, the Department of Justice (DOJ) formed the Human Trafficking Prosecution Unit (HTPU) as a specialized unit to deal specifically with complex human trafficking cases of national significance (DOJ 2017). As above, pressure placed on jurisdictions through the tiering system of the TIP reports and the contingency of assistance because of anti-trafficking measures places the United States at the forefront of anti-trafficking approaches. The dominant position of the United States in the current anti-trafficking discourse has been said to “force other countries to get serious about prosecuting cases of slavery” (Allain and Bales 2012: 1).

Despite progress made and the significance of US policy and legislation, little is known about the effectiveness of anti-trafficking strategy in the United States and the consistency of efforts across states (Farrell et al. 2013). As in other countries, the numbers of prosecuted cases across the United States remains low (there were approximately 1876 prosecutions for federal human trafficking and 450 at state level between 2000 and around 2016 (Farrell et al. 2016)). There are issues with the investigation of human trafficking cases at a local level with the majority of cases involving trafficking for sexual exploitation of US citizens. The few perpetrators that are charged are frequently charged with lesser offences where the penalties are less
severe (Farrell et al. 2013). The relatively infrequent use of the legislative tools has meant that prosecutors are unfamiliar with the legislation and this is especially the case with trafficking for labor exploitation, where the numbers are smaller still (Farrell et al. 2013). Due to the dual criminal justice system in the United States (in a pattern similar to that identified in Canada, above), this is compounded at state level, where state prosecutors have less experience of human trafficking cases than at the federal level (Farrell et al. 2016). Lastly, there is a lack of specialist units dedicated to the problem of human trafficking, particularly in smaller areas (Farrell et al. 2013; Reid 2012).

The National Strategy to Combat Human Trafficking (US Department of Justice 2017) identified bringing human traffickers to justice as one of the priorities for the DOJ through (among other measures) strengthening multiagency partnerships and capacity building for victim support, as observed in the discussion regarding EU and Canada above. Here, it is worth bringing to attention the Human Trafficking Task Force e-Guide, hosted by the Office for Justice Programs website (US Department of Justice 2018). The Office of Justice Programs (OJP) provides innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the-art knowledge and practices across the United States and providing grants for the implementation of these crime-fighting strategies. The ethos of this tool is well described on the website stating that it is impossible for any single agency or organization to respond comprehensively to the problem of human trafficking. The e-Guide acknowledges that traffickers’ range from opportunistic individuals to sophisticated criminal organizations, with multijurisdictional activity. The resulting victimization is described as extreme and involving diverse populations with a host of needs. The response to human trafficking is described as most effective, coordinated, and efficient through multidisciplinary and collaborative problem-solving efforts. The guide is in comprehensive language, but not at the cost of being superficial, and provides excellent information on what is human trafficking; how to form a task force; how to operate a task force (including community-based partnerships and information sharing); what supporting victims ought to entail; who are the victims (uniquely including information on LGBTQ victims and victims with physical, cognitive, or emotional disabilities); how to build strong cases; and the role of courts (including ethical consideration and use of innovative court responses). This guidance may provide a useful template for countries at the stage of developing anti-trafficking tools.

Following the Justice for Victims of Trafficking Act, all US attorneys’ offices have developed local strategies to improve victim identification and the investigation and prosecution of human trafficking crimes (DOJ 2017). Within this framework, the strategies identify the importance of using evidence other than or in addition to that provided by the victim, similar to recommendations made in the EU (European Commission 2012). However, there remains a greater burden on victim evidence. The dependence on victim testimony combined with the complex relationships between traffickers and their victims results in problems with prosecutions (Farrell et al. 2013). Elsewhere, Farrell and colleagues (Farrell et al. 2016: 52) highlight that “extra-legal factors such as suspect and victim characteristics and the victim’s
relationship to the suspect also influence the decision to prosecute a case.” This is similar to what happens in a domestic violence case. Unsurprisingly, there is a worry that where victims do not fit the ideal image of what a victim ought to look like (a weak, passive female who did not contribute to the crime done against her), prosecutors will decide not to prosecute, thus denying the victim a chance of justice (Srikantiah 2007).

In the abovementioned Human Trafficking Task Force e-Guide, the chapter on building strong cases begins with victim-centered investigations, illustrating how the role of the victim remains key. The e-Guide states that victims are crucial to human trafficking investigations and prosecutions. In many human trafficking cases, only the victim can explain the coercion and control that is a basic element of the crime of human trafficking. As discussed, this is of course true, but it does risk victims becoming a tool to a state-focused end of increasing levels of prosecutions. The e-Guide however is revolutionary in its attempt to consider how to ensure victim involvement in a way that guards the victim’s dignity, for instance, by empowering victims and providing them with recourses that could help the victims tell their stories. This is certainly a more preferred avenue than for instance offering them advantages such as residence permits in exchange for cooperation. The latter is a tactic that may backfire: “[i]t has been pointed out that offering residency conditioned upon testifying can backfire in court and provide opportunity for the defence to draw into doubt the veracity of the testimony, or indeed, even induce exaggeration of information in order to obtain a residence permit” (Brunovskis and Skilbrei 2016: 18). Of note however is that across the United States, suspects are more likely to be charged where there is additional evidence to corroborate the victim’s evidence (Farrell et al. 2016) which may indicate a movement away from a narrow reliance on victim testimony alone or alternatively may exemplify the doubt which can meet testimony of victims where there is no additional supporting evidence.

**Investigation and Prosecution Case Study of the United Kingdom: Challenges and Best Practice**

England and Wales’ 2015 Modern Slavery Act (hereinafter MSA) was the result of a wave of new governance around efforts to address human trafficking and slavery. The legislation aimed to consolidate existing offences, simplify the legislation, and provide stakeholders with relevant tools and powers to fight the crime. It also required UK companies with a turnover above £36 million per annum to produce a statement setting out how they ensure modern slavery is not taking place in their business or their supply chains. The act also created the Independent Anti-Slavery Commissioner. The role of the Commissioner is to identify and promote best practice in anti-trafficking responses as well as to drive improvement across these responses in the United Kingdom and internationally. However, the first Commissioner resigned in May 2018 citing government interference in his role (Press Association 2018) and illustrating additional problems with the governance of the problem of human trafficking (Broad and Turnbull 2018).
The development of the MSA has marked a diversion, particularly in terminology, within the EU frame although other Member States are in the process of developing “modern slavery” legislation (e.g., France, along with other, non-EU countries such as New Zealand and Australia (Broad and Turnbull 2018)). Among other changes, the Act has replaced previous legislation that fell under several different acts under a single act (for an overview of UK policy development, see Broad and Turnbull 2018; Craig 2017). The legislative changes were partially prompted by recognition from those working within the sector of the poor levels of victim protection and support, particularly through investigative processes (through the anti-trafficking monitoring group’s collaborative report: (ATMG 2013), also see CSJ 2013). The report found that the previous disparate legal framework was “confusing and potentially misleading” (ATMG 2013: 10). This had resulted in a disproportionately low number of convictions for trafficking offences as well as the inability of trafficked victims to access adequate protection as required through the 2005 Council of Europe Convention on Action against Trafficking in Human Beings and European Union Directive 2011/36. In addition, the issue of balancing victim support with migration concerns had previously led to criticism of the commitment to victim care in the context of the removal of undocumented migrants (Balch and Geddes 2011). A context where victims are unsure of their ability to access support and what the implications of reporting their victimization may be will prevent their participation in the investigative process.

The MSA aimed to increase the numbers of prosecutions and convictions, particularly through international cooperation, working with partners, and by providing better support for victims and witnesses through court proceedings (HM Government 2015). However, reports released at the end of 2017 and early 2018 indicated little improvement. In particular, a report from the National Audit Office (NAO) (2017) on public spending on reducing modern slavery stated that although the United Kingdom had an identification and support system in place (the National Referral Mechanism (NRM)), there are numerous shortcomings. The criticisms concern victim care, including that the Home Office has been very slow to implement improvements to the NRM, despite recognizing a series of problems in 2014 (NAO 2017: Para. 14). In addition, NRM decisions on whether the person has sufficient evidence to be identified as a victim are slow, causing distress and anxiety to vulnerable people in the NRM system (NAO 2017: Para. 16). Decisions are made by trained individuals who work for “competent authorities” or first responders including the police, UK Border Force, Home Office Visas and Immigration, and several anti-trafficking NGOs. In recognition of problems with the NRM decision-making system, a pilot scheme was introduced and evaluated in 2017 (Home Office 2017). The decision-making within the pilot involved a more specifically trained and experienced decision-maker charged with making the decisions. The pilot was evaluated with generally positive results although this system has not yet been implemented at the time of writing (see Home Office 2017 for more information). Regarding prosecution the key conclusion is that there have been few prosecutions and convictions under the MSA, again similar to trends elsewhere. The report states that:
In 2016, only 80 defendants were prosecuted under the Modern Slavery Act for 155 modern slavery offences, rising from 26 in the previous year for 27 offences. This legislation can only be used for crimes committed after the Act was introduced and as modern slavery cases take a long time to build (two to five years) it is difficult to benchmark. There has been increasing use of the Modern Slavery Act to prosecute defendants, although the overall volume of prosecutions related to modern slavery is relatively small. In 2016, there were 349 completed prosecutions of defendants flagged by the CPS (Crown Prosecution Services) as being involved in modern slavery, of which 62% resulted in conviction. Despite this conviction rate being in line with other hidden crimes, a small proportion of the crimes recorded by the police result in a charge. The average length of a custodial sentence for modern slavery between 2014 and 2016 was around four years. The Modern Slavery Act has set the maximum sentence to life in prison, but that sentence has not yet been used. (NAO 2017: Para. 21)

This effectively summarizes the consistent and continuing problems with investigative and prosecutorial processes in the United Kingdom but also reflects themes identified throughout this chapter in other jurisdictions.

Undeniably cases on human trafficking are complex and include numerous actors, transnational networks, missing witnesses, and frequently inexperienced law enforcement officials. Another reason that cases of human trafficking are complex to prosecute is the fact that they do not only entail criminal law but also administrative law, international cooperation, and complex financial investigations. In response to this, the Group of Experts on Action against Trafficking in Human Beings (GRETA) (2014) encouraged the specialization of judges. A previous GRETA report (2012) stated that an increase in training of those involved in the prosecution process could improve effective evidence collection and subsequently increase related prosecutions in the United Kingdom. These recommendations have been promulgated by a range of experts but have been slow to be implemented.

A final problem concerns financial investigations as part of the criminal investigations – related financial investigations are few even though investing in better financial investigations would benefit the possibilities of forfeiture, which could ideally benefit the victim. According to the European Commission (2012: 9–10), “[e]vidence gathered from money trails might provide the necessary additional proof, particularly in high-risk sectors, thus relieving victims of the burden of testifying in court.” The United Kingdom has existing money laundering offences under the Proceeds of Crime Act 2002 (POCA) that can be used to disrupt criminal finances. There are also separate regulations that protect the financial sector and other related businesses from being used for money laundering and help to identify suspicious financial activity. The POCA also has various means to recover the financial benefits made through any crime, namely, confiscation following any criminal conviction, civil recovery in the High Court, cash forfeiture in the magistrates’ courts, and taxation. The legislation also provides specific investigation powers to ascertain the extent and whereabouts of the proceeds of crime. The key is thus to raise awareness and encourage the use of legal provisions that allow for financial investigations and recovery of criminal assets. Efforts should be put into integrating financial investigations into trafficking cases on a regular basis (Keatinge 2017).
Conclusion

This chapter has aimed to provide a review of the investigation and prosecution of human trafficking cases to identify themes in relation to challenges and progress in this regard. The forefronting of the international policy frame as more focused on security than human rights from the outset appears to have had long-term implications in framing national responses. Starting from a point of law enforcement and prosecution has led many countries to identify that their approaches to victim protection were lacking in support. However, incorporating effective victim protection at the same time as necessarily pursuing prosecutions has proven difficult. While some progress has been made in this area in relation to multiagency working and capacity building for victim support services, there remain significant barriers to providing effective levels of support that enable victims both to have the necessary support to recover from their victimization and also to work with the criminal justice system to assist in successful prosecution.

Despite positive changes in the investigative process and as acknowledged at all levels, from the global to the local, law enforcement is only one very small part of a much bigger picture. Wider structural inequalities must be tackled to provide better opportunities in countries of origin for those who eventually find themselves bound up in human trafficking activity – for both victims and perpetrators. Encouraging participation in the prosecutorial process for victims who may ultimately find themselves returned to their country of origin is not a viable option if there are no legitimate work opportunities in those countries. Philosophically treating victims as witnesses rather than as person’s who are owed rights is problematic. In addition, failing to develop adequate frameworks of rehabilitative work (a discourse that receives very little attention) with those who have perpetrated these crimes may see them returned to the same networks and needs that they had prior to prosecution.

The move toward multi-agency models partly recognizes the need for a coordinated approach to build the frameworks necessary to adequately support victims and identify effective evidence to prosecute traffickers. It also acknowledges the futility of trying to understand the picture from a national level: while it is important to piece together information to build a wider view, learning from the local manifestation of human trafficking activity and the successes and challenges facing local collaborations can effectively inform national strategy, as much as a top-down approach (also see Winterdyk 2017). Those who are working in anti-trafficking on a daily basis are often those with the most knowledge, and these views are vital in developing policy.

According to this review, there are significant challenges in the operationalization of anti-trafficking legislation. In considering the implementation of legislation, Farrell et al. (2013: 141) state that legislation does not necessitate or explicate operational change, “unless criminal justice organizations actively seek change...there will be a lag or even a complete disconnect between the enactment and the enforcement of new laws.” The enactment of legislation can only represent the start of the process. As illustrated across jurisdictions, local experience of working with the (inter)national guidance to achieve successful outcomes in trafficking cases is a work in progress.
References


Combating Trafficking in Persons Through Public Awareness and Legal Education of Duty Bearers in India

Geeta Sekhon

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Abstract

The United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons of 2016 amply demonstrates that no country is immune from trafficking, yet public awareness and perception remains uneven, both globally and also specifically in India. There are also adequate international standards calling upon Member States to generate public awareness and strengthen capacities of duty bearers on human trafficking. On the other hand, the actors of the criminal justice system, namely, the police, the prosecutors, and the judiciary, as well as the labor officials, immigration, medical, and other professionals, often do not have adequate knowledge and training of the counter-trafficking legal framework and its application. Against this backdrop, the

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chapter examines the reasons for the gaps in awareness among the general public. It also assesses gaps in the legal knowledge among the general public and the duty bearers with legal responsibilities and its consequential impact on combating human trafficking, globally and with special reference to India. Current government and nongovernment initiatives from India towards legal and public education on human trafficking are discussed, and some recommendations are provided in the conclusion.

**Keywords**

Public awareness · Legal knowledge · Legal education · Training · Capacity building · Duty bearers · Childline · Campaign · Social media

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**Introduction**

The poignant words of India’s President, Shri Ram Nath Kovind, during his meeting with survivors of human trafficking on the occasion of International Women’s Day on March 8, 2018, demands reflection:

> Human trafficking is a social evil. It is not a common crime but a crime against humanity. The entire society must unite for its eradication. Awareness should be increased. People should also be encouraged to urge the survivors of human trafficking into the mainstream of society and help them overcome their problems. We need to create an appropriate ecosystem for survivors. …

Trafficicking in persons (hereinafter, TIP) is the fastest growing organized crime in the world. The crime generates illegal profits obtained from the use of forced labor at more than $150 billion USD every year (ILO 2014). It creates an estimated total annual profit made from forced sexual exploitation at USD $99 billion worldwide (ILO 2014), with an estimated 24.9 million people its victims. An estimated 16 million people are likely to be in forced labor in the private economy and 4.8 million in forced sexual exploitation (ILO 2017). An estimated 79% of all detected trafficking victims are women and children (UNODC 2016). Despite the obvious formidability of this problem, it remains hidden in plain sight, continues to destroy lives, and weakens the social and economic fabric of nations.

As much as these statistics are alarming and horrifying – they lose the essential element of “a” human victim.

The United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons of 2016 clearly establishes that no country is immune from trafficking. Victims are trafficked along a multitude of trafficking flows, within countries, between neighboring countries, and even across different continents. The report detects more than 500 different trafficking flows between 2012 and 2014. There seems to be a relation between a country’s level of development and the age of detected trafficking victims. In the least developed countries, children often comprise large shares of the detected victims.
Trafficking in Persons in India

India is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking (UNODC 2013; US TIP Report 2018), which constitutes the two predominant forms of TIP. Estimates suggest that millions of Indian women and children are victims of sex and forced labor trafficking, the latter affecting millions of men as well. Other forms of trafficking – organ transplant, forced marriages, illicit adoptions, and children being recruited as child soldiers by non-State agencies – are also prevalent in India.

Forced labor takes the form of men, women, and children in debt bondage, sometimes inherited from previous generations, who are forced to work in brick kilns, rice mills, agriculture, and embroidery factories. Forced labor also exists in sectors, such as construction, steel, and textile industries, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and ship breaking (a type of ship disposal involving the breaking up of ships for either a source of parts, which can be sold for reuse, or for the extraction of raw materials, chiefly scrap). Thousands of unregulated work placement agencies reportedly lure adults and children under false promises of employment into forced labor, including domestic servitude (UNODC 2013; US TIP Report 2018).

Traffickers use traditional methods of entrapment through false promises of employment or “boyfriend” relationships, or arrange sham marriages and lure women and girls into sex trafficking. But the new trends reflect that they are increasingly adapting their modus operandi by using websites, social media, mobile phones, mobile applications, and online money transfers to trap victims and facilitate commercial sex (UNODC 2013; US TIP Report 2018).

Besides trafficking of women and girls within the country, several other nationalities are being subjected to sex trafficking in India. These include nationals from Nepal, Bangladesh, Thailand, as well as and from Europe, Central Asia, and Africa (UNODC 2013; US TIP Report 2018).

Crime statistics from the government’s “Crime in India” report (National Crime Records Bureau (NCRB) 2016) provides the following data on TIP:

<table>
<thead>
<tr>
<th>Total cases in 2016</th>
<th>8132</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of victims trafficked</td>
<td>15,379</td>
</tr>
<tr>
<td>Female victims</td>
<td>10,150</td>
</tr>
<tr>
<td>Male victims</td>
<td>5,229</td>
</tr>
<tr>
<td>Total number of victims under 18 years</td>
<td>9,034</td>
</tr>
<tr>
<td>Total number of rescued victims (rescued persons may include persons trafficked in previous year also)</td>
<td>23,117</td>
</tr>
</tbody>
</table>

The Crime in India report shows that filed cases of human trafficking rose by almost 20% in 2016 against the previous year, but anti-trafficking activists believe that these figures failed to reflect the true magnitude of the crime (Nagraj and Bhalla 2017). Activists attributed the rise in cases to greater public awareness and increased police training, resulting in better enforcement of anti-human trafficking laws.
Unofficial government sources also believe that “more victims are coming forward and reporting because of more information about trafficking, government and civil society groups are doing campaigns and people are also seeing more cases being reported in the media” (Bhalla 2017).

Available statistics from India are not a true reflection of the problem’s estimated scope. A large number of cases are unreported as per NGO accounts and other stakeholder reports, with many people still unaware of the crime or lacking confidence to seek police help. Even one victim, one crime, is too many, but a constant challenge is how to measure its exact magnitude. Countless commentaries can be written on the enormous diversity of the data globally as well as in India, which is available through UN reports, international and national NGOs, and official government sources. Globally, estimates range from 4 million victims per year (UNODC 2016) to 27 million per year (Bales 2012). The varying estimates both globally as well in India result from various factors. Some of these are, the clandestine nature of this crime, existing problems with the legal definitions of trafficking in specific national jurisdictions, scarcity of comprehensive data about the scope of the problem, and the dearth of systematic empirical research. Considering these factors, the disparity in quantitative estimates becomes increasingly unsurprising.

What is not disputed, however, is the heinousness of the crime, which requires immediate responses. Albeit, it also needs to be stated upfront that the extent of the trafficking problem determines the strategies for creating awareness, developing policies and plans towards prevention of trafficking and rehabilitation of victims, and the resources required to build capacities of all relevant stakeholders. Nonetheless therefore, coherent and comprehensive responses to TIP cannot be stymied due to the unavailability of accurate figures, whether based on the magnitude and incidence of the crime, or on the number of victims.

The “3P” paradigm to counter trafficking in persons – prevention (of crime), protection (from crime), and prosecution (of criminals) – continues to serve as the fundamental international framework described by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter, UN Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime of 2000. A fourth dimension, namely of partnerships, broadly understood as a multidisciplinary and multistakeholder approach to counter trafficking, has been added in recent years (Four “Ps”: Prevention, Protection, Prosecution, Partnerships 2010). The four Ps strategy is being followed in India too for a comprehensive approach to anti-trafficking measures.

India has ratified the UN Trafficking Protocol, as an expression of its political will to counter human trafficking. However, ratification in itself is not sufficient to ensure its effective implementation and impact on the ground. Whereas protection of victims and prosecution of offenders are steps to be taken after the crime has taken place. Prevention of trafficking is the stage at which maximum public awareness can be created towards preventing the crime from occurring in the first place.
International Standards and Guidelines with Reference to Awareness and Knowledge of Trafficking in Persons

The UN Trafficking Protocol lays down the international standards on public awareness and training of duty bearers. Member States are obligated to comply within their domestic laws and systems the building of public awareness and training of duty bearers. Article 9, Paragraph 2 of the UN Trafficking Protocol provides that for prevention of trafficking in persons, the State Parties shall endeavor to undertake measures, such as “research, information and mass media campaigns” along with social and economic initiatives.

Apart from standards laid down in the UN Trafficking Protocol, the “Annotated Guide to the UN Trafficking Protocol” provides further guidelines on implementing the provisions of the Protocol. The Annotated Guide, with respect to Article 9 of the UN Trafficking Protocol, states:

- Research is important in understanding trafficking and developing policies and responses. For example, research needs to be done in countries of destination to assess the manner in which restrictive immigration laws facilitate trafficking by preventing people from entering legally. Research is also needed on best practices regarding prevention and reintegration. (Jordan 2002: 29)

- Information and mass media campaigns should not use scare tactics to deter people from migrating. Governments should fund campaigns that provide information to potential migrants about their legal rights abroad and safe migration so that people can decide whether or not their travel and work plans are realistic and safe. The campaigns should also be linked to service providers and ways to obtain more information. (Jordan 2002: 29)

Article 10 of the UN Trafficking Protocol stipulates measures to be taken by State Parties for information exchange and training. The Article refers to multiple stakeholders who should be trained with human rights, and child and gender-sensitive perspectives for multiple stakeholders. These include policymakers, criminal justice practitioners, border and immigration authorities, labor inspectors, workers’ and employers’ organizations, health practitioners, and social workers, and other relevant officials in the prevention of TIP.

The Annotated Guide also provides guidelines on achieving the objectives stated in Article 10 above. It suggests that NGOs and law enforcement need to work together. Experience has shown that the input of NGOs is often extremely helpful in encouraging law enforcement officials to change their practices in a manner that protects the rights of trafficked persons and assists law enforcement.

Member States are faced with different challenges in preventing and combating TIP, not only because the extent and nature of the problem varies but also due to different capacities across countries and regions. For this reason, strengthening capacity through training and legal education at the national level is necessary so that countries have the institutional and technical ability to develop and implement their own anti-human trafficking policies and strategies.
The “International Framework for Action to Implement the Trafficking in Persons Protocol” (UNODC 2009) stipulates the implementation measures that countries could take especially with respect to awareness and training for the prevention of human trafficking. Such measures may include: “Identify groups and communities vulnerable to trafficking, those who may come into contact with trafficking situations and the general public, and describe their environment” (UNODC 2009: 41); “Implement awareness-raising campaigns to raise awareness among identified vulnerable groups, for instance, through free hotlines, or other accessible open sources, including information on how to obtain legal employment, migration information, the risks of trafficking in persons” (UNODC 2009: 42); “Implement awareness-raising campaigns among key/influential audience in destination communities to generate concerns and to address the demand for easily exploitable services and labor” (UNODC 2009: 42); “Monitor the impact of awareness campaigns including attitude in countries of origin, transit and destination” (UNODC 2009: 42); “Implement measures to reduce specifically the vulnerability of children through raising awareness education in schools (e.g., integration of the issue into school curricula), and creating multi-stakeholder community networks, which are able to identify potential child victims and prevent them from being trafficked” (UNODC 2009: 42); “Ensure or strengthen training of law enforcement, immigration service and other services related to prevention as well as social support and welfare service and civil society partners” (UNODC 2009: 43).

The “Framework” further prescribes that for prosecution of trafficking crimes, the implementation measures that countries could take especially with respect to awareness and training could be: “Ensure comprehensive training for law enforcement, immigration, and judicial authorities, prosecutors, labor inspectors, social workers and other relevant officials (such as, medical, psychological, and social service) in combating trafficking in persons” (UNODC 2009: 19). This training should focus on methods used in preventing trafficking, prosecuting the traffickers, and protecting the rights of the victims, including victim assistance and protection. “It should also take into account the need to consider human rights, refugee protection and child and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society” (UNODC 2009: 19). Training should also focus on “Anti-corruption training for law enforcement officers, judges, prosecutors, immigration officers, and judicial authorities” (UNODC 2009: 23).

An example of another relevant UN Protocol prescribing training for those who work with child victims of trafficking/crime is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000). This Optional Protocol mentions in Article 8, paragraph 4 that “State Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.” This guideline is useful to those working with child victims of trafficking.
Countries that have signed or ratified the UN Trafficking Protocol and other UN instruments have committed themselves to implementing its various provisions, and therefore, are also obligated to implement measures with respect to public awareness and legal education of duty bearers.

**Public Awareness and Legal Education for Duty Bearers: Why and By Whom Required**

*Objectives for creating public awareness* – According to the International Labor Organisation (ILO 2014), two important reasons that push people into forced labor and trafficking are poverty and the lack of education. This ILO report highlights how forced labor thrives in the incubator of poverty and vulnerability, low levels of education and literacy, migration, and other factors. Education and literacy are very important factors, both in terms of vulnerability to, and in the elimination of, forced labor. Educated individuals are less likely to be in basic forms of manual labor and are more likely to know their rights. Literate individuals can read contracts and recognize situations that could lead to exploitation and coercion. However, the great population movements in the 1980s and the 1990s opened a “demand side” for irregular channels of migration. Thus, new international dynamics were created, making people who aspire for a better life, vulnerable to trafficking.

Similar reasons as above, could be accorded for human trafficking for any exploitative purpose, be it sexual exploitation, organ trafficking, forced or/child marriage, and others. Lack of awareness in the context of human trafficking could imply any one, or a combination of the following:

- Absence of knowledge of the *modus operandi* of the traffickers.
- Absence of knowledge on what is trafficking and its different forms, pushing people into making uninformed choices and decisions.
- When caught and trapped in the vicious cycle of abuse and exploitation, victims do not know whom to contact or how to get out of it.
- Misconceptions and myths impeding efforts to prevent trafficking. This include the supposition that only women can be its victims, whereas, men can also become victims, especially of labor trafficking or organ trafficking, often leading to men failing to identify themselves as trafficking victims.

A survey of available literature from India such as UN, NGO, and media reports on TIP confirms that not all people in India understand human trafficking, nor do they see it as a problem in their daily lives. This is despite the fact that South Asia generates the world’s second largest number of victims and India itself is a source, transit, and destination country for trafficked victims. Awareness of human trafficking was found to be low, as evidenced by a research study in India, and other countries (China, Indonesia, Japan, Philippines, and Thailand) where on an average, less than 40% of the respondents were familiar with this crime (Prawit 2011).
The one major factor that contributes to the escalating numbers of trafficking, especially in rural areas or/villages in India, is that people simply do not know about the dangers and realities of this crime. However, this absence of alertness is now no longer confined to villages. Even the urban masses, the reasonably economically secure population, and the well-educated, often have an inadequate/limited understanding of trafficking.

However, there has been no systematic and evidence-based research by any government institution or India based NGOs, towards understanding how little is known about public comprehension, perception, and attitudes of TIP in India. Thus, there is a strong need for building public awareness in India in the light of the identified shortcomings as above.

The context of public awareness – Within this discourse, there are some pertinent questions on public awareness vis-à-vis trafficking that need to be answered for designing effective plans of action. These questions are who ought to be considered as “public” and what is the “public sphere”? What exactly is public “awareness” and thereby, public “comprehension”? Does it represent collective viewpoints of a mass of people? How is it formed? What is the impact of awareness campaigns, media outreach, and other strategies on generating this public awareness? How and to what degree does public awareness leverage the fight against human trafficking?

A broad range of stakeholders would come within the ambit of “public” who would benefit from awareness and information on human trafficking. These include vulnerable communities, “supply” and “demand” areas, children and youth in educational institutions including those out of formal education systems, religious and faith-based organizations, trade unions, consumer groups, and the entire population in general.

Objectives of legal education and training of duty bearers – Some of the duty bearers are the first responders to the victims of human trafficking, such as the police, NGOs, and medical professionals. Appropriate training and capacity building of all the duty bearers sets the tone for a victim-friendly approach in all aspects of human trafficking. To take an example, throughout the world, “prosecution” of trafficking offences has been considered as a fundamental governance and law and order approach. This approach typically involves, framing of specific anti-trafficking laws, arrest and prosecution of traffickers, and investigation of the organized nature of the crime. The implementation of the legal framework is done through capacity building and training of police officials, prosecutors, judicial officers, and all other related duty bearers.

Human trafficking crimes are different from other crimes, in its modus operandi, its geographical spread often becoming transnational, its financial trails, the psychological profile of the victims and often their non-cooperation with law enforcement, traffickers often being known to the victims and their families, and the enhanced complexities when the online or/mobile phone component is added to it.

Law enforcement authorities usually face challenges of manpower and technology to combat sophisticated organized criminal networks and even lack the training required for identification of victims and comprehensive investigation of human trafficking offences. Successive UNODC and other UN agency TIP reports, and the annual report of the US government on TIP, have highlighted the uneven law enforcement responses by countries and their varying levels of readiness to combat
this crime. When first responders and all other service providers are not aware that human trafficking is occurring in their communities, victims fall through the proverbial cracks and do not receive the support they need.

While governments are primarily responsible for capacity building and training of all duty bearers, multiple international and national NGOs are equal participants, bringing forth wide-ranging expertise in the process.

The objectives of legal education and training of duty bearers is to implement the national laws more effectively so as to ensure prevention of TIP, prosecution of offenders through strengthened investigations and prosecutions, and protection of victims through a victim-centric approach.

Important aspects in countering trafficking are the creation of awareness and knowledge through training and capacity building of duty bearers, appropriate attitudinal orientation, and enhanced understanding of the true essence of the laws on human trafficking.

The proverbial duty bearers – A wide-ranging group of stakeholders are service providers or duty bearers to victims of human trafficking, who need legal and other professional resources and solutions. Some of these duty bearers would be first responders with different responsibilities. Others would provide services at different stages of a victim’s journey of removal from exploitative circumstances towards rehabilitation. Still, others would be involved in making laws, policies, and plans to fight human trafficking, such as the relevant Ministries and government Departments. These Ministries and Departments are usually those dealing with women and child, home/or interior affairs, foreign affairs, labor, education, health, social welfare, rural development, among others. Some duty bearers would be enforcing the laws and policies such as police, prosecutors, judges, lawyers, border security, immigration officials, medical service providers, NGOs, and others. Each and every duty bearer requires training and knowledge of this crime to frame adequate responses.

Reasons for the Gaps in Awareness and Legal Knowledge of Both the General Public and the Duty Bearers

What information is available on the Internet for anyone who wishes to understand/search on the topic of “human trafficking”? A cursory search will show that information, which comes up is dominated by trafficking for sexual exploitation. In many cases, the imagery features misleading and sometimes voyeuristic images of victims that are chained up or locked behind bars and wire. This messaging and imagery provide a foundation for a majority of TIP awareness campaigns. This singular emphasis too often overlooks equally devastating trafficking types, such as forced labor, domestic servitude, organ trafficking, forced marriage, child soldiers, and others.

Besides, images of chains and captivity create a false narrative and misinformation, that victims of trafficking are held only by forceful physical restraint. In reality, however, trafficking does not require physical restraint, bodily harm, or
physical force. The old myths of victims being prevented from going out alone, or being locked up in rooms, with no freedom of movement are a bit over exaggerated in today’s day and age, with psychological manipulation, being the most common method used by traffickers to manipulate victims for exploitation. Victims often develop a “Stockholm syndrome,” which is a condition that causes them to develop a psychological alliance with their perpetrators/the traffickers, as a survival strategy during exploitation (Levine and Schumacher 2017). Other forms may include “capture bonding”/“trauma bonding” with their perpetrators as a result of power imbalances and the intermittent good-bad treatment (Dutton and Painter 1993).

With regard to the training and capacity building of duty bearers, there are many factors that could explain uneven responses by them in identifying victims, conducting comprehensive investigations, guiding effective prosecutions, and providing medical and legal services. One factor is a lack of training for counter-trafficking agents in the field. Although some governments have themselves invested extensively in training and capacity building, in other cases, where governments do not have adequate financial capacity, they complement their efforts with the assistance of international and national NGOs. Capacity building of duty bearers through the creation of strong infrastructure and human resources is one part of taking action. The other significant part being training which prepares them for actual action vis-à-vis combating this crime. Both these aspects have to be strengthened for a concerted effort. And yet, economics and prioritization (or the lack thereof) in a particular country, often become the deciding factors in enhancing capacities and training the service providers.

Clarifications need to be made on the difference between training, workshops, and awareness. A workshop refers to a seminar, discussion group, or the like, that is used to exchange ideas about any particular subject. It emphasizes problem-solving, hands-on training, and requires the involvement of the participants. Training is a skill-building program that relate to specific knowledge area and competencies. Training has specific goals of improving one’s capability, capacity, performance, and productivity. “Workshop” is a subset of “training methods” along with lecture, seminar, tutorial, simulation, which are other methods of training (Training vs. Workshop 2016). Awareness on the other hand, is use of different methods to create a basic understanding of the problem among the larger target audience.

The reasons for the gaps in raising awareness can be traced to the “challenges” of raising awareness and its impact. Significant initiatives are being undertaken globally to raise and increase awareness, however, these campaigns need to be based on the changing nature and modern trends of human trafficking for greater impact. These in turn will have the prospective to be of direct and lasting benefit to all potential victims.

In the context of public awareness building and campaigns, important issues to be identified are:

- Do the campaigns create a meaningful understanding and perception for the general public about the intricacies of human trafficking and it’s interconnectedness with the social, economic, cultural, and political characteristics in which it thrives and survives?
What is the impact on public awareness from the messaging that it receives from targeted campaigns, media, and all other sources?

Is there any relationship between public awareness, participation, and action?

There is a dearth of research or information and no convincing evidence available on the impact of raising awareness, on whether the campaigns raise knowledge and understanding to any degree necessary to reduce human trafficking. The short films, posters, and other visual materials on human trafficking are typically framed in the most superficial ways. For example, a short campaign film that shows a young girl, with garish lipstick, swinging on a perch in a birdcage, being tortured by a man in preparation of prostitution (Don’t be Fooled 2011). Another shows a photo of a naked woman with a barcode on her back (Constantine 2017). Such images, therefore, too often sidestep both the complexities and the new methods of trapping and involving victims in various kinds of exploitation.

It needs no detailed research to know that the efforts in preventing human trafficking by countries of origin have proved inadequate to address the “supply side.” This is despite the collective endeavors of governments, international and national NGOs, and other stakeholders in this direction.

In addition to questions about effectiveness, we have even more troubling questions about the degree to which campaigns are actually counterproductive. For instance, the target audiences have quite often interpreted anti-trafficking materials in South Eastern Europe as anti-migration propaganda. Or that raising people’s awareness about trafficking had sometimes unintended and even counter-productive side-effects, such as provoking a fall in school attendance of girls in parts of Albania, because their parents were afraid that they might be abducted (Dottridge 2006).

Awareness campaigns are usually targeted at two core audiences, the potential victims, and the general community. With respect to specifically aiming at potential victims of trafficking, there is information material usually placed at airports, for example, at Thailand’s Suvarnabhumi airport (Yi 2018). Or at bus stations in an initiative by the Delhi (India) police through forging an alliance between police, NGOs, vendors/hawkers, at the Inter-State Bus Terminus at New Delhi (UNODC 2007: 73). In Thailand, messages to identify human trafficking are also shown in shopping malls, cinemas, and train stations across its capital Bangkok. These show people how to look out for signs of human trafficking (Yi 2018).

In as much as these campaigns and strategies are laudatory, there is very scant empirical statistics to show that these Public Service Announcements (PSAs) are effective approaches for a victim or potential victim to access help. The organizations creating these campaigns typically assert that they are successful, but as long as the evidential back-up data does not exist, there is no sure way of verifying that these were indeed effective in preventing trafficking or in providing critical information for accessing help to a victim.

Apart from creating awareness aimed at potential victims, campaigns trying to inform and alert the general public is even more challenging. Numerous national and international NGOs spend vast sums of money to produce and distribute PSAs. Again there is negligible empirical data to back up this strategy and to validate its effectiveness.
Both types of campaigns do not focus on all types of trafficking. This is, therefore, a missed opportunity to inform migrant laborers, domestic workers, child laborers, and others of the illegality of the acts and the risks of unscrupulous labor recruiters and entrapment through debt.

Above all, the biggest challenge is that there is weak co-operation between countries in documenting and sharing experience about the effectiveness of anti-trafficking campaigns, which is perhaps why prevention strategies have failed to integrate into policies, both globally and in India.

Current Government and Nongovernment Initiatives in India Towards Legal and Public Education on Human Trafficking

The magnitude of human trafficking in India; the size of the population; the religious, social, cultural, and linguistic diversity of its people; the lack of adequate economic opportunities; and other factors creating vulnerabilities for trafficking make it difficult to have one composite public awareness campaign. There is no known major public awareness campaign run by the federal government on human trafficking. However, state governments have their own initiatives on the subject. Some of the initiatives on building public awareness, and training and capacity building of duty bearers, undertaken by the federal and State governments and, NGOs are highlighted as underneath.

Child trafficking and missing children – A large number of children go missing each year in India, and it is believed that most of the missing children are trafficked for various purposes (Sen and Nair 2004: 207; Supreme Court 2013). They could also be runaways from home, or simply be lost, making them vulnerable to trafficking and exploitation. It is thus important to recognize the vital link between missing and trafficked children.

A court judgment (Bachpan Bachao Andolan v/s Union of India of High Court of Delhi 2011) highlighted that of the 44,000 children that are reported missing annually, only 11,000 are traced. In 2013, the highest court of India directed (Bachpan Bachao Andolan v/s Union of India of Supreme Court 2013) that in case a missing child is not recovered within 4 months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit (AHTU) in each State, to enable the said Unit to take up more intensive investigation regarding the missing child.

To deal with the issue of missing children who may have been or who could potentially be trafficked, the Government of India has set up two official web portals to register missing children. The Ministry of Women and Child Development (MWCD) has developed web portals “TrackChild” and “Khoya-Paya” (literally, lost and found) to track the missing and found children. The TrackChild portal is implemented in association with various stakeholders including Ministry of Home Affairs, Ministry of Railways, State Governments, Child Welfare Committees, Juvenile Justice Boards, National Legal Services Authority. The Khoya-Paya has been integrated as a citizen corner on the TrackChild portal.
The “Khoya-Paya” is a citizen-based website to exchange information on missing and found children. This works as an enabling platform, where any citizen of India can register and report about missing children, sightings of their whereabouts, and “found” children previously reported missing. This portal allows the public to create a missing or found child report, which can be viewed by other users. This is to enable parents looking for their children to get in touch with members of the public who report sighting these children.

The “TrackChild” portal is a limited portal since it allows only police to police communication, whereas everybody can participate in the Khoya-Paya portal. This enables a citizen to citizen contact and allows private citizens to take part in search for missing children.

The number of website hits reported on TrackChild portal from January 1, 2012, to December 28, 2017, are 139,443,896. The number of children missing during this period were 280,561 and those tracked/rescued with the help of these portals are 202,877 (Press Information Bureau 2018).

The MWCD also provides support for an outreach service for children in distress, through a dedicated toll free Childline number, 10-9-8. This number can be accessed by children in crisis or by adults on their behalf from any place in the geographical location of India. Information on this toll free number is widely available everywhere in India and is among one of the more successful initiatives and partnership between the government and civil society.

Training and capacity building – The Ministry of Home Affairs (MHA), Government of India, through the Bureau of Police Research and Development, Central Bureau of Investigation, and the National Police Academy conducts regular TIP training programs for police. State Police Academies and Judicial Training Academies of various States, including the National Judicial Academy, hold regular training programs. The border security forces like Central Reserve Police Force and the Sashastra Seema Bal (literally, Armed Border Force) are also trained to prevent and detect human trafficking cases at the border areas of Bangladesh and Nepal. These training programs often involve NGOs working on anti-human trafficking and thus follow a multistakeholder and multidisciplinary approach in the selection of trainers and trainees.

To provide just one instance of the impact of training, the number of traffickers apprehended by the Sashastra Seema Bal has risen from just 8 in 2014 to 102 in 2015, 148 in 2016, and 154 in 2017 (Weinert and Weinert 2018).

Anti-Human Trafficking Units (AHTUs) – The MHA is implementing a comprehensive scheme to strengthen law enforcement capability, by setting-up about 350 AHTUs (by the federal and the state governments), throughout the country and impart training to 10,000 police officers through Training of Trainers (TOTs), who in turn would train more police officials in their respective states. However, assessing the impact of the training programs as well as the efficacy of AHTUs has not yet been undertaken through proper monitoring and evaluation.

Academic courses – The Indira Gandhi National Open University, in partnership with the MHA (Press Information Bureau 2010) offers a certificate course on TIP, to accelerate the process of sensitization, awareness and training of law enforcement
officials and other stakeholders like prosecutors, government departments, and NGOs. The course is available for a minimum period of 6 months and maximum duration of 2 years. This certificate course is a part of the ministry’s efforts on training and competence building on human trafficking.

Initiatives by NGOs – In the recent past, two major initiatives have been taken by NGOs in multiple states to create and channelize public awareness on human trafficking.

Bharat Yatra – Nobel Peace Laureate Mr. Kailash Satyarthi conducted a 36 days Bharat Yatra (India March 2017), an 11,000 km road rally, in September–October 2017, as a clarion call to “Make India Safe Again for Children,” against all kinds of sexual abuse and exploitation, and especially child trafficking. The Yatra was led by the Kailash Satyarthi Children’s Foundation and was conceptualized on the theme of Surakshit Bachpan–Surakshit Bharat (literally, Safe Childhood – Safe India).

It started from the southernmost tip of India in September 2017 and culminated in north India, through seven different routes touching cities, towns, and villages in 22 Indian states and Union Territories, engaging with policy makers, implementers, teachers, local leaders, women’s groups, law enforcement personnel, the media, business leaders, and most importantly with children and their parents. Using the traditional and time-tested technique of social mobilization by walking and connecting interpersonally on the streets and in small lanes, the Yatra included gathering for events and awareness programs and leveraging political leadership to mobilize action, through partnering with several local civil society organizations (India March 2017).

A special feature of the march was the involvement of child abuse survivors, universities, schools, religious leaders, local community radio stations, along with local NGOs. Political heads of several States committed themselves to protection of children against all kinds of abuse in their States. A total number of 1,011,323 pledges were taken by children, women and men towards making India safe for children (India March 2017).

The impact of the Yatra was given in its scale of reach and mobilization – it had 1 billion online imprints; millions of students reached in 25 states with a lesson on child safety from sexual abuse; 2 million views in 24 h of the theme song recorded by a popular band and rescued child laborers, promoted by Google India; 1.4 million+ pledges to make India, their state, their town safe for children; 800,000+ participants including movie stars, corporates, political leaders, and others; 250,000 educational institutions engaged; 11,000 km covered in 35 days; 5000+ civil society partners involved; and 29 religious leaders publicly pledged their support (India March 2017).

Swaraksha (self-protection) – a Community Based Prevention Programme of Prajwala (Swaraksha 2016), an NGO from southern India, recognizes that the crime of human trafficking can be stopped only through the concerted efforts of all stakeholders, including the general public. It was conceptualized and launched by Prajwala in January 2016, in collaboration with three state governments (Telangana, Andhra Pradesh, and Odisha) to spread awareness among the communities against trafficking for commercial sexual exploitation.
A caravan travelled through villages, towns, and cities, demonstrating a unique partnership between local civil society partners and several state government departments, such as Department of Women and Child Welfare, Department of Home, heads of district administration, district police, senior judiciary, State Legal Services Authority, experts on trafficking and survivors of sex trafficking.

The caravan travelled 14,000 km, covering all the districts of the three states in 165 days and its impact was:

- Directly interacted and impacted 1 million students, girls, women, and men
- 112 suspected cases of trafficking were reported from within the community
- 40 trafficking offenders disclosed their crime in public and repented their actions
- 1990 community members came forward as members of community vigilance (Swaraksha 2016)

The target beneficiaries of the Swaraksha campaign were young and vulnerable girls from underprivileged backgrounds in schools, and villages with small populations. In addition, young men in schools and colleges, auto rickshaw (a mechanized transport, which runs on three wheels) unions, truck drivers associations, and men’s clubs were approached as equal stakeholders to generate support from them to curb the “demand” for paid sex.

The sustainability of this community outreach and awareness program was made possible by the State of Telangana, which has prescribed every third Saturday as anti-trafficking day in the state, to promote awareness on the subject. Seeing the outreach and success of the program, the caravan is proposed to be replicated in 7 countries and in rest of the 26 states of India (Swaraksha 2016).

**Businesses fight human trafficking** – There are many instances in India of businesses collaborating with NGOs to create public awareness on trafficking. To quote one such example, E-commerce platform Snapdeal has partnered with NGO Save The Children in July 2018, to raise awareness about the problem of child trafficking in India. The campaign, titled #KidsNotForSale, features a teaser campaign portraying an “Amazing Kids Sale” on Snapdeal that highlights stories of children who are sold for prostitution, kidnapped at birth, made to work in unhealthy conditions, drugged for organ trafficking, or forced to become combatants (Save the Children 2018).

**Illustrated comics** – Illustrated comics is an example of innovative technique being used by NGOs in directly empowering children with the knowledge of human trafficking (Pasricha 2017). In January 2017, thousands of school children in India’s northeastern state of Assam pored over an illustrated story of how two young girls from a relief camp were lured by a man who told them of the good life they could lead in a big city. It sounded attractive to the poor youngsters who could only visualize a bleak life ahead. Fortunately spotted by a policeman as they waited for the man at a railway station to head to the city, the story goes on to relate what their future could have been like when they were sold to work as poorly paid domestic employees, sex workers, or laborers.
The comic in the local Assamese language aims to raise awareness among children about trafficking rings that lure young girls and boys from villages into India’s big metropolitan cities with the promise of good jobs. As child rights campaigners’ stress, prevention as key to addressing the problem, comic books have emerged as an effective tool to empower children to protect themselves (Pasricha 2017).

**Recommendations for Curtailing Human Trafficking Through Public Awareness and Legal Education of Duty Bearers**

Social media campaigns raise awareness by spreading information and allowing for small, manageable goals to be set. Since large majority of the rural population as well as the urban city dwellers in India are unaware of the prevalence of human trafficking and how traffickers lure their victims into exploitation, implementing a social awareness campaign could increase understanding of the dangers of human trafficking and potentially dramatically reduce incidences of human trafficking.

However, for any campaign to be effective, it should be based on sound research with some indicators towards impact measurement. Therefore, to build evidence-based awareness and training:

- More research and information is required on the efficacy of the awareness campaigns.
- Whether public service announcements, information campaigns, or celebrities talking about the plight of exploited victims is making a measurable impact.
- Playing the numbers game (the use or manipulation of statistics or figures, especially in support of an argument), as donors have sometimes been known to do, is not helpful.
- Can the awareness raising messages include more stories and information on prosecution of traffickers/offenders, the legal framework on human trafficking, and the agencies responsible for its enforcement.
- Campaigns and their interconnectedness with the social, economic, cultural, and political characteristics in which trafficking thrives and survives.
- Reaching a million viewers who do nothing to help fight trafficking, and may even undermine the cause by understanding the problem too superficially, is less valuable than helping a handful of people to avoid being trafficked or to access support after it has taken place.

Social campaigns should utilize simple and fairly familiar methods of communication to engage their target audience. Campaigns should tap into already existing communication framework and need not be too cost-intensive. Effective use of local language media channels could be made to engage communities. Campaigns should not have unrealistic and lofty goals, while focusing on core specific messages.

However, awareness-raising campaigns should not be very general in content and nature. Rather, it should provide people with specific information on what to look for
so they could detect trafficking in their vicinity. Vulnerable communities should be given information on predatory behavior and tactics of traffickers, especially their use of technology in the digital age. Awareness campaigns should also be approached holistically, involving all segments of society, and should definitely aim at reducing the stigma associated with the issue, bringing in a cultural change and breaking the “conspiracy of silence.” All stakeholders involved in creating public awareness should make extensive use of social media and all online platforms as young children and youth are more comfortable accessing information there.

Before the awareness campaign is launched, it would be prudent to have some sort of community readiness assessment to ensure proper results/action as an impact of the awareness campaigns. Law enforcement, other government authorities, NGOs, community-based organizations, welfare services, and all other relevant stakeholders must be prepared for the potential impact of educating people on this subject. Efforts needed for community readiness will vary depending on the community infrastructure in place to respond to human trafficking, such as hotlines/helplines to report cases or suspicious activities, law enforcement readiness, government and NGO run shelter homes to house victims immediately upon removal from exploitative circumstances, and other preparatory steps.

**Use of Internet/mobile phones for communicating TIP messages** – The number of Internet users in India was expected to reach 500 million by June 2018, as reported by the Internet and Mobile Association of India (Agarwal 2018). The number of mobile phone users in India in 2018 was expected to be 775.5 million (Statistics Portal 2018a). As per information received from an anti-trafficking NGO, traffickers sent about 80,000 SMSs in 2017, in a certain geographic region of a state in India, offering jobs in big cities, and were able to traffic about 1800 of those who responded to the job advertisements. It thus seems that traffickers are using mobile phones more effectively to reach out to potential victims from vulnerable populations in comparison to government and other stakeholders, which could also use the same medium to convey awareness messages to the people on trafficking.

**Social media and messages on TIP** – With respect to social media, India claimed the first place with 294 million Facebook users as of October 2018 (Statistics Portal 2018b). India is also the largest market for WhatsApp with over 200 million monthly active users as of February 2017 (Statistics Portal 2018c). Such platforms and Apps could be used extremely effectively to convey messages on TIP to a very large population at almost negligible financial costs.

**Television and public awareness** – Indian media and entertainment industry is estimated to touch US$ 37.55 billion by 2021 from US$ 22.75 billion in 2017 (IBEF 2018). Television dramas called “serials” (another name for soap operas) in India are the dominant form of television entertainment in urban and rural India. Indians are watching TV for 3 hours and 44 minutes on average every day as per the Broadcast India 2018 survey undertaken by the Broadcast Audience Research Council of India (Laghate 2018).

Without going into the artistic merit and quality of these soap operas, they continuously try to introduce new contemporary content, such as child marriage and others. The information provided disseminates relatively quickly and across a
broad range of audiences and has a great deal of influence on the lives of people who are avid followers of these stories telecast every day. Using soap operas as a platform to convey human trafficking related messages would instantly convey the information in people’s homes very effectively.

*Films for public awareness* – The Indian film industry’s’ gross box office earning in 2017 was USD 2.2 billion, with over 9000 single screens and 2100 multiscreens as of 2016 (Cinema of India 2018). Films as a means of communicating human trafficking messages either as full-length films or through messages conveyed in theatres is a very powerful medium of information sharing. Among the very popular films recently made on human trafficking stories in Hindi and in other regional languages are *Mardaani* (2014), *Love Sonia* (2018), *Lakshmi* (2014), *Naa Bangaru Talli* (2013), *Aanmai Thavarael* (2011), *Siddharth* (2013), and others.

Indian NGOs also make films on trafficking and release them on You Tube reaching wider audiences as part of their own communication and advocacy. Most of these movies effectively portray the intricacies and multilayered realities of human trafficking by depicting the life of a victim from the minute they are captured until they are able to escape, and their journey towards healing and rehabilitation.

Efforts by government and all other stakeholders should extend beyond raising awareness campaigns to strengthening anti-trafficking laws and the law enforcement and strengthening partnerships between governments, law enforcement, and non-governmental organizations. Successive TIP Reports from the US Department of State and Indian NGOs have highlighted that in far too many cases trafficking laws are applied unevenly. The same reports highlight that criminal justice practitioners lack adequate training, thereby failing to identify victims initially, hampering effective justice delivery to them.

There is thus no substitute for consistent legal knowledge and capacity building of the duty bearers and public involvement as the *sine qua non* in the fight against human trafficking.

**Cross-References**

▶ A Complex Systems Stratagem to Combating Human Trafficking
▶ Aesthetic Whistle-Blowers: The Importance and Limitations of Art and Media in Addressing Human Trafficking
▶ Breaking Bondages: Control Methods, “juju,” and Human Trafficking
▶ Mediated Representation of Human Trafficking: Issues, Context, and Consequence
▶ Multisector Collaboration Against Human Trafficking

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It’s Your Business: The Role of the Private Sector in Human Trafficking

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Abstract

Human trafficking concerns the private sector. Both sex and labor trafficking have been identified in legitimate businesses, and research has begun to show how a range of other businesses are wittingly or unwittingly facilitating the crime. Research can be further sparked by a clear theoretical framework that systematically addresses how and why the private sector is involved in human trafficking. This chapter examines the merits of three existing theoretical frameworks in guiding empirical research on the role of the private sector in human trafficking. These frameworks include theoretical notions on organized crime, corporate

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crime, and social and economic networks involved in crime. Each theoretical framework provides different explanations for private-sector involvement in human trafficking and has varying implications for research and anti-trafficking efforts.

Keywords
Human trafficking · Legitimate businesses · Theoretical development · Private-sector responses

Introduction

Since the passing of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Palermo Protocol) in 2000, human trafficking has been prioritized as a serious form of crime on most governmental agendas. In supplementing the UN Convention against Transnational Organized Crime, the UN Palermo Protocol globally couched human trafficking as an organized crime that undermines legitimate economies, threatens governmental sovereignty, and has profits similar to those from drug smuggling and illicit arm transfers (Charnysh et al. 2015). This organized crime frame has been translated into various domestic policies. For example, the federal anti-trafficking law in the United States frames human trafficking explicitly as an organized crime: “Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide” (Trafficking in Victims Protection Act, TVPA Sec 102(b)(8)). More broadly, studies have shown that on international level, the problem of human trafficking is defined through the lens of organized crime and criminal networks that are undermining state authority (Broad 2015; Charnysh et al. 2015; Simmons and Lloyd 2010).

The focus on organized crime perpetuated by political elites and codified in legislation resonates in media (Charnysh et al. 2015; Farrell and Fahy 2009; Johnston et al. 2015). News outlets commonly describe human trafficking as “the fastest growing business of organized crime” (in Farrell and Fahy 2009) and report on the “sophisticated international slave trade syndicate[s]” (Hosken and Masweeneng 2018) and criminal networks “suspected of conspiracy to rape, sexual exploitation, trafficking, blackmail and drugs offences” (Dearden 2018). Such crime narratives incite public fear about human trafficking and point to nefarious perpetrators creating a problem that needs to be solved by criminal justice professionals (Charnysh et al. 2015; Farrell and Fahy 2009; Jahic and Finckenauer 2005).

While supporting the intensification of criminal justice responses to human trafficking, the crime narrative diverts attention away from more complex issues underlying human trafficking such as poverty and inequality (Farrell and Fahy 2009) as well as a complex nesting of human trafficking practices in legitimate surroundings and economic systems. With human trafficking, as seen in the criminalization of...
other social problems (see, e.g., Hagan 2010; Simon 2009), there is a failure in research and public policy to address private-sector responsibility.

Nonetheless, scholars and practitioners have recently begun to recognize how human trafficking occurs in legitimate businesses and otherwise intersects with the private sector through supply chains, logistics, or finance (see Chap. 48, “Human Trafficking in Supply Chains and the Way Forward” by Lloyd). These studies call upon the private sector to play a more prominent role in anti-trafficking efforts (Aronowitz et al. 2010; Shelley 2010; Shelley and Bain 2015). Even so, empirical research on how the private sector drives or facilitates human trafficking remains in its infancy in part because there is no clear theoretical framework that can guide scholarship in this area.

To fill this gap in the literature, the current chapter discusses three theoretical frameworks that can guide research on the role of the private sector in human trafficking. First, theoretical notions associated with an organized crime frame include a role of legitimate businesses facing infiltrative practices of traffickers. Second, a corporate crime frame provides several theoretical explanations for why private individuals and businesses may engage in human trafficking but is limited in explaining the involvement of other businesses unwittingly facilitating the crime. Third, a network frame can illuminate the economic and social ties that connect a broad range of legitimate businesses to human trafficking practices and may more effectively describe the complex character of private-sector involvement. In highlighting the merits and pitfalls of each of these frameworks, this chapter aims to provide theoretical counter-narratives to the dominating framework through which human trafficking is understood and which has left little consideration of the role of the private sector in human trafficking.

The next section will elaborate on prior research that has discussed the role of the private sector in human trafficking, followed by a section that outlines how the three theoretical frameworks help us understand the role of the private sector in human trafficking. A subsequent section utilizes these frameworks to call upon the role of the private sector in anti-trafficking responses, and a concluding section proposes future directions for research and policy.

**Evidence on Private-Sector Involvement**

Recent studies have begun to refer to human trafficking as a crime problem that concerns the private sector (e.g., Bales 2004; Crane 2013; Jägers and Rijken 2014; Shelley and Bain 2015; Todres 2012), and a small number of private individuals and businesses have faced legal charges because of their purposeful and strategic role in the recruitment and exploitation of cheap or abundant human labor or sexual services (e.g., De Vries, 2018). As a matter of definitional clarity, it should be noted that while the purpose of exploitation is a key defining feature of both sex and labor trafficking, exploitation can also occur outside of a trafficking scheme due to other circumstances that increases vulnerability to exploitation (see, for an in-depth discussion of the difference between human trafficking and exploitation, Campana and Varese...
Examples of companies facing criminal charges for activities related to labor trafficking and exploitation were included in USA v. Askarkhodjaev et al. (USA v. Askarkhodjaev, et al. 2010), which involved three labor-leasing companies facing charges for racketeering, bringing in and harboring aliens, and money laundering and fraud as part of a grand labor trafficking and exploitation scheme of migrant workers in construction and hospitality venues across the USA. While the charges against the corporate entities were dismissed, the defendants running these businesses were convicted for labor trafficking-related activities. In addition to the businesses facing legal procedures, other businesses had a facilitating role in securing fraudulent contracts for employment in construction, hospitality, and housekeeping services. Companies faced more often legal persecutions for labor trafficking or situations alike under the civil law in the USA, for example, in Baricuatro et al. v. Industrial Personnel and Management Services, Inc. et al. (2014), Chellen et al. v. John Pickle Company et al. (2006), or Francisco et al. v. Wiley (2013) (see, for other examples, De Vries 2018). The case law database of the United Nations Office on Drugs and Crime (UNODC n.d.) can be utilized to search for examples of individuals running legitimate businesses for trafficking purposes in different countries. For example, in a case in New Zealand, a defendant’s wife ran a legitimate travel agency to transfer immigrants to New Zealand under false or misleading information for the purpose of labor exploitation at various businesses (The Queen v. Faroz Ali and Jafar Kurisi 2015).

In addition to defendants running businesses for the purpose of labor trafficking, existing studies provide numerous examples of traffickers running bars, restaurants, or sham escort services as a cover for sex trafficking, evade law enforcement detection, to recruit clients or to claim ignorance (see Bouché 2017; Shelley 2010). Research has also begun to draw attention to massage businesses involved in sex and labor trafficking practices, with a number of businesses operating under the guise of a license and advertising in newspapers, directories, and online classifieds (Polaris 2018).

Whereas legitimate businesses are used as a means to cover or launder proceeds from sex trafficking operations, corporate misbehavior in the context of labor trafficking can be a response to structural economic problems, such as rapid social and economic change, growing markets, and increased competition due to the advancement of globalization (Bales 2004, 2016; Zhang et al. 2014). In attempts to meet the demand for production and increased profitability, companies are looking for a way to get ahead of their competitors, sometimes with labor conditions falling victim to economic pressures (Brown et al. 2004; Crane 2013; Scherer and Palazzo 2011). A failure to institutionalize labor conditions in compliance with laws and regulations was taken at the core of a study by Crane (2013) who sought to explain the occurrence of labor trafficking and exploitation in failing strategic management practices such as a lack of enforcement of codes of conduct, lack of research into subsidiaries and indirect suppliers, or lack of training of employees. Crane (2013) further suggests that some businesses have difficulty meeting the legal standards due to an underpricing of labor to compete on the market, debt management, high labor
intensity, or high elasticity of demand. As a result, companies may actively engage in labor trafficking or exploitation as a means to compete on the market.

Studies have also mentioned companies where human trafficking and exploitation slips under the radar due to an unfamiliarity with laws and regulations or inability to recognize indicators of sex or labor trafficking. For example, hotels and restaurants are being utilized by traffickers to sustain their illegal operations and infrastructure without clear indication of active facilitation by these industries (Bouché 2017; Shelley 2010). Studies also warn against growing corporate networks in which single companies have difficulty monitoring the institutional and management practices of subcontractors or other collaborators such as suppliers and manufacturers culpable for substandard labor conditions (Aaronson and Higham 2013; McSween 2011). One should further consider the corporate agencies behind social media websites utilized for sex trafficking operations: Research increasingly shows that popular social media platforms like Twitter and Facebook are utilized by traffickers as a convenient medium to recruit young women and girls and offer their sexual services (Latonero 2011).

Furthermore, some companies may knowingly accept a potential participation in sex or labor trafficking practices but do not consider their business to be a first point of responsibility (Shelley and Bain 2015) in part because of fear for reputation damage or unwillingness to implement an expensive or time-consuming monitoring system to identify instances of human trafficking (Pierce 2010). Various other companies turn a blind eye because they indirectly profit from the crime, for example, nightclubs, transportation companies, tour agencies, and the entertainment and leisure industry profiting from exploitative labor and sexual services (Leman and Janssens 2015; Shelley 2010).

Despite increased awareness about the role of the private sector in human trafficking, the amount of empirical research systematically exploring and explaining that role is limited. A recent study by de Vries (2018) sought to address that gap and analyzed US federal cases concerning labor trafficking and proposed a typology of private-sector involvement in labor trafficking. Guided by a social and economic network approach, the analyses resulted in the identification of “corporate defendants,” “active contributors,” “passive participants,” and “involuntary participants.” Table 1 summarizes the key characteristics of each of these roles. Corporate

Table 1 Typology of private-sector involvement in human trafficking and exploitation

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Roles</th>
<th>Corporate defendants</th>
<th>Active contributors</th>
<th>Passive participants</th>
<th>Involuntary participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role in legal proceedings</td>
<td></td>
<td>Central</td>
<td>Peripheral</td>
<td>Minimal</td>
<td>Minimal</td>
</tr>
<tr>
<td>Knows about human trafficking/exploitation?</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Contributes to human trafficking/exploitation?</td>
<td></td>
<td>Initiator/coordinator</td>
<td>Strategically contributing</td>
<td>Not strategically contributing</td>
<td>Not strategically contributing</td>
</tr>
</tbody>
</table>

Source: De Vries (2018)
**Theoretical Frames**

This section discusses three theoretical perspectives that may serve as an analytical tool to examine the role of the private sector in human trafficking: (1) an organized crime frame, (2) a corporate crime frame, and (3) a social and economic network frame.

**Infiltrating Legitimate Businesses: An Organized Crime Frame**

Although definitions of organized crime are controversial and ambiguous, organized crime has been defined as involving criminal networks with a restricted membership that utilize violence and threat of violence to engage in illicit activities and may or may not have a well-structured hierarchy (Finckenauer 2005; Maltz 1985, 1994). In public discourse, organized crime is often associated with a range of crime activities “that operate beneath the radar of government tax collection agencies or law enforcement” (McCarthy 2011: 26). These popular connotations are also translated into public depictions of human trafficking, which is then understood as an underground business that operates independent of legitimate markets.

Although human trafficking discourse has only recently begun to include a facilitating role of the private sector in the crime, the infiltration of legitimate businesses is often understood as a defining attribute of organized crime. Criminal infiltrative practices can be a means to conceal criminal behavior, launder money or maximize profit (Dugato et al. 2015; Gambetta and Reuter 1995; Reuter 1985), or with the aim to control certain industries, maintain family assets, cultural practices, or pursue personal reasons (e.g., Riccardi 2014). The literature on organized crime seems to agree on a somewhat opportunistic notion of private-sector involvement:
The infiltration of organized crime in legitimate businesses occurs when it is required to support the underlying criminal operation.

Studies on human trafficking that consider the role of the private sector often do so along the lines of an organized crime frame. By way of illustration, Shelley’s work highlights the organized crime character of human trafficking while emphasizing the intersections of the crime with the legitimate market (2010; Shelley and Lee 2007). Traffickers rely on the assistance of criminal and noncriminal actors in the legitimate world, for example, to obtain false documents, to organize transportation within and across borders, and to establish money-laundering channels (Shelley 2010). As an example, Shelley refers to violent Balkan crime groups that frequently seek contact with transport companies to move women to Western Europe and utilize legitimate financial institutions to wire repatriate assets (Leman and Janssens 2015; Shelley 2010). Other scholars, too, have recurrently argued how human traffickers connect with a larger world of transnational crime that infiltrates into legitimate economies to move proceeds through money-laundering channels (e.g., Shelley 2010).

Another common notion in the literature is that organized criminals are essentially entrepreneurs that somewhat formally operate as part of a criminal network: an illegal enterprise (Chambliss 1978; Smith 1971, 1980). Similarly, many scholars have depicted human traffickers as organized criminals with a business mind, arguing that their modus operandi mirrors effective business strategies of large-scale companies in the legitimate world. The difference between legitimate companies and a human trafficking operation is that force, fraud, and coercion are the key business strategy of human traffickers (Leman and Janssens 2015; Shelley 2010). The framing of human trafficking as a big business comports with public perceptions that human trafficking is the “fastest growing business of organized crime” that is “challenging trafficking in drugs as the world’s biggest illegal business” (Fight human contraband 2000, p. A14; in Farrell and Fahy 2009: 622).

While the organized crime frame draws attention to traffickers’ infiltration into legitimate businesses, it leaves little room for alternative roles of private individuals and businesses. In addition, empirical evidence suggests that various human trafficking operations are less organized and involve actors that are loosely coupled or even operate individually (e.g., pimps) (Aronowitz 2009; Bouché 2017), thus supporting the need to examine private-sector involvement in other types of trafficking operations.

**Crime in the Workplace: A Corporate Crime Frame**

Contrary to the popular depiction of human trafficking, many trafficking practices across the world occur within the context of legitimate businesses. As studies have begun to elucidate, trafficked persons can be employed in legitimate industries such as the agriculture, construction, hospitality, transportation, or venues that are licensed to offer sexual services, and there are many points of contact with a range of other businesses through supply chains, logistics, and finance (Aronowitz et al.
Within a corporate setting, both sex and labor trafficking can yield significant profits when businesses compete on the market through profiting from sexual demand, cheap labor, or tax avoidance.

Criminology has a long-standing interest in theorizing and analyzing the behavior of corporate offenders, starting with the foundational work of Sutherland (1940; Sutherland and Cressey 1947). In what became known as his differential association theory (see Bruinsma 2014), Sutherland argued that individuals in a corporate context are more likely to engage in illicit activity when they are excessively exposed to wrongdoing such as tax avoidance by others. Even though scholars have criticized Sutherland’s focus on elite corporate crime and coined terms like organizational crime to account for illicit behavior in any type of corporate setting (Schrager and Short 1978), corporate crime has now been an integral part of the work of many researchers and scholars.

Studies have proposed a variety of theoretical angles to explain corporate crime, including strain and anomie (Passas 2000), rational choice (Paternoster and Simpson 1993), neutralization techniques (Piquero et al. 2005), or control theory (Benson and Moore 1992; Piquero and Piquero 2006; Simpson 2002). Many of these theoretical notions can also help explain the behavior of corporate offenders engaging in human trafficking. For example, prior work on human trafficking has mentioned globalization, neoliberal processes, and the advancement of a global desire industry as key underlying mechanisms for why individuals and organizations, including private actors, engage in sex or labor trafficking practices to mitigate the strains they experience due to increased sexual demand or demand for cheap products (Agathangelou 2004; Crane 2013).

Potentially most applicable is a theory by Piquero and Piquero (2006) that suggests that individuals with more surpluses are more likely to have an intention to exploit. This can include managers who have “an excess of control exercised relative to control experienced” (Piquero and Piquero 2006). Even though Piquero and Piquero (2006) focused on the issue of fraud in a corporate context, their theorization helps explain why crime opportunities may more likely exist in hierarchically organized corporate settings. The unequal power structures in such settings make that managers exercise more control relative to control they experience. In the context of labor trafficking, this could be a crew boss in agriculture who is in charge in the fields and works with significant discretion in the exploitation of workers.

In addition to human trafficking practices that directly occur in a corporate context, there are various examples of human trafficking cases in which individuals utilize their professional background to neutralize their intention to exploit labor or sexual services. As noted in criminological work, individuals may be more likely to engage in crime when excessive exposure to wrongdoing helps them justify their own illicit behavior (Sykes and Matza 1957). These neutralizations of wrongdoing have been utilized to explain corporate crime (Piquero et al. 2005; Shover and Bryant 1993) and have also been suggested in the context of exploitative employment of domestic workers by representatives of international companies or by
diplomatic personnel who perceive substandard hiring and employment conditions for domestic workers as common practice within their professional setting even though the exploitation itself occurs in a more private setting of the household (OSCE 2014; U.S. Department of State 2016).

It follows from the above that the theoretical notions associated with a corporate crime frame help explain a different type of private-sector involvement in human trafficking schemes than an organized crime frame. Nevertheless, a corporate crime frame is limited in that it emphasizes crimes emerging within corporate settings rather than resulting from a broader market involvement that provides the structure for trafficking to occur. To address this gap, the next section discusses how social and economic network concepts can supplement the previous analytical frameworks to address the role of the private sector in a more comprehensive way.

**Crime in Legitimate Markets: A Network Frame**

Situating human trafficking within a broader market structure requires a relational approach that examines the social and economic networks underlying crime. A social or economic network is a bounded set or sets of individuals, organizations, or any other actors upon which relationships can be defined (Jackson 2010; Wasserman and Faust 1994). Social network analysis is an analytical technique to study these relationships. Whereas these techniques are making headway in criminology to understand the structure and organization of criminal networks (Carrington 2014), most studies are limited to the study of networks in which all individuals are labeled criminals.

A few recent studies have employed social network techniques to study the interconnectivity between legitimate surroundings and crimes such as gang activities and behavior of violent youth. For example, a study by Papachristos and Smith (2014) shows that criminal networks are comprised of offenders that navigate through multiple social worlds, resulting in systematic connections between criminal and noncriminal networks. Other studies have also demonstrated that organized crime is in part driven by connections spanning personal, criminal, and legitimate social networks (Malm et al. 2010; Smith and Papachristos 2016).

The present chapter argues that network concepts and analysis are particularly insightful to observe and explain private-sector involvement in human trafficking. Four network concepts illustrate why (see also De Vries 2018). First, multiplex ties of traffickers, referring to relationships that build on different types of relationships that may or may not be criminal (Kadushin 2012), can account for criminal connections that span personal, criminal, and legitimate social networks (see Malm et al. 2010; Smith and Papachristos 2016). Such intersections between crime and legitimate markets have been observed in the context of labor trafficking whereby traffickers navigate through supply chains, logistics, and finance (Aronowitz et al. 2010; Shelley 2010; Shelley and Bain 2015; see also ▶ Chaps. 48, “Human Trafficking in Supply Chains and the Way Forward” by Lloyd and ▶ 23, “The Spoiled Supply Chain of Child Labor” by Sadler Lawrence). When considering multiplex
ties of traffickers, private-sector involvement can in part be driven by familial, friendship, or employment ties that connect private individuals and businesses to human trafficking operations.

Second, these multiplex ties can also indicate a systematic nesting of crime within legitimate surroundings, which is better captured by the term “embeddedness.” While initially introduced by Granovetter (1985) to describe how economic behavior is constrained by social relations, the term embeddedness is now utilized to refer more generally to the nesting of individuals in larger social contexts, structures, and cultural frames (Baker and Faulkner 2009; Feld 1997; Granovetter 1985; Moody 2005; Moody and White 2003; Uzzi 1996). The multiple and overlapping social and economic networks of offenders as well as associated victims and clients/consumers suggest that there can be an inevitable embeddedness of crime in legitimate surroundings.

Third, a process of information diffusion captures the idea that market-based connections and social connections of defendants allow for the diffusion of information about crime (see for the use of this term: Hirshleifer 1973; Jackson 2010). Information about indicators of sex and labor trafficking, such as suspicious cash transactions, cheap labor, or knowledge about hazardous working conditions of employees, can travel from firm to firm through economic and social interactions if not through media exposure. The previously mentioned study by De Vries (2018) qualitatively examined information diffusion in private-sector involvement in labor trafficking in the USA and demonstrated that a broad range of firms were exposed to indicators of labor trafficking and exploitation, making them witting participants in the crime.

Fourth, information about illicit activities likely diffuses unequally through markets making some but not all firms aware of potential human trafficking practices. This results in information asymmetries, which are understood as imperfections in knowledge due to differential exposure to information about market parameters (Arrow 1968, 1974; Stiglitz 2000). Information asymmetries can explain why some companies continue to collaborate with trafficking-involved companies to gain a better understanding of the motivations behind business strategies of other companies. Alternatively, companies may also discontinue the business relationships out of fear of potential reputational or legal risks associated with the detection of crime, if not because of moral considerations (Jackson 2010; Kirman 2001; Podolny 1994). In addition to labor trafficking, the concepts of information diffusion and asymmetry can also help identify and explain private-sector involvement in sex trafficking whereby businesses such as massage establishments, hotels, and restaurants may be exposed to sex trafficking indicators (e.g., many different clients walking in and out hotels) and become witting participants in the crime when these indicators are recognized (see also the previous section).

Whereas the above concepts form by no means an exhaustive list, they are illustrative of how a relational orientation can alert scholars and practitioners to consider a trafficker’s wider social and economic network, which includes businesses that directly or indirectly and wittingly or unwittingly participate in the crime. As will follow from the next section, this broader market involvement in human trafficking demands a comprehensive anti-trafficking approach that involves legitimate businesses in anti-trafficking efforts.
Private-Sector Responses to Human Trafficking

As studies have begun to expose the limitations of the traditional response that heavily relies on the criminal justice system, legitimate businesses are increasingly called upon to identify, prevent, and combat human trafficking. This section explains why.

The Limitations of the Criminal Justice System

Human trafficking has been prioritized by the criminal justice system in the USA and elsewhere, yet the number of prosecutions and convictions remain low, and the criminal justice system has limited capability or capacity to deal with the complexity of human trafficking cases (Farrell et al. 2012, 2014; Gallagher 2011). Studies have also noted that routine approaches of law enforcement may be inadequate to address human trafficking in its different forms. For example, police traditionally employ a reactive response to crime, whereas the identification of human trafficking requires a proactive approach because trafficked persons often do not self-identify as victims (Farrell and Pfeffer 2014). Furthermore, human trafficking is commonly delegated to specialized police units that are more likely to identify sex trafficking such as vice units. The routine strategies employed in these units (e.g., stings in brothels) may be less helpful to identify human trafficking operations that occur in the workplace (Farrell and Pfeffer 2014).

A criminal justice system approach has proven to be especially limiting in addressing corporate offending in the context of human trafficking. While the UN Convention against Transnational Organized Crime establishes corporate criminal liability, there has been a limited enforcement in domestic laws and regulations (Chap. 94, “Corporate Criminal Liability on Human Trafficking” by Schuman). Under domestic law, corporations often do not face criminal charges, with the exception of countries that have adopted legal provisions regarding the criminal liability of representatives, managers, or agents involved in human trafficking (e.g., the United Arab Emirates, see Mattar 2012). In the USA, scholars have started to call for an amendment of the TVPA to explicitly include corporate liability for trafficking involvement (Pierce 2010). A recently passed law in the USA, the Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act (FOSTA-SESTA), makes it possible to prosecute the corporations behind websites that facilitate sex trafficking by posting or sharing sexually explicit material such as online classifieds utilized for the recruitment of clients in the commercial sex industry. However, controversies about this law exist and include concerns about increased difficulties in investigating sex trafficking when online material that could otherwise be utilized as evidence may now disappear. In other countries like Australia, corporations are held liable for involvement in crime when “the offense is committed by an employee, agent or officer of a body corporation acting within the actual or apparent scope of his or her employment, or within his or her apparent authority” (Mattar 2012). However, even if corporate criminal liability is legally an option, its actual use may be limited due to
concerns about the potential adverse impacts of corporate criminal liability on businesses and trade relations (Mattar 2012). In response to the limitations of the criminal justice system to address human trafficking, the private sector is now being put forward as potential key to a more effective or at least complementary anti-trafficking response.

Private-Sector Responses

Various policy initiatives that involve the private sector are being developed. Many of these initiatives are better considered supplements to a criminal justice system response as they show how legitimate businesses are invaluable resources to law enforcement. For example, in the USA, Western Union participates in the Homeland Security Blue Campaign to conduct trainings on recognizing and reporting suspected human trafficking cases. The Blue Campaign is a collaborative effort of law enforcement, government, nongovernmental, and private organizations to raise public awareness about human trafficking (Western Union 2013). A variety of other industries have begun to train staff to identify sex or labor trafficking. For example, ECPAT-USA partnered with Marriott hotels to administer training in identifying and reporting human trafficking for all Marriott employees (Marriott International 2017). Similarly, Airline Ambassadors is a nongovernmental organization that provides training to airline personnel to identify and report individuals who may be at risk for human trafficking (Fortin 2017). A recent initiative called “Employers Against Sex Trafficking” (EAST), spearheaded by the Attorney-General’s office and Major of Massachusetts, Boston, engages businesses in prohibiting their employees to buy commercial sex during worktime with the aim to reduce opportunities for sex trafficking (Martin 2018).

In addition to such specific public-private partnerships, several innovative anti-trafficking efforts are being developed within the private sector. For example, in recognition of traffickers’ use of technology services and networks (Latonero 2011), companies have developed software and algorithms to identify traffickers or victims utilizing open-source online data (e.g., through the use of web crawlers) or corporate data (e.g., financial transactions) (see, e.g., Latonero 2011). The private sector can also be used to proactively regulate their own line of industry and corporations. Aaronson and Higham (2013) call for a mandated self-reporting mechanism to publicly reveal business efforts (or lack of efforts) to prevent human rights violations. Also Obokata (2005) advocates for the development of a system of accountability, suggesting that private firms should be held accountable for monitoring their application of codes of conduct. Such mandated reporting includes those being enforced under the California Transparency Act that went into effect in January 2012, which requires large-scale companies to report on strategies to identify and prevent human trafficking throughout the supply chain (Eckert 2013; Pickles and Zhu 2013; see also Chaps. 48, “Human Trafficking in Supply Chains and the Way Forward” by Lloyd and Chaps. 23, “The Spoiled Supply Chain of Child Labor” by Sadler Lawrence). Although not mandated and more on a global level, the United Nations
introduced Guidelines on Businesses and Human Rights that provide a framework for ethical corporate behavior that may also prevent human trafficking practices. Large companies like Microsoft and financial institutions like ABN Amro translated the guidelines in corporate codes of conduct (United Nations 2017).

Public Support for a Private-Sector Response

Scholars have observed a public pressure on the private sector to adopt socially responsible and legal ways of conducting business (Brammer et al. 2012; Lindh 2015; Schneiberg and Bartley 2008). Additionally, the private sector has begun to play a more important role in crime prevention and control generally as public-private partnerships on the community level are increasingly being designed to address local crime problems. Studies put forward a private-sector model as a more durable and less expensive alternative to criminal justice measures that press on governmental expenses, have sometimes problematic impacts on socially disadvantaged and minority communities, and have shown to be ineffective in addressing certain crimes (Clear 2011; Crawford and Evans 2017).

These general concerns for a role of the private sector to address crime and social problems may also indicate potential support for private-sector responses to human trafficking. A recent study explored public support for labor-market responses to human trafficking and found a willingness of the American public, especially women, to engage in ethical consumer behavior as a response to human trafficking. These initial insights into public support for private-sector responses to human trafficking underscore the need to further investigate the role of legitimate businesses in both facilitating and combating human trafficking.

Conclusions

As stated at the start of this chapter, the private sector has an important role in human trafficking. This chapter discusses three theoretical frameworks that can guide further empirical inquiries into the role of the private sector in human trafficking. An organized crime frame is helpful to understand crime infiltration in legitimate markets, whereas corporate crime frames shed more light on corporate offenders that initiate or coordinate crime. A network frame is a more comprehensive framework in that it addresses both witting and unwitting engagement in human trafficking operations due to the social and economic connections of traffickers.

A few aspects could not be discussed in this chapter as they require more empirical substantiation. This includes a detailed consideration of the role of the private sector across different economic systems such as informal and shadow economies and across economically distinct countries. In addition, it should be noted that the role of the private sector changes due to the advancement of sharing economies and less regulated services such as ride-sharing apps. These transforming economies may complicate the monitoring of labor, increase the pool
of labor-trafficked persons, or facilitate the transportation of sex-trafficked persons. While associated with opportunities for economic prosperity, a sharing economy has also been associated with regulatory loopholes and opportunities for exploitative practices (Sundararajan 2016). Hence, future research should also consider sex or labor trafficking in these emerging economies.

Additionally, more information is needed about the role of the private sector in different forms of human trafficking. Specifically, organ trafficking has received little attention in research on human trafficking with even less awareness of a facilitating role of the private sector. An early article that considered the organ trade as a possible form of corporate crime highlights the complicated nature of medical activities in the organ trade based on which a role of private hospitals can be expected (Foster 1997). The extent to which human trafficking for the purpose of organ removal depends on the private sector merits further attention.

This chapter sought to lay the ground for scholars and practitioners to conceptualize and analyze private-sector involvement in human trafficking and anti-trafficking responses. It follows from the theoretical approaches discussed in this chapter that scholars can no longer neglect the potential involvement of businesses in human trafficking. Likewise, businesses should be included in future anti-trafficking response efforts.

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A Complex Systems Stratagem to Combating Human Trafficking

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Abstract

Human trafficking as a complex phenomenon leaves no country unscathed as perpetrators continue to conjure up new schemes to subvert and circumvent efforts by the international counter-trafficking community. The challenges associated with effectively responding to the crime, whether through research or prevention, or taking a case from a crime scene to court involve multiple and interpenetrating social systems and human actors with different perspectives, skill sets, mandates, and objectives. Their interactions are numerous, interdependent, and causally indeterminate which give rise to environments characterized by volatility, uncertainty, complexity, and ambiguity (VUCA). This chapter will make a case for complex systems thinking, as a conceptual framework, to be interwoven in counter-trafficking activities by policymakers, researchers, activists, prosecutors, and police investigators (to name but a few) who are effectively engaged in a battle of wits against the human trafficking system that perpetrates the crime. The author’s policing and investigative exposure to and work in the field of counter-human trafficking over the past 16 years,

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and his use of complex systems theory in a Ph.D. study, serves as the basis for this chapter. The chapter will contend that complex systems theory, and by extension complex systems thinking, has immense potential to alter our thinking about micro-level strategies and can explain how foundational interactions and interconnectedness give rise to emergent properties on a macro-level, which are not predictable from the parts alone. It is recommended that reductionist responses and “fixes that fail” are set aside in favor of a whole approach to human trafficking combating efforts that are better equipped to embrace complexity.

Keywords

Systems theory · Complexity theory · Complex systems theory · Human trafficking response mechanisms · Criminal investigation · Prosecution

Introduction

As a truly global problem, human trafficking is by no means a recent phenomenon (Allais 2013; Kabance 2014; Morawska 2007) and takes place in and between many countries throughout the world (Franco 2015). Except for Antarctica, it has affected every continent, and it continues to exist throughout the history of humankind (Kabance 2014). A range of disciplines and perspectives that intersect and engage with the issue of human trafficking exist (Laczko 2007; Lee 2007; Lopez and Minassians 2017) which continue to explore, deliberate, hypothesize, contend, and antagonize about issues of scope, response mechanisms, and policy development. Disciplines and perspectives include fields such as criminology, politics, law, human rights, sociology, gender, and public health with the problem interpreted as, among other things, human trafficking as illegal migration, a threat to national sovereignty and security, slavery, transnational organized crime, a labor issue, a violation of human rights, or a combination of the aforementioned issues (Lee 2007).

The chapter will begin by providing an overview of human trafficking as a complex phenomenon that is unrelenting in the multilayered challenges it presents to those involved in the continuum of response mechanisms. An introduction to complex systems theory follows and prompts a “different way of thinking about our thinking” and responses to complex problems. Human trafficking is then positioned as a complex system that is far greater than the sum of its parts, followed by the application of complex systems principles and suggestions for human trafficking combating efforts.

The Complexity of Human Trafficking

Frequently used as an all-encompassing concept, the idea of “complexity” is commonplace in human trafficking literature and general discourse when describing the multivariate and shape-shifting problems presented by the phenomenon. Van der Watt and Van der Westhuizen (2017) point out that the complexity of human trafficking
emerges from the interaction of a range of factors. These include the nature of the crime as a process and not an event, the range of perpetrators involved in the commission of the offence (from single perpetrators to large international organizations), the seemingly endless ways in which humans are exploited, and the variety of contextual factors (social, economic, cultural) that exist. Efforts to combat the crime, in particular, have been framed with reference to complexity as a salient characteristic (Aronowitz 2009; Holmes 2010; Morehouse 2009). Here some complex processes in which anti-trafficking, human rights, and social justice intersect provide an additional layer of complexity. Zheng (2010) underscores opposing definitions of human trafficking and the complex ways in which the intertwined configurations of race, gender, ethnicity, and nationality muddle the dominant discourse on trafficking. Dempsey (2017) and Van der Watt (2018) have also documented the use of truncated definitions of human trafficking and the concomitant undercounting of the scope, nature, and extent of the phenomenon by preservationist researchers. The crime is tortuously shaped by, and linked to, global migration dynamics, including the interests, capacities, and structures of nation states, international and non-governmental organizations, private companies and criminal groups (Danziger et al. 2009: 261). The problem has also raised deep divisions on issues of principles, theories, perceptions, and the strategy to address it (Sawadogo 2012: 95).

The recognition of human trafficking as one of the most challenging crimes for the counter-trafficking community to understand and detect continues to grow among criminal justice researchers and practitioners (Morehouse 2009). The criminal and subversive nature of the crime (Kingshott 2015; Nair 2010) imbues the chronic failure by police, immigration officials, and prosecution agencies to identify victims of trafficking (Farrel et al. 2014; Shrivankova 2006). Conversely, victims themselves often do not consider reporting as an option due to the perceived, and sometimes real, disincentive for approaching the authorities (Holmes 2010). The complex relationships that frequently exist between victims and the perpetrators of human trafficking also fuel the underreporting of the crime (Holmes 2010; Verhoeven and Van Gestel 2011), while a range of manipulative, violent, and threatening acts are commonplace in most trafficking scenarios (Aronowitz 2009). The variety of abuses include the confiscation of travel documents, deception, fraud, social and linguistic isolation, assaults, rape, fears of deportation, and threats of harm to family members (Aronowitz 2009; Haynes 2004; Hughes 2000; Kelly 2002; Logan et al. 2009; Lopez and Minassians 2017). Drugs are also used to recruit new victims and to retain them in a subjugated state (Shelley 2012). The harms that are experienced by victims of trafficking are indeed significant, varied, and multi-layered with Vandenberg and Skinner (2015: 7) underscoring the fact that victims do not experience harm in “stovepipes” but rather that their physical, mental, emotional, legal, and financial needs all merge into one holistic and encompassing need.

Corruption has proven to be a fundamental contributor to the continuation of trafficking and the ability of traffickers to operate with impunity (Van der Watt 2018; Whittles 2017). As an operational requirement, trafficking also relies on payoffs to police, judges, and ministers at all levels (Transparency International 2011). Harmful and distorted cultural practices frequently intersect with the crime of human
trafficking (Prinsloo and Ovens 2015; Van der Watt and Ovens 2012) and may include the trading of children for the payment of family debt. An example is where daughters are bounded by labor to support families or are forced into child marriages (Olujuwon 2008). The demand for exploitative services, socioeconomic instability, social dislocation, and gender inequality in transitioning countries (Bermudez 2008; Haynes 2004; Sawadogo 2012; Singh 2004) also nurtures an environment in which the crime of human trafficking thrives.

The coordination between role-players in response to the crime is not a simple task with multilateral and cross-sector harmonization in counter-human trafficking strategies continuing to fall short. Concerning the continuing efforts to increase organizational capacity within social services that identify and refer victims of human trafficking, Wolf-Branigin et al. (2010: 424) underscore the delay in positive outcomes caused by the challenges faced by social service practitioners when dealing with entangled law enforcement and criminal activity systems. Interorganizational coordination and awareness in a nonprofit ecosystem were studied by Stoll et al. (2010) who highlighted how nonprofit organizations grapple with the significant complexity added by having to cooperate across international borders and local jurisdictions. Coordination among both nonprofit organizations and legal institutions for service provision and the prosecution of traffickers is therefore necessitated by the mobile nature and jurisdictional dynamics of a trafficking scenario. In one case study, 21 different organizations were enumerated that had to be involved in the identification, intervention, and subsequent rescue of a 15-year-old victim of sex trafficking (Stoll et al. 2010).

Notwithstanding the crime being a violation that occurs over multiple geographic and legal boundaries, many counter-trafficking actions continue to be targeted at the place of exploitation. Although law enforcement has led counter-trafficking efforts, trafficking is a fundamental issue for other sectors, such as immigration, labor and health, and development and trade (Zimmerman et al. 2011). Human trafficking can therefore not be sufficiently addressed as a distinct issue (Danziger et al. 2009) and requires a unified effort to conquer (Franco 2015). The complexities associated with human trafficking as a phenomenon and the inherent challenges linked with efforts to combat the problem are indeed multilayered and enmeshed. In the next section, complex systems theory, and by extension complex systems thinking, will be introduced as a response to prevailing reductionism in counter-human trafficking strategies. Reductionism, closely associated with mechanistic thinking and the Newtonian worldview, is the practice of analyzing and describing a complex phenomenon such as human trafficking in terms of its simple or constituent parts, and creating the erroneous impression that such oversimplified explanations can provide sufficient insights.

Complex Systems Theory [and Thinking] as a Response to Reductionism

The division in science contributed to the impetus behind the quest for a general systems theory. Von Bertalanffy (1968) points to the fragmentation of science into numerous disciplines that continually generate new sub-disciplines. The result of
this, Von Bertalanffy (1968: 30) argues, is that the physicist, the biologist, the psychologist, and the social scientist are encapsulated in their private universes, and it is difficult to get word from one cocoon to the other. In 1954, five “Grand Old Men” in American intellectual history founded the Society for General Systems Research. They were Ludwig von Bertalanffy, Kenneth Boulding, Ralph Gerard, James Grier Miller, and Anatol Rapoport. The Society was an attempt to cultivate conversations across a broad spectrum of disciplines about the systems that condition human lives (Hammond 2003). The collaborative and interdisciplinary nature of modern systems theory is evident in the backgrounds of these founding fathers, as highlighted by Stowell and Welch (2012), which included the fields of biology, economics, physiology, and mathematics.

Regarding general systems theory (GST), systems of all types share certain common characteristics that can be described using mathematics as well as ordinary language. Through the study of systems as general phenomena and by identifying the laws that they all obey, people are enabled to learn more about the functioning of a specific system of choice (Midgley 2007). This view is justly rooted in the original words of Von Bertalanffy (1968: 33) that models, principles and laws exist which apply to generalized systems irrespective of their particular kind, elements, and the particular ‘forces’ involved. Linguistically of Greek origin (Ison 2008; Skyttner 2005), the word “system” has long been part of our day-to-day vocabulary and emerges in a variety of contexts – some social, some technical, and some philosophical (Stowell and Welch 2012). Skyttner (2005: 56) posits that the Greek word denotes a connected or regular whole, while Ison (2008: 140) highlights that the word “system,” derived from the Greek verb synhistanai, means to stand together. In general terms, Hammond (2003: 17) defines a system as a set of relationships between discreet things that together form some kind of coherent pattern and/or whole that is capable of maintaining itself through time. Skyttner (2005: 57) suggests an oft-used “common sense” definition of a system as a set of interacting units or elements that form an integrated whole intended to perform some function.

The development of knowledge has progressively come to terms with the plurality of life and the increasing limitations of reductionist thought and methodologies for making sense of it all (Skyttner 2005). Systems thinking has evolved because of the search by people for ways to articulate the features of the world around them in a comprehensible manner, with various formalizations of systems thinking emerging over time as people explored ways of rationalizing their interactions with the world (Merali and Allen 2011). Dating back to the 1920s (Skyttner 2005; Stowell and Welch 2012), systems thinking is a response to the failure of mechanistic thinking in attempting to explain social and biological phenomena (Skyttner 2005). The over-specialization and compartmentalization of “reductionist” science (Midgley 2007: 14) has proved to be ill equipped to handle problems of immense complexity and interdependencies (Heylighen et al. 2007). Reductionism has a propensity to reduce and to seek key explanations at ever-smaller units, whether these are individuals constituted as agents in social theory or genes in biological science (Walby 2007). This tendency to simplify is part of the human endeavor to survive, flourish, and reduce uncertainty as people find at least the illusion of control by following this approach (Pycroft 2014). Reductionist thinking, however, remains prevalent in
contemporary times (Louth 2011) and, as found by Van der Watt (2018), continues to inhibit efforts to investigate, prosecute, and respond to the human trafficking problem. A system, as a set of interacting units and relationships that form an integrated whole, cannot be understood through analysis only. Furthermore, inasmuch as a system is a whole, it will lose its synergetic properties if it is decomposed (Skyttner 2005). This is most fittingly elucidated by Capra (1996) who comments on the notion of reductionism in his discussion of a comprehensive theory of living systems. He calls for synthesis between two approaches – firstly, the study of substance, or structure, and, secondly, the study of form, or pattern. Structure involves quantities, where things are measured or weighed, whereas patterns involve qualities, which must be mapped as they cannot be measured or weighed. Systemic properties, according to Capra, are properties of a pattern. He illuminates the problem with reductionist analysis as follows:

What is destroyed when a living system is dissected is its pattern. The components are still there, but the configuration of relationships among them – the pattern – is destroyed, and thus the organism dies. Capra (1996: 81)

When dealing with the complexity of human activities, Stowell and Welch (2012) contend, it becomes evident that reductionist thinking is problematic as human situations are complex and cannot be treated as rational. Human judgments are affected by and affect human experience, and both “value” and “fact” are prized. The human situation is iterative and eternal, and universal laws of human behavior are nonexistent (Stowell and Welch 2012). Weaver (1948: 544) insightfully highlights that “there are rich and essential parts of human life which are alogical, which are immaterial and non-quantitative in character, and which cannot be seen under the microscope, weighed with the balance, nor caught by the most sensitive microphone.” Thus, reducing complexities to their parts and attempting to understand the whole through knowledge of its individual chunks are no longer valid as a single variable can be both cause and effect. Historically scientists did not understand that the whole is more than the sum of its parts. Knowledge was gathered into silos, and data became increasingly disconnected. Systems thinking became the revision of science against the backdrop of increased complexity (Skyttner 2005).

In the global theater of increasing uncertainty and ambiguity, it is essential to master the ability to manage, in tension, incongruent and often contradictory views without undue stress. Mitleton-Kelly (2003: 3) describes complexity theory as a somewhat new discipline with immense power to alter the way in which the world is conceptualized and observed. Not only does it have the potential to generate novel ways of working and relating but can change the way organizations are managed, designed, and structured. Various thoughts exist as to the foundation of complexity theory, with De Toni and Comello (2010) observing that complexity theory developed in a turbulent, disordered, and multidisciplinary manner. Some scholars argue that complexity theory is in fact a systems theory (Frank 2015; Morçöl 2012). Systems theory, at its core, attempts to explain how elements are related to each other, how they collectively constitute a whole, and how this whole relates to other wholes.
These are the essential issues in complexity theory as well (Morcöl 2012). According to Masys (2012), a fundamental feature of complexity theory is its rethinking of the nature of systems and its acknowledgment of the simultaneously dynamic and systemic interrelationships and interconnectivity within and between systems.

A robust association between the terms “systems” and “complexity” throughout the history of the systems enterprise is pointed out by Midgley (2007), while Cilliers (2008) highlights “complexity” as a characteristic of a “system.” Johnson (2010: 116) posits that the contemporary messy and multifarious problems humanity faces today (also see Skyttn 2005: 36) involve entangled systems of systems of systems. They involve natural subsystems of the environment, social subsystems and the artificial subsystems of technology, and the constructed environment. Moreover, a range of intertwined and complicated interactions are inherent in these subsystems and their subsystems of families, businesses, the oceans, the atmosphere, the land, houses, shopping malls, and transportation (Johnson 2010). In the author’s study of the Human Trafficking Complex System (HTCS), multiple overlapping criminal enterprises as subsystems and a host of individual role-players that perform numerous sub-activities within their own subsystems were clearly present. He also found the reference to “systems of systems of systems” when describing complex systems and their numerous subsystems as making conceptual and intuitive sense (Van der Watt 2018: 32).

Pointing to the complex behavior that arises through the interaction between components of the system, Cilliers (2008) underscores the importance of focusing on relationships rather than on individual components. Concerning genuinely complex systems, Heylighen et al. (2007) state that components enjoy a measure of independence. They are therefore autonomous in their behavior while undergoing various direct and indirect interactions with other systemic components. The global behavior of the system, though not random, is therefore extremely difficult to predict (Heylighen et al. 2007). As open systems, complex systems interact with their environment in terms of exchanging both energy and information. Complex systems must be able to acclimatize to environmental fluctuations, and therefore their internal structure must respond to or be influenced in some way by external conditions. A distinction between what is considered to be “inside” and “outside” the systems often becomes problematic (Cilliers 1998). In the next section, an argument is made for the consideration of human trafficking as a complex system (HTCS). This will serve as a preface to the positioning of the Counter-Trafficking Complex System (CTCS) and the motivation for the CTCS to inculcate complex systems knowledge as a means to create a response system that bears remarkable similarities to the dynamic HTCS that it seeks to combat.

**Human Trafficking as a Complex System**

No formal or generally accepted definition of a complex system exists (Ball 2012; Ireland and Gorod 2016; Mitchell 2006). Simon (1962), in providing one of the earlier definitions of a complex system, characterizes it as consisting of a large number of
parts that interact in a non-simple way. He continues by stating that the whole of the system is more than the sum of its parts, *not in an ultimate, metaphysical sense, but in the important pragmatic sense that, given the properties of the parts and the laws of their interaction, it is not a trivial matter to infer the properties of the whole* (Simon 1962: 468). Mitchell (2006: 1195), who describes it as a *large network of relatively simple components with no central control in which emergent complex behavior is exhibited*, provides an informal definition of a complex system. Mitchell continues by explaining the meaning of relatively simple components and argues that the individual constituents, or at least their functional roles in the system’s collective behavior, are simple with respect to that collective behavior. A single neuron and a single ant are complicated entities within and of themselves (Mitchell 2006). Ball (2012) underscores that there is a general agreement that a complex system is one made up of many components, the components of which might or might not be identical.

Living things, such as the brain, *social systems*, and language, are usually associated with *complex systems* and have a number of characteristics (Cilliers 1998). Other frequently cited examples of *complex systems* in nature and society include biological cells, metabolic networks, the immune system, ant colonies, the Internet and World Wide Web, human social networks, and economic markets (Mitchell 2006). In addition to *social systems* such as crime networks, gangs, and terrorist cells (Leary and Thomas 2011), Van der Watt (2018) refers to the Investigation Complex System (ICS) (Referred to as the Counter-Trafficking Complex System (CTCS) in this chapter.) and the Trafficking Complex System (TCS) (Referred to as the Human Trafficking Complex System (HTCS) in this chapter.) that it seeks to investigate and combat, as examples of complex *social systems*. Both the CTCS and HTCS consist of an extensive network of elements and a range of subsystems that all form part of multiple and overlapping “*systems of systems of systems.*” The *complex systems* approach, according to Van der Westhuizen (2015: 13), *has not been used extensively in human trafficking research*. Williams (2009: 416) points out that human trafficking has *all the characteristics of a complex system* and states that those endeavoring to respond to this crime must *create a system that looks remarkably similar to the one they are trying to destroy*. Leary and Thomas (2011) underscore the value of *complex systems* theory in the role of analysis in *law enforcement* and national security. They argue that by gaining an understanding of the characteristics of complexity, role-players are presented with an opportunity to harness it and to use it advantageously in strategic planning and tactical policymaking.

The Fig. 1 represents but some of the multiple and overlapping “*systems of systems of systems*” identified by Van der Watt (2018) as being part, directly or indirectly, wittingly or unwittingly, of the HTCS in South Africa. Each cog represents different elements and subsystems that interact, interpenetrate, and overlay all other subsystems and collectively enable and make up the HTCS (Fig. 1).

The following characteristics of *complex systems*, as highlighted by Cilliers (1998: 3–5), will be used to qualify human trafficking as a complex system:

*Complex systems consist of a large number of elements:* Elements in the human trafficking complex system (HTCS) are truly incalculable. An individual trafficker, who is responsible for the exploitation of one or more individuals, could very well be
Fig. 1 Human trafficking complex system (Van der Watt 2018)
functioning as a sole enterprise. However, the individual trafficker usually forms part of a group consisting of multiple actors collaborating with a number of other groups working in a city. Groups can then form part of networks which span inner-city networks, national networks, regional networks, continental networks, and, ultimately, international networks. The roles of the different elements are diverse and include recruiters, harborers, transporters, financiers, enforcers, money-launderers, corrupt public officials, and a range of support personnel and specialists to name but a few. Customers of criminal enterprises and the buyers of illicit services form part of the HTCS and so do other overlapping systems, and their individual elements, which may not necessarily have a human trafficking mandate. These may include hotels, farms, restaurants, fisheries, banks, and a range of private sector institutions who directly or indirectly, wittingly or unwittingly, engage in the human trafficking process.

A large number of elements are necessary, but not sufficient: In order to constitute a complex system, the elements have to interact dynamically. Furthermore, these interactions need not only be physical in nature but can also include the transference of energy and information. The HTCS is typified by interactions between elements, which significantly overreaches the physical dimension. Cellular and mobile communications, the Internet, social media, and the dark web are but some of the catalysts which allow for dynamic interactions between elements in the HTCS. Cyberspace in and of itself can be considered a complex system and so can its users who dynamically interact and share information – again underscoring the notion of multiple overlapping “systems of systems of systems.” Fundamental here is the interactions between the large number of elements in the human trafficking system and not merely the fact that elements exist and are numerous. This principle becomes evident when considering the reference by Cilliers (1998) to the grains of sand on a beach which are countless, but do not represent a complex system due to the lack of interaction between the grains. Interactions and the transference of energy and information are also what allow a complex system to change over time.

The interaction between elements is fairly rich. Any element in the system can influence another element and can be influenced by others: The behavior of the system is not determined by the precise amount of interactions associated with specific elements. If there are enough elements in the system, of which some may be redundant, some meagerly connected elements can perform the same function as that of one element that is richly connected. Every element in the HTCS, no matter where it features in the horizontal process or vertical hierarchy, and notwithstanding its lesser number of connections in comparison to other elements, can imbue sufficient formidability by receiving information and providing information. What becomes important here is not the number of interactions between elements that determine the behavior of the HTCS, but rather the density, intensity, and quality of these connections that allow it to change and respond to “disturbances” from the CTCS.

Interactions between elements are non-linear. Non-linearity is a precondition for complexity and guarantees that small causes can have large results, and vice versa: The nature of the interactions between elements in the HTCS is non-linear. This means that interactions rarely progress or develop effortlessly from one phase to the
next in a logical and mechanistic fashion. Non-linearity is a central concept in complex systems theory and the primary generator of complexity (Morçöl 2012). It guarantees that small causes can have large results, and vice versa (Cilliers 1998: 4). Non-linearity can be evident in the “small” input by a trafficking network who allows a victim to be rescued by police as a means to enable her entrenching within a shelter where other victims of trafficking are cared for. The “output” subsequently generated may include the recruitment of multiple victims from the shelter where the rescued “victim” is now embedded as a disproportionally larger find than the efforts invested. Conversely, significant inputs by the HTCS such as resources, risks, time, and money may be invested in corruption efforts that rebound unexpectedly when prominent members of the HTCS are arrested and convicted for corruption. For the HTCS, this may lead to a significant loss in finances, influence, and institutional memory. Both of the aforementioned scenarios can result in new interactions, dynamics, relationships, and structures within the HTCS. The interconnectedness between the elements in complex systems gives rise to non-linearity in behavior and relationships (Dekkers 2015), which, in turn, results in “turbulence” in the system that creates complexity. Non-linearity implies that even the most insignificant variable (or element) in a system can produce complexity and turbulence as every constituent of the system is a part of the overall system with the potential to have massive impacts and emergent behavior (Garlick 2016; Leary and Thomas 2011).

Interactions are typically short ranged: Interactions between elements in the HTCS are typically informed by the local knowledge to which each element has access. Information exchange occurs between elements which are close to each other. Here the notion of “close” becomes a relative term in a world where everything is connected. Van der Watt (2018) posits that the world in which people exist today is infinitely more intricate and connected than ever before. Conversely, every passing moment brings about more space expanded by social media, cloud technology, and the Internet. The global village becomes increasingly smaller, compressed by globalization and its ever more effective transportation systems (Saniee et al. 2017). It is in this ecology where short-ranged interactions flourish. Furthermore, individual elements are also ignorant of the behavior of the system as a whole in which they are embedded and therefore respond only to information that is available to them locally.

There are feedback loops in the interactions, which can be positive or negative. The effect of any activity can feed back onto itself. This can happen directly or after a number of intervening stages:

The interconnectedness of elements in the HTCS, as well as the shifting alliances of individual elements and the interpenetration of the HTCS with other systems, which includes the CTCS, serves as incendiary dynamics for feedback and feedback loops to abound (Van der Watt 2018: 349). Feedback loops refer to the process by which the effect of any activity in the complex system can feed back onto itself. The feedback can occur directly, and sometimes indirectly, after a number of intervening phases. Thus, information generated by the activity between a recruiter and a victim, or between a pimp and a police investigator, is fed back into the different systems, which has either a dampening effect (negative feedback) or an amplifying effect...
The degree of connectivity in a complex system not only determines the transfer of information and knowledge and the arrangement of relationships but is essential in feedback processes (Mitleton-Kelly 2003). Negative feedback clashes with what the system is already doing. It denotes the idea of diminishing return (Skyttner 2005: 83) and dampens information (Boisot and McKelvey 2011). On the other hand, a positive feedback loop is amplifying (Boisot and McKelvey 2011: 280) and pushes small changes in a system onward, which escalates change. Positive and negative feedback loops thus contribute to the fact that a complex system is never fixed or unwavering, but forever in a process of change and adaptation (Garlick 2016: 296).

Complex systems are usually open systems that interact with their environment: As open systems, complex systems interact with their environment in terms of both energy and information exchange. Complex systems must be able to adapt to environmental changes, and therefore their internal structure must be influenced in some way by external conditions. A distinction between “inside” and “outside” the systems, however, often becomes problematic (Cilliers 1998). The HTCS and its various subsystems can be considered an open system as constant and varying degrees of feedback, and information exchange occurs with their external environment. The external environment includes various other systems, including the CTCS. On the other hand, closed systems often have firm boundaries and do not allow information exchange with their environment. This can include organizations with rigid boundaries, which are often considered unhealthy. Such systems, according to Morgan (2005: 9), are starved of nourishment, which include the commitment and the energy and motivation to survive, identity and shared values, information, finances, and legitimacy. Such closed systems begin to decline gradually. Their resilience dissipates, and the system eventually collapses.

Van der Watt (2018) underscores that these characteristics of complex systems are present not only in the HTCS, but also in the CTCS and its various respective subsystems that enable, perpetrate, and respond to human trafficking. He continues:

The constituent parts and elements of these systems are made up of diverse and numerous multi- and interdisciplinary individuals, groups, agencies, departments and mandates. All of these are in a constant and dynamic mode of interaction and information exchange whilst directly or indirectly contributing to the mandate of their specific system. They also continually interact in a complex manner and do not have a central point of control. Interactions are non-linear in nature and contain feedback loops, both positive and negative, each of which respectively either prompts or stifles change. This gives rise to emergent complex behavior, which is exhibited by the [CTCS] and the [HTCS] at a macro level. Van der Watt (2018: 326)

Furthermore, the HTCS and CTCS constantly crisscross a number of other complex systems such as organized crime, labor markets, transportation systems, social networks, and political systems to name but a few. Their respective elements can also be in several systems at once and can connect to or withdraw from those systems. Van der Watt (2018: 336) documented two examples where “internal organs were shared” between the HTCS and CTCS. These include, firstly, a corrupt
police investigator who shared sensitive information related to his investigations with a trafficker and his legal team and, secondly, a human trafficking activist known for “rescuing” young girls from brothels who was later implicated in the sexual assault and re-trafficking of women from brothels in South Africa to other parts of the world. As complex systems, the HTCS and CTCS, therefore, interpenetrate with each other and with a variety of other systems and their environments, which makes a clear distinction of their boundaries very difficult.

Combating Human Trafficking: Embracing the “Whole”

Williams (2009: 423) describes the adversarial relationship that exists between the CTCS and the HTCS as a battle of wits. It is this clash of interests, characterized by Van der Watt (2018) as a constant asymmetrical and non-linear confrontation, where the CTCS can outwit the HTCS through an understanding of and inculcation of complex systems knowledge in response strategies. As a point of departure, it becomes foundational to come to grips with the difference between something (i.e., a system, intervention, or problem) that is “complex” and something that is “complicated.” Cilliers (1998) provides a useful distinction. When a system can be accurately analyzed and understood in terms of its individual elements, it is simply complicated. An example of a complicated system would be a jumbo jet or a computer. These systems, often containing thousands of parts, can be disassembled and reassembled, after which the “whole” of the system can be understood as the sum total of its parts. If one component in the system malfunctions, it is replaced and the system will continue to function as normal. Conversely, complex systems such as the HTCS, the CTCS, and its respective operations cannot be understood just by describing and understanding its different elements. In these systems there are also interactions between the elements of the system, the system and its environment, and the system and its history. Furthermore, these interactions and relationships continually shift and change, leading to a change in the system as a whole (Cilliers 1998). The HTCS and the crime of human trafficking as a process involve multiple and interacting systems of all sorts that crosses international borders and penetrates cyberspace. Reductionist response methods that aim to “cut up” the problem in more manageable parts, with the goal to “solve” or “fix” each part separately, will cause significant harm to an understanding of the patterns and configurations of relationships in the HTCS (see Capra 1996 and Van der Watt 2018).

A reductionist approach to a transnational human trafficking syndicate, for example, may result in the neutralization of some components or role-players in the trafficking network. Others, however, will remain and self-organize with new and emergent properties that continue to operate (Van der Watt and Van der Westhuizen 2017) with impunity. Morgan (2005: 6) refers to such interventions as being “micro-smart” but are in fact “macro-dumb.” Such “either/or” approaches may well work for linear cause-and-effect problems but have very little value when it comes to “both/and” social problems that manifest in a complex “both/and” world. The following are but some actions by the CTCS that can be considered as
reductionist and referred to by Van der Watt (2018: 382) as fruits from the poisonous intellectual comfort tree that ought to be weeded out:

- The explosion of human trafficking awareness campaigns and unapprised financial injections to “stop trafficking” and the concomitant absence of monitoring and evaluation tools which measures how successful these interventions are
- Ill-informed disruptive police actions aimed at “quick wins,” at the cost of complex and labor-intensive intelligence and court-driven investigation strategies more inclined to secure successful convictions, strategic CTCS success, and a higher-level disturbance of HTCS activities
- Impulsive arrests and the flaunting of “successes” in the media as a means to stroke obscured agendas and personal interests, rather than considering how such strategies might in fact constrain CTCS progress (negative feedback) while amplifying HTCS strategies (positive feedback)

Another example of how reductionism and the non-linearity of interactions within the CTCS play out was present in the following case study shared by a shelter manager in the study of Van der Watt (2018: 265):

The most frustrating thing experienced by the shelter manager was after the police dropped off a new victim at night and the following scenario played out:

She’s tired, she’s exhausted, she’s scared, she’s traumatized and she’s hungry, everything you can imagine, very poor image to look at and now the next day she’s picked up at eight o’clock in the morning to go and give her statement...

The shelter manager felt that the demands on the victim to submit a statement were “too quick” because the “girl never came back because she just freaked out.” Understanding that “the statement has to happen,” she emphasized that “it’s not working” and is in fact “insensitive” toward the victim. She explained:

It’s not working for the victims and it’s not working for the shelter in the way we want to...you coming to us then we give you rest, we give you safety, we work on your fears, on your everything, on your trauma, but, no, she has to go...she just sleep one night, she doesn’t get to know anybody at the shelter, and then the next day you say, good luck, bye-bye, all the best, and she goes...she [victim] didn’t come back because she dropped the case right there. She said I can’t do that.

Varieties of lessons are to be learned from the aforementioned scenario which has relevance for a number of other CTCS activities. The strategic best interest of the CTCS must be kept in mind at all times. Role-players cannot continue to be encapsulated in their own private universes where discipline-specific mandates and objectives are pursued at all costs. Nurturing both a conceptual and intuitive awareness of system-wide and whole sensitivity is thus essential if the capacity for seeing deeper and further away is to be created. Here, beginning with the end in mind and visualizing the desired state of affairs most equipped to combat the HTCS constitute a worthy venture. An ecological perspective thus remains vital to ensure
that each actor in the response process remains cognizant of how his or her action either constrains progress of the CTCS (negative feedback) or amplifies it (positive feedback). Harmonious with the definitional elements of the crime, human trafficking must be responded to as a process. Functional relationships, resources, time, planning, and criminal sophistication form part of the “whole” investment made by HTCS stakeholders to perpetrate the crime. At the very least, this investment must be matched by the CTCS if any measure of success is to be achieved.

A complex systems approach to investigative or prosecutorial decision-making demands that some boundaries are to be drawn around a specific system or subsystem of interest (e.g., syndicate, brothel, or criminal enterprise) which, for that specific investigation, will become the “whole.” If this is not done, stakeholders will be left with an unmanageable universe of elements to address. Van der Watt (2018: 383) points out that the decision about boundaries needs to be an informed one. What to include and what to leave out of the system of interest is a strategic decision that will be dictated by real-world realities and limitations such as time, resources, and capacity. The capacity to harness complexity and co-axe solutions from the volatile, uncertain, complex, and ambiguous (VUCA) landscape that characterizes the CTCS and HTCS frequently eludes top-down decision-making processes. Therefore, bottom-up decision-making processes and inputs from stakeholders at the forefront of counter-trafficking activities, and those who occupy multi- and interdisciplinary vantage points and perspectives, must be embraced as a means to encompass a “whole” understanding of a specific system or subsystem of interest.

Boundaries can and should however be reconsidered for each new discussion, problem, or purpose (Meadows 2009: 99). Irrespective of the eventual boundaries drawn around the system of interest, the ecological perspective demands that the chosen system be considered as an open one that will continue to provide energy and information to and imbibe the same from its environment. Embracing the “whole” also applies to all stakeholders as human beings and individuals, whether as part of the HTCS or CTCS, who in and of themselves are complex systems and more than the sum of their parts. Just like victims of trafficking who do not experience harm in “stovepipes” as all their needs are fused into one, so also stakeholders in the CTCS should be considered as wholes which are not only researchers, investigators, social workers, or prosecutors but also mothers, fathers, sons, and daughters who experience stress, threats, injustice, and conflicting relationships as profoundly real. Van der Watt (2018: 384) points out:

A whole pursuit considers that victims’ appearance of compliance and agency may be contingent upon an array of factors and nuances not easily decipherable, whilst dubious investigative decision making on the part of an investigating officer requires a more urgent contemplation than a mere shrugging off as workload issues or a lack of experience and skills. A whole approach to victims of trafficking takes cognizance of the importance of not only sheltering, safety and psychosocial support services but also a validation of cultural and linguistic differences, nutritional needs, general well-being and hope placed in a future state that transcends their current day-to-day realities. These are but some of the constituent parts that consistently interconnect and efforts should be focused to embrace the ‘whole’ that the victims, stakeholders, perpetrators, the CTCS and HTCS make up.
Neglecting to consider the interwoven and relationally bound nature of both the HTCS and the CTCS, and by employing reductionist methodologies as a means to “cut up” and understand elements as self-governing entities, will continue to result in an “archipelago of disconnected data” (Skyttner 2005: 37) that underestimates the complexity of human trafficking. Van der Watt (2014) asserts that numerous challenges will inevitably accost role-player decision-making in the continuum of CTCS efforts. Instead of a mechanical response or rule-based changes to policy and standing operating procedures to cope with difficulties, complex systems thinking imbues the understanding that decisions cannot be made in isolation without considering its reverberating and non-linear effects on the entire response strategy. The battle of wits between the CTCS and HTCS demands new ways of thinking, asymmetrical capacity within bureaucratic organizations, and the ability to visualize the interwoven fabric of all things social and natural. From a complex systems perspective, intelligence and research play vital roles in the disentanglement of HTCS patterns, on the one hand, and the understanding of patterns within the CTCS, on the other. Relationships between entities and activities and the “flow of information and resources in an intra- and inter-relational and dynamic pattern should become the focus of research, intelligence and investigation” (Van der Watt 2018: 397–398).

Summary

The less than favorable record of accomplishment by the CTCS to contain the human trafficking problem is becoming increasingly evident. This chapter underscored a new way of thinking about the manner in which the CTCS engage the HTCS in what represents a battle of wits. Complex systems thinking has the potential to change the way CTCS stakeholders contemplate their role, and how their role and actions impact on the state of the multiple systems they are a part of. As a complex phenomenon that is hard to pin down, human trafficking does not lend itself to one-dimensional interpretations and linear responses. As a confluence of complexities, the problem confounds the social worker, agitates the police investigator, obscures its victims, and piques the curiosity of researchers. As complex systems, both the CTCS and the HTCS are made up of numerous elements that interact in a non-linear and dynamic way. This imbues complexity within the structures of these systems and gives rises to the emergent complex behavior exhibited at the macro level. What effectively boils down to an asymmetrical battle of wits between the CTCS and the HTCS cannot be approached with reductionist methodologies where the ultimate achievement is erroneously considered to be representative of the sum total of all parts and activities seamlessly working together. Rather, fixes have a tendency to fail, people disappoint, unintended consequences do emerge, statistics do not tell the whole story, and “order” in the CTCS is a fleeting reality. Interconnectedness, non-linearity, self-organization, feedback loops, and emergence are but some of the complex systems’ characteristics that must be considered in strategies, day-to-day decision-making, and communications. By understanding the
characteristics of complexity, CTCS role-players are presented with an opportunity to leverage it advantageously in strategic planning and tactical policymaking.

Cross-References

▶ A Comprehensive Gender Framework to Evaluate Anti-trafficking Policies and Programs
▶ Breaking Bondages: Control Methods, “Juju,” and Human Trafficking
▶ Criminal Justice System Responses to Human Trafficking
▶ It’s Your Business: The Role of the Private Sector in Human Trafficking
▶ Multisector Collaboration Against Human Trafficking

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The Failing International Legal Framework on Migrant Smuggling and Human Trafficking

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Abstract

The article observes and discusses the failure of the current international legal framework relating to human trafficking and migrant smuggling. It argues that this framework has failed to provide a solid basis for dealing with these issues and

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that there have been serious consequences due to that failure. It suggests that the legal distinction between migrant smuggling and human trafficking has proven inadequate as a basis for international cooperation and the protection of migrants and victims of trafficking. On the one hand, the complicated legal definition of human trafficking imposed by that framework has been inoperable and has contributed little to the protection of victims of that heinous crime. On the other hand, the criminalization of migrant smuggling has served to justify the criminalization of immigration and weaken the protection owed to refugees. The article deplores the lack of space left in international immigration and criminal justice policies for alternative approaches to these issues and calls for a different contribution from academic research to broaden that space.

Keywords
Human trafficking · Migrant smuggling · Perverse effects · Criminalization · Vulnerable groups · Organized crime · Justice policy · International conventions

Introduction

There are unprecedented demographic shifts underway, and the significance of their impact cannot be underestimated (Harper 2016). These shifts are, among other things, reshaping immigration at the global level. Since the beginning of the seventeenth century, sovereignty and territory were intertwined as states built borders and forged domains of law and authority. Today, according to Charles Maier, the world finds itself awash in fast-changing and deeply conflicting ideas about territory. Globalization, the interdependence of economies, and the emergence of cyberspace have reduced the salience of physical territorial control and weakened notions of sovereignty and citizenship (Maier 2016).

Globalization involves massive flows of goods, services, money, and people. Yet, as the global populist revival is eager to remind everyone, opening up a country to globalization inevitably confronts it with complex challenges. In recent years, every aspect of globalization has come under assault, often leading to a popular backlash against free trade and unrestricted cross-border movements of capital, goods, and people. Across the developed world, attitudes have turned against immigration, especially as waves of Middle Eastern refugees have flooded Europe (Hu and Spence 2017). A perceived erosion of sovereignty and a fear of losing control over national identity, particularly as it relates to immigration, are triggering what Chua (2018) calls “new tribalistic pathologies.” States and international institutions carry the blame for failing to mitigate the negative side effects of these deep and disruptive changes.

The internationalist and globalist international order, of which the norms and legal framework relating to migration, refugee protection, and human trafficking are a small part, is being challenged and eroded. The challenge stems from the unaddressed need to expand and adapt the traditional principles of that international order, including the principles of sovereignty and nationhood, to the new reality of a
highly interconnected world and massive flows of population (Haass 2017). A new international order will inevitably require an expanded set of norms and arrangements. In the age of globalization, the failure of our multilateral institutions to spin effective solutions to mass, irregular, and often involuntary migration and to migrant smuggling and human trafficking may prove to be one of their greatest failures and may well contribute to their eventual demise.

The social and political consequences of such failure are becoming increasingly obvious, including the ways that the issue of migration is rocking the foundations of democracy in many countries. For states, dealing with large movements of population at a time when there is growing opposition toward migrants is quite complicated (Kfir 2017), particularly when the issue is so easily exacerbated and exploited politically by anti-globalization, nativist, and nationalist discourses. It seems that arguments based on reason or evidence, when they are not rejected outright, play a much lesser role than emotions in shaping attitudes toward migrants and refugees and attempts to engage with these fears and attitudes require engaging with emotions and values around which these attitudes are formed (Dempster and Hargrave 2017). Immigration, the human side of globalization, is clearly one of the unresolved challenges of our times.

This article starts by offering some observations on the failure of the convoluted international legal framework that purports, but mostly fails, to govern national responses to irregular or involuntary immigration, migrant smuggling, and human trafficking. It considers the consequences of the states’ growing propensity to criminalize immigration and to rely heavily on the criminalization of migrant smuggling and human trafficking. It notes the lack of space left in the current political context for the development of alternative approaches, and it concludes with a few remarks on the potential contribution of academic to broaden that space.

The Convoluted and Confusing International Legal Framework

Leaving to others to retrace the history of the development of the current international legal framework on the protection of refugees, the control of immigration, and the criminalization of migrant smuggling and human trafficking (Gallagher 2015a; Gallagher and David 2014; Obokata 2015), it may be sufficient here to remark that states have always asserted and protected their sovereign right to determine who could enter their territory. To this day, refugee law is the only legal constraint on state sovereignty in regard to people entering territory (Dauvergne 2014). As a powerful anchor for the international system, state sovereignty remains a core issue around which concerns of migrant smuggling and human trafficking obviously revolve.

In the mid- to late 1990s, international discussions started on the need to control the “illegal trafficking in and smuggling of migrants” by criminal organizations and the need “to address trafficking in women and children” (United Nations General Assembly 1998). At the end of 2000, two supplementary optional protocols to the Convention against Transnational Organized Crime were adopted (also known as the Palermo Convention and Protocols): the Protocol against the Smuggling of Migrants
by Land, Sea and Air (which came into force on 28 January 2004) (hereinafter the “Human Trafficking Protocol”) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (which came into force on 25 December 2003) (hereinafter the “Migrant Smuggling Protocol”). In addition, since the adoption of these protocols, other regional treaties and treaty-like instruments have been adopted, including the 2002 South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the 2002 Council of European Union Framework Decision on Trafficking Human Beings, and the 2005 European Convention on Action against Trafficking. The latter essentially followed the definition of the Palermo Human Trafficking Protocol. This is what is referred to, in this article, as the international legal framework, and it is important to note that, in shaping the scope of that framework, states were careful to protect their sovereignty and their authority to take appropriate measures to protect their territory and national legal framework (Articles 5 and 11(6) of the Convention against Transnational Organized Crime; Article 7 of the Migrant Smuggling Protocol) (United Nations Office on Drugs and Crime 2004).

The main stated interest behind that legal framework is to promote international cooperation (Article 1 of the Convention, Article 2 of each of the two protocols). The foundation of that framework rests on two main strategies representing several compromises that emerged during the negotiation that preceded the adoption of the framework (for more details see United Nations Office on Drugs and Crime 2006). These strategies were as follows: (1) the introduction of legal distinction between the smuggling of migrants and human trafficking and (2) the criminalization of migrant smuggling, human trafficking, and related conducts as the basis for the harmonization of national criminal definitions of these conducts and improved international cooperation in criminal matters.

The first strategy was based on the assumption that it would be feasible and practical for states to reflect such a distinction in their laws and practices. More importantly, it was based on the belief that it would be possible, in practice, to reserve the claim of victimhood to victims of human trafficking and exclude from it victims of various forms of violence and exploitation at the hands of migrant smugglers. There was also the idea that it should be possible to protect borders by confronting and combatting the criminals involved in the smuggling of migrants while protecting the “innocent victims” of human trafficking and the rights of immigrants.

The second strategy was also based on several assumptions, including assuming that the criminalization of conducts related to the smuggling of migrants and human trafficking would help harmonize national criminal definitions of these offences and thus facilitate international cooperation; the idea that criminal organizations are primarily responsible for migrant smuggling and human trafficking activities; the idea that it would be possible to criminalize the smuggling of migrants without encouraging the criminalization of immigration or endangering immigrants; and the assumption that states would find ways to criminalize and prevent migrant smuggling and human trafficking without indirectly criminalizing asylum seeking, compromising the existing international refugee protection regime, or subtracting themselves from their international obligations with respect to refugees. These assumptions, as will be discussed, neither stood the test of time nor a confrontation with reality.
Criticism of the international legal framework is nothing new (e.g., Gallagher 2009; Hattaway 2008). However, 15 years or so after that framework came into force, it is time to acknowledge that it has mostly failed to deliver on its promises. Evidence of that failure is compelling, but the shortcomings of that approach are also part of the broader international failure to address the pressing challenges posed by mass immigration, conflict and insecurity, and organized crime. It is a failure based in part on the myopic, ahistorical, narrow legal, and instrumentalist view of immigration control that shaped that international legal framework. It has also failed to adapt to rapid changes in patterns of immigration. The context has changed, the patterns of migrant smuggling and human trafficking have evolved, the situation is fluid, but the framework is not sufficiently flexible to adjust to the rapid evolution of the problem.

It has been argued that the adoption of an international legal definition of trafficking in persons was a victory because it provided the basis for a meaningful normative framework, even if it included a number of vague and undefined terms that led to expansive interpretations of trafficking that went well beyond the initial goals of the drafters (Gallagher 2015a).

The following discussion focuses on some of the factors behind the failure of that international legal framework. But before that, one must acknowledge that the best way to assess the value of an approach or a strategy is to consider carefully to what extent it has achieved its objectives. In the case of the international legal framework in question, we ought to look at whether it has successfully been implemented, whether it has led to more effective international cooperation, whether it has affected or weakened the transnational criminal organizations involved, and whether it protected victims of human trafficking and victims of exploitation and violence at the hands of criminal migrant smugglers. One should also look at the unintended (or presumably unintended) consequences of that particular approach.

The Failure of a Legal Fiction

The distinction between human trafficking and migrant smuggling is a “strange legal fiction” (Gallagher 2009: 792) The idea that such a fiction could actually support effective interventions to control migrant smuggling and human trafficking, while protecting the innocent people involved, turned out to be nothing more than a flightless idea. Like large flightless birds, it got fat and complicated, but it could never fly. In the end, whether in policy, in practice, in the media, or more generally in the minds of people, the ineffectual distinction led to the eventual conflation of people smuggling and human trafficking (Coyne 2017a, b). In fact, one could argue, as did Tinti and Reitano (2016), that conflating human smuggling with the much less morally ambiguous activity of human trafficking uses the moral disapproval of human trafficking to gain support for policies that are really intended to stem migrant and refugee flows.

A distinction adopted essentially as a politically expedient accommodation to bring as many countries as possible into the fold, by allowing them to subscribe to either the border protection or the victim protection scheme, or to both, ended up
shaping future actions and national laws in a way that had not been anticipated. It also provided cover for countries that were unwilling to address these issues, except under their own terms. Unfortunately, many of the resulting national legal frameworks are nearly unenforceable, are plagued with complicated evidentiary requirements, and are applied in ways that are to the detriment of the rights and safety of migrants and human trafficking victims involved. The border control emphasis inherent in the two protocols provided states with a justification for intensifying broadly based efforts to prevent the arrival or entry of unauthorized noncitizens (Hattaway 2008).

In the case of human trafficking laws, the complex definition of the key elements of the offence has generated a host of complex evidential issues. According to a recent review, these evidential issues are among the most pressing problems that criminal justice systems face in investigating or prosecuting human trafficking (United Nations Office on Drugs and Crime 2017a).

With respect to migrant smuggling laws, a recent report of the United Nations Office on Drugs and Crime (2017b) notes that, in criminalizing migrant smuggling as required by the Smuggling of Migrants Protocol, many states had not included a financial or material benefit element, despite it being a key component of the international definition. That report also notes that this “raises questions about the impact that different approaches to the definition may have on efforts to mount effective and coordinated responses to the transnational crime of smuggling of migrants” (United Nations Office on Drugs and Crime 2017b: 3).

The distinction between the two main types of crimes may have made some sense in political and legal terms, but it did not provide a strong basis for prevention, investigation, or prosecution. It may have grossly underestimated the phenomenon of mixed migration and the challenge it poses for immigration control and the fight against human trafficking.

Today, the media and official spokespeople never hesitate to conflate irregular migration, migrant smuggling, and human trafficking. The terms are now used almost interchangeably. Yet, media coverage is vital to shaping people’s opinions on migration, the plight of refugees and asylum seekers, and victims of human trafficking. For instance, trends in media representations of human trafficking reflect a failure to distinguish the substantial differences between moving people in order to exploit them and facilitating irregular or involuntary migration (Denton 2010). A new terminology that conflates various issues, such as migration, irregular migration, migrant smuggling, and human trafficking, has become a challenge for the media trying to present a balanced reporting on migration: “the language of reporting is often laced with hate-speech and loose language, talk of ‘waves’, ‘invasions’ or ‘tides’ and ignorance of the correct terminology to describe migrants, refugees, displaced persons and their status” (ICMPD 2017: 5).

The contents of news articles on human trafficking are dominated by official views which typically ignore the finer legal distinctions between migrant smuggling and human trafficking and often reduce the matter to a false issue of the apparent consent by victims. It is a language that typically portrays irregular migrants as a threat and victims of human trafficking as minors and females, “reflecting prevailing
assumptions regarding ideal victimhood, where some individuals are viewed as more ‘legitimate’ and worthy of assistance than others” (Sanford et al. 2016: 153). The contemporary discourse of human trafficking control is increasingly dominated by anxieties about unwanted migratory flows from the Global South to the North; it is the political discourse of trafficking-as-immigration crime (Lee 2014).

As Carling et al. observed, “(...) it has become increasingly apparent that the legal distinction between migrant smuggling and human trafficking does not always stand in the real world” (Carling et al. 2015: 4). The distinction between human trafficking and migrant smuggling, which is never clear-cut, is blurred even further by the dominant focus on immigration control and border protection. In practice, it is often unclear whether someone is being trafficked or smuggled, as deception, exploitation, and other abuses are not always apparent at the time when an individual is moving from one country to another. Irregular migratory flows are not comprised of clear-cut categories of migrants. The law may posit a distinction between illegal migrants, victims of human trafficking, and refugees, but in practice, migrant smuggling, facilitating of the movement of refugees, and trafficking in persons often overlap. Given the clandestine nature of these activities and the complexities of migration flows, it is difficult to know to what degree certain smuggling and trafficking organizations overlap and merge their operations with one another (Jokinen 2016).

Officials explain that they need to sort out among hundreds of migrants and refugee claimants arriving regularly on their soil between irregular migrants, migrant smugglers, victims of trafficking, violent radical individuals, and would-be terrorists. The complex dynamics of mixed migration makes it almost impossible for those receiving immigrants to distinguish in any meaningful way between refugees and migrants (Reitano 2017) and between smuggled migrants and victims of human trafficking (Ventrilla 2017). Countries have been known to renege on their international obligations vis-à-vis refugees on the basis that they do not have the means to do proper background checks and proceed with that kind of “triage.”

The Impact of the Criminalization Approach

What did the criminalization of migrant smuggling and human trafficking really achieve? Were there any perverse effects of that approach?

Smuggling is a thriving business because there is a pressing need for legal avenues for the movement of people, but these legal options are very limited. Barriers to mobility and interdiction schemes are part of the problem (Achilli 2015; Sanchez 2017). Migrant smuggling arises out of restrictive migration (Triandafyllidou 2018); barriers to mobility force migrants to rely on clandestine mechanisms, even if this involves significant risks (Achilli 2015). The securitization of borders perversely empowers, strengthens, and enriches smugglers (Reitano 2017). It also increases the chances that smuggling becomes predatory (Reitano 2017). A purely criminal justice response to migrant smuggling tends to strengthen the very industry it is trying to undermine (Tinti and Reitano 2016).
Treating all migrant smugglers as criminals, assuming that they are all part of criminal organizations, and blaming them for tragedies that arise from migration enforcement and control do not paint an accurate picture of this complex phenomenon. It also obscures the role played by states in creating the conditions that lead to the explosion of the smuggling industry. The role that organized crime plays in human trafficking is not always clear (Viuho 2018). The international narrative may emphasize the criminality and abusiveness of smugglers, but in reality, particularly in the case of refugees, “smugglers are a crucial lifeline to help people who are vulnerable to move when there are barriers or obstacles preventing them from doing so” (Reitano 2017: para 8). Some research shows that irregular migration is not necessarily under the control of organized crime and often reflects long-standing social relations and migration traditions (Achilli and Sanchez 2017; Ayalew 2016; Sanchez 2017). In fact, some research indicates that the relationship between the smugglers and the migrants is far more complex and is often rich in solidarity and reciprocity and grounded in local notions of morality (Achilli 2018). In Ethiopia, for example, the facilitation of irregular transits by migrants themselves emerges as a system of refugee protection from below (Ayalew 2018). Migrant asylum seekers and labor migrants are often central players in the facilitation of clandestine journeys of others as they have firsthand knowledge of the process and the routes (Achilli 2015).

The preceding discussion considered the impact of the current international legal framework and its focus on the criminalization of migrant smuggling and human trafficking. The following considers the implementation of the framework, whether the approach has effectively improved international cooperation in addressing these issues, the effect the approach has had on law enforcement, and whether the approach has somehow actually contributed to preventing and controlling these activities.

Incomplete Implementation

The success of an international legal framework lies not in its adoption, as some authors may seem to suggest (e.g., Attard 2016), but in its implementation. By that measure, the success of the international legal framework on migrant smuggling and human trafficking can be questioned. The implementation of the international legal framework relating to migrant smuggling and human trafficking has proved slow, difficult, and often problematic (Dandurand and Chin 2015). It remains incomplete.

Ineffective International Cooperation

The main purpose of the Convention against Transnational Organized Crime and its protocols is to foster and support international cooperation. There is little evidence that the provisions for formal international cooperation contained in the Convention and its protocols have been widely implemented beyond a few states (Shaw 2018); in fact the usefulness of these cooperation “tools” seems to have been limited to informal rather than formal cooperation (Boister 2016).
Numerous practical, legal, and political factors hamper international cooperation in criminal matters. They include differences in cultural and legal traditions, languages and political orientation, but also the jealous protection of state sovereignty, the absence of enabling legislation, the absence of channels of communication, divergences in approaches and priorities, and corruption of public officials (Dandurand 2012). By most accounts and in most parts of the world, the existing cooperation regime remains very weak. International cooperation has not grown enough to keep up with the pace of change in patterns of transnational crime; the movement of people, goods, and criminals; and the growing technological sophistication of criminal groups (Dandurand 2012). Furthermore, measures adopted to combat organized crime or facilitate international cooperation can carry unintended detrimental effects on the situation and the rights of those who remain vulnerable to the tactics of criminal groups (Dandurand and Chin 2011).

The situations in which states find themselves with respect to the implementation of the international legal framework related to immigration control, migrant smuggling, and human trafficking often tend to be asymmetrical. States do not necessarily share the same crime control priorities. There is also a fundamental asymmetry in the means and capacity of states to address transnational criminal activities and to cooperate internationally. Consider, for example, the fact that developing countries typically find it difficult to take effective measures to prevent illegal immigration and the smuggling of migrants, because of their dependency on foreign remittances and the fact that large segments of their population aspire to emigrate (Dandurand 2012). Yet, they are under pressure from “destination countries” to curb irregular immigration, the smuggling of migrants, and trafficking in persons.

In recent years, international cooperation has focused on immigration management and has even led states to externalize the protection of their borders and the control of migrant smugglers. For example, the European Union (EU) and its member states are seeking possibilities to contain migrant movements before they reach the EU’s external borders and have intensified cooperation with third states in border protection and management (Vorrath 2017). All this is leading to the paradoxical situation in which the EU at once guarantees asylum seekers the right to protection while systematically trying to prevent them from reaching the EU in the first place (Tinti and Reitano 2016).

**Implications for Law Enforcement**

With the large-scale movement of people within and across borders come new and difficult challenges for law enforcement (Taylor et al. 2013). In the context of globalization and states’ efforts to maintain control over a key aspect of national sovereignty, police are increasingly playing a role not only in immigration enforcement but also in policing noncitizens and suspect populations and “policing crimmigrants” (Bowling and Westenra 2018; Weber 2013). States saw an opportunity to mobilize the criminal justice system into enforcing borders and the repression of illegal immigration. In too many instances, the repression of illegal immigration turned into the repression of immigrants, and border protection and immigration
control became a thin veil for discrimination and racism. In others, the conflation of migrant smuggling and human trafficking leads to various forms of gender-based and racial or ethnic forms of discrimination (Andrijasevic 2016).

People smuggling and human trafficking are often quite closely related. Both can involve exploitation, fraud, and human rights abuses. Smugglers often turn out to be traffickers (Tinti and Reitano 2016). From a law enforcement point of view, it is important to understand how they differ, how they relate to each other, and how each may contribute to the other. When human trafficking is confused with or reduced to the smuggling of migrants, it triggers conflicting law enforcement strategies with potentially dire consequences for the rights of those involved. It is clear that much of the existing border protection and immigration control apparatus was put in place to prevent illegal migration or unwanted immigrants from entering a country. In other words, it was designed to protect borders, not people (Dandurand 2017). Nevertheless, the claim is often made that stronger border control measures are required to prevent human trafficking. Alternatively, there are calls for better coordination between governmental approaches to immigration enforcement and human trafficking law enforcement (Loftus 2011). There are also calls for more attention to be paid to the implications for the police and criminal justice institutions of their involvement in migration policing (Weber 2013).

No Measurable Results

Obviously, one must also ask whether states have been able to demonstrate that the current approach has been effective in curbing the problem of migrant smuggling and human trafficking. Has it produced significant results?

It would be hard to conclude that the criminalization approach has actually been effective. On the contrary, all evidence points to the opposite, with the ever-growing prevalence of the problem of human trafficking and the lack of effective prosecution of this crime (United Nations Office on Drugs and Crime 2016), as well as the galloping growth of the migrant smuggling industry (and estimated 2.5 million cases in 2016) (United Nations Office on Drugs and Crime 2018). The criminalization and prosecution of migrant smuggling does not seem to be an effective deterrent. For example, a review of human smuggling prosecution practices in Australia did not find any evidence to suggest that the prosecution of people smugglers in Australia had any measurable deterrent effect on those most commonly engaging or likely to engage in migrant smuggling activities (Schloenhardt and Craig 2016). Identifying the reasons why such measures have not deterred smugglers may be a worthy focus on future research.

More telling perhaps is the inability or unwillingness of States Parties to the Convention and the two protocols to agree on a mechanism that might hold each of them accountable to others for their efforts or lack thereof. That is perhaps the most significant evidence of the failure of the whole international legal framework (Shaw and Stanyard 2018). It certainly can be argued that, without an effective system of review, “the convention may shrink into irrelevance, with no checks on what states have achieved in terms of meeting its provisions” (Shaw 2018: para 3).
**Perverse Effects of the Criminalization Approach**

On the other side of the same balance sheet, one may ask whether there have been unintended adverse effects of the criminalization approach. Some of those effects are now becoming much clearer. They include the consequential criminalization of asylum and humanitarian assistance, the criminalization of immigration, and the increased vulnerability of migrants, refugees, and human trafficking victims.

**Criminalization of Asylum and Humanitarian Assistance**

The separation of refugee law and immigration law is hard to maintain and is resisted by states seeking greater control over refugee movements (Dauvergne 2014). It is also resisted by individuals who may not otherwise be able to secure immigration status and rely instead on asylum. In the end, it leads to the criminalization of asylum seeking (Dauvergne 2008) and the expansion of criminal law within refugee law (Dauvergne 2014). That expansion is harmful to individuals seeking asylum, particularly because the criminalization of immigration and asylum seeking is in stark contrast with a number of criminal law principles (Aliverti 2012; Zedner 2014) and is affected in a manner that does not always extend to foreigners (immigrants and refugees) the same due process protection that are offered to nationals.

It is also important to note that the broad criminalization of migrant smuggling and the inclusion of various facilitation offences, regardless of the circumstances, have often resulted in the criminalization of humanitarian assistance to refugees and all those fleeing from conflict and other disasters (Allsopp 2016; Allsopp and Manieri 2016).

The exercise of penal power at the border serves to settle claims on access to material and symbolic resources: “It seeks to preserve these precious goods for those with the right set of attachments, identities, and citizenship” (Barker 2017: 447).

**Criminalization of Immigration**

The international legal framework has allowed new legislative constructs that have criminalized irregular migration and those involved in it (Coyne 2017). In the current international framework, states reserve the right to criminalize immigration; see Article 6 (4) of the Migrant Smuggling Protocol: “Nothing in this Protocol shall prevent State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.”

As such, several border crossing infractions are being criminalized, such as unlawful entry and reentry, overstaying, and attempting to enter with false documents, among others (Aliverti 2012). In addition, a range of new criminal offences that criminalize other related conducts, including concealing, harboring, shielding, aiding, abetting, and employing, are being introduced. This is perhaps part of a larger pattern of using the criminal law to enforce regulatory regimes, but some have argued that the
criminalization of immigration results in the creation of offences that breach the fundamental principles of criminal law (Zedner 2014).

It has been observed that immigration strategies that rely on the criminalization of migrants and migrant smuggling ultimately undermine anti-trafficking objectives (Marinova and James 2012). Such strategies have also justified the so-called zero-tolerance policies regarding unauthorized immigration, the detention and punishment of migrants, and the separation of migrant children from their parents as a form of deterrence. These are only a few of the issues related to “crimmigration” (Bosworth et al. 2017; De Giorgi 2010; Stumpf 2006; Bowling and Westenra 2017).

Increased Vulnerability of Migrants and Victims

The dominant conceptualization of human trafficking regards it mostly as a form of organized crime linked to an illegal migration problem that calls for law enforcement and immigration control interventions (Lee 2011). Efforts to address the problem of trafficking within that framework seem to have the unintended effect of reinforcing migrants’ vulnerability to exploitation (Chacón 2010).

For example, a review of US law on immigration and human trafficking by Loftus (2011) led him to conclude that, despite measures designed to protect victims of human trafficking, human trafficking laws often conflict with immigration enforcement policies. Because trafficking laws and immigration laws have developed in isolation, inconsistencies exist that result in inadequate protection of human trafficking victims (Loftus 2011). This has serious consequences for irregular migrants and trafficked victims (Lee 2011; McAuliffe and Laczko 2016). In particular, it is quite clear that young people who migrate across international borders are particularly vulnerable to exploitation by traffickers while traveling to or upon arrival at the destination (Rafferty 2013).

In some ways, the efforts to crack down on illegal migration might actually facilitate trafficking. First, efforts to crack down on illegal migration in the workplace have left undocumented migrants more vulnerable to exploitation (Chacón 2010). At the same time, efforts to prosecute large numbers of first-time illegal entrants can overwhelm resources and result in diverting law enforcement resources from more serious crimes, including human trafficking, in favor of securing thousands of easy plea convictions (Chacón 2010). Increased border enforcement does not stop the flow of unauthorized migration or actually prevent human trafficking but creates new opportunities for smugglers to exploit migrants and increase their profits.

When examining immigration enforcement raids in the United Kingdom and their effects on the labor market, conditions of work, and the local community, Bloch et al. (2015) observed that the raids and the accompanying sanctions against employers had the consequence of creating fear, suspicion, and an increasingly exploitable labor force. Both documented migrants and employers adopted strategies to escape attention and minimize the risk of detection.

It is difficult to assess how much impact the international legal framework has really had on national laws. The incorporation of the Palermo Protocols’ provisions into national law has proven more difficult than anticipated (Dandurand 2012).
Way Forward

In spite of its many flaws, the international legal framework, perverted as it is, remains the only one that we have, and it is unlikely to be renegotiated in either the current context of international criminal policy or human rights policy. We should be concerned that much of the dominant discourse, in academia and in policy circles, seems to be unlinked to the effects of globalization and what is possibly the greatest issue of our time: immigration. A different way of thinking and communicating about these issues is needed to overcome the current “policy paralysis” of immigration regulation, as Dauvergne (2016: 7) put it. Casting forward alternative approaches will require something new. The present discourse around issues of immigration is too easily reduced to its absurd expression, that of a security concern.

In contrast with many other policy areas in our post-globalization world, migration control continues to be led at the national level. To push beyond the impasse, governmental leadership and innovation must prevail, and the failings of the criminalization approach must be documented. The human rights arguments in favor of a rights-based and more humane approach to migration control and the protection of refugees appear to be losing some of their persuasive power, even as the international order is being reinvented. In a political landscape dominated by economic and nationalist rhetoric, there is little space remaining for discussions around multiculturalism, global equality, and peacebuilding, all of which are aspirations that once lurked at the edges of migration analysis and perhaps form part of the long-term solutions to migrant smuggling and human trafficking. These discussions need to be revitalized.

Academic Research

Too much of the academic research and literature is caught in a definitional quagmire and a state of conceptual hesitation. It remains fragmented and unable to truly inform either the public debate or policy making. Academia’s contribution can no longer lose itself in technicalities and fruitless debates. It must include vigorous participation and engagement in the public realm in order to help reduce as opposed to add to some of the prevailing confusion about the nature of the problem, some of its intractable aspects, some of the inevitable conclusions to be drawn from our past experience, and some of the new approaches to be explored.

It should be quite possible and useful for academic research to re-problematize the concepts on migrant smuggling and human trafficking and to redefine the issues in terms of the distinct problems of facilitating the necessary flow of people across the world, the facilitation of irregular migration, slavery, and the criminal exploitation of individuals whether they are immigrants or not.

The facilitation of irregular migration has been primarily articulated as a violent, exploitative practice under the control of transnational crime in a fashion often plagued with ahistorical, state-centered articulations of class, race, and gender. Furthermore, the language of crisis, crime, violence, and terrorism that is
often present in migration discourses has facilitated the surveillance and control of specific geographic locations and bodies.

The criminalization of immigration and migrant smuggling has certainly given birth to a new criminology of mobility (Bhui 2014; Bowling 2013; Pickering et al. 2014) and may certainly ponder the role of academic scholarship in thinking about the harms produced by the punitive border (Bowling 2013). Academic research must seek to create a space for active, organized, and strategic reflection and research on irregular migration and clandestine transits and their controls. It must help define alternatives to the criminalization of unauthorized migration (Leerkes 2016).

**Conclusion**

While attempting to reassert their waning sovereignty in the face of globalizing forces, states continue to experience considerable challenges in dealing with irregular or involuntary migration, migrant smuggling, and human trafficking. Criminalization may have seemed like a logical solution, but the negative consequences of such an approach are considerable. Left with few immediate alternatives to that approach, it is time to acknowledge the failure of the current international legal framework on migrant smuggling and human trafficking. The contemporary landscape within which the international framework functions has changed, patterns of migrant smuggling and human trafficking have evolved, and the situation continues to be fluid, yet the framework is not flexible enough to adjust to the rapid evolution of the problem. In addition, many of the national laws, from which have flowed from the international legal framework, are plagued with complicated evidentiary requirements, are applied in ways that are to the detriments of the rights and safety of victims, and have failed to deter offenders. Yet, states seem to be deeply committed to that approach, and there is a deplorable lack of space in international immigration and criminal justice policy forums for alternative approaches to emerge and for breaking the current policy gridlock. Acknowledging the failure of the current international legal framework is only a beginning. To move forward, academic inquiry must re-problematize the concepts of migrant smuggling and human trafficking and contribute to renewed discussions about human rights-based approaches to immigration and the protection of migrants against abuse and exploitation at all levels.

**Cross-References**

- Combatting Trafficking in Human Beings: A Step on the Road to Global Justice?
- Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses
- Human Trafficking: An International Response
Human Trafficking and Migration: Examining the Issues from Gender and Policy Perspectives

Protection of Migrants Against Labor Exploitation in the Regulation of Migration in the EU

Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking

References


ICMPD (2017) How does the media on both sides of the Mediterranean report on migration? - a study by journalists, for journalists and policymakers. International Centre for Migration Policy Development, Vienna.
Psychological Care and Support for the Survivors of Trafficking

Irina Churakova

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Abstract

The chapter draws upon the author’s experience as a counselling psychologist working with survivors of human trafficking at the International Organization for Migration Rehabilitation Centre (IOM RC) in Moscow, Russia. This was the first rehabilitation center created to address the psychological care and support of survivors of trafficking in the Russian Federation. The European Commission and the US Government funded the project. Psychological rehabilitation of human trafficking survivors at the Centre is facilitated through psychological assessment, daily monitoring, and providing individual and group psychological counselling. These tasks are performed in a context that frequently presents multiple ethical and professional challenges that can put counsellors at risk of malpractice or burnout. This chapter explores psychological characteristics of the survivors taking into account the fact

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that most are adolescents and young adults and describes the program of psychological care and support offered at the IOM RC. The chapter further explores the counsellor-survivor relationship, roles of, and special ethical and professional demands experienced by counselling psychologists working in this service setting to promote the psychological care and support of survivors. The chapter concludes with recommendations on effective and ethical practice, such as acting in the best interests of the survivors, using careful deliberation and development of the counsellors’ questioning skills, and attaining to the counsellors’ psychological well-being.

**Keywords**

IOM · Sex trafficking survivors · Counselling psychologist · Professional challenges · Ethical behavior · Preventing burnout · Care providers

**Introduction**

Risk factors for mental and sexual health disorders of women exposed to trafficking for sexual exploitation have been documented in a number of international studies. An increase in the risk of mental disorders is caused by a number of reasons, including violence before and during trafficking, restrictions of freedom and difficult living and working conditions at the exploitation location, as well as a lack of social support and unmet social needs after release (Abas et al. 2013; Kiss et al. 2015; Kissane et al. 2014; Le 2014; Ottisova et al. 2016; Tsutsumi et al. 2008; Varma et al. 2015; Zimmerman et al. 2006).

The damage of mental health and psycho-emotional status to victims of sex trafficking is enduring; many researchers report slower decrease of the severity of the diagnosed disorders several months after release (Abas et al. 2013) and the slower decline in symptoms compared to physical health (Zimmerman et al. 2006).

The author of this chapter identified a need for further research on the ways sex trafficking affects mental health to elaborate rehabilitation programs for the purpose of effective intervention and acceleration of recovery. Also, studies are needed to test effectiveness and identify adequate psychological support programs to restore and maintain survivors’ mental health. The functioning of the International Organization for Migration (IOM) Rehabilitation Centre (RC) was aimed at solving these problems.

**Establishment and Purpose of the IOM RC**

The IOM RC was founded in April of 2007 in Moscow, Russia, for the purpose of giving medical and psychological assistance to survivors of human trafficking before they return to their home region and/or family. This is the first rehabilitation center of its kind in Russia. In accordance with the law of the Russian Federation, the Centre can only accommodate individuals of legal adult age (18) and/or minors
accompanied by adults. One of the main principles of assistance at the IOM RC in the Russian Federation is the principle of equal opportunity in receiving aid. Accordingly, in line with international standards, the assistance to the survivors is offered regardless of sex, age, or religion (IASC 2014).

Each survivor is offered the same standard set of services:

- Welcoming at the airport or point of arrival.
- Provision of temporary housing in the rehabilitation center at IOM Moscow.
- Provision of professional medical assistance and psychological consultation, as well as consultation on social and legal issues in the rehabilitation center.
- Organization of repatriation to place of origin in Russia or another country: restoration of the ID documents, buying the tickets, etc.
- Monetary or material assistance for the duration of the rehabilitation/repatriation.
- Referral to local NGOs for medical and psychological consultation outside the RC.
- Detailed pre-integration assessment of survivors based on a questionnaire developed by IOM and establishing of a specialized integration plan for each assisted case.
- Reintegration financial assistance, i.e., assistance aimed at the facilitation of the return process and at the achievement of a normal life for the survivors.
- Arrangement of cultural visits in the city, if survivors wish to venture outside of the center. However, survivors are not encouraged to leave the center unaccompanied.

Psychological Help to the Survivors

Psychological care and support of survivors of trafficking at the IOM RC aim to address survivors’ psychological needs and provide opportunities for a better future. In the atmosphere of psychological and physical safety at the center, the staff works on stimulating survivors’ psychological, spiritual, and other resources by drawing on their unique life experiences, creativity, power of logical reasoning, and motivation. Staff at the RC provide comprehensive support to survivors while acknowledging that many of the difficulties staff and survivors encounter are part of survivors’ long healing journey. During these processes, counselling psychologist staff faces notable professional challenges. Staff draws on IOM guidelines on the ethical treatment of victims of trafficking to ensure the best interest of each individual is considered throughout the provision of services (IASC 2014).

Characteristics of the Survivors

A survey conducted by the author provided summary information about female survivors served at the RC and their experiences (Churakova 2014). The survey was part of a case-control study on mental health of 78 sexually exploited
females, who accessed NGO post-trafficking support services at the IOM RC from May to December 2007. The author conducted 280 individual and 51 group counselling sessions (trainings) with the survivors. Mental health was assessed using the Spielberger Anxiety Scale (anxiety), the Beck Depression Inventory (depression), and the Clinician-Administered PTSD Scale (post-traumatic stress disorder). All women surveyed had been trafficked for work in the sex industry, though none of them had actually planned to work in the sex industry. Instead, similar to the experiences of many survivors of human trafficking, their traffickers had promised them opportunities to improve their economic situations with jobs such as waitresses, cleaners, and baby-sitters, either at home or abroad (Ottisova et al. 2016; Perry and McEwing 2013; United Nations 2014). Traffickers preyed in particular on young women (see Table 1).

Indeed, the majority of survivors surveyed at the RC (79.5%) indicated that they had first been trafficked before they reached 21 years of age. Many of those surveyed had come from difficult family situations. Some (6.4%) had run away from home and ended up in vulnerable situations, which exposed them to sexual abusers and traffickers. Some of the survivors (1.3%) were sold to traffickers by their relatives. Most of the women who were surveyed at the RC reported that their experience of being trafficked had lasted for a little over a year. The information about IOM RC location was kept closed from public for safety reasons as the guidelines of this project demanded. Despite efforts to advertise the RC among the interested non-governmental organizations, most survivors came to the RC after being referred by IOM missions (63%) in this country or abroad.

Table 1  Information about female survivors served who completed survey ($N = 78$) at IOM RC (Churakova 2014)

<table>
<thead>
<tr>
<th>Age when first trafficked</th>
<th></th>
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<tbody>
<tr>
<td>15–17 years</td>
<td>25.6%</td>
</tr>
<tr>
<td>18–20 years</td>
<td>53.9%</td>
</tr>
<tr>
<td>21–25 years</td>
<td>12.8%</td>
</tr>
<tr>
<td>26–32 years</td>
<td>7.7%</td>
</tr>
<tr>
<td>$M \ (SD)$</td>
<td>19.6 (3.43) years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Duration of victimization</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0.5 year</td>
<td>19.2%</td>
</tr>
<tr>
<td>0.5–1 year</td>
<td>55.1%</td>
</tr>
<tr>
<td>1–2 years</td>
<td>19.2%</td>
</tr>
<tr>
<td>2–3 years</td>
<td>6.4%</td>
</tr>
<tr>
<td>$M \ (SD)$</td>
<td>1.22 (0.67) years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How survivor was recruited to rehabilitation center</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Law enforcement</td>
<td>13%</td>
</tr>
<tr>
<td>IOM missions</td>
<td>63%</td>
</tr>
<tr>
<td>NGOs and other referrals</td>
<td>24%</td>
</tr>
</tbody>
</table>
Psychological Characteristics of Adolescents and Young Adults

Given that most of the survivors served at the RC were adolescents and young adults, and young age tends to be a risk factor for being trafficked (Perry and McEwing 2013), the psychological characteristics of adolescents and young adults are often relevant to the psychological care of survivors of human trafficking. According to Eric Erikson’s still influential theories of psychological development, the adolescent and young adult are struggling to attain, and perhaps more important, to retain a sense of identity as well as resolve intimacy and isolation issues. Psychological problems for the young adult from age 18 to 25 years are generally concerned with personal difficulties occurring in relation to family and friends, the perception of the world, and around attitudes to their intimate relationships, work, and social life (Chapman 2013). The complex psychological trauma typically experienced by survivors of human trafficking has strong negative influence on the survivors’ sense of identify and ability to love and connect to close others (Countryman-Roswurm and DiLollo 2017). These problems, when they occur, can be characterized by feelings of anxiety or tension, dissatisfaction with their own behavior, excessive worries about minor problems and body image, and a sense of failure to meet desired goals and ambitions in life. Consequently, these feelings and worries, characteristic of adolescents and young adults, are to be addressed at counselling sessions; the main issues of those are:

- The stormy and peaceful transitions in the individuation processes. As a rule, the survivors had had little opportunity to reflect on and develop an understanding of themselves, their feelings and emotions, and the challenges they had experienced.
- Problems of separation – many survivors had trouble developing independence. For example, many survivors had difficulty making personal decisions for themselves or their children without the approval of family members.
- Difficulty establishing a work pattern either in education or employment. Some survivors had not finished high school; others could not find a regular job and frequently changed temporary working positions.
- Concepts of success and failure. Most survivors viewed success as making money rather than personal development, social status, happiness, or psychological well-being. Survivors tended to perceive themselves as failures.
- Inability to develop intimate relationships (Cooper 2003). Many of the survivors underestimated the value of marriage and the family, because they had difficulty trusting other people, including family in intimate partners.

Counsellor-Survivor Relationship

As discussed above, adolescent and young adult are struggling to attain and retain a sense of identity as well as resolve intimacy and isolation issues, but, unfortunately, psychological trauma of human trafficking negatively effects the survivors’ sense of identify and causes their distrust and inability to build connections in intimate
relationships, work, and social life. Challenges that victims of human trafficking face include experiences of isolation, psychological manipulation, dependence, and resulting mental health problems (Pascual-Leone et al. 2017). So the counsellor-survivor relationship is of crucial importance because it forms the basis for restoring a sense of trust in others and service providers generally (Contreras et al. 2017). Nevertheless, given that the psychologist is in a position of authority, this relationship is characterized by a power imbalance. This imbalance often causes survivors to be reluctant to ask questions, voice their opinions, question a practitioner’s opinion, or make their own decisions regarding their future. For trafficked persons, their respect for the professional person may be reinforced by their feelings in relation to persons in authority which developed when they were under the control of their traffickers. In addition, it is not uncommon for individuals receiving assistance to believe that their well-being, even their life, may depend on unconditional acceptance of the suggestions of service providers, the aim to please them, or not to cause them problems, so that compliance and good behavior may ensure continued assistance (Contreras et al. 2017).

Given the essential nature of the relationship, paired with the potential for power imbalance, counsellors should take care not to adopt an authoritative or commanding tone, but rather an informative and reassuring one. They should use language and terminology that will be understood by the survivor and should regularly encourage and reinforce the survivor’s self-assessments and opinions. In addition, while conducting an examination or assessment, counsellors should explain, step by step, what they are doing, their rationale, and the length of time needed. The most ethical practice is to help the survivor understand their condition and the treatment offered (IOM 2004; American Psychological Association 2017).

Roles of a Counselling Psychologist

Experts in person-centered approaches recommend that counsellors maintain an attitude that empowers the survivor, viewing survivors as valuable, rather than carriers and sources of pathology (Maslow 1968; Rogers 1967). Those working with survivors of human trafficking recommend the same attitude (Contreras et al. 2017). This recommendation is based on the belief that the survivor is best able to understand his or her problems and therefore must be included in the design and implementation of a plan for resolving those problems. From this perspective, the duty of the counselling psychologist is to help the survivor rebuild his or her self-esteem and self-confidence, build on his or her own personal resources, and help them to feel greater control over their life and feel more competent to make their own decisions (Nelson-Jones 2002). As a result, counsellors function as enablers, advocates, and teachers for survivors. As an enabler, the counsellor assists the survivor in identifying needs, defining goals, recognizing his or her own strengths, and helping him or her to find solutions to problems and ways to achieve his or her goals. As a broker or advocate, the counsellor assists the survivor in identifying available resources, helps the survivor evaluate the available resources, and facilitates contact
with or referrals to other resources. Finally, as a teacher, the counsellor helps the survivor to develop the skills and information base so that the survivor is able to make informed decisions, solve problems, and achieve goals.

Counselling psychologists should always remember that the helping relationship is different from personal relationships; it is a professional one and should have clear direction and purpose. In so doing, the objectives of the survivor are clarified, the challenges and strengths more evident, and the responses for the survivor and psychologist more apparent; in fact, it helps demonstrate empathy, warmth, and genuineness to the survivor (Contreras et al. 2017; Pope and Vasquez 2001).

Psychological Rehabilitation at IOM RC

Psychological rehabilitation of survivors of human trafficking at IOM RC includes psychological assessment, daily monitoring, individual counselling with the counsellor, and group counselling sessions. Survivors usually stay at the RC for about 3 weeks. On the day of a survivor’s arrival at the RC, the first counselling session takes place. The main task in this session is to collect information about the survivor’s medical, psychological, and social history and to determine psychological diagnoses and the need for interventions of other specialists (e.g., psychiatrist, specialist on alcoholic or drug addiction). The formal psychological assessment usually begins at the second individual session after getting informed consent from the survivor. The aim of the assessment is to develop a more comprehensive view of clients’ psychological well-being and functioning including mental health and substance abuse disorder issues. Standard clinical psychology measures are used for the assessment of cognitive processes, mental health, and emotional status. Projective tests and personality questionnaires are used to assess personality, and vocational orientation tests are used to inform plans for career development. Based on the assessment, an individual rehabilitation program is created.

Each day, usually in the morning, counsellors conduct monitoring. Daily monitoring is a brief counselling session aimed at targeting short-term challenges a survivor may experience. The counsellor uses this session to observe a survivor’s current emotional condition, to help solve pressing current issues, and to identify topics to be addressed at the longer individual counselling sessions.

On average, survivors at IOM RC participate in four to six longer individual counselling sessions. Nevertheless, the exact number of sessions and time frame on which counselling is provided is based on the survivor’s needs and current psychological state. Individual counselling sessions address all issues that require individual processing or issues that cannot be raised during group counselling sessions. These issues include treatment of trauma symptoms, relationships with family members, vocational orientation, and support in choosing the future field of professional occupation.

The group psychological counselling sessions are 1.5- to 2-hour sessions that are conducted three times a week. The group counselling curriculum is cycled through continuously so that each survivor has the opportunity to experience the full curriculum.
Survivors continue attending the group counselling program until they leave the center. During group sessions, a counsellor helps survivors to address eight tasks. These tasks are reducing and managing survivors’ negative emotions, reconsidering the arrived-at situation, addressing psychological problems, building self-esteem and positive personal image, acquiring relevant communication skills, learning assertive behavior, looking for self-development and career opportunities, and determining realistic and viable life plans (Gilbert and Shmukler 2003). Counsellors and survivors address these tasks by discussing principles of rehabilitation, ways to improve life circumstances and dealing with mistakes, healthy ways to manage and express negative emotions, overcoming of addictive behavior, and planning for the future.

There are two additional short group-counselling programs. One of these programs is focused on helping survivors cope with depression and prevent suicide attempts. The second program is devoted to issues of women’s self-perception, self-respect, and post-trauma work. Each of these additional programs comprise three 2-hour sessions.

In summary, the psychological rehabilitation program at IOM RC includes:

- Helping survivors to find ways to realize their potential, purpose, and vision in life.
- Helping survivors to choose a profession for themselves which promotes personal growth and reintegration into society.
- Conducting psychological assessment to facilitate survivors’ choice of profession and to provide mental health support tailored for individual needs.
- Individual psychological counselling for psychological problems, including post-traumatic stress disorder, deviant and addictive behaviors, family dysfunction, depression, guilt, anxiety, low self-esteem, and victimized behavior. Individual counselling often uses elements of narrative therapy, art therapy, systemic family therapy, cognitive psychotherapy, and brief solution-focused therapy.
- Group counselling aimed at providing emotional support to survivors, solving their practical problems, and practicing to support others.

At the IOM RC, survivors may also participate in crafts and leisure activities (drawing, knitting, making handmade toys, etc.). The RC also has a small literature and audio-video library, accessible for any survivor. After completion of a 3-week-long rehabilitation program, survivors are directed either to their home country or city or to the destination of a regional nongovernmental organization partner. RC staff calls each survivor weekly to provide follow-up and ongoing support. Survivors are also encouraged to contact the RC as often as possible for post-rehabilitation monitoring.

**Special Challenges Experienced by Counselling Psychologists Working with Survivors**

Ethics or moral philosophy seeks to establish guidelines by which human character, relations, and actions may be judged as good or bad, right or wrong. What is considered “ethical” practice varies between professions and cultures and changes
over time. Woolfe refines the definition of ethics in relation to psychologists as a codified set of value principles which applies to a certain subset of people and professional practitioners (Woolfe et al. 2003).

There are certain well-known ethical principles, used in caring for trafficked persons in different service-settings (IASC 2014; IOM 2010). They are:

- Do not harm.
- Ensure safety, security, and comfort.
- Ensure privacy and confidentiality.
- Provide information and request informed consent.
- Ask questions in a sensitive and sensible manner.
- Listen actively and responsively; believe, do not judge.
- Observe for emotional signs that an individual needs to stop debriefing.
- Consider preconceptions and prejudices that you may have.
- Maintain professionalism along with respect and compassion.
- Ensure that survivors feel in control of their bodies and communication.
- Reassure trafficked persons they are not to blame.
- Inform trafficked persons of their right to medical examination.
- Inform persons of their right to copies of health records.
- Remind the trafficked persons of their strengths.
- Provide interpretation.

There are overlapping categories of unethical behavior a counselling psychologist may engage in. They are (a) mistakes in otherwise good practice, (b) poor practice in which the overall standard of work is inadequate, (c) negligence or wanton lack of care, and (d) malpractice, which is intentionally explorative and abusive (Woolfe et al. 2003). Several ethical issues arise frequently in work with survivors of human trafficking. Because sex and gender play a significant role in health and health care, respect for privacy and modesty is a significant precondition of successful rehabilitation. Recognition of the impact that sex – the biological fact of being a male or a female – and gender, the cultural definition determining masculinity and femininity, have on health is important in designing effective health-promoting activities. A gender-sensitive approach is also a rights-sensitive approach that recognizes the principles of nondiscrimination and the right of women and men to equitable treatment. Although there may be a preponderance of women among trafficked persons, men, male adolescents, and boys are also trafficked (World Health Organization 2002). Whenever possible, it is important to offer women and female children and adolescents, who have experienced sexual violence, abuse, and exploitation with the associated health problems, the option of being seen by a woman practitioner. If none is available, a woman should be present during the physical examination.

Another crucial ethical issue concerns how information is shared between care providers. There are a number of risks involved in sharing survivors’ case file information. However, when appropriate security and confidentiality procedures are followed in sharing information between the key persons assisting the patients, the benefits outweigh the risks. Sharing information between care providers, such as social
workers, psychologists, physicians, and referral services, reduces the need for traf-ficked persons to repeat information already given (some of which may evoke very strong emotions) and facilitates cooperation and proactive support by individuals assisting the survivors in health, social welfare, and legal matters. Survivors must be made aware of the purpose of such practice and give their consent (IOM 2007).

Providing accurate diagnosis and interventions that meet a high standard of care necessitates that counsellors acquire adequate skills and sensitivity. Indeed, all encounters between survivors and counsellors can be viewed as part of the recovery process. Positive encounters can help build an individual’s trust in others, increase self-confidence, and nurture hopes for the future. On the other hand, negative experiences can cause survivors to feel ashamed, stigmatized, disempowered, and hopeless. Counsellors’ acting in a rote or impersonal manner will be counterproduc-tive both to the helper’s aims and the survivors’ well-being (Contreras et al. 2017). When survivors put their trust in counsellors, one of their basic expectations is that the counsellor will be competent. Society also holds counsellors to this standard. Although mistakes in counselling may occur, remaining vigilant of ethical pro-cedures and addressing mistakes in an ethical manner are paramount. Assessment should include comprehensive psychiatric evaluations with a focus on understanding the client prior to trafficking and the idiosyncratic experience of being trafficked. Therapy should focus on trauma-related aspects of the client’s symptoms concurrent-ly while treating other disorders (Pascual-Leone et al. 2017).

Deliberation as a process of careful consideration and examination of the matter is one of key competences for counselling psychologists. Questioning skills of a counselling psychologist refer to fundamental aspects of diagnosis, intervention, and the standard of care. Therefore, questioning should be careful, active, informed, and comprehensive. Examining the case thoroughly before diagnostics includes contacting family members, friends, workplace supervisors, community members, as well as legal consultants for detailed information. Such investigations should be done whenever possible, concerning crimes, already committed or being prepared (Pope and Vasquez 2001).

**Fitness for Providing Psychological Counselling and Preventing Burnout**

A counselling psychologist provides a positive model for survivors, thus enabling survivors to lead more satisfying and fulfilling lives. To be psychologically compe-tent for providing counselling, counsellors must pay attention to their own personal wellness. They must see that their personal needs are met and both inter- and intrapersonal conflicts are resolved. There are certain qualities or habits that can support this inner resource of the counsellor and keep them fit for giving therapy. First, counsellors should perceive their personality as a means of cooperation with people and building proper relationships with them. Next, life experiences of counselling psychologists, increasing the ability for empathy, are keys to their professional success. Another characteristic that counsellors should have is readiness
for personal growth and development, which includes habits of raising self-awareness, resolving past and current issues, reviewing of personal values, and focus on self-realization and professional growth. Counselling psychologists know and should practice patterns of psychological and emotional self-regulation regularly (Geldard and Geldard 2005).

To be fit for providing psychological counselling, counsellors must attend to their own psychological well-being. Providing care and services to traumatized persons, such as survivors of human trafficking, results in a variety of psychological reactions that can cause secondary stress disorders and lead to vicarious trauma. It is believed that counsellors working with trauma survivors experience vicarious trauma, because of the work they do. Vicarious trauma is the emotional residue of exposure that counsellors have from working with people as they are hearing their trauma stories and become witnesses to the pain, fear, and terror that trauma survivors have endured.

It is important not to confuse vicarious trauma with “burnout.” Burnout is generally something that happens over time, and as it builds up, a change, such as time off or a new and sometimes different job, can take care of burnout or improve it. Vicarious trauma, however, is a state of tension and preoccupation of the stories/trauma experiences described by clients. This tension and preoccupation might be experienced by counsellors in several ways. Counsellors should be aware of the signs and symptoms of vicarious trauma and the potential emotional effects of working with trauma survivors (American Counselling Association 2018).

If constant stress is allowed to build up over time, burnout can occur. Burnout is a state of physical, emotional, and mental exhaustion caused by long-term involvement in an emotionally demanding situation.

There are five categories of burnout symptoms. First, physical symptoms of burnout include fatigue and physical depletion, exhaustion, sleeping difficulties, and specific somatic problems such as headaches, colds, and flu. Second, emotional symptoms are characterized by irritability, anxiety, guilt, depressions, and a sense of helplessness. Third, among behavioral symptoms are aggression, callousness, pessimism, and cynicism. Fourth, work-related symptoms imply poor performance, absenteeism, tardiness, etc. Fifth, interpersonal symptoms may include weak communication with an inability to concentrate and withdrawal from residents or coworkers (Palmer 2003). Burnout typically develops gradually. For this reason, counsellors must be vigilant for symptoms of burnout to ensure that they are able to provide adequate care as well as retain their own health and well-being.

Counselling psychologists working with the survivors of human trafficking must take care of themselves and set limits on the amount of emotional energy they can safely expend on their work. Supervision is also an effective tool in the prevention of burnout. Weekly staff meetings help to ensure proper supervision of staff activities and can be used to monitor for staff burnout.

Upon recognition of symptoms of burnout, the supervisor should give counsellors encouragement, advice to have realistic expectations for what they can accomplish, and practical help such as resolving the current counselling issues. Supervisors should also make appropriate adjustments to schedules and responsibilities if there
are signs of burnout and suggest or arrange counselling with an external psycho-
gist. Finally, supervisors can prevent burnout by encouraging staff to express their
feelings and frustrations and focus on developing positive strategies and solutions
during weekly staff meetings (IOM 2007).

In conclusion we should say that the tasks arising at counselling sessions with the
survivors of human trafficking are performed in a context that frequently presents
multiple ethical and professional challenges that can put counsellors at risk of
malpractice or burnout. Nevertheless, appropriate training of counselling skills and
key competences, such as questioning skills, empathy, logical “cold-head” reason-
ing, examination of the matter and skills related to other fundamental aspects of
diagnosis, intervention and the standard of care, as well as commitment of the
counsellor to personal and psychological well-being, prevention of the burnout,
and constant supervision, can successfully eliminate these risks.

Conclusion

This chapter reflects on various aspects of psychological care and support of
female survivors of human trafficking. Specifically, the characteristics of the
survivors served at the IOM RC are discussed. The program of psychological
care and support offered at the IOM RC is described. The contribution also
explores the counsellor-survivor relationship, the ethical and professional demands
experienced by counselling psychologists working with survivors of human traf-
ficking. Practical recommendations are given to the counsellors working with this
population. The chapter states the necessity of studies to test effectiveness and
identify adequate psychological rehabilitation and support programs to restore and
maintain survivors’ mental health.

Cross-References

▶ Breaking Bondages: Control Methods, “Juju,” and Human Trafficking
▶ Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking
  and Commercial Sexual Exploitation
▶ Developing a Universal Standard of Care for Victims of Trafficking Under the
  Guiding Principles of Non-state Torture
▶ Family-Based Non-state Torturers Who Traffic Their Daughters: Praxis Principles
  and Healing Epiphanies
▶ Health and Social Service-Based Human Trafficking Response Models
▶ How Lifelong Discrimination and Legal Inequality Facilitate Sex Trafficking in
  Women and Girls
▶ Strategies to Restore Justice for Sex Trafficked Native Women
▶ The Application of the Non-punishment Principle to Victims of Human Traffick-
ing in the United States
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Human Trafficking in Supply Chains and the Way Forward

Danielle Lloyd

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Abstract

Human trafficking in supply chains is a global issue caused by globalization, populous supply chains, and a lack of supply chain transparency that has increasingly been gaining attention over the past several years. Its infamy has been followed by a legislative fight through the release of new laws that have been

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heralded as revolutionary, with several exerting particular clout in the last decade. Today it has been accepted that the crime usually occurs at the supplier level, including tier 1 suppliers whose business practices are often vetted by the brands who purchase goods from them, but struggle with effectively uncovering any human rights abuses that might require mitigation. Despite varying efforts to combat the crime across the globe, human trafficking for labor purposes has been exposed in the supply chains of both developing and developed nations and throughout the tiers of their supply chains. This oversight is the result of the inadequacy of the current supply chain monitoring system to identify these issues, rendering the system obsolete, ineffective, and in need of replacement. In this chapter, the problem of human trafficking in supply chains and the current system of identifying human trafficking in supply chains will be introduced. Second, the evolution and weaknesses of the current systemic approach to monitoring human trafficking risks in supply chains will be addressed. Third, the environment surrounding human trafficking in supply chains will be reviewed (areas of opacity and intrinsic challenges to be acknowledged in developing a more effective and robust response to mitigate the issue). Finally, the future of supply chain monitoring will be discussed, identifying strengths and weaknesses of emerging efforts and offering recommendations on how to successfully replace the current system of supply chain monitoring.

**Keywords**
Brand · Supplier · Gangmaster · African Development Bank (AFDB) · 2015 Modern Slavery Act (MSA) · Civil Society Organization (CSO) · Corporate Social Responsibility (CSR) · Gangmasters Licensing Association (GLA) · International Labour Organization (ILO) · Nongovernment organization (NGO) · Organisation for Economic Cooperation and Development (OECD) · Transparency in Supply Chains (TISC)

**Introduction**

The exposure of human trafficking and slavery in the supply chains of esteemed brands today has become increasingly less shocking. The frequent release of articles published by investigative journalists across the globe outlining the occurrence of these offenses has rightly attracted the attention of the public, private, and third sectors (nongovernmental humanitarian entities). This attention has resulted in the development of a response that improves ethical business efforts, known today as transparency in supply chains, and is categorized under the wider umbrella of efforts to combat modern slavery.

In 2015 *The Independent* published an article uncovering the use of slave labor and human trafficking in the UK-based manufacturing supply chain of three very notable British brands (Connett 2015). Each of the brands conducted what is known as an “ethical audit” at the manufacturer’s location, but each of these audits was unsuccessful in uncovering human rights abuses.
Likewise, in 2016 *The Guardian* released an investigative article that exposed the illegal labor practices of an unlicensed gangmaster from Eastern Europe, operating in the UK. He had been declined a Gangmasters Licensing Authority (GLA) license to operate as a gangmaster in the UK, but proceeded to conduct business by supplying the labor of trafficked EU migrants to other licensed gangmasters in the UK. The region wherein his illegal business activity took place is known to produce “more than a third of the UK’s produce” and was likely to involve the supply chains of well-known supermarkets (Lawrence 2016).

These examples are among a variety of cases wherein traditional and widely accepted monitoring and/or auditing systems failed to identify human rights abuses such as severe underpay, child labor, intolerable working conditions, and human trafficking.

**Method of Research and Development of Observations**

The opinions displayed in this paper have been informed by both firsthand second-hand research on transparency in supply chains, ethical business, human trafficking, and modern slavery. Research on supply chain ethics, including human rights risks and relevant systemic weaknesses in the practice of ethical business, was first conducted through the vehicle of a human trafficking NGO based in the UK and South Asia (*due to the sensitive nature of covert intelligence gathering performed by this NGO, it will remain unnamed*).

Existing systemic responses to supply chain monitoring were reviewed across the public, private, and third sectors and hierarchy of stakeholders in both the UK and India to ascertain strengths and weaknesses pertaining to gender equality and safety in the workplace. This research then informed a supply chain project that was developed and delivered by the above NGO in conjunction with a participating multinational company and several of their South Asian suppliers.

Initial research involved working with South Asian suppliers to notable British brands in order to identify their barriers to risk mitigation and ethical business practices. This led to highlighting incentives that heightened the attractiveness of ethical business and human rights risk mitigation within tier 1 (*direct suppliers to the end manufacturer/seller*) and tier 2 (*suppliers to tier 1 suppliers*).

Substantial engagement with South Asian and British government departments committed to combatting human trafficking also took place. This contributed political insights on relevant values and pressure points of the subject, including ministries of labor, women and children, health, law enforcement, and judiciary.

The values, interests, and pressure points of British and American brands on the subject of ethical business and transparency in supply chains have also informed this chapter, alongside discussions with corporate law firms that represent multinational brands, the sustainable, ethical, and CSR teams of pioneering brands and the senior leadership of numerous civil society organizations and nonprofits researching and combatting human trafficking and modern slavery in the UK and abroad.
Lastly, secondhand research underpinned the former efforts to ensure that a holistic and well-informed knowledge base was developed on the subject of transparency in supply chains, human trafficking, modern slavery, and ethical business. This involved examining the development of national and international legislation and the ethical and human rights business efforts of 100 American and European businesses across 6 industries: automotive, apparel and fashion, construction, cosmetics, agriculture and food, and furniture.

**Scale of the Problem**

The ILO suggests that 21 million people are victims of forced labor worldwide (ILO 2013). However, other data noting informal labor populations worldwide suggest that this estimate could be only the tip of the iceberg (discussed below). It is imperative to note that the covert nature of human trafficking renders credible estimates on the exact scale of the problem to be difficult, if not nearly impossible to calculate. This lack of data on human trafficking in supply chains is perhaps the first feat to overcome in combatting the problem, as it hampers any viable attempt to mitigate and eventually abolish the crime.

The OECD believes that there are at least 1.8 billion people supplying informal and unregulated labor worldwide (OECD 2009). These individuals have no contracts and therefore no legal protection or visibility. They are subject to working conditions and forms of labor sourcing (either domestic or international) that are unmonitored and operating outside of national or international purview and jurisdiction.

Country reports from across the globe show that some nations have as much as 85% of their population involved in informal labor (World Bank 2018). Many of these countries fulfill roles as primary exporters of oil, cocoa, precious metals, and more, to known multinational companies with products that have been picked, handled, mined, or packaged through questionable labor practices likely to involve the movement of persons from one location to another for exploitative labor. Zimbabwe, a known exporter of gold, which makes up nearly a third of all Zimbabwean exports according to the OEC, is believed to have 86% of their working population involved in informal labor, as documented by The Economist (OEC 2016; Intelligence Unit, The Economist 2015).

It would be imprudent to assume that all instances of informal labor include human rights abuses; however, it is possible that the scale of the OECD figures associated with informal labor can significantly impact existing estimates of human trafficking for labor purposes (Fig. 1).

Firsthand research conducted through work with trafficking victims in South Asia has shown that a trafficked individual conservatively has 7 years of “usability” on average before the stresses and demanding physical requirements of their job render them “useless.” While not explicitly attributing an average duration to the tenure of a human trafficking victim, the NCBI is a valuable resource to consult in garnering an in-depth understanding of the extensive mental and physical strains that human
Fig. 1  Map of informal worker populations worldwide in millions and percentages based on country reports
Trafficking can exert on a human and therefore impact their ability to function long term (Toney-Butler et al. 2018).

Any figure on human trafficking victims, including the ILO’s figure of 21 million people worldwide in forced labor, must be considered alongside the concept of annual attrition rates, noting that those affected by the crime are not a static figure but one that grows exponentially year-on-year with victims who are no longer “usable,” but are still negatively affected circulated out of the system, while new victims are added to the figure annually to maintain current labor requirements of the entities utilizing trafficked labor.

In 2008, the ILO’s convention on human trafficking revealed that about one in five victims of forced labor had been trafficked (ILO 2008). If in 2008 there were 21 million individuals in forced labor, then it can be assumed that today if an equal number of people required replacement in human trafficking circles annually, 10.21 million victims would be involved in trafficking for labor purposes at present, factoring in a 7-year attrition rate.

However, the informal worker populations above suggest that the scale of human trafficking in supply chains could be even greater than these estimates. If just one fifth of these informal workers were involved in an instance of forced labor, then approximately 360 million people worldwide would be victims of forced labor today. If the ILO’s estimation that 20% of forced labor victims are trafficked for the purposes of forced labor, then even a static, spot-in-time annual estimate of individuals trafficked for forced labor could be as high as 72 million people. When taking attrition and replenishment rates into account, this figure could be pushed to over 162.7 million people affected by human trafficking for labor purposes.

Every year the figure of individuals harmed by forced labor and trafficking for labor purposes grows, demonstrating the gravity of this problem as a problem that grows exponentially, damaging new lives annually in addition to the ones it has already negatively impacted.

The Current Systemic Response of Ethical Business

The Evolution of the Ethical Audit

In an attempt to begin combatting the lack of transparency in supply chains, the Fair Labor Association was established in 1999 as a forerunner in publicizing the concerns of human rights abuses in supply chains. Targeting both consumers and multinational companies, it amassed a corporate member base of over 4000 companies in the process. The organization used Clinton’s 1996 White House Task Force dedicated to clamping down on forced labor in supply chains as a springboard to raise awareness and garner support.

Heralded as a revelatory approach at the time, the task force sought to ensure that American supply chains were free of forced labor by utilizing international business as leverage for enacting change. As a result, national law adopted a provision that required multinational companies to include ethical business practices as a
mandatory provision in global supplier contracts. The thought-leading concept of overreaching the constrictions of national law through the vehicle of international business was significant. A method for monitoring and enforcing such supplier contracts evolved into what is known today as the ethical audit. *(The Fair Labor Association is a worthwhile resource to explore regarding any further interest in ethical audits and associated practices and methodologies.)*

Fortifying this shift in prioritizing human rights protections in business, numerous ILO conventions have mandated humane labor practices that have since been translated into the national law of member states across the globe. In 2008 the ILO released guidelines on combatting human trafficking and the responsibilities that different stakeholders should expect to assume, such as businesses, financial institutions, and trade unions.

Within the last decade, the 2010 *California Transparency in Supply Chains (TISC) Act* and 2015 *Modern Slavery Act* (containing section 54 on TISC) have been accepted as two pieces of legislation on this topic that have most recently moved the discussion and weight of the subject forward worldwide.

Today, the most notable development of this chain of legislative and political events could be the prevalence of the adoption of supplier contracts and ethical codes of conduct across industries headquartered in the western hemisphere. A firsthand review of the human rights efforts of 100 well-known European and American companies across six industries showed that 98% of them have developed a supplier code of conduct or some supplier accreditation that houses the company’s commitment to ethical and responsible business.

Such codes and accreditations include the banning of any activity involving the trafficking of persons. This overall approach to supply chain transparency, however, is increasingly becoming acknowledged as having numerous gaps and weaknesses that prevent ethical audits, and the supplier contracts and ethical codes of conduct that underpin them, from fulfilling their purpose.

Furthermore, an adequate understanding of how to effectively embed these laws into business practices remains to be seen. Recent examinations of the adoption of *Section 54* protocol from the Modern Slavery Act (MSA), for example, have shown that less than a third of British businesses met the minimum requirements stipulated in the MSA, while only 12% ticked all of the boxes *(Berman 2016)*.

When queried on CSR and human rights efforts, CEOs have been found to profess that they “do not know how to change their businesses and feel hampered by the complexity of their supply chains and lack of action by regulators,” suggesting that the current system of supply chain monitoring is inadequate and in need of improvement, despite the practices that have most frequently been utilized to monitor the ethics of business practices in supply chains *(paragraph 3, Confino 2014)*.

**Methods of Ethical Auditing and Their Weaknesses**

Of the 98% of businesses mentioned previously to practice some form of ethical business monitoring and/or supplier ethical quality control, over half of them have
been exposed as having one or more human rights abuses in their supply chains through external investigative efforts (e.g. slavery, child labor, severe underpay, etc.).

These companies practiced one or both of the following supply chain monitoring efforts:

1. **Ethical audits** – Ethical audits have no mandatory guidelines for execution, meaning that an ethical audit can vary from having suppliers respond to a questionnaire about their business via email to conducting an unannounced in-person investigation of a site. In examining the ethical practices and supplier codes of the companies mentioned above, the majority of suppliers to these companies were ethically audited once every 3–4 years, while “high-risk” suppliers were ethically audited once every 1–2 years.

2. **Supplier self-assessments** – A rise of online platforms providing a space through which brands can receive answers to supplier assessments, completed by the suppliers themselves, has been gaining popularity among ethically minded businesses in recent years. Some brands conduct these privately with their suppliers, whereas others might use an externally managed database, such as SEDEX to share their suppliers’ responses with other brands that have contracts with these same suppliers. These are often then validated through supply chain and ethical audits, as described above.

The current system of exerting pressure on suppliers to comply with ethical business practices through contractual obligations with powerful multinational companies, however, has proven to be insufficient when improperly monitored. These monitoring efforts fail in identifying human trafficking in supply chains due to **three predominant weaknesses**:

1. **Infrequency** in conducting ethical audits leaves substantial opportunity for human rights abuses to take place in the time between ethical audits. An expose published in February 2017 featured a quote by a factory worker who revealed that children are told not to come to work on days when buyers conduct audits (Chamberlin 2017). This particular factory, which supplies four multinational British brands, is an example that demonstrates how infrequent, “spot-in-time” ethical audits are incapable of capturing a realistic picture of a supplier’s everyday activities.

   The practice of conducting an ethical audit is disruptive to supplier activity and can be detrimental in negatively impacting daily production. As highlighted in discussions shared with suppliers in Bangladesh and India to British and American brands, most suppliers are informed of visits in advance and are able to make necessary preparations to accommodate the ethical audit. Such preparations allow for the opportunity to orchestrate daily business activities in a way that would assure the absence of negative activities or any other human rights risks that violate a supplier contract or code of conduct, in order to ensure a satisfactory ethical audit result.
2. **Sole reliance on hierarchical supplier feedback** results in an incomplete account of supplier practices due to **corruption** and/or a mere **lack of visibility** throughout the supplier’s workforce.

   In having worked with suppliers, CSOs, and workers in South Asia on human rights in supply chains, a glass ceiling effect has been witnessed in the supplier hierarchy. Most human rights abuses occur between supervisors and workers at the bottom of the pyramid, which is exasperated by the fact that current grievance reporting structures typically are either:
   (a) **Nonexistent or insufficiently publicized** throughout the supplier’s workforce, leaving workers unsure of how to report a grievance
   (b) **Managed between supervisors and workers**, leaving workers with no direct line of communication to overreach their perpetrators and report human rights abuses to upper-level management where it can be properly, transparently, and safely addressed (Fig. 2)

   In visits with South Asian textile suppliers to western brands, a unique insight was gained into labor sourcing and management details that most supply chain audits miss and therefore neglect to explore further. Several workers shared that rather than going through a formal recruitment process or recruitment agency, many of them were **recruited from a single village by a supervisor-like figure in the factory**. After conducting baseline studies, it was clear that the workers did not have a proper induction to inform them of their labor rights. Such informal recruitment practices raise several concerns surrounding the potential of domestic trafficking to occur on a regular and communally accepted basis. This points directly to a system that can easily sustain informal labor practices that go undocumented and leave workers without contracts to outline and legally defend their rights.

   Communication lines that do not successfully inform those in the upper echelons of a factory or farm operating as a supplier produce data that has no cross-validation from workers further down the chain who may have opinions on their working environment and conditions that differ from the reports of upper-level management. This means that the word of the individual completing the self-assessment or acting as the sole contact for an ethical audit is the only account a brand or buyer might ever receive. Suppliers spoken with in India have shown up to five different ledgers (on average) that they maintain for different stakeholders. The ledgers were hard copies, and each had figures tailored specifically to suit the level of relationship that the supplier maintained with the particular stakeholder, indicating that all stakeholders saw only what the supplier intended them to see and was possible to achieve due to the system(s) in place.

3. **Both ethical audits and supplier self-assessments are inappropriate for identifying instances of human trafficking**, as both monitoring methods occur after workers are already recruited into their workplace. Whether trafficking is a domestic or international occurrence, both methods are **too late in capturing how the workers arrived at their workplace** and do not include provisions that review labor sourcing activities.
Fig. 2 Supply chain monitoring flows denoting top-down and bottom-up monitoring methods
The Supply Chain Environment: Stimulants and Drivers of Human Trafficking

A number of drivers for human rights abuses create an environment of apathy in taking action toward ensuring slavery- and trafficking-free business practices. These drivers can be categorized as:

- **Opacity** in the division of supply chain responsibilities
- **Three intrinsic challenges** underpinning human trafficking *(to be detailed below)*
- **Broken labor sourcing systems**

Opacity in Human Rights Responsibilities

Liability and the boundaries of data and business privacy are two undefined subjects that create opacity in taking responsibility over investigating and mitigating human rights abuses in supply chains.

Up until recently, modern labor abuse atrocities overseas have not attracted criminal lawsuits, despite the ILO’s efforts to combat human trafficking and modern slavery from a legislative standpoint. A single multinational company can easily have several thousands of suppliers throughout the tiers of their supply chain, which is impossible to effectively monitor according to the system’s cumbersome audit-based approach. As such, several brands have verified that there are likely to be human rights abuses in their vast supply chains and that as a result many of them have been unsure of where to start investigating these potential risks.

Prior to the UK’s *MSA* and the *California TISC Bill*, there were questions as to whether or not a case of human trafficking in a brand’s supply chain would warrant a lawsuit. This consideration helped form the foundation of these two pieces of legislation, requiring businesses of a certain size (£36m per annum for UK businesses and $100m per annum for Californian businesses) to annually report their efforts in combatting modern slavery and human trafficking in their supply chains. The intention was to create a level playing field for businesses to have the confidence to explore potential human rights risks in their supply chains without fearing that unsatisfactory information would trigger a lawsuit. While these pieces of legislation have stoked a healthy worldwide discussion on transparency in supply chains, these two areas still remain undefined and have created opacity in the division of supply chain responsibilities:

1. **Liability**: Globalized markets and supply chains have not only revolutionized international economic development and trade but have also created a grand lack of clarity over who bears liability in the wake of a human rights abuse overseas. Existing law only requires a business to report on their efforts to combat modern slavery and human trafficking in their supply chains, but stipulates no guidelines on what extent of action is required should an abuse be found.
For example, a case of child labor in the supply chain of Henri Lloyd exposed in February 2017 resulted in, during the writing of this publication, no action taken by the company to rectify the issue or state what efforts they sought to put in place to mitigate the present issue.

However, the discussion on supply chain liability is slowly shifting. In May 2016, a group of Zambian laborers in the workforce of a Zambian subsidiary to a UK parent company had their case, consisting of human rights abuses in the subsidiary’s supply chain, accepted by the UK High Court. While the outcome of this case remains to be seen, the acceptance of the case by the UK High Court sends a strong message to British parent companies that human rights abuses in their subsidiaries overseas could attract significant liability concerns on home soil.

2. **Extent of data privacy**: While companies can require suppliers to make efforts that enable buyers to fulfill their own ethical compliance requirements, there is no pressure for suppliers to volunteer information that the buyer is not likely to find on their own through the current approach to supply chain monitoring. Companies that are based in countries where an active fight against modern slavery and human trafficking exists may request data from their suppliers and may conduct audits and supplier self-assessments, but there is no supranational law in place that would require that supplier to divulge everything to the buyer, particularly if a supplier would consider a piece of information to be potentially damaging to a contract with a buyer.

   In fact, *The Sustainability Consortium*, an organization that works with both brands and their agricultural suppliers to enhance environmental and social sustainability in their supply chains, has found through firsthand engagement with suppliers that a mere requirement for a supplier to enforce ethical business from a stance of compliance is not enough to motivate meaningful action or extensive data sharing from suppliers (Dooley 2016).

**Three Intrinsic Challenges**

Human trafficking in supply chains is a *by-product*, with broadly three foundational problems that foster its occurrence:

**Foundational Problem 1: Poverty**

Human trafficking “sourcing” regions, both nationally and internationally, have a trend of pronounced poverty. Such communities are therefore resistant to any activities or efforts that may serve as barriers to employment.

In the UK, discussions with organizations working on the frontlines with victims of human trafficking have revealed that a considerable number of the victims are aware that they have been trafficked and have been in a situation of exploitative employment. Upon questioning, a trend surfaced wherein the victims claimed that
working conditions in their home country would have been at least marginally worse than their working conditions in the UK. As such, they accepted the exploitative nature of the work they were subjected to in the UK. Male victims in particular have shown a desire to reject the rehabilitation provided under the UK’s National Referral Mechanism to confirmed victims of human trafficking in order to return to work as quickly as possible (Barnett 2015).

In South Asia a similar sentiment was witnessed among workers in conditions of exploitative labor. In situations of poverty, an individual’s priority is to do whatever is necessary to survive, which often includes suboptimal labor.

A major challenge within this area is the need to develop a system for tracking and mitigating instances of human trafficking that is not seen as compromising work opportunities which source labor from impoverished regions.

**Foundational Problem 2: Urbanization**

Rapid industrial and economic development has instigated a mass exodus of rural communities to urban areas where unemployment is low and the need for labor is high. According to the IOM, there are around one billion internal and international migrants worldwide, while the ILO estimates that nearly 73% of all migrants migrate for work-related purposes (IOM 2015; ILO 2013). As explored further in the two case studies below, it can be seen that a strong correlation exists between the phenomenon of rural-urban migration or “urbanization” and human trafficking.

**Case Study 1: Urbanization fueled by the dominance of informal labor in Africa**

It is estimated that “more than 90% of future population growth will be accounted for by large cities in developing countries” (paragraph 1, African Development Bank Group 2012). The African Development Bank noted that the majority of rural migrant laborers have neither an education nor a trained skill set pertinent to urban labor and therefore typically fall into positions of informal work. Informal labor represents an overwhelming 93% of new jobs made available across Africa, while accounting for 61% of employment in urban areas (AFDB 2012). The combination of rapid urbanization across Africa with a stark majority of new jobs accounted for in the informal sector of urban regions presents ample opportunities for human trafficking networks to supply labor in Africa’s burgeoning unmonitored informal sector.

**Case Study 2: Massive textile industry growth in India encourages rapid urbanization**

In India, more than a third of the urban population consists of internal migrants, while studies show that nearly 60% of these migrant communities in urban areas have moved from rural regions (Kumari et al. 2014). This is a trend that is likely to only increase in coming years. In an attempt to compete with the global market shift of textile sourcing to China, the Indian government created a plan (active since 2016) to more than double the textile industry by 2021. What is significant about this regarding labor migration is that the Indian textile industry already directly and
indirectly employs around 100 million people with most textile regions boasting low
unemployment rates, indicating that a doubling in industry size is likely to result in
considerable internal migration to textile manufacturing regions (IBEF 2017). This
large-scale industry increase over a relatively short period of time, combined with
the prevalence of informal and unmonitored recruitment practices in India (discussed
further below), could suggest a major opportunity for human trafficking networks
operating in the region.

The increase of migration from rural to urban areas in order to meet increasing
market demands requires a method of labor sourcing monitoring that is both scalable
and replicable.

**Foundational Problem 3: Broken Labor Sourcing**

Existing recruitment systems in developing countries are largely unregulated
and unmonitored, while illegal recruitment agencies have been found to serve as
fronts for human trafficking networks. These agencies do not bear certifications
required by national law, will often charge the worker for their own placement, and
have no obligation to inform a worker of their rights. Illegal recruitment agencies
are known to have intentionally provided inaccurate and misleading details about a role
in order to recruit for it, luring an individual into a situation of potentially exploit-

tative working conditions. Whether the hired individual migrates internally or inter-
nationally for the role, should coercion, fraud, threat, deception, abuse of power and/
or vulnerability, or the receipt of payment in order to exert control over the individual
be used in the recruitment process, the case would be considered one of human
trafficking.

Case Study 3: Zimbabwean informal workforce

In Zimbabwe, at least 86% of the workforce is engaged in informal labor, as
mentioned above (Intelligence Unit, The Economist 2015). The increase of employ-
ment available in the informal sector has interestingly resulted in stimulating a spike
in illegal recruitment agencies across the country, meeting informal labor demand
with illegal and unmonitored recruitment. Within 3 years informal employment grew
by nearly 30%, while formal employment decreased by about 40%, suggesting a
very rapid shift in market demand that would require the substantial engagement of
illegal recruitment agencies operating across the country to adequately fuel the
informal work force.

Case Study 4: Illegal recruitment agencies in Delhi

It is estimated that there are more than 10,000 illegal recruitment agencies
operating in Delhi (Saxena 2016). News articles and journals reporting on the subject
in India acknowledge that many of them are likely to be human trafficking hubs.
These agencies have been found to move recruited individuals both nationally and
internationally. India’s Ministry of External Affairs (MEA) has an online forum and
FAQ dedicated to complaints of Indian nationals, some well trained and well educated who had been deceived by an illegal recruitment agency that resulted in labor exploitation (Ministry of External Affairs n.d.).

Furthermore, a firsthand review of placement agencies advertised throughout India uncovered that roughly 25% of them were clear in maintaining the appropriate national certification in order to operate legally, with the other 75% either attributing a lack of importance to the certification (not considering it necessary to publicize their certification) or potentially not having acquired the certification mandated. This suggests that national certification is not taken seriously and that recruitment agencies are confident enough to attract business without publicizing their certification.

The method of labor recruitment through traditional agencies is increasingly becoming either obsolete in a formal sense or corrupt in an informal sense, indicating a broken system of labor sourcing in need of replacement.

The Future of Ethical Supply Chain Efforts

The Global Compliance and Risk industry is anticipated to be worth $64.61bn USD by 2025 (Grand View Research 2018). To date, audits have served as a compliance tool, allowing companies to declare that they have vetted their business practices in an effort to monitor business ethics. But as previously seen, audits have repeatedly been found to fall short in identifying human rights risks in supply chains. Human trafficking in particular is a complex supply chain problem that is bound to opacity, intrinsic challenges, and broken labor management systems worldwide.

As a result, companies have increasingly been growing skeptical of the transparency that ethical audits actually supply. An annual survey conducted by Deloitte in 2015 revealed that 82% of large businesses monitor the compliance efforts of their entire enterprise at least annually, but that roughly 68% of Chief Compliance Officers are not confident in the current compliance and risk IT systems they use (Deloitte 2015). When examining the annual CSR reports of various large companies across the UK and the USA, numerous companies have admitted that they are aware of the shortcomings attached to supply chain auditing, confirming a growing skepticism in industry monitoring trends.

The future of effective and successful supply chain monitoring should take at least six different criteria into consideration. These six criteria have been found to exist in the approach of pioneering companies seeking to disrupt the current auditing approach and are:

- **Accuracy** of data. This is perhaps the most important point. If data is at risk of being inaccurate, it is essentially worthless, e.g., *worker surveys that are heavily impacted by a fear of retribution might result in avoiding the divulgence of disagreeable truths.*
- **Bottom-up approach** of data gathering. Is the whole workforce of a supplier empowered to share data on working conditions and labor sourcing, or are data
and information managed by a section of supplier management who is likely to have a vested interest in protecting certain details?

- **Sustainable business model.** Is the approach replicable, scalable, resilient, and robust? If an approach cannot be transplanted elsewhere with a high likelihood of success, then the approach is probably too time-consuming to execute in the first instance and too costly to adapt and appropriately apply across supply chains worldwide.

- **Commercially beneficial** to the companies and suppliers choosing to utilize the software or implement the program. This will be further discussed below, but in the private sector, an ethical approach to business must also be commercially viable and incentivize suppliers and brands to participate.

- **Traceability** of the journey of a product from raw materials through to finalized goods. A form of software or program to improve the traceability of workers has not existed to date, but would contribute to global knowledge of trafficking in supply chains considerably. Tracking the journey of a product can be valuable, but contributes little to mapping out the intricacies of a worker’s conditions, namely, human trafficking.

- **Worker welfare** – does the software or program effectively take worker welfare into consideration and/or exist for the purpose of improving worker welfare? Not every form of TISC software that exists has actually put worker welfare first in designing a product. Approaches that are intended to provide enough data to satisfy a company’s report on ethical business do exist, and several serve primarily as “tick box” software, rather than products intended to realistically improve the welfare of the worker.

In examining the current programs and complimentary forms of software of eight of the most pioneering and successful companies/nonprofits involved in increasing TISC, it was found that no single approach effectively balanced these six criteria. In order for a program and/or software or most importantly, an evolved systemic approach of supply chain monitoring, to be truly revolutionary and satisfy the basic needs for a holistically effective TISC model, all six criteria should coexist (Fig. 3).

**Bottom-Up Disruptive Technology: Strengths and Weaknesses in Emerging Interventions**

The emergence of a bottom-up use of technology to improve transparency in supply chains is becoming increasingly more popular and is a welcome approach to supply chain monitoring. True transparency throughout supply chains will require a diversification of stakeholder engagement throughout the tiers of the supply chain as the system moves away from “single stakeholder models” that have existed traditionally, engaging primarily with upper-level stakeholders who have limited visibility on the realities of working conditions within their institutions or fear that accurate data on ethical compliance might damage a buyer contract.
Worker Surveys

These are among a number of supply chain interventions that seek to empower workers through tech-enabled mobile phone surveys prompting reporting about working conditions. To date, these sorts of interventions are the only ones operating from a true bottom-up stance, connecting worker feedback with upper-level management and/or brands buying from the suppliers employing the workforce. However, while these efforts do increase connectivity between workers further down the supply chain and the brands that want to know about their working conditions to validate ethical compliance, survey-based reporting has its limitations.

The accuracy of data gathered through worker surveys is questionable. Somewhat ironically, a sole reliance on worker-based feedback can be hampered by a variety of conditions that could affect how much is effectively reported. Limitations such as cultural perceptions, varied interpretation of grievances, and fear of punishment from management can all affect a worker’s account of working conditions, if given at all.

In a firsthand program done with factory floor workers in the garment industry, it was found that an adequate understanding of sexual harassment and worker rights was subpar. Many of the women in the program had a much higher tolerance level of
harassment than would be deemed acceptable according to the ethical compliance standards of western buyers. There was a cultural perception of solicited behaviors that affected a female worker’s willingness to report an incident of sexual harassment, believing that unwanted behaviors from male colleagues were a result of their behavior and thus their responsibility to manage. Furthermore, if given the opportunity to report, many women expressed concern over the security of the reporting mechanism and questioned whether or not they would be at a risk of retribution upon reporting, suggesting that on-the-ground programs and training would need to be conducted alongside the deployment of any kind of bottom-up reporting mechanism. Research conducted by the Fair Wear Foundation has uncovered similar findings in response to conducting workplace harassment training, documenting improved changes in worker perception of harassment following training in fair workplace treatment (Fairwear Foundation 2014).

Complexities in human trafficking vernacular are likely to only further taint any transparency rendered in bottom-up worker reporting due to cultural and educational variance.

**Supplier Tier-to-Tier Reporting**

A unique approach to facilitating a sort of bottom-up approach to supply chain reporting is a model that requires a supplier to complete ethical surveys on their suppliers’ conduct, with the intention of having a reporting structure that goes beyond tier 1.

The limitations of this approach, however, hinge again on the extent of knowledge a supplier will have about their suppliers, relying on the word of a single stakeholder further up the management hierarchy. In a similar sentiment to the drawbacks of supplier self-assessments, their inability to facilitate change in negative behaviors known to exist within their suppliers might deter them from giving a fully transparent report on the ethics of their suppliers due to fear that a lack of compliance among their suppliers could result in a termination of a buyer’s contract. Furthermore, the extent of knowledge a supplier has about their suppliers is likely to be limited, perhaps without an existing reporting structure in place for them to receive ethical compliance data from their suppliers and therefore incapable of providing a true snapshot of their suppliers’ ethical conduct.

**Online Supplier Vetting Platforms**

Within the same vein as the SEDEX approach, a variety of different companies have developed a model that takes supplier self-assessments a step further. The use of media and instant news coverage has been used as a tool to cross-validate a supplier’s account of their business ethics. These sharing platforms also enable brands to share information that they may have on a supplier with other brands that use that same supplier. Ratings are often assigned to a supplier’s social and environmental sustainability that can then inform a company’s procurement decisions.

While the element of cross-validation and the use of the media in this approach strengthen the accuracy of a supplier’s ethics profile, the approach is again limited by the nature of those involved in the reporting process. Such platforms typically
engage upper-level stakeholders in a supplier that may not have a thorough pulse of the ethics standards throughout their company, and furthermore, a public leak of a human rights concern on the media can be detrimental to a business’ reputation. Ideally, issues should be identified internally and then mitigated in a manner that addresses the issue but does not compromise the business.

**Bottom-Up Tech Recommendations**

- **Worker surveys should not be used as a sole means of human rights reporting and should be cross-validated through metadata.** A variety of data input methods is critical to be able to identify potential anomalies in data collected on supply chain ethics. Employing the use of alternative means of data gathering also relieves pressure from workers and increases the robustness of data gathering, decreasing dependence on worker engagement.
  - *The source of data for cross-validation can be top-down or bottom-up, but should serve as complimentary to worker surveys.*

- **Suppliers involved should be incentivized** to share the data retrieved from workers to prevent any fudging of the figures. Incentives can be rendered in a number of different ways and require creativity by the TISC service provider. The approach should undoubtedly have a win-win approach to TISC.

- **Awareness programs** will need to accompany the application of any TISC product. Many human rights awareness programs already exist in supply chains to inform workers of their rights. These are essential in ensuring that a worker knows how to spot an abuse when they encounter one. Bottom-up reporting will be moot if workers are unaware that abuses they are facing are, in fact, abuses. Human trafficking awareness programs would be a crucial addition to any product seeking to mitigate human trafficking in supply chains (Fig. 4).

**Conclusion**

The future of TISC monitoring should incorporate a business mindset, including two considerations in particular:

1. A commercially beneficial approach

   The commercial benefit of ethical business is a subject that has been gaining increasing traction in the subject of supply chain stewardship. Service providers within this space are beginning to create an argument for increases in productivity and decreases in costs that can be associated with sustainable procurement.

   Up until recently, ethical business efforts or CSR programs have been considered costly activities that exist primarily to satisfy compliance and PR, which has in turn hampered the extent to which supply chains have actually been impacted by ethical programs due to financial- and interest-related limitations. However, the ability to show a strong, direct correlation between improvements of a company’s top line and bottom line through ethical business could give the supply chain stewardship market
the boost that it requires in order to be truly transformational in the progression of human rights and the mitigation of human trafficking in supply chains.

Data underlining decreases in absenteeism and attrition rates in direct relation to the execution of ethical programs and the institution of effective grievance reporting mechanisms have already begun to support these claims (see the BSR HERproject as an example).

Companies have begun sprouting in the supply chain stewardship space, departing from a previously NGO-dominated space wherein an assumption that ethical business lacked a commercially minded approach has historically persisted. Several corporate stakeholders engaged over the past 2 years have revealed that working with a company on ethical business felt like a safer and more stable approach to further engaging with supply chain stewardship because of the degree of relativity associated with for-profit interests.

Governments worldwide are acknowledging that a multidisciplinary approach is essential to combatting human trafficking. While all sectors are necessary to

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**Fig. 4** Map of leading TISC product and service providers and how they relate to the current standard reporting pyramid and occurrence of human rights risks in supply chains
successfully crack down on the crime, the familiarity of a commercially minded entity is a welcome approach.

2. A symbiotic partnership culture between brands and suppliers

To date, ethical business has had a prevailing “done to suppliers” sentiment rather than a “done with suppliers” approach. A lack of ownership and interest from suppliers is an obstacle to widespread engagement with supply chain stewardship from the supplier perspective.

Audits, surveys, NGO programs, and a variety of other initiatives required from a swath of buyers have become burdensome for suppliers according to several accounts from suppliers in South Asia. A demand for faster, cheaper goods with greater ethical standards sends mixed messages to suppliers who often feel like it is impossible to keep buyers pleased between working employees over time and yet engaging them in a brand’s ethical programs during working hours.

In parallel with the first key recommendation, supply chain monitoring efforts should have clear benefits for suppliers, assisting them commercially with their top-line and/or bottom-line figures, rather than serving as a further drain on time and finances in order to remain compliant with buyer standards. Introducing programs that incentivize suppliers to participate should not be considered as ideal, but as mandatory in developing a new approach to ethically monitoring a supplier.

3. Real-time technology and cross-validated data

Real-time data is highly achievable and needs to disrupt the current approach of “spot-in-time” data, which, in the instance of human trafficking, puts those combating the issue perpetually several strides behind the perpetrators. Real-time data, matched with cross-validated data, offers the opportunity to streamline an effective mitigation of the problem and can unlock vital information about the processes used by perpetrators.

4. Multidisciplinary approach

This has already been widely regarded as a necessity among stakeholders in the TISC fight worldwide, and rightly so. Neither the private sector, public sector, nor third (humanitarian and NGO) sector independently has the key to effectively mitigate human trafficking in supply chains.

The private sector has the resources necessary to abolish the crime and the international clout to enforce change. The public sector can continue to evolve policy that makes improving TISC in the private sector more favorable for both brands and suppliers. The humanitarian and NGO sector has a wealth of knowledge and on-the-ground experience with communities affected by human trafficking and how best to raise awareness and provide education on the subject.

Each sector holds a key that when utilized in balance with the other sectors can effect change that is greater than the sum of its parts.
**Noteworthy Challenges**

A well-defined liability across the private sector in the wake of a human trafficking issue in a supply chain is unlikely to be defined in the near future. However, a slow and steady evolution of existing legislation such as the MSA and California TISC Act is the most effective way forward.

A graduated definition of liability endows the private sector with time to change and make realistic adjustments and therefore achievable targets in improving TISC. Dramatic changes to subjects such as corporate liability only cause confusion and only set businesses up to fall short due to their inability to quickly adapt and allocate budgets as necessary.

A large-scale mapping of workers and details of their job placement particularly in regions where informal employment is high would be the ideal achievement for combatting human trafficking in supply chains, but would be a colossal undertaking. It would require cooperation across sectors and effective incentivizing of private sector engagement and enlist the multidisciplinary approach mandated by governments worldwide in combatting the problem. The successful execution of this activity, however, would produce the data required to globally transform TISC and effectively battle human trafficking in supply chains worldwide.

**Summary**

Human trafficking in supply chains is a massive issue that is likely to be considerably greater than currently assumed. The current systemic approach to combatting the atrocity through ethical audits has provided a necessary foundation for the subject of ethical business and transparency in supply chains, namely, by utilizing international business to influence change. However, the approach has revealed weaknesses that limit its ability to produce the data required to effectively combat the problem.

Evolving an effective, replicable, scalable, and robust systemic approach to combatting human trafficking in supply chains will be challenging, but is not impossible. Learnings garnered from companies and organizations leading the charge in TISC already point to a new method of monitoring supply chains that can begin to take shape and inform a multidisciplinary approach in holistically combatting human trafficking in supply chains.

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Family-Based Non-state Torturers Who Traffic Their Daughters: Praxis Principles and Healing Epiphanies

Jeanne Sarson, Elizabeth Gordon, and Linda MacDonald

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Abstract

This is a praxis-based chapter with a feminist human rights lens. Drawing on the authors’ knowledge-based experiences, it explains that women and girls are subjected to torture and human trafficking by non-State actors in the domestic private sphere. The chapter begins by defining non-State torture and that women speak of being born into family-based systems that also trafficked them.

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Validating the credibility and reliability of women’s disclosures is derived from research examining the online Internet sexualized victimization and torture of children. A family-based typology is outlined, conceptualizing these perpetrators are foremost torturers who traffic versus traffickers who torture. Three principles of non-State torture victimization-traumatization informed care are explained utilizing models developed by authors Sarson and MacDonald who have, since 1993, supported women’s healing recovery of their relationship with Self. Their observations are explained sharing intervention models. Author Elizabeth Gordon writes of her recovery from non-State torture human trafficking ordeals beginning in infancy, sharing drawings and art forms that describe three major epiphanies of her recovery. Best practice suggestions close the chapter.

Keywords
Family-based non-State torture · Human trafficking · Victimization-traumatization informed care · Patriarchal social formation

Introduction

This chapter represents women who detail non-State torture, human trafficking violations frequently accompanied by exploitation into pornographic victimization, beginning any time after birth and organized within the context of family relationships. It exposes that such families were linked to like-minded individuals and groups (Sarson and MacDonald 2009, 2016, 2018a). Torture that is inflicted by these families, private individuals, and groups is referred to as non-State torture, whereas torture inflicted by representatives of a government, for example, police or military personnel, is referred to as State torture. Both commit the same or similar acts of torture but are differentiated as being “non-State actors” or “State actors” (Amnesty International 2000). In this chapter the terms torturers and perpetrators are used interchangeably. For the purposes of this chapter, trafficking in persons means that the women as children were harbored or born into families that trafficked them in and out of their homes and being tortured or the threat thereof was an everyday relational reality (Sarson and MacDonald 2009, 2016, 2018a).

For authors Sarson and MacDonald, the pioneering work began in 1993 when non-State torture perpetrated in the domestic private sphere was rarely identified as a form of violence inflicted against women and girls in community settings, in the literature, or even at the United Nations (Jones et al. 2018). When the United Nations Committee against Torture released their General Comment No. 2 in 2008, it included, for the first time, in paragraph 18, the acknowledgment that there were forms of violence committed against women and girls that manifested as torture perpetrated by non-State actors. This means that the work discussed in this chapter began, for Sarson and MacDonald, 15 years prior to the global acknowledgment that non-State torture victimization occurred in the domestic private sphere (Sarson 2018).

Since 1993 Sarson and MacDonald have provided prolonged support to 32 women; for some the support has lasted for years. However, over these years contacts have
become too many to tabulate, occurring mainly through the Internet emails, Facebook, Twitter, and Skype – but also via face-to-face meetings, letters, and through women’s voluntary completion of participatory website research questionnaires. Contacts have come predominantly from Canada, the United Kingdom, the United States, Western Europe, Israel, the Philippines, Australia, and New Zealand (Sarson and MacDonald 2016). Professionals from various countries working with women describing family-based non-State torture human trafficking victimizations have also sought support. Rarely have contacts come from men; therefore male victimization is not addressed.

This praxis-based chapter exposes a gap in present knowledge by addressing non-State torture and human trafficking perpetrated within families. Generally speaking praxis relates to combining and learning from trans-theoretical knowledge, practices, and experiences, including the scientific methodology of systematic observations and visual model-making as proposed by Capra (1988) and Sarson and MacDonald (2018a). Sarson and MacDonald share three practice principles developed when supporting family-based victimized women, and author Gordon describes how these supportive principles lead to healing epiphanies.

In addition, a feminism and human rights lens that promotes the equality of women and girls not to be subjected to torture is shown to be essential for healing. Thus, challenging the social and global discriminatory patriarchal lens that the human right not to be subjected to torture is violence that disproportionately affected men (Jones et al. 2018; Mendez 2018). Praxis-based experiences require acknowledging that women’s and girls’ survival responses are not indicators of mental illness but potentially relate to family-based non-State torture human trafficking victimizations.

Comprehending torturers’ aim to intentionally destroy the personal integrity and sense of humanness or personality of the person tortured (Staub 1993; Vorbrüggen and Baer 2007) is critical to understanding what normal non-State torture survival responses are. For instance, it is frequently evident for victimized women to describe not knowing they are human beings, describing their Self-perception as being an “it,” a “thing,” a “nothing,” or “garbage” (Sarson and MacDonald 2012a, 2016). Healing this destruction calls for supporting women to define who they are or want to be. This requires clarifying their personal beliefs, owning their own thoughts, developing personal boundaries and rules that will safely guide their lives. Learning, also, to attend to naming their emotional responses and their stress, as they work to integrate shaping their own healthy relationship with their Self. “Self” is spelled with a capital “S” because it is coming to know “I” – moving away from perceptions of being “a thing” to realizing “I” have a relationship with my-Self – that “I” was born a single and distinct human person. It is similar to knowing and owning a name.

**Responding to Stresses**

Sarson and MacDonald, for example, utilized drawings of stress responses in Fig. 1 to visually explain various emotional and behavioral responses to stressful situations women can experience in their efforts to recover, as well as cope with everyday living. Learning to identify every seemingly tiny success as they move forward contributes to rebuilding women’s relationship with Self, nurturing confidence, pride, dignity, and Self-belief.

Being aware of stressful responses also applies to helpers’ reactions to disclosures of human right atrocities such as family-based non-State torture and human trafficking. For instance, in 2017 the Canadian Centre for Child Protection launched an international survivor’s survey which focused on identifying childhood sexualized victimization that was recorded and possibly distributed online, and of 110 respondents, 71% changed therapists because the first therapist would not or could not address their needs. In 2010, Sarson and MacDonald conducted an Internet survey that focused on the discrimination and stigmatization individuals experienced when disclosing family-based victimizations addressed in this chapter. Published here for the first time, 83% of the 94 respondents said they had difficulty finding appropriate support, were not believed, were treated as if they were “crazy,” were not listened to, were ignored, given negative labels, and automatically medicated. All persons, whether helping or victimized, need to understand their emotional and behavioral responses to facilitate building positive coping and intervention strategies.

**Victimization, Credibility, and Reliability**

When disclosing family organized non-State torture, human trafficking, and, for some, pornographic exploitation, women are angered and hurt when their non-State torture victimization is named another crime such as assault as occurred with a decision made by the Standing Committee on Justice and Human Rights (Parliament...
of Canada n.d.). This rejection cuts into women’s sense of being considered a creditable person. It is wounding.

The descriptions women detail suffering as children once disbelieved can no longer be dismissed. Evolving Internet evidence of crime scene pedophilic pornographic victimization validates, and thus supports, the credibility and the reliability of the women’s disclosures. Multi-reports (Bunzeluk 2009; Canadian Centre for Child Protection 2016; Cribb 2015) that examined such exploitation reveal that:

(a) Children’s disclosures were generally disbelieved
(b) Sexualized violence is predominately inflicted against the girl child
(c) Sexualized victimization is perpetrated against newborns
(d) Children’s victimization include torture, sadism, bondage, bestiality, weapons used against them, degradations such as being defecated and urinated on, and writings on their bodies
(e) Children most seriously victimized are generally under age eight but victimizations can continue into adulthood
(f) Children are forced into child-child sexualized victimizations
(g) Some images were suggestive of necrophilia
(h) Multiforms of victimizations are inflicted together
(i) Perpetrators’ victimization patterns can be organized and ritualistic
(j) Perpetrators use violent, terrorizing death threats
(k) Perpetrators are predominately parents, other family members, and friends
(l) Much victimization appears to be home-based

Police investigations confirm that sexualized torture and exploitation including of infants occur (ABC News 2018; Caswell et al. 2006; CBC News 2015; IWF 2016; Morris 2015; Pacienza 2002; Sher 2006). Children can be victimized by bestiality – human-animal cruelty – that can involve small or large animals such as dogs and horses (The Chronicle Herald 2004). “Snuff” film victimization is proven by police investigations (Burke et al. 2000). Snuff images record the eventual killing of the child.

A Specific Typology

Women’s disclosures must be considered creditable, reliable, and believable. Women’s non-State torture, human trafficking, and exploitation ordeals can begin in childhood and for some lasting into adulthood. Their ordeals need to be understood within a family-based typology that can, for instance, include one or both parents, other family members, and a network of like-minded friends such as work colleagues, groups or rings, pimps, individual buyers, and pornographers (Sarson and MacDonald 2012a, 2016, 2018a). This population of family-based perpetrators must be recognized primarily as torturers because:
• Their prime relationships and social belongingness were repeatedly described by women as the like-minded intentional pleasure derived by inflicting sexualized torture, not unlike the pleasure expressed by some State torturers who say “I enjoyed doing it” (Amnesty International and Marange 1989: 15).

• Women described their childhood torture victimizations were organized and inflicted inside their homes and when transported to their family’s insider networks. Some women explained torture gatherings were coded and covered up as “parties,” so if as children they attempted to tell, they would be misunderstood (Sarson and MacDonald 2016, 2018a).

• Women described the physical and mental torture pain was intentionally and purposefully inflicted to fracture their personhood identity, beginning for some women in infancy. Destruction of a human being is recognized as a prime aim of torturers (Staub 1993; Vorbrüggen and Baer 2007).

• Women’s description of non-State torture tactics is similar to those of State actors as illustrated in the Patriarchal Discrimination in Fig. 2 (Sarson and MacDonald 2009).

Torture is recognized by the international community as an *ius cogens* human rights crime setting it apart from all other crimes (Human Rights Council 2008), “regardless of any familial or other relationship between the perpetrator and the victim” (United Nations Committee against Torture 2012: para. 3). The United Nations Committee against Torture (2008, 2012) and the United Nations General

![Fig. 2](image_url) This provides examples of State and non-State torture tactics

Namely, understanding acts of State and non-State torture

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<td>• Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification</td>
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Sarson, J. & MacDonald, L., 2018
Assembly (1999) acknowledge that protection from torture is a non-derogable fundamental human right which must be specifically upheld in efforts to restore the dignity of women so tortured. Additionally, Article 5 of the United Nations Universal Declaration of Human Rights states that no one shall be subjected to torture (1948). This right applies to all the women and girls who suffered family-based non-State torture. The past tortures that inflicted destruction against their personhood and dignity cannot be altered, but their personhood and dignity now and in the future can be by upholding their human rights and legal equality.

Maintaining patriarchal legal discrimination that dismisses non-State torture as a crime means non-State torture is seen not to exist; it denies that women and girls are tortured; it dismisses acknowledging the destructive impact non-State actors inflict (Jones et al. 2018; Sarson and MacDonald 2016, 2018a; Sheehy 2018; Starman 2000; United Nations 2006). Consequently, when a country criminalizes human trafficking, but not non-State torture, the family-based torturer-trafficker typology is invisibilized. It will not become knowledge taught in everyday classroom lectures. The United Nations Office on Drugs and Crime (UNODC) Global Trafficking Report admits there are unknown populations of women and girls who endure sexualized exploitation (2014). The women born to family-based non-State torturer human traffickers are such a population (Sarson and MacDonald 2016, 2018a).

Non-State Torture Victimization-Traumatization Informed Care

Ochberg (1997) wrote that a person victimized by atrocities of cruelty, dehumanization, and acts of human evil speaks more about their victimization ordeals than about the consequential traumatizations. This is knowledge that aligns with the authors’ experiences. Telling their torture stories and receiving public acknowledgment of their torture pain, suffering, and humiliation are important in recovery (Agger et al. 2009; Cienfuegos and Monelli 1983; Human Rights Council 2010; Jørgensen et al. 2015; Laplante 2007; Sarson and MacDonald 2014, 2018a). For these reasons, Sarson and MacDonald insist that best practice interventions must include a helpers’ ability to stay present as women retell and re-experience the terror, horror, and torture pain they survived and at the same time honoring how remarkable women’s spiritual will and their body’s spontaneous survival adaptation responses are. Spontaneous adaptation survival responses need to be considered normal—not abnormal or disordered (Sarson and MacDonald 2018a; Herman 1992). Therefore, the term post-traumatic stress disorder (PTSD) is replaced using post-traumatic stress responses (PTSR).

Women speak of wanting to be considered “normal,” although initially being called a woman can feel foreign because it conflicts with perceptions of being an “it” or a “thing.” Women also asked whether the inside of their body is the same as that of non-tortured women—they needed to know that anatomically they are normal. Learning to honor that their body’s spontaneous responses helped them survive can reduce blaming and hating their body or that there was something
wrong with them as a person. After all, what does society expect a woman’s responses will be when subjected to family-based non-State torture and human trafficking, especially considering these torturers are family – the group that society deems responsible for relational nurturing versus relational destruction (Sarson and MacDonald 2009, 2016, 2018a)?

Utilizing a feminist and human rights lens to examine the construct of societal patriarchy can promote free space for women to understand that they are, as all women are, born into global concepts of human inequality. It helps women learn that they are not alone in their victimizations – that these were not their fault – that societal positioning of women and girls as subordinate to men and boys contributes to distorting and enforcing beliefs that can influence women’s perceptions that violence suffered can be their fault (Fisher 2013; Narayan 2018).

Three fundamental praxis principles that grounded authors Sarson and MacDonald’s pioneering caring work included presenting to women understandings of (1) societal formation of patriarchal misogyny as illustrated in Fig. 3, (2) cultural shock and vicarious trauma, and (3) various normal survival responses.

**Fig. 3** It explains that four sites shape the fundamental patriarchal principle that holds male domination in place and subordinates female persons across all sectors of a society. This shapes cultural beliefs which are housed in structures and practices that influence expressions of power and control and oppression including of relational violence perpetrated against women and girls (Sarson and MacDonald 2018c)
Principle 1: Societal Formation of Patriarchy and Misogyny Outlined in Fig. 3

The societal formation model is an expanded concept from Gintis and Bowles (1981; Sarson and MacDonald 2018c). It explains the formable impact of global misogynistic patriarchy by identifying four societal organizing sites of fundamental men’s domination and positional power and control that operationalizes the societal subordination and oppression of women. Examining the first site of political and governmental positions and of law through the lens of male domination over female subordination, research reveals that worldwide women are blatanty underrepresented with only one out of five members in lower or single houses of parliament being women (United Nations Statistics Division 2015). Recapturing the patriarchal discrimination presented in previous Fig. 2 illustrates to victimized women, represented by this chapter, how social-legal patriarchy and misogyny have dismissed codifying non-State torture of women as a lesser-than human right crime while codifying State torture as a form of violence that predominately affected men (Jones et al. 2018; Mendez 2018).

In the second site labelled religious structures, fundamental patriarchy and misogyny were verbalized by Pope Francis, for example, when he said to “women religious” that women are “complementary” to men’s “seeing problems” (McElwee 2016). Religious leaders have resisted women’s entry as equals.

Within the third site of family structures, women’s patriarchal misogyny situates them to be controlled, oppressed, objectified, commodified, and sexualized. This has, for centuries, justified women and girls being sold, bought, or rented predominately by men within what Seager (2009) identifies as the “global sex trade” that includes torture victimization. However, Sarson and MacDonald disagree that torture victimization involves “sex” and therefore identify such victimization as the ever-growing global sexualized exploitation industry (GSEI); this includes women being blamed for males’ acts of raping (Department of Economic and Social Affairs 2016). In countries that do not make child “marriages” illegal, male attitudes include marriage to 8- and 9-year-old girls (Ananthalakshmi and Latiff 2017; Kakar 2017), fusing this with other patriarchal expressions of inequality and subordination.

Examining the fourth site – economic wealth, capital, class, and caste – reveals that women on average, across all sectors and occupations, earned 10–30% less than men (United Nations Statistics Division 2015). An old fact Minnie Phelps complained about in 1898 when in her Canadian province of Ontario a male school teacher earned $900.00 yearly, whereas a female teacher doing the same job was paid $600.00.

The fundamental patriarchal principle of male domination over female subordination shapes cultural patriarchal beliefs, attitudes, and practices, shaping women’s and girls’ inferiority into cultures which impose structural rules and regulations as just described. These filter into intra- interpersonal experiences, played out in workplaces, in homes, and in relationships as oppression and violence. Women this chapter represents have reported being raped in their workplaces, stalked until
alone and then attacked. They have, as other women have, been manipulated and suffered sexualized victimizations when accessing “professional” care (Canadian Centre for Child Protection 2017; Mickleburgh 2018; Penfold 1998; Ussher 1992). Collectively approximately 30% of this planet’s female population, regardless of income, age, or education, have suffered physical and/or sexualized violence perpetrated by a partner or sexualized violence by a non-partner (United Nations Statistics Division 2015).

Having awareness of this patriarchal social construction helps illustrate to victimized women that they are not alone. This supports women to realize that it was not their fault and more specifically not the fault of their vagina. Blaming their vagina led some women to have deep expressions of body hatred – including Self-cutting of their vagina. Realizing that being told it was their fault were lies the torturers inflicted onto them using misogynistic dehumanizing tones to intentionally slash at women’s human dignity can also reduce their Self-blaming responses.

Principle 2: “Culture” Shock and Vicarious Trauma

Culture shock or fatigue can happen when a person is submersed in another culture confronted by, for example, unfamiliar beliefs and practices (Hachey 1998). This is akin to defining and confronting the horrific criminal co-culture of the non-State torture, human trafficking family typology (Sarson and MacDonald 2012b, 2016, 2018a).

During recovery a woman will be challenged by absorbing unfamiliar beliefs and practices; especially those that promote respect and dignity and explain that non-State torture and human trafficking are human right violations (United Nations General Assembly 2003). Absorbing that she suffered crimes means challenging all the distorted, destructive beliefs and practices perpetrators forced her to absorb and normalize, such as believing being torture-raped and trafficked were relational norms (Sarson and MacDonald 2016). Undoing distorted beliefs can be exhausting – a form of cultural shock or fatigue can set in. However, Sarson and MacDonald have witnessed a woman immediately take on new safe beliefs, while others struggle in the hope the family-based perpetrators will change. Assessing beliefs and shifting destructive ones is essential to recovery and safety. Knowing how this challenging and exhaustive work can affect women means understanding their brain pain and vicarious trauma responses.

Brain pain is a healing response experienced by women and observed by Sarson and MacDonald. When confronting the distorted torture-inflicted beliefs internalized as children, women frequently expressed feeling their brains had been physically affected by perpetrators’ intentional infliction of torture pain combined with psychological mind-control conditioning never to tell.

Struggling to take their recall beyond never to tell conditioning, when beginning to examine and shift their beliefs, women may experience migraine-type headaches that can last for numerous days. Additionally, they may feel dizzy, weak, nauseated, and sleepy and experience chills and shivering, as well as described physical brain
sensations. One woman reported feeling and hearing “zapping” sounds in her brain which she described as tiny electric shocks (Sarson and MacDonald 2011). Seldom were headaches relieved with headache medication; thus, it appeared women had to wait for the brain’s new belief neuropathways to settle. Women experienced relief when informed that their brains had neuroplasticity – that new brain neurons are added daily (Spalding et al. 2013), which means their brains could heal, developing new and healing neuropathways. Sleeping was healing.

Brain pain was also observed by Sarson and MacDonald as a consequence of horrification, a response that is beyond terror. Horrification can give rise to speechlessness – to becoming mute (Ochberg 1997; Schmemann 2000). Victimized women describe experiencing going mute in school, having stuttering episodes, and talking “gibberish.” Sometimes episodes of muteness and stuttering occurred years later when horrification torture response memories resurfaced. Often horrification ordeals were beyond women’s ability to verbalize or describe; for some drawing helped processing their terror and horror. As previously stated, drawing is a common intervention that can help healing. Additionally, horrification is biologically shocking. Being shocked can give rise to coldness, shivering, and tremor responses. Based on observations of Sarson and MacDonald, sometimes mild seizure responses occurred and appeared to be compounded by the release of stored cellular body memories of prior electric shocking torture seizures. As women struggled to recount their childhood horrification ordeals, they spoke about the torturers’ smiles and laughter, identifying perpetrators experienced torturing pleasures. When women try to tell, they can re-experience past horrification victimization memories. Sensory memories can return the seeing, hearing, smelling, and tasting of the degradation ordeals they were subjected to at a level that was beyond their conscious capacity to process when they were being tortured. Dissociation and unconsciousness were spontaneous survival responses women remembered experiencing when children.

Vicarious trauma responses have generally been thought of as occurring to helpers working with individuals recovering from victimizing and traumatizing atrocities (Herman 1992, 2002; Hybels-Steer 1995). However, the observations of Sarson and MacDonald suggests when women become aware of the intentional non-State torture and human trafficking atrocities committed against them, they become a witness to their own victimizations – the smells, sounds, touch, sights, and their emotional feelings of terror and horror return. Dissociative survival responses distanced such atrocities perceived as being inflicted onto someone else. However, as women heal their dissociative distancing responses, they begin to integrate that they were “the someone else” person. Absorbing what was done to them and by whom, this new reality challenges their beliefs – from believing their family relationships were normal to understanding the family tortured and trafficked them. There are losses and grief – past losses that cannot be fixed.

Just as there is uniqueness in the recovery processes of individuals who survived State-inflicted torture (Burton and Omarzad 2006), there is uniqueness to each victimized woman’s recovery. Sarson and MacDonald found that in their supportive work with women, an average recovery meeting required at least 2 h. For intense memory releases, the experience sometimes required up to 4–7 h per session. Similar
prolonged time frames occur in sessions with Vietnam veterans or persons who suffered State torture (Burton and Omarzad 2006; Shatan 1997). It takes talking time; it takes time processing diary notes; it takes time to give emotional voice to “show and tell” drawings; it takes reframing one’s lived reality that it was non-State torture-trafficking that was survived.

**Principle 3: Observations of Various Survival and Healing Responses**

In this section, Sarson and MacDonald discuss other observed victimized women’s survival and healing responses. These include understanding (1) cellular memories, (2) eye movements, (3) chemical drugging torture memory responses, (4) sensory shutdown, (5) the emergence of missed early childhood growth and development tasks, and (6) psychological visual reframing.

*Cellular memories* in Fig. 4 refer to women’s stored and frozen victimization ordeals re-experienced during flashbacking, body reenactments, and recall (Sarson and MacDonald 2011). Understanding the release of stored cellular torture victimization responses is best described as understanding that a woman’s body is talking.
to them, telling them how and what they suffered. As physical and emotional pain reemerges when memories return, explaining to women the concept of present-day body talk is helpful; it reduces their fear that something is wrong with them. For an everyday example, explaining that over-exercising can cause painful muscles tells a person they have done too much. Past day victimization body talk is similar – it returns – it tells women what they suffered.

Women’s body pain can be released when women recall non-State torture-trafficking ordeals. Their dissociated symptoms of pain from dislocated joints, from bladder infections related to ongoing sexualized tortures, and from battered muscles related to severe beatings, hangings, whippings, punches, and burnings can return in the here and now. The soles of their feet pain from beatings known as the torture tactic of falanga (Danneskiold-Samsøe et al. 2007). Women struggle as they are sent traveling back into time whereby their past victimization pain becomes their present body pain. It feels like being caught in two time zones – the past and the present. A similar experience Vietnam combat survivors call “living in a split time zone” (Shatan 1997: 205). This is why women say recovering and integrating is like being tortured all over again. Women need knowledgeable non-State torture victimization-traumatization informed care for them to feel safe to travel through such recovery suffering.

Noting eye movements can help identify when a woman is moving into a dissociative response. For example, women’s eyes may roll up into their head or retreat to the “back” of their head. These dissociative responses create physical sensations. To assist a woman become aware of her eye movement, physical sensations ask, “Where are your eyes?” Women need to learn to counter such dissociative responses for safety reasons. Practicing breaking their eye movement dissociative response can help them develop their ability to end their vulnerability of being chronically controlled and revictimized when contacted by the perpetrators. Otherwise, women can remain controlled for years by family-based torturers when ongoing contact is possible.

Chemical drugging torture memory responses can occur. A woman’s body can reenact drugging chemical torture responses such as experiencing:

1. Drowsiness
2. Slurred speech
3. Becoming mute
4. Eye movements to the “back of her head” or “go up into her head”
5. Her eyelids droop or close falling into a sleep state unable to respond
6. Feelings of having no physical control
7. Dizziness
8. Feeling drunk with balance effected
9. Temporary paralysis and or blindness

Polydrugging was a regular torture tactic; drugging into unconsciousness continues to be used by traffickers (Nellemann et al. 2018). Drugging of the women when they were children facilitated the perpetrators ease of transporting and
exploiting them to organized torture gatherings often coded as “parties”. It kept them as children silent when tortured. Women may reenact their drugging responses for years, for decades, if misunderstood. Recovering means practicing to overcome dissociative responses by keeping her eyes open, locating her-Self in the present time and space, for example (Sarson and MacDonald 2011).

*Sensory shutdown* is the dissociative distancing that spontaneously shuts down women’s physical sensory systems when as children, they were overwhelmed by life-threatening torture pain and suffering (Sarson and MacDonald 2012a). Having dissociated sensory physical pain, some women felt no pain when scrubbing their body. Only when they saw blood did they realize they had scrubbed their skin too hard. Some women also spoke of visually perceiving their environment in tones of black or gray and red for the times they bled from sexualized tortures. When healing, some women expressed surprise, for example, when noting green tree leaves changed into autumn colors.

*Emergence of missed early childhood growth and developmental tasks* can appear during recovery. Because women’s victimizations began in infancy or soon thereafter, during recovery of very early childhood victimizations, a strong urge for sucking can arise, a normal growth and developmental sucking response that was never safe to express when tiny. By using a water bottle with a spout that requires a sucking action when drinking can help heal this growth and developmental gap. This traumatization response needed addressing because women expressed feeling embarrassed when this infantile response developed. Left unaddressed can cause increased painful emotional embarrassment triggering.

*Psychological visual reframing* is an intervention that supports women’s need to “escape” from their torture-trafficking memories, particularly when re-experiencing early childhood captivity ordeals. They needed to unlock the terror, horror, and torture victimizations by describing these, feeling their emotional-physical feelings, being listened to and understood, and getting out or “escaping” their overwhelming senses of captivity and powerlessness. These torture-trafficking victimization memory ordeals held them as children in a state of captivity – captive in houses of horror; captive in their bedrooms; captive in the basements; captive in the cars, trains, buses, trucks, taxis, boats, and airplanes that transported them to the homes of organized multi-perpetrator torture gatherings; captive when transported to a foreign country; captive when trafficked to unknown perpetrators in unfamiliar places; captive by the perpetrator-professionals who abused their positional power to inflict further victimizations; and captive when discarded as useless garbage in homes, warehouses, motels, farms, backyards, woods, churches, military buildings, and cabins, for example. Reframing by visualizing escaping or being “rescued” from re-remembered childhood non-State torture-trafficking captivity victimizations can be a unique key component of promoting safety in recovery.

A number of women explained they were conditioned as children to believe they must Self-harm or commit suicide if they tell (Lane and Holodak 2016; Sarson and MacDonald 2018b). Therefore, interventions to reduce this suicidal-femicidal risk need addressing when women undertake disclosing childhood victimizations.
Visualizing a psychological mental imagery of escaping and/or being rescued reframes and promotes safely getting out of a past childhood memory of captivity, powerlessness, torture, and trafficking. This has been an effective healing strategy with women who find they have a strong skill for engaging in visual imagery interventions.

Creating psychological escape and rescue visualization principles needs to (1) reflect that the woman’s victimization memory is of being a child, and thus the escaping visual reframing needs to apply to a child’s development and creative imagination, (2) include color which helps overcome prior sensory shutdown of color, and (3) be nurturing to overcome growth and developmental deprivations. Additionally, prior planning with a woman about where a safe place would be for her to visualize escaping helps undo powerlessness. For example, escaping to a tree house filled with warm blue blankets may feel safe and then assessing with her when she says it is time for her to be rescued from a childhood torture memory. Rescuing must happen when she has finished processing her state of captivity and helplessness, knowing she has told all she needed to and was understood.

When Bristol University researchers did a literature review to evaluate the frequency by which victimized women’s voices are included in domestic violence articles, they found of the 85,000 articles accessed, only 140 carried women’s voices (verbal communication Marianne Hester, 39 Aug 2018). This chapter resists such a practice. In the following chapter section, author Elizabeth Gordon presents evidence-based outcome epiphanies when healing family-based non-State torture and human trafficking victimizations that specifically relate to the three praxis-based principles discussed.

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**Author Elizabeth’s Healing Epiphanies**

**Principle 1 – Epiphany 1: Patriarchal Societal Formation, Feminism, and Human Rights**

Having a feminist human rights framework is respectful to me as a woman, as a person. It helps to understand what I endured in a social political patriarchal structure context because I felt so alone as a child, as a girl, captive, tortured by multiple men.

Within a feminist human rights framework, I am not pathologized. It enables me to tell the story of my childhood knowing the responsibility and accountability for the non-State torture crimes are placed clearly with the torturers. It is an antidote to the evilness and brutality of the torturers and the environment I struggled to exist in as a child, where I felt more dead than alive, where I was indoctrinated, objectified, degraded, humiliated, confined, my human rights violated over and over again, feeling in “shatter bits” as drawn in Fig. 5.

Do the opposite of what the torturers do was advised, so where my human rights were so violated before, I now put them back in my life over and over again with freedom to be me, with resilience, determination, and attitude!
Principle 2 – Epiphany 2: “Culture” Shock and Vicarious Trauma and Challenging Beliefs

Challenging my beliefs was complicated by perceiving and feeling I was in shattered bits as drawn in Fig. 5. As a result of torture inflicted by parents, extended family, “uncles,” and other perpetrators, I existed since I was an infant dissociated. I don’t think I knew I was alive. I felt I’d died over and over again and couldn’t find enough of my-Self to feel connected and grounded. I was lost to my-Self. There was nothing and no one to hold onto in the terrifying torture-trafficking environment until I saw this timeline (Fig. 6) drawing. It was a profound shock and surprise, but, I could see the truth on the timeline. Until then I had never thought of my-Self as being a person, one person, from birth, one child that grew up and developed into a woman in a continuous way.

I saw for the first time that I had in fact, despite the dissociative fragmenting impact of all the torture-trafficking victimizations, been interacting, growing up, working hard, and being creative from birth onward and had had successes. The hearts are so important. No one had drawn hearts for me before to support me to understand that I was a person and deserved kindness and care!

It totally challenged my beliefs. It was a relief too. In this timeline I could see the truth that I grew up in one body. So began a transformation of my beliefs and feelings about being in bits and in dissociative Self-states. I must have survived in one body. These were completely new thoughts, totally radical and very strange just as was discovering that I had skin.

Discovering I have skin just happened. It was June 2010 when I noticed, I saw, I have skin all over me. This is remarkable. It is amazing how levels of awareness that I have skin still come, like the other day I was trying to turn off the bath tap which has become very difficult to turn, and I noticed that my skin on my hand is good for gripping. I was impressed with my human skin. It’s so clever. It is
waterproof too! In February 2017, it was 6 years, 7 months after my first realization that I had skin. This illustrates how long recovery time is.

Working on my beliefs meant that sometimes during healing sessions, I got a bit cross and my head hurt because it was new to me to come to understand physically, emotionally, and spiritually that although I’d felt in shattered bits, to realize this was how the torturers made me feel, this wasn’t the actual reality of how I was physically. I was not in shattered bits; I was a whole infant, child, teenager, and woman. This was hard work to understand because I had a very deeply held belief that I didn’t have a body. I’d seen and perceived my-Self as invisible, nothing, no one, and in shattered pieces.

When drawing my-Self age 5 as one whole body with edges, I hadn’t noticed my big toes were not on the outside that they were on the inside. I redrew my feet in Fig. 7. This was funny! It helped me to work on my beliefs that I had had a whole body as a 5-year-old child, for example. That means I had skin when I was 5 with edges; if I have edges, then I can’t be in bits because you can’t be in bits and have a body with edges. This is impossible I think.

**Principle 3 – Epiphany 3: Other Normal Responses of Escaping Black Boxes of Memories**

*Black box memories.* I had been carrying the weight of unspoken unprocessed torture-trafficking ordeals for 30 years. Overwhelmed with flashbacks a few years ago, I visualized my compartmentalized memories that happened at different times and at different childhood ages as being inside black torture boxes as shown in Fig. 8. Each held a separate ordeal with the physical, emotional, sensory body talk memories of the harms inflicted by the perpetrators. Processing each black box memory was like opening a time capsule of remarkable evidence.

In the process of reliving the original torture, I feel in a state of life and death emergency. As a memory releases, the body talk impact may last for days and nights. Feeling sick, dizzy, confused, migraines, my body swelling up, not being able to walk...legs shaking...blood suddenly dripping out of my vagina...bruises appearing
Fig. 7  These drawings show two images of how the big toes were first drawn on the outside of my feet, then realizing the big toes were on the inside of my feet (July 8, 2012).

My many stored and separated torture, trafficking, and captivity victimisation memories hung heavily, exhausting me, taking all my energy.

Relief and freedom came when I trusted opening a black box to release the memory.

Fig. 8  Each black box held separate victimization memories that felt like heavy weights but when opened and worked through brought relief as healing happened.
where the men had gripped my wrists in the ordeals... feeling strangulation and pain in my arms... feelings of being gagged... feeling the men’s penises in my mouth... suffocating... trying to scream and not being able to... then flashes of images... the place... a hedge... a black car... the men’s coats... the smell of cigars... the room, the barn... the ropes... the men.

Visual and sensory unprocessed torture-trafficking memories from my childhood: images, sounds, smells, voices, what was said by the perpetrators, my child words, terror and horror feelings during the ordeal... the place... the time of year, who was there... and then flashbacks... being tied up and tied with ropes... being forced into a box... ditches in the woods... the men laughing and calling me names... the feelings of shame and humiliation when forced to be naked... feeling numb... and dissociating... and then the rapes... feeling naked and frozen... the pain, the blood, and my body inflamed sore and raw... seeing the knife and other torture tools terrifyingly coming at me, going “blac blac” into unconsciousness.

I was absolutely overwhelmed and terrified when I was flooded with flashbacks and body talk. I thought I was crazy and no one would believe me. I felt I was suffering the torture-trafficking ordeals all over again. I learned that it is a relief to draw the memory when a black box begins to open and verbally and emotionally release the ordeal it had held frozen in time.

**Torture drugging responses.** Understanding my torture drugging memory meant learning about the drugging responses of feeling very dizzy, floppy like a rag doll, eyes rolling into my head, not being able to see, fainting, panic, feeling I wanted to run and not being able to, feeling I was going crazy, choking feelings, my chest hurting and collapsing into speechlessness blocked me from telling. Learning this was a reenactment of the drugging torture response and supported on how to practice staying in the present soon dissolved this response. Now I can identify my drugging responses so I can tell even while feeling very dizzy. I help my-Self to stay conscious when I feel faint or floppy. I try to keep my eyes open and in focus so they don’t keep rolling into my head.

**Rescuing and escaping.** Flashbacks strike like bolts of lightning; there is a thunder storm of body talk. In the storm which I believe will last forever, I work very hard to keep in connection with the adult me while feeling very much the age of the child I was when a torture-trafficking memory floods in. The torturers’ tornado with their words of “you die,” “nothing,” and the evilness energy of the ordeal engulf me until I get some relief through drawing the memory alongside the child I was in the memory. I re-experience in the present the whole torture event as my mind, body, and spirit attempts to recover what was not possible when I was a child. Releasing all the body talk but also witnessing the torture suffering that the child I was endured means I have to walk through it.

If in the process of telling I didn’t have the opportunity to leave the original torture environment of the child I was, I would stay stuck in the torture memory. So feeling like the child I was in the adult I am today might be overcome by the “die if you tell” programming and be triggered into a suicidal response.

In a rescue I feel my little child body is protected, soothed, and wrapped in a blanket which replaces forced nakedness and the voices of the men shouting
“no one” and their objectification, rape, and destruction of me as a human being. Feeling I have a body albeit wounded and recovering replaces “no-body,” pride in my-Self knowing it was not ever my fault replaces the relentless torture programming of “it’s your fault.” Feeling I have a body and always did replaces my perception of my-Self in shattered bits, the result of their brutality. A released memory ordeal without a rescue or a different ending to the original torture story is abandoning, re-victimizing, and re-traumatizing. It would be repeating the torture without a resolution. Feelings of craziness, lostness, shame, captivity, and dissociation would continue, and the torturers would win.

The rescue is real and concrete to the child I was in the memory and to the adult woman I am. It is important care in the present where there was none before. The dissociative barriers that had once compartmentalized my childhood ordeals begin melting one by one. Anger replaces helplessness. Compassion for my-Self replaces the brutality of the perpetrators without humanity, warmth replaces numbness and coldness, and the kindness of my supporters replaces the cruelty of the perpetrators who wanted to destroy me. Where there were wounds, there are fresh scars. Now I feel hopefulness and awe, I see beauty and color, and each rescue allows a little more pastness to begin to happen. Escape is about justice, justice for me and for the child I was.

Rescues are important. They have given me strength and confidence in my-Self to recognize and stay away from perpetrators both past and present. I stand in my own space with my values which I am proud of, and they are important to me. Creating good healing memories now is a very profound new experience, so I feel I am alive. I believe rescues are a social, moral, and ethical responsibility both for the person so harmed who is reliving the torture and for persons who are supporting. Each rescue is an exit opportunity toward freedom. A rescue helps me learn I am important enough to be cared about. It is always a surprise to me to receive gentle care.

It’s courageous work, to go through the torture again as the body pours out pain and reaches out for healing. To be rescued in the memory and taken away from the perpetrators by good persons to a safe place soothes the unbearable pain that I held for so long. This is almost unbelievable. I never believed this could be possible and yet it is. Now I create new memories, memories of being cherished and soothed and memories of kindness and laughter; I can feel joy. I can make statements which I couldn’t before like, “when I was five I was taken to a house with a basement where several men tortured me. I was subjected to forced nakedness, caging, and was raped while hung up on some bars on the wall.” I can say this because what the perpetrators did and my responses are named and recognized as torture and because I was rescued which makes a different ending to the story. I can be in my community and speak about the injustice, the silencing, and the discrimination and fight for non-State torture to be recognized as a violent human right crime on the continuum of violence particularly against women and girls.

**Conclusion: Best Practices**

In conclusion, This chapter has presented the non-State torturing, human trafficking family typology. It has explained how patriarchal socio-legal discrimination has excluded upholding and promoting women’s and girls’ human and legal rights not to
be subjected to non-State torture. Shared professional praxis principles and testimonial epiphanies normalized survival responses and explained recovery interventions. The following best practice suggestions are essential to ensure recovery, social inclusion, and judicial remedies:


3. When women and girls speak of their victimization saying they were tortured, their dignity must be upheld, their wording respected, and their disclosure of non-State torture not dismissed and renamed another form of violence such as assault.

4. Knowledgeable care and effective outcomes as this chapter described include processing both the victimizations suffered and the consequential traumatizations. This necessitates specifically developing non-State torture victimization-traumatization informed care being aware of the extended time required for recovery.

5. Prevention necessitates acknowledging that organized family-based non-State torture and human trafficking exists. Because all the women this chapter represents went to school and if nondiscriminatory human rights education had occurred, Article 5 of the Universal Declaration of Human Rights would have been explained. Women have said they may have then realized what the family-based victimizations that were being inflicted against them were. Education of children utilizing the Declaration on Human Rights Education and Training (United Nations General Assembly 2012) is needed. This explains the human right equality of all persons including the right not to be subjected to torture, exploitation, or enslavement regardless of who the perpetrators are.

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Mediated Representation of Human Trafficking: Issues, Context, and Consequence

Elena Krsmanović

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Abstract

The issue of human trafficking is complex and there are numerous debates in the field that continue to divide both professionals and academics who work on this topic. Giving voice to advocates of different perspectives, the media have been seen as a facilitator of these debates. This essential function, however, gives the media great power to influence the debate and set the agenda by choosing what to report on, and how. This chapter reflects on the author’s PhD research and other available literature on trafficking representation in the media and its implications. In the first section, the chapter identifies essential roles that the media can play in fighting human trafficking. These roles expand far beyond awareness raising and prevention and include mobilization of public support, influencing policy change, monitoring institutions involved in tackling trafficking, deconstructing stereotypes, and fostering a supportive environment in which victims recover. In the

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second part of the chapter, main issues characteristic of media reporting on human trafficking are identified. These are the 3S’s of mediated representation of trafficking – Stereotyping, Simplification, and Sensationalism. After elaborating on these problems, the text turns to the context and consequences of media reporting on trafficking through considering major shifts in antitrafficking discourse. Consideration of political, cultural, and economic context in which contemporary media reports are created suggests that the representation of human trafficking is being used to preserve state power, the current world order, and wealth distribution. The chapter concludes with recommendations to media and antitrafficking professionals that could lead to better reporting on human trafficking.

**Keywords**

Human trafficking · Media representation

**Introduction**

Perception of crime, and any other social phenomenon, is becoming increasingly dependent on its mediated representation. What is more, the media is often the only source of information accessible to the general population when it comes to the clandestine and relatively rare crime acts, such as trafficking in human beings (THB). Crime depiction, however, is never objective and depends on a number of factors. At least three levels of potential bias need to be taken into account: personal/organizational, profit-driven, and structural. Personal cultural, ideological, and political affiliations can take a toll on author’s impartiality (consciously or unconsciously). Same can be said of affiliations of the news outlet the person is working for and affiliations of the sources the person is using. Most media outlets are profit-oriented and therefore in need of producing stories that sell papers, attract audience, or generate clicks and attract advertisement. The tendency to overstate newsworthy aspects of the crime story is particularly pronounced in the wake of economic pressures, ever-growing competition, and propensity to infotainment. In relation to human trafficking (HT) news, focus on sex, violence, and stories involving children is indicative of the newsworthiness bias. In addition to that, more pragmatic factors influence news production, making it reliant on available resources, accessibility of sources, and structural determinants of the news making process. Not only do these pressures affect the media portraying a story, but also the antitrafficking (AT) experts who are feeding the information to them.

In addition to serving as an important source of information about criminal conduct that happens in the world around us, the media also represent an arena in which different meanings and forms of representation fight for influence (Ferrell et al. 2008). To begin to grasp media representation of human trafficking, one must also be aware of the role media play in constructing the social reality. Criminological literature abounds in examples of orchestrated crime spectacles in the media that served the purpose of social control and exercising political power.
(see e.g., Moore 2014; Ferrell et al. 2008; Cohen 2002; Kidd-Hewitt and Osborne 1995; Krsmanovic 2018 in relation to the mediated representation of human trafficking in particular). Similarly, media scholars theorize on mediatization, a process that leads all social institutions to change in response to the increasing importance of the media (Couldry and Hepp 2013, 2017; Hjarvard 2008). Therefore, media framing of human trafficking is not only dependent on the above-listed factors but also part of the hegemonic efforts to tackle THB and/or other pressing issues. In the light of these complex dynamics, the first part of this chapter looks at the potential role media could play in suppressing human trafficking. It then turns to identify and contextualize the problematic aspects of media reporting on THB as evidenced in author’s doctoral research and other available empirical data. Finally, the chapter concludes with recommendations on how to improve reporting on THB and nurture nonharmful and genuine representation of trafficking in the mass media.

**Role of the Media**

The role of the media in fighting human trafficking stretches far beyond awareness raising and prevention of the criminal act. There are five additional domains in which the media have an impact. In each domain, reporting can enhance or do damage to efforts to adequately respond to trafficking in persons. The Table 1 below summarizes the positive and negative effects media could have. By demonstrating the complexity and the major impact of the role of the media, it also provides an argument as to why contemporary scholarship needs to engage further with the topic and help find ways to improve it (Krsmanovic 2018).

The media plays an important part in debates on what human trafficking is and how it should be handled. By giving voice to advocates of certain perspectives and silencing others, the media can influence the debate and set the agenda of the public communication. The immense potential of the media to be an important contributor to the fight against the crime of trafficking demonstrated in this section can be realized only if problems linked to the reporting on trafficking are identified and adequately addressed.

**Main Issues in Media Representation of Human Trafficking**

This chapter now turns to exploring the main issues with reporting on human trafficking. (Observations made in this section are based on author’s PhD research focused on scrutinizing media framing of human trafficking for sexual exploitation in the United Kingdom, the Netherlands, and Serbia. Additional empirical evidence was sought to show whether these observations are true for other regions of the world.) After zooming in the mediated representation of THB to identify problems with journalistic reporting, the chapter zooms out to explore socio-political context in which this reporting is shaped.
Table 1 Domains of media influence and possible impacts. (Adopted from author’s PhD thesis)

<table>
<thead>
<tr>
<th>Domain of influence</th>
<th>Positive impact (product of responsible reporting)</th>
<th>Negative impact (product of irresponsible reporting)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awareness raising</td>
<td>Public sufficiently informed on HT and able to recognize the related risks and take measures of precaution</td>
<td>Public misinformed Real risks hard to recognize</td>
</tr>
<tr>
<td></td>
<td>Examples: domestic citizens aware of risks of internal trafficking; men, women, and children wary of both sexual and labor exploitation</td>
<td>Examples: inflated numbers causing moral panics to occur; vulnerable people not being aware of THB risks due to victim stereotyping</td>
</tr>
<tr>
<td>Public support</td>
<td>Public support mobilized; political will to tackle HT raised</td>
<td>No public support to AT efforts or support mobilized for harmful actions; low political will to tackle HT</td>
</tr>
<tr>
<td></td>
<td>Examples: Country improving AT mechanism and victim assistance; public involved and supporting AT efforts</td>
<td>Examples: Low profile of HT on the political agenda; public disinterested. Or government AT focus doing harm (e.g., antimigration measures that violate rights of other vulnerable groups and are proven to be ineffective in stopping HT)</td>
</tr>
<tr>
<td>Policy change</td>
<td>Media help improve AT policy</td>
<td>Media promote inadequate policies</td>
</tr>
<tr>
<td></td>
<td>Examples: Effective policies promoted, ineffective ones criticized and substituted</td>
<td>Examples: Policy responses that have no impact on suppressing HT and/or negatively affect vulnerable groups (e.g., migrants, sex workers) promoted in the media</td>
</tr>
<tr>
<td>Monitoring</td>
<td>Media used as monitoring tool in suppressing THB</td>
<td>Monitoring tool potential of the media unutilized</td>
</tr>
<tr>
<td></td>
<td>Examples: Media involved in the effective and constructive supervision of the AT mechanism, law implementation, and protection of victims’ rights</td>
<td>Examples: Noncritical and inert reporting that does not help with identifying problems and improving the AT system and victim support mechanism in place</td>
</tr>
<tr>
<td>Deconstructing stereotypes</td>
<td>Genuine media representation of THB</td>
<td>Stereotypical representation of THB</td>
</tr>
<tr>
<td></td>
<td>Examples: Stereotypes deconstructed; improved awareness and reduced stigmatization</td>
<td>Examples: Stereotypical representations promoted; impaired awareness and increased stigmatization</td>
</tr>
</tbody>
</table>

(continued)
The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (also known as the Palermo Protocol) introduced the three P model used to address THB: Punishment, Protection, and Prevention that was later enriched by another P for Partnership. The model of 3P was further adopted by the US State Department in the so-called TIP report that measures governmental efforts to tackle human trafficking around the globe. In the media sphere, on the other hand, a model of three S’s could help determine how poorly countries are doing in reporting on trafficking in persons: Stereotyping, Simplification, and Sensationalism. If they adhere to the 3S’s, media outlets are likely doing well in terms of attracting audience and readership. Yet, as this section demonstrates, this success goes at the expense of genuine representation of THB and has numerous consequences that affect all 3 P’s – trafficking punishment, prevention, and victim protection. As shown in the analysis below, biases in representation of human traffickers could lead to failure to recognize, prosecute, and punish certain groups of criminals; inaccurate information is damaging prevention efforts; and stereotypes around innocent and underserving victims can adversely affect protection of trafficking survivors.

Media reporting on human trafficking is characterized by an abundance of stereotypical representations (see for instance Gregoriou 2018; Krsmanovic 2016, 2018; Virkus 2014; Muraszkiewicz 2014; Snajdr 2013; Martin 2013). In addition to that mediated representation of trafficking relies heavily on simplistic binary oppositions of good and evil, free and enslaved, innocent and guilty, migrant and citizen. In doing so, media fail to encompass nuanced nature of the human trafficking phenomenon. Simplistic portrayals of human trafficking in the media increase the newsworthiness of the story by situating it in the existing meaning structures and making it easily comprehensible. For instance, through the direct contradiction between victim and trafficker trope, the narrative is reduced to the simple conflict

Table 1 (continued)

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<th>Positive impact (product of responsible reporting)</th>
<th>Negative impact (product of irresponsible reporting)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shaping the environment in which trafficked people recover and exercise their rights</td>
<td>Supportive environment encouraged in the media</td>
<td>Discriminatory environment encouraged in the media</td>
</tr>
<tr>
<td></td>
<td>Examples: Media facilitating unhindered process of victims’ recovery and reintegrating and promoting adequate protection of victims’ rights</td>
<td>Examples: Media focused on criminal justice and uninterested in victims causing obstacles to victims’ recovery and reintegration process and inadequate protection of victims’ rights</td>
</tr>
</tbody>
</table>

**Zooming in: The Three S’s of THB Reporting – Stereotyping, Simplification, and Sensationalism**

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (also known as the Palermo Protocol) introduced the three P model used to address THB: Punishment, Protection, and Prevention that was later enriched by another P for Partnership. The model of 3P was further adopted by the US State Department in the so-called TIP report that measures governmental efforts to tackle human trafficking around the globe. In the media sphere, on the other hand, a model of three S’s could help determine how poorly countries are doing in reporting on trafficking in persons: Stereotyping, Simplification, and Sensationalism. If they adhere to the 3S’s, media outlets are likely doing well in terms of attracting audience and readership. Yet, as this section demonstrates, this success goes at the expense of genuine representation of THB and has numerous consequences that affect all 3 P’s – trafficking punishment, prevention, and victim protection. As shown in the analysis below, biases in representation of human traffickers could lead to failure to recognize, prosecute, and punish certain groups of criminals; inaccurate information is damaging prevention efforts; and stereotypes around innocent and underserving victims can adversely affect protection of trafficking survivors.

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between good and evil. This is one of the most common conventional themes in the literature that is deeply embedded in our culture. Thusly, it makes human trafficking news stories easily digestible and unlikely to be challenged. Adding nuance to the story, however, complicates the matters. For instance, it is the author’s experience that a news piece about sexually exploited women who previously worked in prostitution and had a history of drug abuse is viewed as much more controversial and consequently is much less likely to be featured in the media.

The most prominent stereotypes are linked to the representation of trafficked persons and perpetrators of human trafficking. The way trafficked individuals end up being portrayed in the media comes down to another binary opposition – one between the innocent victim and the unworthy prostitute/migrant. This contrasting way of portraying victims in trafficking discourse has been extensively analyzed in the literature (Andrijasevic 2007; Attwood 2016; Doezema 1999; Krsmanovic 2016; Snajdr 2013). The contrast is particularly pronounced in portrayals of victims of human trafficking for sexual exploitation. One can encounter the crying, bruised suffering body of a helpless victim, or its antithesis – the body of an unworthy prostitute that wears provocative garter belts instead of whip marks on her skin. However, victims of labor exploitation also receive negative media coverage (Szörényi 2016), especially if their motives to come to work in the West are interpreted in accordance with the greedy economic migrant stereotype. For instance, the companionate tone used in articles about young victims exploited through debt bondage in South Asia can be very different to the tone used by the same outlets in describing cases that involve victims from the same area who migrated to Europe and ended up exploited in hotels and farms of the old continent.

Regardless of the type of the exploitation, human trafficking articles often devote significant attention to proving victimhood, i.e., that the victims are worth reader’s compassion because they had no chance of escaping the unfortunate fate that has befallen them. This creates a hierarchy of victimhood, where the legitimacy of one’s victim status is judged based upon preconceptions about THB that are often incorrect (Krsmanovic 2018). Establishing whether someone is victim-enough to be considered innocent and worthy of our pity has numerous negative consequences on trafficking survivors. It encourages victim-blaming and negative attitudes towards sex workers and migrants, or more generally, female sexuality and ethnic otherness. Further, it can have a negative impact on identification and protection of victims who do not fit the stereotype. The Diagram 1 below shows traits of the preferred victim type in the European media.

Existing empirical evidence shows that common motifs in the visual representation of trafficked people are congruent with the victim/prostitute opposition (Andrijasevic 2007; Krsmanovic 2016). Images of oversexualized prostituted bodies are, however, more common than images of suffering victims. If we take into account that most people do not read all news stories until the end and that titles and images get the most attention, it becomes clear that media still have a long way to go to do no harm and represent THB genuinely.

In contrast to the ideal victim trope, the stereotypical trafficker is represented as a violent, merciless foreign criminal who shows no remorse for his actions and no
compassion for his victims. In accordance with what Doezema (1999) and others have called the white slavery myth, this stereotype banks on the idea that foreign men come to the West where they corrupt local (white) women and force them into prostitution. Through accentuating or fabricating “otherness” of traffickers and their victims, media frame human trafficking as an issue that is imported by foreign criminals from their own (morally inferior) cultures. Such representation often masks anxiety over migrants arriving in the first world countries and justifies measures to discourage or inhibit their settlement. Furthermore, blaming trafficking solely on foreign criminal gangs prevents us from considering the macrolevel and accounts for the role of capitalism (Kempadoo 2015), gender inequality, poverty, conflict, patriarchy, and other important social factors that allow for THB to keep occurring.

Comparison of traffickers’ nationality as recorded in news reports with the official statistics on traffickers’ demographics shows that European media over-represented traffickers who are foreign (Krsmanović 2018). Alongside this over-representation, some media also display a tendency to stress if domestic traffickers have foreign roots, or even falsely represent them as foreign based on their ethnic

Diagram 1  Characteristics of the victim type preferred by the media (Krsmanovic 2018)
descent. This is not to deny that some traffickers do come from abroad. Yet, instead of investigating whether men from certain countries are indeed more likely to exploit young women, and if so, for what reasons, media reports on human traffickers reiterate stereotypes uncritically. This leaves the reader with a one-sided perfunctory representation and unaware of genuine risks of human trafficking. Additionally, biased representation of human trafficking and traffickers involved can cause more grounds for further discrimination, racism, and other underlying factors that may push minority communities to commit a crime in the first place, and law enforcement agencies to focus on policing these groups and neglecting others that could also be involved in THB. Apart from the stereotyping of victims and traffickers, there are also noticeable patterns in media portraying of law enforcement, governments, politicians, and activists involved in fighting human trafficking (Krsmanovic 2018).

The third characteristic of THB representation in the media is sensationalism. With a crisis engulfing journalism globally and the ever-growing market competition, the quality of investigative journalism in the mainstream media is losing the battle to sensationalist, revenue driven reporting. Digitalization and the decline in consumption of traditional media further adversely affect the media quality. This happens as outlets compete to attract online media consumers and put emphasis on choosing tweetable headlines and attention-grabbing images, rather than on the content of the reports. Such conditions allow for sensationalism to flourish. It comes as no surprise, then, that most trafficking-related news reports bear shocking titles and titillating graphic images. Sensationalism in trafficking stories also manifests itself in the use of problematic terminology. This often leads to the conflation of human trafficking with other phenomena, such as human smuggling, slavery, or prostitution. Furthermore, inappropriate terms are sometimes used by the tabloid media when referring to trafficking victims and perpetrators, for instance, calling the first streetwalkers, and the later controversial businessman.

Many THB stories come down to short, hard news pieces that only tell who got arrested or prosecuted and for what. However, it is worth noting that when reports are based on interviews with victims, the authors focus on describing the horrors of the violence the victim had to endure (Krsmanovic 2018). It is essential to raise the question of awareness raising potential and functionality of such human interest stories that sensationalize violence. Denying trafficking survivors the agency to decide whether or not they want to share their stories publicly is a trap that needs to be avoided. At the same time, however, media professionals need to do much more to ensure professional and ethical standards are adhered to and victims’ interest, wellbeing, and safety prioritized over everything else. It is also necessary to make sure trafficking survivors have recovered enough to engage with the media and are also familiarized with the possible implications of their mediated confessions. The current focus on providing a thick description of beatings, sexual violence, starvation, unsafe and unhygienic living conditions, life in fear, and other hardships victims of trafficking suffer through is not indicative of responsible and meaningful journalistic practice.
Zooming Out: Context and Consequence of THB Reporting

Media play an important role in conceptualizing human trafficking. Not only do they serve as an important source of information about this type of criminal conduct, they also represent an arena in which different meanings and forms of representation of trafficking fight for influence. In public discourse, human trafficking has been framed in a myriad of different ways. These include human trafficking as modern-day slavery, a migration issue, a safety threat, a criminal justice problem, an issue linked to inequality and poverty and supply and demand, a human rights violation, a globalization-related phenomenon, and a problem of prostitution (see e.g., Kempadoo 2012; Lobasz 2012; Aronowitz 2009). The laws of news production, however, do not allow for stories to reflect on such complex and multifaceted nature of trafficking in people. With the exception of specialized outlets and programs, media need to produce stories that are easily comprehensible by all, regardless of their interests and intellectual abilities. Therefore, simplification increases newsworthiness of the produced story. Simultaneously, simplified stories are a useful adaptation to the decreasing attention span of the contemporary media consumer. Yet, making different views on human trafficking more salient than others is very consequential. Not only does it influence public awareness and shape people’s attitudes, but it also has an impact on the way countries respond to human trafficking (Gulati 2010). Therefore, this section turns to examining three major shifts in the way trafficking was framed in the media and considering the context and consequences of these discursive changes.

Before the adoption of the UN Palermo Protocol in 2000, the issue of human trafficking was mainly regarded through the prism of human rights violations (Aronowitz 2009). At that time THB was not widely recognized, and media were focused on explaining what the problem is, defining it as a gross human rights violation and linking it to other human rights issues such as inequality, gender-based violence, and poverty. With the introduction of the Palermo Protocol, however, human trafficking was defined as a serious crime that needs to be suppressed and punished harshly. The very fact that this Protocol was created to supplement the UN Convention against Transnational Organized Crime positioned the crime as a great security threat and foreordained the focus on suppressing organized crime networks involved in THB. In the 2000s media played an important part in framing trafficking as a security threat that calls for an uncompromising criminal justice system response (Farrell and Fahy 2009). The focus shifted from dealing with human rights issues to securing prosecution and adequate penalization of trafficking offenders. Even the support to trafficking survivors became dependable on their willingness to testify in court and help prosecution to secure conviction against their abusers. Thusly, what started as a victim-centric political discourse calling for protection of women and children trapped in trafficking rings, developed into crime-control discourse focused on punishing offenders and imposing strict antitrafficking policies (Farrell and Fahy 2009; Krieg 2009; Aradau 2004).

Apart from organized crime approach to human trafficking, Palermo Protocol also highlighted movement and migration aspects of the phenomenon, identifying
“recruitment, transportation, transfer, harboring or receipt of persons” as acts that fall under the definition of human trafficking and calling for strengthening of border controls to prevent and detect trafficking in persons (UN Palermo Protocol 2000). Parallel with that, the media focused on cross-border cases of trafficking that involved foreign victims and foreign traffickers. Through this bias, the media have endorsed the migration frame that proposes that migration is the main cause of THB and that stricter migration controls should be imposed in order to eradicate it. However, these strategies proved to be ineffective against human trafficking. Visa liberalization within the European Union and the accession of poorer Eastern European countries such as Romania, Bulgaria, and Hungary provided many opportunities for human traffickers who suddenly did not have to worry about smuggling their victims across the European borders. Furthermore, measures such as strict border controls, increased policing and surveillance, deportation of irregular migrants did not have the desired effect on suppression of human trafficking. Rather than discouraging illegal migration, it made people who wanted to migrate even more dependent on smugglers and traffickers (Berman 2003; Sassen 2000; Kempadoo and Doezeema 1998). Another negative consequence linked to this is that victim-blaming became more likely as consent to migration served as a proof of victim’s culpability. The media started to represent trafficked individuals as undesired aliens and not victims, which served as a justification for further restrictive migration policies.

The critics of the criminal justice and migration-centered approaches to human trafficking have linked the re-emergence of the problem of human trafficking on the international political agenda to contemporary anxieties centered on survival of the nation, state power crisis, preservation of the current world order and wealth distribution, tackling globalization-related phenomena (e.g., regional integration, high rates of immigration, new forms of capital circulation), and identifying the ethnic “other” as a threat to security of the First World (e.g., see Berman 2003; Kampadoo 2015; Kapur 2016). In an atmosphere that fostered criminalization, prosecution of traffickers, dismantling of criminal groups, migration control, and eradication of trafficking, the rights of THB victims ceased to be a priority. As a consequence, this topic was slowly disappearing from the media agenda as well. Mediated representation of human trafficking became characterized by case-driven reporting that was superficial, biased, and inert. Due to the lack of analytical reporting and reliance on official sources, the hegemonic views on human trafficking were hardly ever challenged outside of the academic circles. This is problematic because the imposed harsher policing and border control measures did not prove effective in solving the problem of human trafficking as they have no effect on poverty, inequality, and other root causes of THB.

The most recent shift in the way trafficking is being framed in the public discourse implies that THB should be viewed as a modern-day slavery (O’Connell Davidson 2015). Pursuant to this view, human trafficking is just one form of slavery that continues to affect today’s society. Forced labor, debt bondage, descent-based slavery, child slavery, and forced marriage are examples of other slavery practices that fall under the term modern slavery. The term became particularly popular in the
USA, the UK, and Australia, where media extensively covered findings of the Global Slavery Index and similar reports that found millions of people to be enslaved in the contemporary world. Parallels between trafficking and historical slavery that the term banks on enabled antitrafficking campaigners to tap into the moral capital of the historical movement for the abolition of slavery. People respond emotionally to the term “slavery,” which typically results in the shift on the moral side of the debate (Brennan 2014). Consequently, any response to trafficking that is not calling for its suppression at any cost is deemed immoral and wrong. For that reason, it comes as no surprise that this discursive shift repositioned the issue of human trafficking high on the global political agenda. However, the modern slavery perspective was condemned by critical scholars who identified numerous issues with representing human trafficking as a form of contemporary slavery (Dottridge 2017; O’Connell Davidson 2015; Kempadoo 2015; Brennan 2014).

Firstly, equating human trafficking and other forms of exploitation to historical chattel slavery encourages victim-stereotyping. Mediated representation of human trafficking abounds in slavery symbolic: filthy surroundings, ragged clothes, shackles and padlocks, whip marks, wounds and bruises, cages, bars, chains, and ropes. In a modernized version of slavery aesthetics, people are also marked as mere goods with barcodes and price tags attached to their bodies (Andrijasevic 2007; Krsmanovic 2016). As demonstrated earlier in this chapter, however, the stereotype of the slave-like innocent victim of human trafficking, although embraced by the media, does not fit the reality of many trafficked people. Some of them had traffickers who resorted to more subtle means of control to avoid easily detectable violence; others willingly exposed themselves to risks of exploitation by relying on smugglers to bring them to safer and more prosperous countries. The lack of agency and exposure to extreme violence that the term slavery implies is often not the experience of trafficked people who face exploitation in XXI century. Therefore, substituting the term human trafficking with modern slavery can result in victim-blaming and denial of assistance to victims who do not fit the innocent victim stereotype. What is more, applying the term slavery to occurrences of less severe exploitation has been criticized for trivializing and relativizing historical slavery with the aim of reducing the responsibility of countries that profited from slavery (Dottridge 2017; Kempadoo 2015). Countries in which modern slavery discourse first emerged and where it gained momentum, namely, the USA, the UK, and Australia all share a long history of benefiting from slavery. The criticism of the term modern slavery is even more convincing in the light of the fact that it is precisely these countries that are branded as leaders in the fight against modern slavery.

Speaking of trafficking in terms of modern slavery has another side effect prompting us to consider this new way of framing human trafficking in the light of Western imperialism. Namely, the term slavery also implies that certain countries are allowing something terrible to happen (Dottridge 2017). Those countries are not the developed Western democracies that are pioneers in combating modern slavery, but African and Asian countries that were impoverished by imperialistic and colonialist practices. Thereby, modern slavery discourse functions as a vessel in which the West
gets absolved from its complicity in establishing and sustaining conditions for modern-day exploitation, and the responsibility gets reassigned to developing countries. Yet, the fact that numerous people are exploited in Asian sweatshops, for example, is not only the responsibility of individual Asian governments but also the responsibility of large Western companies and corporations that are benefiting from low-cost country sourcing and Western governments whose economy is flourishing under such conditions. On the structural level, that means that the blame for human trafficking and slavery gets shifted from institutions and capitalistic enterprises to individual criminals and criminal groups (Kempadoo 2015) whose prosecution, consequently, will have no impact on demand for exploitative labor and will not solve the problem of THB and exploitation. The media that are using this rhetoric and endorsing the idea that individual governments are to be blamed for allowing trafficking to occur within their territory and/or to their nationals are reverting back to the imperialist belief that some countries are uncivilized and in need of foreign intervention that will introduce order. This kind of differentiation between the “good” and “bad” countries is unlikely to foster the efficient international cooperation that is necessary to tackle trafficking in human beings.

Understanding reporting on human trafficking requires careful consideration of political, cultural, and economic context in which analyzed media reports are created. Today’s focus on suppressing international organized crime, irregular migration, and modern slavery, therefore, needs to be understood as an attempt to utilize the media and try to preserve state power, the current world order, and wealth distribution. Resisting reiteration of the problematic hegemonic views on human trafficking is a difficult task for the media that are struggling for survival in extremely competitive and fast-changing environment. Nevertheless, it is a task that is necessary to execute in order to secure reporting that will actually lead to more effective prevention, identification, assistance, and suppression of the issue of human trafficking. Hence, the last section of this chapter is offering recommendations to media, antitrafficking professionals, and academics involved in creating the mediated image of human trafficking.

Recommendations

Strict adherence to ethical and professional standards in journalism is essential when it comes to covering sensitive topics such as human trafficking. Media that cover the topic of human trafficking need to do so by having public interest and interest of trafficking victims prioritized over making profits.

The common conflation of human trafficking and related phenomena, together with frequent misconceptions about THB issue itself, are signaling that media professionals need to be better educated about the topic. Having workshops for journalists would be a useful step forward, especially if the trained journalists are schooled to share the acquired knowledge within their newsdesks and wider. These training sessions need not only to provide accurate information on human trafficking to media professionals, but also encourage them to deconstruct stereotypes, explore new angles, be critical,
and avoid simplification. Bearing in mind that, due to the nature of the industry, most journalists have a limited opportunity to write reports on human trafficking, it is necessary to foster general sensitivity that spreads beyond the topic of THB.

Understanding all the complexities of human trafficking is a difficult task even for the scholars involved in studying it. However, that does not mean avoiding simplification of the phenomenon cannot be achieved by the media. Media need to educate their consumers and broaden their knowledge of the phenomenon, rather than underestimate their potential to grasp the phenomenon of trafficking and related risks. At the same time, antitrafficking practitioners and scholars need to think about ways to communicate THB news in an understandable and accurate, media-friendly way. Therefore, workshops for antitrafficking professionals who provide information of human trafficking to the media need to be organized as well.

Paying special attention to titles and images used in trafficking news stories is of pivotal importance because these proved to be the richest sources of sensationalism and stereotyping. While education of journalists can help overcome this problem to an extent, one must take into account that titles and visual illustrations are often picked by editors and graphic editors. For this reason, educations on THB reporting need to target these professionals too or think of alternative ways to avoid malpractice. For instance, journalists should be encouraged to propose interesting alternatives to sensationalistic titles and acceptable visual illustrations. Furthermore, antitrafficking practitioners can produce different photographs and footage that will substitute for eroticized and other problematic images available on stock. These photographs and records should be distributed to the media or otherwise made readily available for publishing and broadcast.

The practice of interviewing victims of human trafficking has proven to be exceptionally harmful. Therefore, journalists should only conduct interviews with trafficked people if stories produced will be meaningful and beneficial to the interviewed trafficking survivor. Journalists need to strictly adhere to ethical standards and prioritize the interest of the interviewed victim above all. It is also their obligation to interview only those people who experienced THB that had enough time and support to recover, making them able to make an informed decision about whether or not they want to make the media appearance and face the possible consequences. In addition to that, following questions must be considered when assessing benefits of a THB story based on an interview with a survivor: Is the story making people less vulnerable to trafficking or raising moral panics? Is the reader being familiarized with related risks or entertained by the THB spectacle of suffering? Is the story benefitting or harming the interviewed victim? Is it easier to secure prosecution of trafficker if the story is shared with the public? Or might the trafficker be more likely to retaliate against the victim if she/he talks to the media?

It is essential for both journalist and trafficking professionals to consider consequences of framing publicized trafficking stories in a certain way. This consideration needs to reach far beyond the immediate actors affected by the given case/issue thematized in the report. Rather, one needs to be aware of all the implications that given frame might have. None of antitrafficking media campaigns and publications should be given space in the media if they promote harmful policies, adversely
affect trafficking survivors, endanger other vulnerable groups such as migrants and sex workers, or give rise and sustain conditions that allow exploitation of people through THB.

Given the negative consequence of migration, criminal justice, and modern slavery frames, it seems that a shift back to human rights perspective might be the most logical step forward.

Research suggests there is a great frustration with sources among media professionals and (vice versa) with media professionals among the antitrafficking experts. To counteract this dissatisfaction, close collaboration between the press and antitrafficking community needs to be fostered. This collaboration needs to be directed towards protecting the interests of the general population and trafficked people and not towards publishing stories that sell well and attract donations or otherwise serve the interest of NGOs and institutions involved in fighting trafficking.

Finally, the situation regarding the mediated representation of THB is unlikely to change for better if efforts are not put into fostering free media environment in which hegemonic narratives can be contested. Bearing in mind the current global journalism crisis, it is evident that such changes will take time. Nevertheless, for the media to excel in the roles discussed at the beginning of this chapter, and fully support fight against trafficking in human beings, it is necessary to show perseverance and determination in creating healthier media sphere. Until these conditions are met, alternative platforms need to be used and created to communicate knowledge about human trafficking. Critical blogs and nonprofit media outlets can be used by both journalist and THB scholars to share information that is not deemed newsworthy by commercial news channels. The academic and research community should also up their game and think about ways to share their findings outside of academic journals and university classrooms.

The set of recommendations provided here may be criticized for being utopian in character. Indeed, socio-political forces at work and structural challenges media outlets face in their struggle to survive in the ruthlessly competitive market cannot be ignored. These factors impede the realistic likelihood of journalists considering these recommendations in the first place as well as them having the desired effects. For that reason, it is pertinent not to forget the great responsibility antitrafficking professionals carry for the way human trafficking is framed and represented in the media. Only joint efforts of media and antitrafficking professionals can lead to preferred outcomes. The numerous problems that media are facing should not justify journalistic malpractices or prevent professionals from finding potential remedies. The basic function of the media is to select and construct topics of general concern to the society. It is imperative that they do so in a nonharmful way, and I hope that proposed recommendations can serve as a helpful guidance.

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Aesthetic Whistle-Blowers: The Importance and Limitations of Art and Media in Addressing Human Trafficking

Andrew Kooman

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Abstract

As academic research focused on human trafficking garners more public attention, art-focused responses to human trafficking are on the rise. Film, theatre, public art installments, and popular television shows bring human trafficking to light in both positive and negative ways. Works of literature in the past such as Hannah More’s antislavery poetry in the late eighteenth century and Aleksandr Solzhenitsyn’s writing in the twentieth century disrupted the status quo. Their work influenced multiple levels of society, including government policy and practice, in regard to the transatlantic slave trade as well as the horrors of enslavement and forced labor in the Gulag system in the USSR, respectively. Can contemporary works of art do for human trafficking what More’s and Solzhenitsyn’s work did in their day? First, this chapter will examine how writers can influence public perception by alerting readers to the complexity and nature

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of human trafficking to serve as “aesthetic whistle-blowers” and will highlight literary works that have sounded the alarm. Secondly, it will explore some of the pitfalls or ways that literature can be unhelpful to antislavery efforts. This chapter therefore considers how world literature positions itself to alert audiences to the realities of trafficking in order to help build social and political will necessary to address human trafficking.

**Keywords**

Aesthetics · Literary forensics · Art · Human trafficking

**Introduction**

The movement of legal professionals, law enforcement, social workers, government agencies, activists, and scholars – to name but a few – committed to combatting human trafficking is global in nature. Academic articles rarely include the artist at the “knowledge-creating table” (Lundy and McGovern 2008: 280) of representatives who contribute to the noble goal to “examine the nature, extent and complexity” (Winterdyk et al. 2012: 3) of trafficking in persons (TIP). The criticism, typically leveled at the artist, suggests “poor methodology and questionable data, so that the [audience] is caught up emotionally with the story and is not applying a critical eye to the data or the analysis” (D’Estree 2012: 81). The primary focus of this chapter is to highlight that literature that takes up human trafficking need not conduct a precise, data-point analysis. As scholars in the field of transitional justice have identified, the national trove of literature and other art forms that emerge “in the wake of [injustices]... show that art, not constrained by literal truth, can generate new opportunities for empathetic understanding and solidarity” (Milton 2018). Artists cast a wide net, a net that can capture the imagination of the heart and uniquely compel and mobilize individuals who otherwise would not know about issues like human trafficking in ways that are useful for academics, practitioners, and policymakers to achieve their goals. With specific focus on literature that emerges from real trafficking incidents that stretch back to the transatlantic slave trade of the eighteenth century, this chapter considers how world literature positions itself to alert audiences to the realities of trafficking in order to help build social and political will necessary to address human trafficking. By uncovering the illicit and harmful nature of human trafficking, writers of such literature serve as aesthetic whistle-blowers.

**Literary Roots to the Original Abolition Movement**

While the contemporary media landscape is constantly evolving and new technologies emerge to disrupt established forms, this chapter is concerned with the particular place of literature in the enterprise of addressing human trafficking.
Indeed, there are various forms of media through which artists employ stories to influence audiences with both sentimental appeal and calls to action to the anti-slavery agenda, forms that include but are not limited to film and television, graphic novels and comics, web series, and social media. The contemporary abolitionist movement has conjured up various figures from history in order to retrace the steps toward the monumental goal to end slavery in order to learn from the successes of the past. Close study of the original abolition movement which worked in earnest during the eighteenth and nineteenth century to campaign for the abolition of the transatlantic slave trade produces many examples of artists who used their craft in particular ways to mobilize social action. Among the era’s leading poets such as William Cowper, William Wordsworth, Mary Robinson, and Samuel Taylor Coleridge who “wrote poems, informed by the rhetorical conventions of sentimentality, animadverting on the slave trade” (Menely 2013: 49), Hannah More addressed the social evil of slavery with an argument that inherent human value not only transcends nations, but race. Aware that other scholars conclude that More’s legacy falls short of a politically liberal and feminist agenda, this section is concerned less with labels and tropes for More and instead examines More’s literary abolitionism through her innovative publishing tactics and attentiveness to the human toll of the injustice of slavery. More’s work advanced the social conversation about enslavement and the slave trade in important ways that can enrich abolitionist writing strategies today.

As the modern abolition movement sets its aim to see an end to contemporary slavery, which binds some 40.3 million people within its cruel grasp (Global Slavery Index 2018), More stands as a fascinating figure in the history of the movement for her contribution to the work of abolition through writing. More’s didactic literary contributions marked a moment in which numerous social, cultural, and religious factors began to converge by 1788 to “bring about one of the most remarkable changes...in human history” (Stott 2003: 88), that is, the beginning of the end of the transatlantic slave trade. Adam Hochschild observes numerous social and literary factors that converged to contribute to this historical tipping point. First, in 1787 Quobna Ottobah Cugoano, an African living in London, published his book Thoughts and Sentiments on the Evil and Wicked Traffic of the Slavery and Commerce of the Human Species which went through three printings in 1787. This text questioned the morality of slavery and praised the efforts of abolitionists like Thomas Clarkson who were becoming familiar to the public. Second, a group of activists in Manchester gathered 10,000 names on an antislavery petition to Parliament and urged more petitions across Britain. Third, the former slave ship captain turned minister John Newton, who until then had been publicly silent about his experiences over the Middle Passage, raised his voice at long last. Fourth, African voices began to be heard in London debating societies and also published letters against slavery in newspapers. Finally, the public was responding to the abolition movement’s disruption with antislavery sentiment so that more than 100 petitions had been signed by between 60,000 and 100,000 people demanding abolition or reform of the slave trade (Hochschild 2005).
“Something new and subversive was making its first appearance: the systematic mobilization of public opinion across the class spectrum” (Hochschild 2005: 138), and it was at this moment, in 1788, that More was at the pinnacle of her social and literary fame (Jones 1952). Before she wrote her first abolition poem, More already demonstrated enthusiasm for the cause, “urging her friends... to taboo the use of West Indian sugar in their tea. She carried about with her a copy of Clarkson’s famous plan of an African slave ship, and showed it to interested and horrified guests at evening parties” (Jones 1952: 84). The famous diagram of the slave ship Brookes was circulated widely among the British public and jolted the nation with a sense of the unjust treatment of slaves. The diagram depicts the Brookes with 292 slaves on the lower decks and 130 stowed underneath shelves in an area not high enough for a grown man to stand. The drawing, which More relied on as a visual aide to convince peers for the cause of abolition, helped Britons consider, likely for the first time, the horrific plight of slaves transported in chains over the Atlantic:

packed in rows, each with less floor space than would be taken by a coffin, on a deck dimly lit by a swinging lantern or two at night and forever lurching up and down over the waves. . . jammed for months into a vessel less than one hundred feet long. (Hochschild 2005: 309)

The abolition movement felt an urgency before William Wilberforce was to present a bill that would bind Parliament to “consider the slave trade” in 1788 so as to galvanize public sentiment with a “last-minute demonstration” they considered “imperative” (Jones 1952: 84). Hannah More wrote the poem Slavery as both an emotional appeal and intellectual argument targeted at the reading public in order to convince them to stand against the injustice of slavery at a critical societal moment. The early abolitionists’ ability to use multiple forms of media was persuasive.

More’s poem hinges on her insistence that she speaks not of “fictitious ills” but “living anguish” like that experienced by slaves on ships such as the Brookes (More 1788). Her poetical exploration of the condition of slaves brings to life the diagram that Clarkson, More, and other abolitionists used to shock the British public and reveals that the written word can compel the human spirit in ways images cannot. As Percy Shelley famously wrote, poets “are the... mirrors of the gigantic shadows, which futurity casts upon the present...the unacknowledged legislators of the world” (1891: 46). Literature can foresee the moves society must make to become more just, like the abolition of slavery in Britain. What More and her colleagues foresaw decades before the legal machinery of the nation recognized, described at Slavery’s climax, was the abolition of the transatlantic slave trade:

The giant dies! no more his frown appals,
    The chain untouch’d, drops off; the fetter falls.
Astonish’d echo tells the vocal shore,
Oppression’s fall’n, and Slavery is no more! (1788: 287–290)

More’s “poetry was essentially a medium of teaching and information” (Demers 1996: 48) in a world bombarded with information and political opinion more accessible than ever. The presses that printed the newspapers and penny tracts in
More’s day were to the eighteenth-century world of ideas what Twitter is to the contemporary world: a platform through which ideas were not only weaponized but could pass quickly, titillate, convince, attract, and repel. Elite critics deplored the “promiscuous mixing” of ideas that the proliferation of the presses encouraged, which allowed for “unrestrained argument” so that “class differences were forgotten” (Hochschild 2005: 218). More’s ability to adapt writing to new publishing formats disrupting the literary landscape serves as an example to writers who take up the cause of abolition in the present. Hannah More seized the opportunity to reach new audiences through different publishing avenues newly available, and her multipronged approach impacted the newly literate and middle class with literature that included abolitionist themes (Myers 1986). Such tactics are useful models for writers today who create stories for traditional literary forms such as the essay or novel or who write for other forms like theatre, film, television, and social media.

As the abolitionist efforts of 1788 and beyond captured the public’s imagination, through the consequential publication of Slavery, More became one of the figures through which the abolition movement interfaced with the public. More published The Sorrows of Yamba or The Negro Woman’s Lamentation (1797) as part of her Cheap Repository project, a signal that sentimental poetry truly did influence the social conversation around slavery in important ways. The success of the Cheap Repository by 1797 was immense, having sold millions of copies and read far and wide. Through this format, More had found a publishing avenue that directly addressed readers, and it was a large and voracious audience. It also generated critics. Some of More’s contemporaries who wrote proslavery propaganda under pseudonyms in Gentlemen’s Magazine, the most widely read publication of the late 1780s, derided More along with other abolitionist writers as “tender-hearted poetesses” (Carey 2013: 90). While the majority of antislavery poems were, in fact, written by men, the essayists were attempting to demonstrate that abolitionist writing was “feminine, domestic, private, and emotion-centred discourse whereas the arguments in favour of the continuance of slavery were based on real facts understood in the...public world of commerce” (Carey 2013: 92). The critique of antislavery poetry began in earnest in March of 1788, the month after the release of More’s Slavery when the reviewers’ position “shifted” from favorable to unfavorable. Carey notes that from March 1788 onward, “every abolitionist tract or poem is harshly reviewed [in Gentlemen’s Magazine] while proslavery texts are portrayed in glowing terms,” a signal More was touching a tender spot of the body politic (Carey 2013: 88).

The graphic imagery More employs in The Sorrows of Yamba emphasizes the narrator’s shattered intimacies – a family torn apart, a whip mangling her flesh, and food forced down her throat – as white hands mark and penetrate black bodies (1797: 12–16). The imagery in the poem jars the senses to great effect. If anything, More did not react to the criticism leveled at herself and the abolitionist poets that grew loud a month after Slavery was published in 1788 with a literary pivot away from the criticism that antislavery poetry is unserious sentiment. Instead she dug in her literary heels with Yamba and claimed the literary space. More maintained a political argument by giving slavery a human face and voice. In Yamba, More is most
concerned with the real-life anguish of women and men torn from each other as free people, forced from their homelife in chains. She was also cautious about the way the artfulness of her verse aroused sentiment, aware that it can become the reader’s end, not the means by which the reader decides upon social action, such as boycotting sugar or putting public pressure on government. If the sentiment the literary work generated yielded no social action, in More’s own words, the poem “will not be worth a straw” (qtd. in Jones 1952: 84).

More disdained creating art that addresses human trafficking to merely evoke emotion. More’s critique of poetry as sentiment only is akin to what Tobias Menely identifies as two potential pitfalls of literary sympathy widely noted in contemporary criticism:

[First] it is unable to effect a meaningful substitution between the witness and the victim (it fails to constitute an identification, to alter interest), and [second] the passions it creates in the witness do not lead to ameliorative activity on behalf of the victim (it fails to compel action). (Menely 2013: 49)

Hannah More, in her abolitionist writing, serves as an example to the contemporary artist who aims to use their medium to address human trafficking. The sentimental address and emotional appeal to an audience is but one aspect of the antislavery project. More’s awareness that emotion alone will not achieve political goals but must be leveraged to galvanize political action is a helpful example from the history of abolitionist writing.

**Literature’s Ability to Influence Memory**

When coupled with the power literature holds to evoke and influence emotion for the purposes of influencing social action, its potential to influence and reshape memory is also noteworthy. Cynthia E. Milton notes that while perpetrators of injustice typically use silence as a way to avoid accountability, the Peruvian military’s efforts to use various art forms to alter the public conversation about injustice suggests literature can be used perniciously. The military’s use of literature to “shift public opinion, debate and memories about the nation’s violent recent past” is a “tactical cultural campaign” utilized to “shift public opinion, debate, and memories” (Milton 2018). Their intervention to sway public opinion in Peru problematizes art’s potential for impact when co-opted to mask truth, historical fact, or evidence. A tier-two country on the US State Department’s Trafficking in Persons Report (2017), Peru presents an interesting example of a nation in transition toward justice, in which certain populations are particularly vulnerable to trafficking for both labor and for sex.

Although Peru has transitioned into open democracy after conflict that took place in the 1980s and 1990s between the military and Shining Path militants, the terrorist group continues to coerce adults and children into forced labor in “agriculture, cultivating or transporting illicit narcotics, and domestic servitude” (US Department of State 2017: par 16). Furthermore, Peruvians of all ages are trafficked for labor to
other South American countries and to the United States, while migrants from countries as far as China and Senegal are trafficked through Peru to Brazil for both sex and labor trafficking. Lessons from the public hearings gleaned from Peru’s Truth and Reconciliation Commission (TRC) that took place between 2001 and 2003 are relevant. While the TRC’s official report detailed that some 69,000 people died or disappeared at the hands of militant and government security forces, the official process staffed by more than 200 people with a budget of US $11 million underscores the limitations of public institutions to adequately account for the toll in human life (Skaar et al. 2005). Resources are finite as are the reaches of the justice enterprise.

While the Peruvian military has utilized artistic endeavors to shift the national narrative that emerged after the TRC, artists and scholars have also expanded on the commission’s findings to argue for “broadening the definition of the testimonial to include various forms of artistic production as documentary evidence” for crimes such as those perpetrated against individuals by traffickers and crimes committed on a mass scale such as the human rights violations in Peru (Milton 2014: 1). If literature has the power to influence memory and public opinion in a variety of ways, then it is incumbent upon artists to wield literature with an awareness that stories do more than merely arouse or produce delightful sensations. Art for art’s sake falls short of its social and political potential to transform. However, when artists push beyond mere aesthetics, new possibilities emerge.

Aesthetic Whistle-Blowing: Solzhenitsyn

Zinaida Miller underscores a danger inherent in the failure to use imagination in scholarly methodological pursuits. Without self-reflection, practitioners of justice can become stagnant through the repeated use of practices that worked in the past and become fixated on a “standard set of debates that employ a familiar list of terms [which]...create a series of assumptions often left unspoken” (Miller 2008: 275). Practitioners and scholars in the anti-trafficking field ought to “defamiliarize” (Abrams 1999: 103) certain notions and practices so as to remain relevant and effective. Literature can help the field of anti-trafficking practitioners accomplish this task. Aleksandr Solzhenitsyn, both as an artist and as a survivor of Stalin’s brutal system of forced labor, is a unique case study in this regard. His literary work embodies a way artists can rupture the tropes commonly used to understand the status quo. Arrested in 1945 after serving his country on the front lines in World War II as an artillery officer, he was imprisoned in a detention camp for eight years because of his writing: letters sent to a school friend that included “disrespectful remarks about Stalin” (Fredriksen 2006: par 3). After nearly a decade of imprisonment, during which he worked hard labor as a miner, a foundry man, and a bricklayer, he was exiled for life from his country and sent to Kazakhstan. His writing life was a life of subversion, his authorship secretive. That the writer and his work survived the Gulag defies logic. The sheer danger of writing, the bold act of putting words down secretly on the page, meant any moment could be a moment of discovery and therefore death in Stalin’s totalitarian state. “While in some contexts
survivors may shape silence into a modality” (Shaw and Waldorf 2010: 13) to avoid further trauma, Solzhenitsyn’s truth-telling is an instructive example of aesthetic whistle-blowing.

Reflecting on the reason he helped Solzhenitsyn smuggle the Nobel Lecture out of the Soviet Union so it could be read in his absence (due to exile) when the Nobel Prize in Literature was granted to Solzhenitsyn in 1970, Swedish journalist Stig Fredrikson recounts that he acted because Solzhenitsyn “was so isolated, so persecuted. He was leading a one man struggle against an overwhelming enemy with the enormous resources of the totalitarian state in its determination to silence him” (2006: par 14). For the same reason, the journalist used spy-like statecraft to later smuggle the author’s other writings so they could be read and released in the West. The hand-off of material from artist to a practitioner in another profession mobilized toward a unified goal is a useful example of how addressing trafficking can be an interdisciplinary exercise, bolstered by the artist.

The above anecdote, which emerges from the brutality of Stalin’s USSR, added together with Solzhenitsyn’s exile, his subsequent life in hiding, and his second exile to the West in 1974 (where he lived until the fall of the Soviet Union) serves as a case study in how the totalitarian state can strip rights from the individual to silence and censor the artist’s voice. For Solzhenitsyn, the beauty of literature and the resonance of the aesthetic practice did not sustain him in his enslavement. Rather, it was the truth of events committed at the hand of an enslaving regime that compelled him to recount the brutal realities of life for victims behind the Iron Curtain, based on his own experience and the “evidence from more than 200 people” (Fredrikson 2006: par 22), in order to give voice to so many silenced screams.

Solzhenitsyn’s literary act of truth-telling represents a tipping point of sorts, both personally as a writer and in the international discourse about the evils of the Soviet regime. His intervention helped to create a “line to separate the past from the present, and [reconcile] the past” (Olsen et al. 2010: 131). His disruption of the macro narrative of a social evil with a personal micro narrative highlights what Susan Dwyer defines as the “range” of reconciliations, in which reconciliation “has both forward and backward-looking dimensions” (2003: 93–94). Solzhenitsyn himself was unsure about when, if ever, to publicly connect his name to his literary voice and in 1961 offered One Day in the Life of Ivan Denisovich for the world, literary critics, and the government to digest:

Such an emergence seemed, then, to me, and not without reason, to be very risky because it might lead to the loss of my manuscripts, and to my own destruction. . . . The printing of my work was, however, stopped almost immediately and the authorities stopped both my plays and (in 1964) the novel, The First Circle, which, in 1965, was seized together with my papers from the past years. During these months it seemed to me that I had committed an unpardonable mistake by revealing my work prematurely and that because of this I should not be able to carry it to a conclusion. (Nobel Prizes and Laureates 2014: par 6)

Solzhenitsyn’s risk to testify to the world during ongoing conflict, to tell the truth through literature before the conflict in his nation was “over” and before democratic institutions or processes on which the justice enterprise typically depends, suggests
literature need not only give a post-mortem account of injustice or serve simply as a historiographic account. Literature can serve as an *inception point* to disrupt or jolt the social narrative to prefigure the painstaking processes on which the infrastructure of securing justice for victims depends. Literature has the potential to achieve the very purposes the anti-trafficking enterprise seeks: “the goals of repairing human dignity, healing individuals, and mending societies after the trauma” (Minow 2000: 236).

Solzhenitsyn’s *One Day in the Life of Ivan Denisovich* is an “example of the experience of a single representative victim” that emerged from the Soviet Union’s force-labor system (Galchinsky 2014: 259). Artists who seek to represent victims and survivors of trafficking can take note of how Solzhenitsyn summons the memory of the others entrapped in the Gulag who did not survive. He both testifies and laments the loss of the beauty, truth, and goodness, voices silenced, words stolen, and lives lost:

I have climbed not three or four makeshift steps, but hundreds and even thousands of them; unyielding, precipitous, frozen steps, leading out of the darkness and cold where it was my fate to survive, while others - perhaps with a greater gift and stronger than I - have perished….Those who fell into that abyss already bearing a literary name are at least known, but how many were never recognized, never once mentioned in public? And virtually no one managed to return. A whole national literature remained there, cast into oblivion not only without a grave, but without even underclothes, naked, with a number tagged on to its toe. (Solzhenitsyn 1970: 3.1)

The passage reveals the double tragedy and injustice done to a nation as tyranny killed not only the artist but also the nation’s art. Galchinsky locates the potential for a nation, especially perpetrators of gross injustice, to regain humanity and heal wounds after a period of abuse and violation, through the process of testimony and lament. While lament’s primary functions are to grieve and memorialize, “the mode is more than a device for mourning. In lament, the expression of *grief* often serves as a platform for the expression of *grievances*” (Galchinsky 2014: 261).

### Contemporary Refugee Literatures: Oral Storytelling

Refugees’ accounts of trauma in Southeast Asia through poetic songs exemplify how the literature of lament can collide with social action. The Rohingya are particularly vulnerable to trafficking throughout Southeast Asia (Tenaganita 2008). Firsthand accounts of Rohingya refugees who fled to Malaysia to escape political violence in Myanmar, their disputed homeland, to seek asylum and safety in Malaysia, shed light on this vulnerability. Because Malaysia is not a signatory of the United Nations 1951 Refugee Convention (UN Treaty 2015), if caught by authorities, such refugees are deported from Malaysia, oftentimes only to fall prey to crime syndicates of human traffickers at the border who extort them, demanding exorbitant fees. Individuals who cannot pay are trafficked and often forced to work on fishing boats on Thai seas (Hurlbut and Kooman 2010). Malaysian nongovernmental organizations
(NGOs) collaborated in 2010 to conduct interviews with such refugees hiding in urban centers and jungles in order to collect their stories. Their narratives were shared, although individual names and certain details were altered or creatively reimagined in order to protect the identity of the real-life subjects. Because they lived in hiding and were vulnerable to arrest, detention, and deportation, the whistle-blowers requested anonymity. The publication was circulated widely in Penang State to raise awareness about the realities of trafficking in Malaysia. It also mobilized education and health professionals to assist victims of trafficking. Sales of the book generated revenue to support medical teams to visit trafficking victims in government detention in order to address pressing health needs. Funds from the book also helped to establish a school for the children of trafficking survivors who, as refugees, had no access to education (Hurlbut et al. 2016). While a legal team worked with various detainees to secure their release from detention and return to their homelands, the literary work of the NGOs, based on testimony from trafficking survivors, supported the victims, while they waited for their case to be adjudicated in court.

The work of scholars in the field who have documented and translated Rohingya tarana (sung poems) also uncovers other important literary moments that can be useful to anti-trafficking practitioners and mark nodes in the complicated matrix of data collection. Rohingya refugees who have been denied access to the United Nations High Commissioner for Refugees (UNHCR) displacement camp in Bangladesh preserve memories of home and of crimes committed against them through oral storytelling. While illiterate, these refugees establish community and retain cultural identity through shared stories that are artifacts of trauma and “indicators of oppressions” (Farzana 2011: 231). The tarana of such refugees, who fled and continue to flee the ongoing campaign of violence committed against them by the government of Myanmar, serve as a fascinating example of how grief can express grievance among populations vulnerable to human trafficking, even when there is no law enforcement or judicial apparatus in place to address obvious crimes.

As the United Nations has described the systemic violence against the Rohingya people as “ethnic cleansing” (Associated Press 2017) and global intervention tarries to stop genocide, Rohingya voices emerge from the conflict in lament. These tarana encode refugee bodies that have been “abused and abjected, dehumanized and marginalized” (Galchinsky 2014: 260) for clandestine purposes like labor and sex trafficking. Whether testimonial accounts or fictional recreations, stories are a way to navigate beyond trauma and to creatively sound an alarm. Viet Thanh Nguyen asserts that victims of state-inflicted violence that leave individuals vulnerable to further trauma, including trafficking, have “no belonging except [their] stories” (2017: 7) and puts forward the importance of recognition as a key to memory in order to underscore the therapeutic potential of story for the survivor of human rights abuses to come to terms with trauma. For this reason, if bad actors appropriate literature in order to reconstruct victims’ narratives, as in the case of Peru’s military disinformation campaign, there is a danger that, when used in such ways, literature has the potential to reshape narratives and re-traumatize victims of human trafficking.
Artists: Complicit Agents of Justice or Injustice

Nguyen invokes Solzhenitsyn to highlight the inherent capacity of individuals to do damage to others and cautions that “the line dividing between good and evil cuts through the heart of every human being” (qtd. in Nguyen 2016: 72). Drawing from the Vietnam War, Nguyen points to that conflict to highlight how “contemporary war is a bureaucratic and capitalistic enterprise that requires its bored clerks, soulless administrators, ignorant taxpayers, contradictory priests, and encouraging families” (Nguyen 2016: 230). The fact that average citizens in America purchased refrigerators from Dow Chemical, supporting the same corporation that developed Agent Orange, the chemical substance that was used by the military complex to kill countless citizens, highlights “a pervasive system of complicity” (Nguyen 2016: 230). The system of complicity is not relegated to the past. As the US State Department notes, billions of dollars “flood the formal marketplace, corrupt the global economy, and taint purchases made by unwitting consumers. Long and complex supply chains that cross multiple borders and rely on an array of subcontractors impede traceability and make it challenging to verify that the goods and services bought and sold every day are untouched by modern-day slaves” (US Department of State 2015: par 3).

Artists, then, are implicated as well, an alarm Solzhenitsyn also sounds in his clarion call to the artists of the world, when he asserts that:

> a writer is not the detached judge of his compatriots and contemporaries, he is an accomplice to all the evil committed in his native land or by his countrymen. And if the tanks of his fatherland have flooded the asphalt of a foreign capital with blood, then the brown spots have slapped against the face of the writer forever. (Solzhenitsyn 1970: 6.9)

Truth is central to the telling of any story, useful to the anti-trafficking movement whether through the flourish of literature or through nonliterary accounts of injustice. If writers and artists can be complicit in the violation of human trafficking then it follows that they are also complicit in processes of eradicating trafficking in its various forms. If the blood of victims splatters the face of writer’s because of the weaponized actions of their respective nation-state or a corrupted global economy, what can art do to stop violence like trafficking? If, as Solzhenitsyn asserts, violence is “necessarily interwoven with falsehood,” the artist’s weapon is the truth. By employing truth in literature, artists and writers can conquer falsehood and disarm violent actors.

Legal processes are limited in their ability to account for the conditions that create injustice in the first place so that although “forensic truth” is uncovered, other features of truth like “why the crimes happened, the political strategy behind them, the social and cultural dynamics enabling them, and the effects on the victims and society...are not captured” (Skar et al. 2005: 27). Literature has the capacity to go to and inhabit these aspects of the truth and embody and imagine them to portray a more comprehensive understanding, weaving together a multiplicity of factors beyond what a criminal trial addressing trafficking can produce, due to the temporal limitations of the judiciary.
The clandestine nature of trafficking combined with the fact that combating TIP is often viewed as a criminal justice problem, typically places focus on traffickers instead of victims (Ćopić 2012) ensuring that the voices of victims and survivors of trafficking are not frequently heard. Literature’s importance in the anti-trafficking enterprise, then, comes to the fore. Solzhenitsyn asserts that it “transfers the whole weight of an unfamiliar, lifelong experience with all its burdens, its colours, its sap of life; it recreates in the flesh an unknown experience and allows us to possess it as our own” (Solzhenitsyn 1970: 5.2). Like the witness speaking at a trial, sharing testimony about a trafficking incident – whether witnessed or experienced and survived – advances a process that restores dignity to individuals who have been violated in unthinkable ways (Minow 2000). Literature also conveys truths that would never otherwise be heard. Susan Dwyer reminds us that “human lives are led narratively” and that individuals inevitably seek coherent, stable narratives (2003: 96–97). Any disruption to such narratives, like violations and personal traumas that occur to trafficking victims, must be reconciled and stabilized, a process that occurs through telling, reconstructing, and retelling stories.

Desmond Tutu recognized that through the South African Truth and Reconciliation Commission, rebuilding society and reintegrating traumatized individuals “requires more than physical, legislative, and judicial acts, but cultural and emotional acts” (qtd. in Galchinsky 2014: 261). In order to advance the judicial process beyond legal and socioeconomic considerations into the cultural realm as a tactic that can equip victims, literature is a part of the necessary widening of the “space for justice” so that victims can “finally taste the fruits of justice in their daily lives” (Mani 2008: 265). Through truthful renditions and accounts of harms, literature serves as a preventative measure that both testifies to injustices and recognizes the capacity of the individual to commit trafficking crimes even as the narrative, however beautifully or artfully conveyed, captures the imagination of the heart. Literature conveys:

condensed experience from one land to another so that . . . one nation learn correctly and concisely the true history of another with such strength of recognition and painful awareness as it had itself experienced the same, and thus might it be spared from repeating the same cruel mistakes. (Solzhenitsyn 1970: 7.6)

Truth-Telling in Our Times

Bapsi Sidhwa’s novel *Cracking India* explores the human toll of the partition of the Indian subcontinent into India and Pakistan in 1947. Not only did the redrawn maps uproot different ethnic groups, displacing some 12 million people almost overnight; as riots swept the population, women were forced into sex slavery en masse (Sidhwa 2006). As Muslims, Hindus and Sikhs fought, rape was utilized as a tactic to break the bonds of community. The violation of women’s bodies marks a violation of the nation-state itself. “Social cohesion” cracked (Quinn 2009: 183). Lenny, the young female protagonist, observes the “fallen women” who are hidden in Lahore in
temporary safe houses as the government attempts to relocate them to safe communities, ideally with their families. The novel poses important questions about how literature can serve as a witness to crimes on such a scale in which perpetrators are never brought to justice, but victims are forever changed.

As an adult, recalling the events she witnessed firsthand, the reader understands that Lenny is an unreliable witness at best, when she challenges her own perception of the terrible events that took place, during which women are forced into the sex trade. What took place over a matter of days, she remembers as being drawn out over multiple months: “in my memory it is branded over an inordinate length of time: memory demands poetic license” (Sidhwa 2006: 149). The fact that victims and witnesses do not remember events perfectly is problematic. How dependable is testimony or story if the empirical or forensic accuracy of such accounts can always already be put into question? Minow answers the question, noting that through a “process of truth-telling, mourning, taking action and fighting back, and reconnecting with others, even individuals who have been severely traumatized by totalitarian control over a prolonged period can recover” and that this recovery can also include “learning to recover memories” (2000: 242).

The therapeutic nature of truth-telling and recovering memory is essential for survivors of human trafficking crimes. The place of the victim and survivor’s voice in literature, then, has great significance. Yet how can a writer do justice to the experience of victims or survivors through fiction, and furthermore, is a literary account of historical harms an exercise in appropriation, another injustice heaped onto the mound of physical and psychological trauma? Sidhwa models a way to include the survivor’s voice in her narrative through Ranna’s account of the vicious attack by Sikhs on Muslim villages as former friends and neighbors drive them off their land in violent raids and women become especially vulnerable to enslavement:

Ranna saw his uncles beheaded. His older brothers, his cousins. . . . He felt a blow cleave the back of his head and the warm flow of blood. Ranna fell just inside the door on a tangled pile of unrecognizable bodies. Someone fell on him, drenching him in blood. (Sidhwa 2006: 213)

 Scholars have noted that in order to successfully eliminate the conditions that produce criminal behavior depends on “achieving an emotional catharsis in the community of victims and acceptance of blame by the perpetrators” (Snyder and Vinjamuri 2008: 392). Sidhwa opens up space in her novel for such emotional catharsis as she recounts the historical anecdote in a different narrative voice, as a “listener,” inserting Ranna’s story as a separate narrative within an otherwise consistent narrative style. In the acknowledgments at the novel’s end, Sidhwa thanks “Rana [sic] Khan for sharing with me his childhood experiences at the time of Partition” and notes that he “still bears the deep crescent-shaped scar on the back of his head and innumerable other scars” (Sidhwa 2006: 291). The gesture of acknowledgment by the author herself indicates not only that victims’ stories must be told and that they require their own space with their own way to be told but also exemplifies ways that survivor stories can be handled by writers of literature and other artists, with sensitivity and appropriate contextualization.
Conclusion

Ultimately, for justice to occur it cannot lead, it must follow (Snyder and Vinjamuri 2008). For the greater culture to be aware of the extent of the crimes of human trafficking in all its forms, least of all for justice to be secured for victims, the crime of human trafficking must first be named and acknowledged, and justice itself must be imagined. The steps that precede the legal steps toward justice are imaginative, even poetic, a narrative of possibility. Aesthetic whistle-blowers, through literature, can sustain the complicated and comprehensive exercise of the anti-trafficking movement throughout its process. The beginning point of addressing human trafficking, then, is the sound of a whistle-blowing: a story that announces important truths and imagines the end goal of justice itself.

This essay has explored the legacy of specific writers who wrote against various forms of human trafficking at particular historical moments to remind contemporary artists who take up abolition in their work of some aspects of the literary inheritance of abolitionist work. The ways these artists make appeals to sentiment through various aesthetic strategies, how they considered the dissemination of antislavery writing to be both a moral and artistic responsibility, and how these artists judiciously handled the depiction of trafficking survivors can be instructive. For artists, it is critically important to recognize that emotional appeals can fail to lead to social action and, worse, can be exploited in order to alter memory or erase criminal acts. However, truthful accounts of events and cathartic representations of trafficking in literature can instigate social action and support the enterprise of addressing human trafficking.

The work of scholars, social workers, policymakers, law enforcement professionals, and other practitioners working to address TIP has many goals that include but are not limited to instituting national and international law, bolstering law enforcement’s ability to identify and respond to human trafficking, building coalitions, and supporting victims. The work from these respective fields utilizes many different methods to achieve these goals. Solzhenitsyn reminds us that art and specifically literature:

possess a wonderful ability: beyond distinctions of language, custom, social structure, they can convey the life experience of one whole nation to another. To an inexperienced nation they can convey a harsh national trial lasting many decades, at best sparing an entire nation from a superfluous, or mistaken, or even disastrous course, thereby curtailing the meanderings of human history. (Solzhenitsyn 1970: 5.3)

Literature has certain strengths and much to offer anti-trafficking strategies. Along with other arts, literature can envision, sustain, and course correct the souls committed to the challenging and multifaceted goal of eradicating human trafficking.

Summary

The primary focus of this chapter is to demonstrate that when artists take up human trafficking, it need not be to conduct a precise, data-point analysis. As scholars have identified, art forms that emerge from the midst of grave injustices like human
Trafficking can convey important truths without being limited to literal truth in ways that can support victims and the cause of justice. As such, artists can uniquely compel and mobilize individuals who otherwise would not know about issues like human trafficking in ways that are useful for academics, practitioners, and policymakers to achieve their goals. This essay considers how world literature positions itself to alert audiences to the realities of trafficking in order to help build social and political will necessary to address human trafficking. With attention to specific antislavery writers from the past who serve as models for contemporary artists, the chapter highlights the ways these historical artists made appeals to sentiment through literature, how they considered antislavery writing to be both a moral and artistic responsibility, and how these artists employed the testimony of trafficking survivors to serve as aesthetic whistle-blowers. This essay was developed from Kooman’s coursework and research as a MA candidate (2018) at Western University in English Literature and Transitional Justice.

Cross-References

- A Complex Systems Stratagem to Combating Human Trafficking
- Combating Trafficking in Persons Through Public Awareness and Legal Education of Duty Bearers in India
- From the Street Corner to the Digital World: How the Digital Age Impacts Sex Trafficking Detection and Data Collection
- It’s Your Business: The Role of the Private Sector in Human Trafficking
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Part V

Local/National/International Response Mechanisms
Regional Responses to Human Trafficking in Southeast Asia and Australasia

Heli Askola

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Abstract

This chapter discusses the challenges involved in responding to trafficking in human beings in Southeast Asia and Australasia, focusing on the development and implementation of anti-trafficking responses in these subregions of the Asia-Pacific. This chapter first outlines the diverse migration patterns and the scope of the problem in the Asia-Pacific. It then assesses the effectiveness and comprehensiveness of the measures adopted in Southeast Asian states and in Australia and New Zealand. This chapter examines measures adopted to improve the investigation and prosecution of trafficking, the protection of victims, and the prevention of trafficking. Considering the many challenges involved in cross-jurisdictional cooperation in the region, this chapter gives special attention to partnership and the promotion of regional cooperation, including within the Association of Southeast Asian Nations (ASEAN).

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Introduction

This chapter examines the responses to trafficking in human beings in the Asia-Pacific region, focusing on the Southeast Asian states (i.e., Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) and two Australasian states (Australia and New Zealand). The Asia-Pacific region is characterized by considerable historical, political, economic, cultural, ethnic, and environmental diversity. It is possible that trafficking in persons is occurring also in the Pacific Islands, but little is known about its scope (UNODC 2016b). In contrast, Southeast Asia, comprising low-income countries, middle-income countries, and high-income countries, has a significant trafficking profile, in terms of both large number of people affected now and its potential for generating trafficking in the future, while Australia and New Zealand are highly industrialized states which are predominantly attractive as destination countries, including for victims from Southeast Asia (UNODC 2016a; US Department of State 2017).

The main framework of reference for this chapter is the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol). The UN Trafficking Protocol operates primarily by setting standards for the criminalization and prosecution trafficking and – to a lesser degree – by encouraging the adoption of measures for the protection of victims and for preventing trafficking. It also provides a universal framework for cooperation (partnership) between states. It is important to note that trafficking, which involves the movement of people for the purpose of their exploitation (Art. 3(a) of the Trafficking Protocol), is both somewhat imprecisely defined in international law and in practice forms “part and parcel” of broader migration patterns, including irregular migration (Piper 2005: 207). The phenomenon is, in other words, both difficult to define and dynamic, which makes collecting comprehensive and comparable data difficult. As a result, the scale of trafficking also remains difficult to pin down, making analysis complex and challenging (Schloenhardt and Wise 2014).

The Nature and Scope of Trafficking in the Region

All Southeast Asian states serve as source, transit, or destination countries, but often in varying degrees – many are mainly characterized as source countries (e.g., Myanmar, Indonesia, Laos, the Philippines), with fewer serving largely as destination and/or transit countries (Brunei, Singapore, and, to some extent, Malaysia) (US Department of State 2017). The various pull and push factors and complex migration patterns in the region mean that the Greater Mekong Subregion, which has traditionally been considered a hub of trafficking, remains important, with Thailand
a prominent destination for migrants from neighboring Cambodia, Laos, and Myanmar (UNODC 2017). While much of the focus in Southeast Asia has been on sexual exploitation (Piper 2005; Kneebone and Debeljak 2012), it is clear – especially after the revelations regarding exploitation in the Thai seafood industry (ILO 2013; EJF 2014) – that trafficking also occurs for forced labor. Labor exploitation takes place in several sectors, and also involves significant numbers of men (Pocock et al. 2016). Indeed, trafficking is known to occur across a broad range of industries (e.g., agriculture, fishing, construction, and domestic services). Forms of child trafficking, including trafficking for forced marriage and begging, are also found across Southeast Asia (UNODC 2016a).

The root causes for trafficking in Southeast Asia include economic disparities and gaps between the wealthier and more globalized economies (e.g., Malaysia, Thailand) and those with lower levels of socioeconomic development, closed economies, and/or instability and conflict (e.g., Myanmar); demand for low-skilled and low-wage migrant workers (including in sex industries); inequality and uneven distribution of employment opportunities; and limited capacity to regulate migration and/or lack of flexible, fast, and cheap legal migration options (Asis 2008; Blackburn et al. 2010; Larsen 2010; UNODC 2016a). Though trafficking, characterized by coercive or deceptive methods and exploitation, is in theory a distinct phenomenon, in practice it to a degree overlaps with forms of irregular migration, smuggling, as well as refugee movements (e.g., Farrelly 2012). The 2015 discovery of the bodies of hundreds of Rohingya migrants and refugees who had been kept in inhumane conditions in camps in southern Thailand near the Malaysian border is one example of this complexity (Auethavornpipat 2017). Even with basic agreement on the definition, however, quantifying trafficking remains difficult. Reported trafficking figures (see UNODC 2016a) represent only fraction – but it is difficult to know how large the hidden picture of trafficking is in Southeast Asia (Song 2016; Yusran 2018).

Australia and New Zealand have been, to some extent, shielded from large-scale human trafficking by their relative geographical isolation and highly regulated immigration programs, but both states also attract trafficking because of their open economies and sustained demand for migrant workers. Just as in Southeast Asia, in Australia the discourse on trafficking was initially focused on women and sexual exploitation, and early knowledge formation focused on the sex work industry (Segrave 2004; Simmons and Burn 2010; Simmons et al. 2013). The majority of identified and investigated cases still involve exploitation in the sex industry, often of Southeast Asian women, though it is now known that trafficking also occurs in other sectors (Australian Government 2016b). Marriage and partner migration have been used to facilitate the trafficking of people into Australia (Lynenham and Richards 2014). Though trafficking in persons is still not well-recognized in public debates, awareness of trafficking has been forming more rapidly in Australia than in New Zealand. Unlike the Southeast Asian states, Australia and New Zealand rank well in international assessments of their anti-trafficking action (US Department of State 2017). Temporary migrant workers, however, are vulnerable to exploitation by employers who subvert pay and working conditions and create disincentives for reporting workplace violations (Berg and Farbenblum 2017; Segrave 2017; Hedwards et al. 2017).
Responses to Trafficking in Southeast Asia

Prosecution, Protection, and Prevention

Both awareness of and responses to trafficking in human beings in Southeast Asia predate the adoption of the UN Trafficking Protocol, but the introduction and implementation of policy measures has intensified since its adoption (e.g., Kneebone and Debeljak 2012; Yusran 2018). The pace of ratification of Trafficking Protocol in Southeast Asia is uneven, reflecting the diversity of political, cultural, and economic development in the region. What the diverse nations of the subregion do have in common is their traditionally strong advocacy of state sovereignty, national security, and noninterference in the internal affairs of a state, which has made many of them averse to the adoption of hard international legal obligations and to regional cooperation (Kranrattanasuit 2014). However, significant developments have taken place since 2000. The Philippines, a major migrant-sending country, ratified the Protocol in 2002 and has robustly attempted to increase social protection of Filipino migrant workers overseas. Laos, Myanmar, Cambodia, Malaysia, and Indonesia subsequently became parties to the Protocol, with Vietnam, Thailand, and Singapore joining since 2012. Brunei is the only ASEAN (Association of Southeast Asian Nations) state currently outside the Protocol’s framework.

Southeast Asian nations have also made progress in the enactment of national legislation on trafficking in the last 15 years (Song 2016). Overall, the various criminal law provisions adopted against trafficking in ASEAN states are of variable quality. For instance, Kranrattanasuit (2014, Chap. 4), in her evaluation of the laws in Cambodia, Thailand, and Vietnam, finds that the criminal offenses in these states are not always complete or consistent with the elements set out in the Trafficking Protocol. Typically, elements of offenses may not be clearly articulated, liability may not be comprehensively addressed, and/or the focus of criminalization may exclude certain forms of exploitation. For instance, Cambodia’s anti-trafficking legislation has been much criticized for its focus on the sex industry and for its discriminatory effects on women (Sandy 2012; Bradley and Szablewska 2016). However, many states have also made some progress in the adoption of more comprehensive legislation: for instance, Singapore had no antihuman trafficking law until 2014, and its other relevant legislation had gaps and an exclusive focus on prostitution (Wong 2014), but its new anti-trafficking law, despite some shortcomings, criminalizes trafficking along the lines of the Trafficking Protocol (Wong and Juay 2015).

Legislation is, of course, only the first step, and much depends on whether the criminalization of trafficking is followed by actual implementation and enforcement, not to mention care, support, remedies for victims, and effective prevention measures that raise awareness about trafficking, seek to reduce demand for it, and target the root causes of exploitation. Many problems persist in these areas. Law enforcement in many states concentrates on trafficking involving women and children – even where labor trafficking is also criminalized, the focus may be on the sex industry (e.g., US Department of State 2017; Chapman-Schmidt 2015). Even where law exists, and national coordination systems are in place, they may, as in
the Philippines, be undermined by corruption (Guth 2010). In many countries, coordination and multiagency cooperation are still often poor (e.g., Indonesia, Myanmar, and Vietnam), and problems with insufficient coordination are compounded by inadequate resourcing of law enforcement, lacking awareness and expertise on trafficking, limited institutional capacity and inability, and/or unwillingness address exploitation (UNODC 2017). Though these obstacles pose particularly serious issues in states with weaker capacity, relatively prosperous states like Malaysia also experience these issues (Wan Ismail et al. 2017). Moreover, such problems also complicate cross-jurisdictional cooperation (see below the discussion of partnership).

The UN Trafficking Protocol recognizes that victims of trafficking need protection and assistance, for instance, to alleviate issues with access to redress, irregular status, and fear of deportation (Gallagher 2010). Successful trafficking prosecutions often also rely on a system that provides adequate support to victims of trafficking to encourage them to give evidence. However, victim protection and support (and measures to encourage them to cooperate with law enforcement) remain limited across Southeast Asia, with Brunei, Cambodia, Singapore, and Vietnam having implemented Article 6 of the Trafficking Protocol in a very limited way (Song 2016). Some states, like Brunei and Vietnam, prosecute trafficking victims with criminal offenses and/or deport actual and potential victims – indeed, limited, or improper, victim identification by frontline officials remains an issue in many states (US Department of State 2017). Many of the problems with protecting victims also have to do with imprecise or insufficient legal provisions for the protection, care, and housing of trafficking victims (often targeting only victims in the sex industry), limited access to dedicated resources, and constraints on civil society activity. As a result, migrant workers, even those utilizing Migrant Worker Resource Centres, often fail to obtain a remedy (ILO 2017).

Prevention means addressing factors that make individuals vulnerable (such as inequality), reducing demand and tackling practices that facilitate trafficking, such as corruption (Gallagher 2010, Chap. 8). All ASEAN states make some efforts at preventing trafficking, but often prevention is conceptualized narrowly, in the sense of law enforcement as a deterrent or as measures to raise awareness of the risks of migration. However, problems persist in addressing demand and actively promoting safe and legal migration avenues that would reduce the vulnerability of migrants to exploitation (UNODC 2017). Asis (2008: 196) has argued that there is a prevalent “hands-off policy with respect to migrants’ rights” in Southeast Asia that underpins and encourages abuse. When legislation provides limited protection for migrants or is not enforced or, when some sectors, such as domestic work, are excluded from labor law protections, migrant workers are left vulnerable to exploitation (Andrevski and Lyneham 2014; Pocock et al. 2016). The reasons for this neglect of migrants’ rights are deeply embedded in existing economic and social relations. Most crucially, addressing trafficking as a labor rights issue is a threat to the existing economic order in receiving states, whose existing legal structures provide limited protection for the large numbers of migrants who provide cheap labor for the growing economy (Yea 2015; Farrelly 2012).
Overall, responses to trafficking in Southeast Asia are skewed toward criminal justice response, focused on prosecutions (Song 2016). There is also a powerful narrative of trafficking as a form of sophisticated organized crime, which may be misplaced, at least as a blanket statement (Sandy 2012; Molland 2012; Keo et al. 2014). Some have questioned whether Southeast Asian states have a genuine commitment to developing a more comprehensive approach to trafficking or whether they are driven by political considerations, such as the annual US Trafficking in Persons (TIP) Report (based on US Trafficking Victims Protection Act 2000) which ranks states into “tiers” on the basis of their compliance with anti-trafficking standards (Sandy 2012; Palmer 2012; Chapman-Schmidt 2015). As poorly performing states face the possibility of unilateral sanctions, such as denial of non-humanitarian aid, the TIP Report provides a powerful incentive to adopt legislation and to pursue prosecutions. However, likely negative consequences of this external pressure include the possibility of politically motivated action, a skewed focus (e.g., on increased numbers of raids or prosecutions), and the reinforcement of a pre-existing discourse of trafficking as a security and crime problem, which sidelines both the obligation to protect victims and take effective steps to prevent trafficking.

**Partnership**

All Southeast Asian states are affected by regular and irregular migration and trafficking, but international cooperation and policy development at the regional level have been hampered by the legacies of prior confrontation and existing tensions in interstate relations (e.g., Thai-Cambodia, etc.) and the strong priority given to the principle of noninterference in the internal affairs of a state in the region. The difficulty of collaboration across the region has meant many governments have pursued bilateral agreements and memoranda of understanding to strengthen regulation and coordination of international labor migration. These are, however, often complex, limited to specific industries, or inflexible, slow or expensive legal migration channels (Kneebone and Debeljak 2012; UNODC 2016a). Moreover, uneven bargaining power between labor-sending and labor-receiving states can make such agreements weak and fail to ensure key protection issues are addressed (UNODC 2016a). However, many Southeast Asian states have found that regional cooperation provides one means to combat the rise of transnational organized crime to the region (Emmers et al. 2006), leading to attempts to build a regional approach to trafficking.

Trafficking has been on the transnational crime agenda of the Association of Southeast Asian Nations since the 1990s (for a summary, see Yusran 2018). As ASEAN is becoming more interdependent and integrated economically (Simon 2008), it has moved toward a strategy to collectively address migration and trafficking (Emmers et al. 2006; Kranrattanasuit 2014; Yusran 2018). The focus has been on addressing trafficking as a form of organized crime, which poses a political security challenge (separate from labor migration, which is considered a social and cultural challenge). This emphasis has not always been conducive to treating trafficking as a human rights violation (Renshaw 2016). Criticisms of previous ASEAN mechanisms dealing with trafficking have also highlighted their ineffectiveness
States have prioritized declarations and other soft law instruments, such as the ASEAN Declaration Against Trafficking in Persons, Especially Women and Children (2004) and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007). These instruments have contained only general mentions of victim protection. ASEAN has also lacked effective institutional structures with a mandate to monitor and ensure the effective implementation of these non-binding instruments (Kranrattanasuit 2014, Chap. 3).

Considering this history, it is significant that ASEAN has recently adopted a binding regional legal regime. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) was signed in November 2015 and came into force in March 2017. Complemented by the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, it is the first substantive treaty of ASEAN on a specific issue with human rights implications. Though ACTIP is largely an anti-crime instrument, its quick ratification is a sign of growing awareness of the complex security challenges involved in trafficking that impact on the whole region (Yusran 2018). ACTIP is similar to the Trafficking Protocol in terms of its broad definition of human trafficking (Art. 2) and its general approach. It focuses on the need for criminalization of trafficking (and related money laundering/obstruction of justice/corruption, Arts. 5–9) but also sets some standards for the protection and rehabilitation of victims (Arts. 14–15) and on prevention measures (Art. 11). Furthermore, it sets out areas for cooperation—such as mutual legal assistance, extradition, validity of documents, confiscation of proceeds, and interstate law enforcement.

Though ACTIP provides clearer regulatory standards than the ASEAN Declaration, its emphasis is squarely on the criminalization of trafficking and on the prosecution of traffickers, as opposed to the development of protection and prevention measures. On protection, it does require victim identification guidelines and the provision of care and support for victims; it also encourages non-penalization of victims for any unlawful conduct. The language used, however, at times suggests states must simply “consider” certain things, like not prosecuting victims “in appropriate cases” (Art. 14(7)). Prevention measures are largely conceived in terms of very broadly phrased obligations and include awareness campaigns, discouragement of demand, and alleviation of factors that make persons vulnerable to trafficking (Art. 11) (Yusran 2018). Although ACTIP formally applies to trafficking in “persons,” much of the specific attention on women and children suggests that ACTIP is more concerned with sexual exploitation (and a paternalistic impulse to protect women and children) than with labor trafficking. Indeed, in general ACTIP treats trafficking as largely separate from migration and has little to say on how states ought to legislate to ameliorate the vulnerability of migrant workers to exploitation that arises from gaps in regulation, unscrupulous migration agents, and use of practices such as debt bondage.

Overall, ACTIP contains incipient moves toward recognizing trafficking not only as a criminal offense that requires effective partnership across the region but as a human rights challenge, which is crucial for addressing trafficking comprehensively. However, ACTIP also comes with limited monitoring and feedback mechanisms, which means it cannot be taken for granted that the instrument will be effectively
implemented and utilized (Yusran 2018). ACTIP does suggest some space is being created for a regional approach and incentives to address trafficking as not simply as a crime and security problem but a shared human rights concern that affects civil society (Renshaw 2016). At the same time, Article 4 ACTIP states that its obligations are to be implemented based on ASEAN principles, such as sovereign equality, territorial integrity, and nonintervention. Considering these are the very justifications ASEAN states have cited when shying away from discussing human rights, transparency, and accountability, it remains open whether ACTIP can assist in addressing the existing biases of anti-trafficking action in Southeast Asia, including the focus on criminalization as opposed to protection of victims and prevention (Yusran 2018).

Responses to Trafficking in Australia and New Zealand

Prosecution, Protection, and Prevention

Since its ratification of the UN Trafficking Protocol in 2005, Australia has made considerable efforts to address trafficking in terms of adopting legislation and encouraging agencies to cooperate and to dedicate resources to this end (Schloenhardt and Jolly 2013: 350). In 1999, Australia introduced criminal provisions against trafficking and various forms of exploitation, such as slavery, in the Commonwealth Criminal Code (Criminal Code Act 1995). In 2004, in response to trafficking in persons being considered by both the Australian Parliament and the international community as a growing form of transnational organized crime, the government adopted its first Action Plan to Eradicate Trafficking in Persons. The criminal law provisions of the Commonwealth Criminal Code have since then been updated several times and now criminalize slavery and slavery-like practices, including servitude, forced labor, and deceptive recruiting (Division 270); Division 271 contains specific offenses for trafficking in persons and debt bondage. The current National Action Plan to Combat Human Trafficking and Slavery 2015–2019 (Australian Government 2014: 19) states that Australia’s action against trafficking revolves around four pillars: prevention and deterrence, detection and investigation, prosecution and compliance, and victim support and protection.

Between 2004 and March 2017, the Australian Federal Police (AFP) received more than 780 referrals for human trafficking and slavery-related matters. In the 2016 calendar year, there were 105 referrals of alleged human trafficking and slavery-related offenses, but a majority of these were on forced marriage (see also Australian Government 2016b: 20). Despite this number of referrals and despite securing prosecutions being a key objective of the government’s strategy, there have been a limited number of prosecutions by the Commonwealth DPP, and only about 20 persons have been convicted of relevant offenses from 2004 to 2017 (Australian Government 2017a: 18). Most of the cases resulting in convictions have concerned the sex industry and have not involved sophisticated organized crime (Simmons et al. 2013; Davy 2017). The small numbers imply that some cases are not proceeded with or that some cases which could potentially be trafficking cases are
instead pursued under the enforcement of workplace rights (US Department of State 2017: 72). These are guaranteed by the *Fair Work Act 2009* (which does not contain specific provisions on slavery and trafficking offenses) and are enforced by the Fair Work Ombudsman for all workers in Australia, including those employed illegally.

Australia provides support for identified victims of trafficking via the Support for Trafficked People Program (STTP), administered by the Department of Social Services and currently delivered by the Australian Red Cross. Access to the STTP is via AFP assessment (Australian Government 2016b: 31). Between 2004 and April 1, 2017, the AFP referred 341 suspected victims of trafficking and related offenses to the STTP (Australian Government 2016b: 31). All persons referred by the AFP now receive intensive support for up to 45 days to provide time for individuals to assess their options. If the person is a noncitizen without a valid visa, they can be granted a Bridging F visa (BVF) for this period and sometimes for a further 45 days. If a person is required to remain in Australia to assist authorities with an investigation or prosecution, another longer-term BVF can be granted for the duration of the criminal justice process (since 2015, a BFV is used instead of Criminal Justice Stay visas). A trafficked person may also in some cases be eligible for a Referred Stay (Permanent) visa (RSV) (previously Witness Protection (Trafficking) (Permanent) visa) if they have made a significant contribution to and cooperated closely with an investigation and would be in danger if returned to their home country. This allows the holder to remain in Australia permanently.

The above-mentioned system in practice maintains a connection between victims’ willingness to assist the police in the criminal investigation/prosecution process and their access to protection/support beyond the initial rest and recovery period. This kind of nexus has often been considered unhelpful, as it fails to prioritize victims as persons whose human rights have been violated and may not address the barriers faced by migrants that discourage them from cooperating with law enforcement authorities in the first place (Gallagher 2010: 299). Though the Australian system has improved somewhat over the years, the response offers only limited and conditional protection and has been criticized for putting the interests of the state before those of trafficking victims (Segrave 2004; Davy 2017). A recent parliamentary inquiry suggested that access to the protection program should be more explicitly de-linked from cooperation with law enforcement and participation in the criminal justice process, while also supporting the establishment of a national compensation scheme for victims of trafficking and related offenses (Australian Government 2017a: 35).

Australia’s prevention activity has been described as “thin in substance” (Schloenhardt and Jolly 2013: 309). The current National Action Plan aims to “prevent human trafficking and slavery by tackling the root causes of exploitation, raising awareness amongst the general community, and building the resilience of groups who may be vulnerable to these practices” (Australian Government 2014: 24). While there have been some campaigns to raise awareness of trafficking in Australia (see Schloenhardt et al. 2012), prevention measures targeting root causes and vulnerability to trafficking are largely targeted at source regions, such as Southeast Asia. Measures to reduce demand receive only limited attention in terms of maintaining compliance frameworks (ibid.: 30). The prevention of trafficking has recently been discussed in context of the debate over the *Modern Slavery Act*,
proposed in 2017 (Australian Government 2017b). While the inquiry was mostly focused on examining the quasi-extraterritorial regulation of business activities, including the requirement to prevent trafficking and similar practices in business supply chains, it also supported the adoption of preventative measures to tackle labor exploitation, particularly for migrant workers, such as improving visa protections and removing conditions attached to visas that enhance employers’ power over migrant workers (ibid., Chap. 9).

Up until recently, New Zealand has focused almost exclusively on prevention activities in relation to trafficking, with authorities operating under an assumption that New Zealand is affected by trafficking only to a very limited degree, if at all (New Zealand Department of Labour 2009). New Zealand ratified the UN Trafficking Protocol in 2002 and updated its legislation (*Crimes Act* 1961) to include the offense of human trafficking, but only in the context of international border crossings (Sections 98C and 98D). Trafficking has not been considered to pose a major challenge in New Zealand, despite various allegations (e.g., in the agricultural and construction sectors) (New Zealand Law Society 2014) and press reports suggesting the presence of trafficking in New Zealand (Carville 2016). Trafficking-related issues have been raised also in relation to workers employed in foreign fishing vessels (Harré 2012; Stringer et al. 2016). The Plan of Action to Prevent People Trafficking (New Zealand Department of Labour 2009) includes prevention measures such as awareness-raising, international engagement, and development assistance.

Recently, New Zealand has placed more emphasis on the use of criminal law and acknowledged that the country is not completely immune from trafficking. The first trafficking prosecution was completed in 2015 (regarding the trafficking of 18 Indian nationals into forced labor in 2008–2009); however, the accused were only found guilty of immigration fraud. In 2016, the first successful trafficking conviction was obtained against a Fijian national, Mr. Faroz Ali, for 15 human trafficking charges: a further case, involving deceived Bangladeshi citizens, proceeded to charges in 2017 (New Zealand Immigration 2017). In 2015, the government also made its first certifications of trafficking victims, providing them with temporary visas. Unlike in Australia, which has a system of visas and assistance in place that is specifically designed for this purpose, assistance arrangements in New Zealand are still managed on a case-by-case basis. The *Crimes Amendment Act* 2015 also amended Section 98D to cover “exploitation,” broadly defined. Showden (2017) argues that this change, as well as a generally increased emphasis on the use of criminal law, is a sign of US influence as the “hegemonic enforcer” of anti-trafficking law, echoing claims made in relation to Southeast Asia.

**Partnership**

Australia’s International Strategy to Combat Human Trafficking and Slavery demonstrates Australia’s aspiration to be a regional leader in the eradication of trafficking (Australian Government 2016a: 3). Southeast Asia is the principal focus of Australia’s engagement and its prevention activities (Australian Government 2016a: 7). The current Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) (from
2013 to 2018) was given a budget of AU$50 million and aimed to strengthen the criminal justice responses to human trafficking in Asia and particularly in the countries of the ASEAN. This program first started in 2003 (as Asia Regional Cooperation to Prevent People Trafficking or ARCPPT, 2003–2006, then as the Asia Regional Trafficking in Persons Project or ARTIP, 2006–2012). It is Southeast Asia’s largest single dedicated anti-trafficking investment, with a focus on enhancing the capacity of the criminal justice authorities to tackle trafficking. It provides Australian technical assistance and support ASEAN and has been arguably instrumental in shaping the abovementioned ASEAN Convention (Australian Government 2016a: 11).

One of the often-mentioned voluntary forums with which Australia is involved in as a way of fostering cooperation in addressing trafficking is the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (“Bali Process”). The Bali Process includes all ASEAN states and involves an uninstitutionalized mechanism of policy coordination and forum for dialogue in the region (Emmers et al. 2006). The Bali Process, in which also New Zealand participates, has helped to shape regional policy direction in Southeast Asia via non-binding regional policy guides, intended for use as reference tools (e.g., on criminalization, victim identification, and victim protection). Based on the UN Trafficking Protocol, such soft law has arguably encouraged ASEAN states to implement international standards (Song 2016). However, as Schloenhardt and Jolly (2013) point out, the Bali Process was conceived of as a regional response to irregular migration and is predominantly focused on anti-smuggling, a strong priority for Australia. It therefore treats trafficking largely as a form of migration and transnational crime, reinforcing a focus on security-driven initiatives and criminal justice responses.

In terms of prevention, the current TRIANGLE II program (tripartite action to enhance the contribution of labor migration to growth and development in the ASEAN, AU$20 million, 2015–2025) delivers technical assistance and support. TRIANGLE I (2010–2015) was implemented by the ILO and supported the establishment of 27 Migrant Worker Resource Centres (MRCs) in Thailand, Malaysia, Vietnam, Cambodia, Laos, and Myanmar to provide knowledge and resources to migrant workers to safeguard their labor rights (Australian Government 2016a: 14). TRIANGLE II aims to improve access to safe and legal migration channels and better jobs, where rights are protected and skills recognized during migration and on return. TRIANGLE is a modest start to addressing the common criticism that the Australian regional response has been much more focused on advocating for tougher law enforcement and criminal justice cooperation than seriously tackling the root causes of trafficking, such as inequality and the lack of safe migration opportunities in the region (Burn et al. 2005; Schloenhardt and Jolly 2013; Davy 2017).

It has been proposed that Australia could play a greater role regionally, including via providing more secure funding (Australian Government 2017a: 31). Similarly, it has been suggested that Australia could give more support to Southeast Asia dedicated to the protection of victims of trafficking (Song 2016: 11). Similar comments could be made in relation to New Zealand, which is also a member of various international organizations and fora which address trafficking and offer development assistance for anti-trafficking projects in developing states (New Zealand Department of Labour 2009).
Conclusion

The development and implementation of anti-trafficking responses in Southeast Asia and Australasia makes it clear that the UN Trafficking Protocol has been deeply influential in encouraging the adoption of legislation. Despite many intra-regional differences, the central role of criminal law and criminal justice cooperation is visible in both Southeast Asia and Australasia, now also in New Zealand. The law enforcement agenda that goes hand in hand with the idea that trafficking involves sophisticated transnational organized criminal networks may not always fit with the evidence that suggests trafficking is highly dynamic and context-specific and may also occur via small-scale or loose networks and middlemen. Moreover, when both the prevention of trafficking and protection of victims are seen through the lens of sophisticated transnational crime, their potential may be marginalized. The protective frameworks in Southeast Asia are still relatively weak and do not always focus on victims as individuals whose rights have been violated. Prevention measures also rarely go beyond deterrence and crime prevention. Trafficking in human beings is deeply embedded in the regional settings of Southeast Asia and Australasia. This suggests that the effectiveness and comprehensiveness of anti-trafficking measures can be improved by developing safe migration opportunities, protecting migrant workers and addressing the inequalities that sustain the exploitation of migrants. Protecting the rights of migrant workers should become a priority for ASEAN, which could build on ACTIP and work toward the development of more comprehensive legal frameworks on preventing exploitation and promoting safe migration; Australasia should encourage the development of accountability mechanisms both as part of domestic efforts and as part of broader regional prevention efforts.

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▶ The Investigation and Prosecution of Traffickers: Challenges and Opportunities
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An Examination of Counter Trafficking Responses in the Asian Region: Hong Kong and Singapore

Shih Joo Tan and Marie Segrave

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Abstract

With a focus on Hong Kong and Singapore, this chapter aims to illustrate some of the key mechanisms these governments have implemented in direct response to human trafficking and, more broadly, efforts to address the exploitation of vulnerable migrant populations. While the Trafficking-in-Persons (TIP) reporting and assessment process is presented as an objective measure of the countries’ progress in tackling human trafficking, it is a limited tool both in terms of understanding the context within which exploitation and the response occurs and the specific limitations and challenges in relation to realizing the international standards for ideal counter trafficking strategies. This chapter offers a review of the development and implementation of counter trafficking strategies in Hong

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Kong and Singapore, two very different city-states within Asia, to consider the extent to which counter trafficking efforts are potentially impacting the exploitation of vulnerable migrant populations more broadly.

**Keywords**

Human trafficking · Asia · Hong Kong · Singapore · Counter trafficking

**Introduction**

There has been significant international attention on the issue of human trafficking over the past two decades, marked by the adoption of the UN Protocol to Prevent, Suppress and Punish Trafficking (hereinafter the Trafficking Protocol) in 2000, and it has remained one of the most critical issues on the international political agenda. Consequently, the international community has seen an explosion of counter trafficking responses by various actors, including governments, international and regional organizations, and nongovernmental bodies. Although human trafficking is a global phenomenon, its manifestation in different nations varies according to a range of factors, including the gendered labor opportunity divide, the extent to which various nations rely on migrant workers, the socioeconomic and political climate within each nation, the management and politics of immigration and border control, and the role and relationship of each nation to other nations within the region and to nations globally. However, in the proliferation of the analyses of counter trafficking responses, there has been less direct engagement with nations in Asia and/or a critique of the responses developed and implemented within this region compared to the proliferation of analyses of responses by nations within the European Union and the United States to human trafficking; in a reference work such as this, it is important to ensure that nations not often included in the analysis of responses to counter trafficking are brought to the fore. (This is not to say that there is no engagement: significant reporting including the work of GAATW, NEXUS Institute (led by Rebecca Surtees), and academic work, such as Ford et al. (2012) and Yea (2014), is demonstrative of research and engagement.) For this reason, this chapter focuses on two Asian city-states: Hong Kong and Singapore, and consider their responses to human trafficking, with a view to considering two key points. First, the extent to which the global framework for responding to human trafficking is evidenced in these two jurisdictions and, second, the extent to which the standard counter trafficking response resonates with and relates to their specific circumstances. In this way, this chapter seeks to reflect on the efforts to compare national efforts and to consider the extent to which this should be the starting point for considering the success or failure of a state’s efforts to counter human trafficking. These two city-states are not chosen as exemplars of Asia, nor are they chosen to be representative of the continent. Rather, examining the responses within these two jurisdictions offers some important reflections and considerations for the various contexts within which nations are responding to human trafficking as well as enabling some reflection regarding the international counter trafficking framework.
Human Trafficking in the Era of Modern Slavery: The Counter Trafficking Framework

The prevailing configuration of human trafficking as a crime, whereby the key players are the trafficker(s) (offender), the victim (witness), and the criminal justice system (to identify, investigate, prosecute, punish), means that responses to human trafficking continue to be predominantly focused on criminal justice strategies, to which victim support and border protection measures are linked (Segrave 2009, 2018; Bhabha 2015; Huckerby 2015). This is embodied within the UN Trafficking Protocol as well as evidenced within the US Trafficking Victim Protection Act (TVPA). Both instruments emphasize human trafficking as a form of transnational crime requiring a law enforcement framework alongside victim-oriented welfare support measures (Chuang 2006; Segrave et al. 2018). The Trafficking-in-Persons Report (TIP Report) has evolved over the past two decades, such that the evaluation now includes an assessment of how nation-states fare in the protection of victims, including the extent of welfare provisions. The breadth of exploitation that comes within the remit of the TIP Report has also expanded, including most recently, the recognition and inclusion of “modern slavery” as an umbrella term for exploitation (USDOS 2017, p. 17). (Increasingly, there is a push internationally and, in the region, particularly led by Australia (see Paisley and Lydon 2014), to focus more broadly on modern slavery (which remains undefined internationally, but is used to refer to forced labor, human trafficking, and other exploitative labor-related practices), the focus here remains specifically on human trafficking and how it is being addressed.) Nonetheless, the ranking and assessment of nation-states continues to emphasize criminal justice efforts and the prosecution and conviction of traffickers as key indicators of a commitment to countering human trafficking (see Segrave et al. 2018). The commitment is to a “one size fits all” approach to understanding and responding to human trafficking, reflective of the narrow criminal justice lens offered by locating the Protocol within the Convention on Transnational Organised Crime.

The criminal justice framework for responding to human trafficking has been identified as limited due to a failure to attend to the structural and institutional factors (including, but not limited to, restrictive migration and labor laws and policies, inequality in global markets, poverty, and gender-based discrimination) that produce and maintain the very conditions that are conducive to exploitation (Lobasz 2009; Bhabha 2015; Marks and Olsen 2015; Segrave et al. 2018). From this perspective, counter trafficking efforts are constrained due to the inability of the criminal justice process to address the complex ways in which situations of vulnerability are facilitated, reproduced, and sustained by these broader processes (van Liempt 2006; Coghan and Wylie 2011). This is particularly so when considering that in many cases, victims of human trafficking are also, often, migrant workers for whom work and remuneration is the driving and primary goal, such that the “protection” of the criminal justice system, in the absence of guaranteed future employment and/or remuneration or compensation, offers very little motivation to leave, let alone report on their experience of exploitative labor conditions (see Segrave 2017). While there
has been work examining the conditions of migrant workers, both regular and irregular, in Australia, which links to a labor force drawn from the region (cf Berg and Farbenblum 2017; Segrave 2017; Clibborn and Wright 2018), it is important to look within Asia to examine the management of these issues in very different nation states where the configuration of migrant labor management and regulation is very different. Such a perspective enables some examination of the extent to which diverse systems, through defining in law and policy, labor, migration, and where exploitation begins, influence the capacity of different nation states to both identify and effectively counter human trafficking. Hong Kong and Singapore are key sites for examination as the articulation of human trafficking as a matter of national concern is relatively recent in both nations. A review of each city-state follows.

First, however, we begin by taking stock on the shifting “exploitation landscape” and the push, led largely by Australia in the Asia-Pacific, toward addressing “modern slavery” as a priority. In this setting, modern slavery refers broadly to all forms of exploitation including bonded labor, forced migrant labor, sex slavery, forced marriage, and child slavery. Several familiar criticisms have been raised against this shift toward modern slavery. One of which is the potential of moral panics in justifying further constraints for the spatial and labor mobility of migrant workers (Chuang 2015; O’Connell Davidson 2015). The second criticism relates to the inordinate amount of emphasis on the notion of “forced work” and “unfreedom,” which ignores the complexity and nuances of migrant workers’ experiences of exploitation (Hoyle et al. 2011). A significant concern is that this could further perpetuate the false dichotomy of ideal victims who exercise no agency and that migrant workers are complicit in their own exploitation because they have expressed some degree of consent (Day 2010; Hoyle et al. 2011). However, it is important to note that the action in relation to modern slavery in countries such as Australia does not shift the trafficking framework but is focused on placing pressure on large corporate entities to ensure supply chains are free of exploitation as per the UK model. It is worth noting in Singapore and Hong Kong, there is little formal recognition of modern slavery, although there has been increased interest and commitment to issues of human trafficking in these two jurisdictions.

Singapore

Singapore is primarily recognized as a destination and transit country for men, women, and girls subjected to commercial sexual exploitation (sex trafficking) and trafficking for labor exploitation (USDOS 2017, p. 355). Human trafficking in Singapore’s context is primarily associated with low-skilled migrant workers in domestic work, construction, and marine industries (USDOS 2017). Low-skilled migrant workers on work permit visa constitute more than half of the 1.36 million strong migrant workforces in Singapore (migrant workers account for a third of the total labor force, see Ministry of Manpower 2017a). Given the reliance on these workers, it might be assumed that every effort is in place to protect and support this population; however, the labor conditions of low-skilled workers have come under
heavy criticism, with several international and domestic organizations asserting that many of these workers are vulnerable to exploitation, forced labor and human trafficking (see HRW 2005; Cheng 2014). Common problems reported include debt bondage, overworking, hazardous work, confiscation of identification documents, psychological coercion, and physical and sexual abuse (HRW 2005; Cheng 2014). The full extent to which human trafficking occurs is unknown but estimates by local NGOs suggest that in 2016 there were at least 20–30 cases (Dewi 2017), which suggests, relative to the number of low-skilled migrant workers, that the numbers of victims of human trafficking are estimated to be low (i.e., “dark figure” of crime). However, the broader estimate produced by the Global Slavery Index (GSI) suggests that numbers are potentially much higher: they estimate modern slavery (which includes forced marriage, forced labor, human trafficking) to affect around 9200 individuals in Singapore (Walk Free Foundation 2016, p. 29). The key issue for Singapore is that despite evidence of labor exploitation and the growing international attention on and pressure to respond to human trafficking, the formal response was not introduced until 2010 via the establishment of a dedicated anti-trafficking taskforce: the Singapore Inter-Agency Taskforce on Trafficking-in-Persons (henceforth, the Taskforce). Singapore’s response to human trafficking is explored below, but it is worth noting that even with the city-state developing a formalized response, since 2012 Singapore has consistently received a Tier 2 ranking by the US TIP Report. This is indicative of an assessment that the Singapore government “does not fully comply with the minimum standards for the elimination of human trafficking but is making significant efforts to do so” (USDOS 2017, p. 355). State efforts to address these issues and improve tier placement have been primarily enacted through the increased prosecution and conviction of traffickers, the provision of protective services for victims and funding outreach events to raise public awareness of human trafficking (USDOS 2017).

**Response: Law**

Co-chaired by the Ministry of Home Affairs and the Ministry of Manpower, the Taskforce, which includes representatives from the Singapore Police Force, Immigration and Checkpoints Authority, Ministry of Social and Family Development, Ministry of Health, Ministry of Law, Ministry of Foreign Affairs, and the Attorney General’s Chambers, is the principal government body responsible for coordinating strategies to combat human trafficking in Singapore (SIATTP 2012). (Formerly known as the Ministry of Labour, the Ministry of Manpower is responsible for the formulation and implementation of labor policies related to both the local and foreign workforce in Singapore.) In 2012, the Taskforce developed and launched Singapore’s first National Plan of Action (2012–2015) against human trafficking. Guided by the internationally endorsed “4Ps” framework of prosecution, protection, prevention, and partnership, this first Plan sought to achieve four main outcomes, via the implementation of 31 initiatives predominantly focused on the criminal justice system. Three of the most important milestones attained during this period were the
drafting and enactment of the *Prevention of Human Trafficking Act* [PHTA] in March 2015, ascension to the UN TIP Protocol in September 2015, and ratification of the ASEAN Convention against Trafficking-in-Persons (ACTIP) in January 2016 (see Yusran 2018 for an assessment of the role of ACTIP). Other key initiatives, such as establishing platforms to increase awareness and understanding of human trafficking amongst the enforcement community, improving victim identification and detection processes, and heightening engagement with destination countries to facilitate investigative cooperation and upstream efforts to reduce human trafficking, were also reported as completed (SIATTP 2012; Ministry of Manpower 2017b). While the Taskforce asserted that the completion of these 31 initiatives has produced “a strong foundation to combat human trafficking” (SIATTP 2015, p. 4), no evaluation or evidence to demonstrate the effectiveness or impact of the initiatives is publicly available. Following the conclusion of the first Plan, the Taskforce developed the National Approach against TIP (2016–2026), which seeks to “build on the foundational work laid by the NPA” (SIATTP 2015, p. 1). The structure of the response around the “4Ps” framework remains unchanged. Indeed, the criminal justice system remains the central focus of the National Approach (2016–2026), which prioritizes the facilitation of prosecution and conviction of TIP cases. Specifically, prevention efforts seek to reduce impediments for reporting and improving enforcing capabilities (ibid. p. 12), and protection efforts are developed with the purpose of encouraging victims’ participation in the criminal justice process (ibid. p. 14).

With respect to law and prosecution efforts, in 2013, the Singapore government revised its long-standing position that human trafficking in Singapore could be dealt with through provisions in existing legislation and introduced a dedicated counter trafficking law – the *Prevention of Human Trafficking Act* (PHTA) (see Yea 2015). The PHTA offers a legal definition of human trafficking, prescribes calibrated penalties for convicted offenders, and provides some measures for the welfare of victims, namely, protection of victim’s identity in cases of sex trafficking and assistance to trafficked victims, although the latter provision is only offered on a discretionary basis and dependent on what the Director of Social Welfare considers “practicable and necessary” (PHTA 2014 Part 4 Section 19). We discuss what this means in practice below, in relation to implementation, exploring the limits of this discretionary provision.

In recognition of the transnationality of human trafficking, the PHT Act expressively provides for extraterritorial jurisdiction. Prosecution can be pursued provided that all the elements of human trafficking (i.e., acts, means, purpose) are fulfilled and has a nexus to Singapore, that is, “regardless of whether the victim was a Singapore citizen or was trafficked within the country or across borders” (Wong and Juay 2015, p. 267). This provision facilitates the capacity for the prosecution and conviction of offenders even if at the time of detention they were operating outside of Singapore (ibid). More broadly, the “exploitation” element in PHTA is aligned with international standards and includes “sexual exploitation, forced labor, or any practice similar to slavery, servitude or the removal of an organ” (PHTA 2014 Part 1, p. 5), thus allowing for a comprehensive legal interpretation of the various forms of exploitative practices. However, despite the wide-reaching nature of this law, its application has been limited.
Response: Victim Support

As identified above, the PHTA has formalized several victim-specific responses and requirements in addition to creating specific offences pertaining to human trafficking. First, under Section 18, the legislation provides for the protection of sexually exploited witnesses giving testimony in court. Protections include the discretion to hear the matter or proceedings in camera (mandatory in cases where the victim is a child), as well as identity protection from the media (PHTA 2014 Part 4 Section 18). Secondly, under Section 19, the legislation specifies additional assistance measures that are available to all victims of human trafficking, including the provision of temporary accommodation and counselling services (PHTA 2014 Part 4 Section 19; USDOS 2017). Other support measures such as interpreters, medical services, and resettlement assistance are also available for victims. However, while the PHTA includes specifications regarding the provision of assistance and protection measures to victims of human trafficking, this is not a mandated right and it can only be accessed via the Director of Social Welfare, determining who ought to have access to the support services. This is articulated in the PHTA, which states the Director must plan regarding support service provision that is “practicable and necessary in the particular circumstances of the case” (PHTA 2014 Part 4 Section 19). However, there is no specific guidance in the PHTA nor any public information regarding the basis upon which a determination is made regarding who is and is not offered access to these support services and/or whether there is a process for appeal should a victim-survivor not be offered and wished to be granted access.

Welfare provisions in the form of shelters, counselling, and sustenance are partially funded by the state. As of 2017, there were 22 shelters for vulnerable children, four shelters for vulnerable women and their children, and two shelters for male foreign workers, of which two are specifically for victims of human trafficking (although male and female victims of human trafficking may be sent to a non-specific shelter, so the capacity for welfare support is larger than just two shelters) (USDOS 2017). Access to these shelters is primarily mediated through acceptance by NGOs and/or referral by the Director of Social Welfare, which is achieved by meeting the government-defined victim of trafficking criteria. There are also several discretionary victim protection and support provisions incorporated within other administrative policies and labor legislation, such as the Employment of Foreign Manpower Act (EFMA). One of the key provisions provided under the EFMA is the right for all victims to remain in the country via the Special Pass, which is automatically granted and renewable until the conclusion of their case (Ministry of Manpower 2018). While the right to employment is also not automatically granted as victim-survivors must apply via the Temporary Job Scheme (Wessels 2015), it differs from other support mechanisms in that victims can apply to access this scheme, instead of having to wait for a referral by the government. Under this scheme, victim-survivors are matched with a job through the Ministry of Manpower and those residing in government-funded shelters may have the option of paid employment in the shelters (Lim 2014b). It is however unclear whether information about this scheme is made available to all victims those who are navigating the system without support from NGOs or shelters.
Implementation: Data and Issues

While Singapore has recognized human trafficking as a national concern and adopted legislation to reflect its international and regional commitments, limited data has been made publicly available to effectively monitor implementation. For the most part, researchers based outside of Singapore and NGOs based in the country have sought to make Singapore accountable for the limits and concerns regarding policy implementation. These include the narrow recognition of victimhood (Wessels 2015; Yea 2015), restrictive access to victim support and services (Wessels 2015), increased policing of sex workers (Chapman-Schmidt 2015), absence of avenues for financial compensation and remuneration (USDOS 2017), and absence of comprehensive labor protections for low-waged migrant workers (Islam and Cojocaru 2015). Three specific limitations are discussed below, but first the data on identification and prosecution is outlined.

The lack of official statistics makes it difficult to accurately identify the prevalence of human trafficking in Singapore, however the reported numbers have decreased since 2013. In 2013 when it was reported via the media rather than in an official document, authorities investigated 49 cases with elements of labor trafficking and 53 reports of sex trafficking, of which five resulted in prosecution (Basu 2014). No public information is available regarding the number of convictions. Compared to other nations around the world (see, e.g., Segrave et al. in relation to Australia, Thailand, and Serbia), this is a high ratio of investigations to prosecutions. Yet, since the efforts to specifically address human trafficking in recent years, the numbers indicate a downward trend. From 2015 to 2017 there were three convictions from eight cases prosecuted (Tan 2017), and, in 2016, the Singapore government reported through a local media outlet that 17 sex and/or labor trafficking victims were identified (Tan 2017). It appears that the number of reported cases accepted and investigated by the Singapore is lower (Wong 2014) than the existing estimates regarding prevalence (Dewi 2017; USDOS 2017), but generally, the rate of prosecution and conviction relative to identification is high. While this may be read as “success,” it is arguable that such numbers belie the reality of the limited recognition of victims of trafficking and the failure of the nation to respond to labor and trafficking-related exploitation. We turn note to examine three specific limitations of the counter trafficking strategy in Singapore below.

Limitations

First, while the legislated definition of human trafficking includes trafficking for sexual and labor exploitation, a study on the classification of trafficking victimhood in Singapore identified that in order for a victim of exploitation to be recognized as a victim of human trafficking, he/she must fulfil a number of narrowly defined criteria, namely, he/she should “have their freedom of movement and associated removed [unable to physically leave an exploitative work situation] and should be subject to physical abuse and violence [which would achieve compliance through fear and threats to personal safety]” (Yea 2015, p. 1088: additional text from Yea). Yet physical coercion and complete control over movement are neither exclusive nor
necessary indicators of human trafficking and related exploitation (see Anderson 2010; Segrave et al. 2018). A critique of the implementation of counter trafficking efforts in Singapore, which echoes other critiques of national responses, is that while the legislation covers a broad range of offences, there is a narrow focus on the most serious and least common forms of exploitation, which creates a high threshold of what is considered exploitative and what constitutes human trafficking. There is no public information regarding how suspected cases of human trafficking are identified or assessed. A major concern is that nongovernmental organizations who are concerned as to the fates of their clients if they are not recognized as victims of human trafficking are unlikely to recommend approaching authorities about a potential trafficking offence (Wessels 2015; Yea 2015; USDOS 2017).

The second major limitation follows from the narrow definition: access to victim support and provisions of that support. Although the various protection and assistance measures (i.e., shelter, sustenance, right to work in Singapore) are laudable, state efforts that can potentially address victim needs, access is not automatic. Rather, it is determined on a case-by-case basis by officials, to “ensure that the victim-care regime is robust, flexible and fair” (Member of Parliament Christopher de Souza quoted in Lim 2014a). The subjective decision regarding victimization and eligibility to access support raises the concern that those who are supported by NGOs but not “officially” recognized as victims of human trafficking by government officials, are not eligible for the services provided for victims of human trafficking. Furthermore, they are likely to be subjected to deportation because of employers refusing to sign the transfer-of-employment letter. In addition, the specific details regarding access to the support provisions in place is limited. While in theory eligible victims can access work rights and shelter accommodation, there is inadequate data regarding access to work rights and shelter accommodation, and NGOs have reported that the work rights available to victims, lack flexibility in employment options (Wessels 2015). Considering that victim protection and assistance measures, particularly those concerning financial security are key to victim decision-making (see Kempadoo 2012), further research into access and the provisions of existing support mechanisms is essential to understanding whether the needs of potential victims are being met and the extent to which the current support system may in fact be an impediment to victims coming forward and accessing support.

The third limitation focuses on a specific aspect of support: compensation and remuneration. There are no specific or formal processes within the PHTA to support the recovery of unpaid wages or compensation for victims of human trafficking (USDOS 2017). Rather, the pursuit of restitution and/or unpaid wages requires undertaking civil proceedings that are separate from criminal proceedings, and thus require victims to be well placed and supported to pursue a lawsuit. Although victims may be able to access pro bono legal assistance through the help of NGOs to support civil court claims, there is, to date, no documented case involving a victim of trafficking pursuing a civil claim to secure compensation (USDOS 2017). (Recent amendments to the Criminal Justice and Evidence Bill had strengthened the victim compensation regime by legislating that the Courts will “be required to give reasons if compensation is not awarded, if it has the power to do so” (Ministry of Law 2018).
However, this has not been tested in Courts and it is unclear if amendments will extend to human trafficking cases.) Considering that remuneration has been widely identified as critical to victim support, the lack of this can be identified in this setting as also contributing to some extent to limiting the appeal for victims of seeking to access formal support mechanisms (see Milivojevic and Segrave 2012).

**Hong Kong**

Like Singapore, Hong Kong is a territory that is both heavily reliant on migrant workers and bordered by less wealthy municipalities. However, unlike Singapore, where there is a demand for low-skilled migrant workers across several sectors, in Hong Kong, the demand is primarily concentrated in the domestic work sector. As of December 2016, there are over 350,000 migrant domestic workers employed in Hong Kong (Immigration Department HKSAR 2017). Although migrant domestic workers in Hong Kong are covered under a comparatively more inclusive and non-discriminatory regulatory framework, international and local organizations have reported cases of labor exploitation, forced labor, and human trafficking in Hong Kong (see Amnesty International 2013; Chan 2014; Constable 2014). (Unlike Singapore, which excludes migrant domestic workers from the main labor law and places them under a separate Employment for Foreign Manpower Act (EFMA), the labor law in Hong Kong applies equally to all workers, regardless of their visa status and thus affords them legal protections and rights, such as annual leave provisions, statutory holidays, and right to not be dismissed when pregnant or sick. All of these are not included under Singapore’s EFMA (Truong et al. 2014).) In a report on the prevalence of forced labor and human trafficking in Hong Kong, it was estimated that more than 17% of the 1003 respondents exhibited strong signs of exploitation and approximately 2.4% (or 24 workers) displayed signs of having been trafficked for forced labor (Justice Centre 2016, p. 54). Estimates produced by GSI on modern slavery suggests that numbers are potentially much higher: they estimate modern slavery to affect around 29,500 people in Hong Kong (Walk Free Foundation 2016, p. 28). Unlike Singapore, Hong Kong has a reputation for strict immigration policies, such as the “two-weeks rule” (which requires migrant domestic workers to return to their country of origin within 2 weeks of contract termination and renew their visa offshore should they want to work for a new employer), which has been strongly criticized as creating precarious employment and increasing the susceptibility of workers to exploitation not least because such rules place the burden on exploited workers (Amnesty International 2013; Constable 2014).

Hong Kong’s counter trafficking efforts have also received increasingly critical reviews by the TIP Report. Primarily recognized as a destination, transit territory, and, to a lesser extent, a source territory for labor and sex trafficking, Hong Kong was first ranked in 2001 and was given a Tier 1 ranking, which it held until 2009 when it was downgraded to Tier 2, which it maintained until 2016 when the city was downgraded further to the Tier 2 Watchlist (USDOS 2001, 2009, 2016). The catalyst for the downgrade to watchlist was not due to a specific case or data related to human
trafficking trends, but rather a persistent refusal to respond to calls for creating and improving a coordinated counter trafficking response including a “comprehensive anti-trafficking law” (USDOS 2017, p. 198).

**Response: Law**

Unlike Singapore, Hong Kong has not introduced specific human trafficking laws and while the People’s Republic of China (the PRC) had ratified the Trafficking Protocol in 2010, this status is not extended to Hong Kong (Liberty Asia 2015; UNTC 2018). Despite mounting international and domestic pressures, the Security Bureau, which is the main government agency responsible for coordinating and implementing counter trafficking efforts in Hong Kong, has remained insistent that ancillary provisions in existing legal frameworks are comprehensive and enough to effectively address cases of human trafficking (Carvalho 2016; Leung and Carvalho 2018). (In 2016, a Pakistani male migrant worker who had previously made complaints that he was victim of human trafficking, launched and won a lawsuit against the Hong Kong government for ignoring his complaints and failing to fulfil basic obligations. This case represented Hong Kong’s first judicial review on human trafficking and in the final ruling, the judge criticized Hong Kong’s lack of legislation targeting human trafficking (Lau 2016; Lee 2016).) Specifically, Section 129 of the *Criminal Ordinance* (Cap 200) is the most relevant piece of legislation that directly addresses human trafficking in Hong Kong (Liberty Asia 2015). However, this legislation focuses exclusively on human trafficking for sexual exploitation (Emerton 2001; Liberty Asia 2015). Other legislation related to labor are identified as enough in protecting migrant workers from exploitation (Security Bureau 2018).

Beyond legislative change, the Government of Hong Kong has implemented a series of counter trafficking initiatives since 2010, starting with the establishment of an Inter-Departmental TIP Working Group, which is chaired by the Security Bureau and includes representatives from the Department of Justice, Hong Kong Police Force, Immigration Department, Customs and Excise Department, Labour Department, and the Social Welfare Department. The TIP Working Group is in charge of monitoring the overall TIP situation in Hong Kong and developing counter trafficking strategies (Security Bureau 2018). In 2013, the Prosecution Code [a set of guidelines for prosecutors to use when conducting prosecutions] was amended to include a section on “human exploitation cases” and set out to define what constituted “exploitation” and “trafficking” (DOJ 2013). (Hong Kong’s Prosecution Code Section 18 (2014, p. 35) defines “exploitation” to include sexual exploitation, enforced labor, domestic servitude, debt bondage and organ harvesting. “Human trafficking” is defined as involving the recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of exploitation.) Under Hong Kong’s Prosecution Code Section 18 (2014, p. 35) “exploitation” includes sexual exploitation, enforced labor, domestic servitude, debt bondage, and organ harvesting. Further, the Hong Kong government has
reported implementing a range of victims-focused reforms, in particular, measures to improve victim identification via regular training for the law enforcement community (i.e., frontline police officers and immigration officials) on the latest trends in human trafficking as well as sending them to conferences, workshops, and seminars on trafficking-related topics (Security Bureau 2018). There is, however, no measure or reporting of the impact or effectiveness of these efforts.

**Response: Victim Support**

A new victim identification and referral mechanism was introduced in 2015 to assist law enforcement agencies in the screening of vulnerable populations (USDOS 2017; Security Bureau 2018). Although the law remains narrowly focused in relation to sex trafficking offences per se, this initiative reflects growing recognition of a broader vulnerable migrant population, which includes migrant domestic workers as well as legal and illegal migrant workers (USDOS 2017). Another initiative introduced was the development of the “guideline on inter-departmental co-operation for handling of suspected cases of trafficking-in-persons” in 2016, which was intended to provide guidance for the various agencies within the TIP Working Group. Recognizing the challenges in securing victim participation in the investigation and prosecution of human trafficking, a challenge in many nations (see Segrave et al. 2018), several measures were introduced to encourage victim-survivor participation. These included initiatives such as witness protection, provision of welfare and financial assistance, and a policy of domestic visa renewal and visa fee waivers, which would allow victims to extend their visas without extra fees, and for some, to work in Hong Kong pending civil, criminal, and administrative case investigations and prosecutions (USDOS 2017). Financial assistance for victims residing overseas, which covers expenses incurred during their stay in Hong Kong, such as accommodation, transport, daily subsistence, and visa processing fees, are also offered to enable them to return to Hong Kong and testify as witnesses (Security Bureau 2018). There is, however, no publicly available research or information reporting on victims’ access to these support mechanisms.

Importantly, under the 2016 guideline (Security Bureau 2018, p. 17), the Government of Hong Kong ensured that victims of human trafficking and exploited migrant domestic workers will not be prosecuted for crimes committed as a direct consequence of being subjected to human trafficking. These can include a host of immigration and labor offences, such as violation of labor contracts, use of forged identity documents as well as drug trafficking. However, despite the rhetorical commitment to protection of victims, the US TIP Report (2017) noted that it was highly likely that unidentified victims [who constitute the large majority] are still being prosecuted for crimes committed as a direct consequence of their exploitation. In the new Action Plan to Tackle TIP and Enhance Protection of Foreign Domestic Helpers in Hong Kong (Security Bureau 2018), immunity from prosecution for both victims of TIP and exploited migrant domestic workers was identified as one of the
initiatives under the protection and support section; although, a disclaimer stating that immunity would “depend on the facts and circumstances of the case and subject to pre-conditions being satisfied” was also included. Subsequently, how this initiative will be implemented, who will be excluded, and how effective it will be in protecting vulnerable migrants remains to be seen.

Implementation: Data and Issues

In Hong Kong, the counter trafficking response has been the subject of limited critique, and three key concerns are raised here. First, the legislative framework is a major impediment to addressing human trafficking as it is broadly defined internationally. Although Hong Kong remains reluctant to pursue a more comprehensive and singular legal framework in relation to human trafficking, it has nonetheless made administrative and policy-level advances pertaining to the pursuit of trafficking and slavery-like exploitation. The issue of law, however, is not insubstantial. The current status of Hong Kong law means that a wide range of exploitative activities that constitute human trafficking under the Trafficking Protocol are not recognized as trafficking offences under Hong Kong law. The concern this gives rise to is that the narrow legal definition, which defines human trafficking in relation to sexual exploitation, would result in labor exploitation being addressed as immigration or labor violations, which hold less severe penalties.

The second limitation follows from the narrow legal definition, specifically, that some of the additional efforts to improve the identification of human trafficking and better support for victims will be compromised. In 2016, it was reported that the Hong Kong government had screened over 9000 vulnerable individuals, however, only 36 victims of sex and labor trafficking were identified (USDOS 2017). The disproportionality between referral and identification rates raises similar concerns that as a consequence of narrow emphasis on severe exploitation, very few exploited workers are recognized as “real victims,” which may contribute to an environment where some exploitation is perceived as not worthy of pursuing due to the burdens placed on victims (i.e., loss of job, deportation). In order to enable more victims to come forward, there is a need to rethink the narrow legal definition and broaden the landscape of exploitation via creating a more detailed list of offences under the legislation.

Finally, the third limitation pertaining to the Hong Kong response echoes concerns raised in relation to Singapore, which is the accessibility of the victim support and protection mechanisms. While there have been advances in terms of resourcing the financial and visa-related assistance to victims of trafficking whose cases are being pursued in the criminal justice system, access to those provisions is limited. Therefore, even though the measures have the potential to address economic barriers that prohibited victims from cooperating with authorities and/or leaving exploitative labor situations, they are not guaranteed under statutory policies. Instead, similar to the Singapore system, access to support and protection provisions is offered on a case-by-case basis and, as discussed above, this fosters insecurity and when coupled
with economic pressures, it has deterred exploited migrant workers from cooperating with authorities, leaving exploitative employment and pursuing justice (USDOS 2017). Instead, the TIP Report critiques that the uncertainty of accessing support and protection has led to workers choosing to return home and/or being deported (USDOS 2017). Moreover, access to support and protection, in particular, immunity from prosecution, is dependent upon the recognition of trafficking victimhood (as opposed to just labor exploitation) by authorities, without which victims may still have to face legal repercussions for any criminal violations.

**Conclusion: Interrogating the Impact of “Counter Trafficking” on Vulnerable Migrants**

In Segrave et al.’s (2018) analysis of counter trafficking responses in Australia, Thailand, and Serbia, they noted the importance of assessing counter trafficking responses by evidence of implementation and impact, rather than relying on policy rhetoric or new laws to be used as evidence of “doing something” to end and respond to human trafficking. There remains a firm and public commitment in the region to counter trafficking and, increasingly, efforts to address modern slavery. Neither Hong Kong nor Singapore have been immune to international pressure to develop and implement counter trafficking efforts. Indeed, both have initiated efforts that to varying degrees fit the international model that prioritizes criminal justice responses (including the development of law, resourcing, and training of specialized law enforcement operatives) and victim-oriented measures that effectively support the criminal justice processes as they are enacted to support victims, most often, while a case is being pursued through the legal system, such as financial support, visa support, and other welfare support. Many of the critiques of other nations are, therefore, relevant here. However, in the analysis of the situation and response in Singapore and Hong Kong, it is important to attend to the specificity of the significant reliance on low-skilled migrant workers who are specifically limited in relation to their rights in the host country.

Both nations rely, in different ways, on low-paid migrant labor. Both nations accept that there is the need to enable and support this group of workers via empowering them and offering some legal protections, but both nations also strive to ensure that these workers are restricted in many ways. For example, in Singapore and Hong Kong this group of migrant workers do not have the option of obtaining permanent residency in the country. What appears to result, then, are counter trafficking frameworks that are limited in their design, but also limited because of the proximity and influence of other relevant laws and policies in relation to temporary labor migration. Thus, in both Singapore and Hong Kong, what is evident is that in responding to and addressing the exploitation of migrant workers, efforts have been made to recognize the barriers that prevent vulnerable migrant workers from leaving exploitative employment. This situation is redressed through measures such as allowing victims to work while undergoing investigations and/or legal proceedings. However, across both jurisdictions, there are varying degrees of
restriction in relation to accessing support and the discretionary control of key stakeholders such as immigration and police is of particular concern. As a result, despite the estimated number of exploited and potentially trafficked persons, the number of individuals who are accessing victim protections is very limited. The system is designed to react to victims who come forward, yet there is limited motivation to do so and very limited support in place. In place of an emphasis on human trafficking specifically, it is clear that the just outcome for foreign workers, which is proactively designed to protect workers, is critical. This, however, is unfortunately a priority and a focus that generally sits outside the remit of the dominant response to human trafficking regionally and internationally.

Conclusion

This chapter has outlined, in relation to Singapore and Hong Kong, the scope of human trafficking, the responses, and the limitations of current responses. The chapter has identified specific issues with the counter-trafficking legislation of Singapore and Hong Kong, with both jurisdictions adopting a narrow understanding of exploitation, and the discretionary provision of victim protection, which in turn limits the extent of protection for vulnerable migrant workers.

Cross-References

▶ A Complex Systems Stratagem to Combating Human Trafficking
▶ Criminal Justice System Responses to Human Trafficking
▶ Multisector Collaboration Against Human Trafficking

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Abstract

A best kept secret of human traffickers is how they control and silence their victims. An effective counter-trafficking response is often obstructed by traffickers implementing various control methods or a blend thereof depending on what is most effective in the specific circumstances. Although the literature revealed numerous mechanisms to control victims, a more in-depth understanding of known methods and especially of emerging unidentified and clandestine methods is needed to combat human trafficking. One of these arcane control methods is “juju” rituals, predominantly used by Nigerian traffickers, to subjugate victims for sexual exploitation in various parts of the world. Exposing control methods usually takes in a number of previously unknown and unrecognised techniques with the net result of potential measurement failure in grabbing a common denominator through which the legal system can sufficiently address this phenomenon.

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methods, especially more unfamiliar cultural, spiritual, and psychological control mechanisms, are essential to establish an informed counter-trafficking global response. The chapter begins by exploring the motivation for control over victims of human trafficking; whereafter an overview of the arsenal of control methods used by traffickers will be provided. This will serve as the context within which the use of “juju” rituals will be unshrouded as a spiritual or psychological control mechanism used by perpetrators to subjugate victims of human trafficking for sexual exploitation. The chapter concludes with suggestions for a more informed response by practitioners and recommendations for further research characterized by the infusion of a variety of multi- and interdisciplinary perspectives.

**Keywords**

- Human trafficking · Control of victims · Control methods · Physical control · Nonphysical control · Juju rituals · Nigerian traffickers

**Introduction**

The compliance of victims to the schemes and operations of traffickers is an integral and pervasive theme in the human trafficking process. For this reason, traffickers use various methods of control (Baldwin et al. 2014: 7) as the catalyst through which such compliance is effected and maintained. An increasing body of scholarship has focused on these methods of control, yet more remains to be learnt as traffickers are in a continuous process of contriving novel and more subversive methods (Ikeora 2016: 10) geared toward circumventing efforts to expose it. Furthermore, as will be argued in this chapter, the intricacies of human trafficking as phenomenon and the concomitant complexities of human beings as individuals who effect, and are affected by the crime, do not allow for reductionist descriptions of control methods. The contested scholarly debates around issues of ‘agency’ and control over victims of trafficking (Van der Watt 2018) are therefore acknowledged. Traffickers cannot simply be elevated as all-powerful, nor can victims be thought of as all-hopeless or without resilience. This chapter therefore considers the issue of ‘agency’ as convoluted and ambivalent where the lines between ‘voluntary’ and ‘involuntary’ participation in a specific set of circumstances are frequently not easily discernable. The numerous and diverse interactions between the human actors in a trafficking process, and the interpenetration of dynamic circumstances, threats, space, and time, mean that different control methods should be viewed as a toolbox from which the trafficker chooses as he or she deems fit. From an exploration of traffickers’ motivation for control effected over victims, the chapter will move toward an overview of documented physical and nonphysical control methods used by traffickers. This will pave the way and provide context for the unshrouding of “juju” rituals as spiritual or psychological control mechanism used by perpetrators to subjugate victims of human trafficking mainly for sexual exploitation. Suggestions for a more informed response by practitioners and recommendations for further research will conclude this chapter.
The Purpose of Controlling Victims of Human Trafficking

Control over victims of trafficking is essential in bringing to fruition the primary motivation of traffickers which is to maximize illicit profits while managing risks (Bouchè and Shady 2017: 93). These conniving control tactics lead victims to believe that the cost of resistance outweighs the implications of giving in to the demands of their traffickers (Baldwin et al. 2014: 7; Bouchè and Shady 2017: 96; Jeter 2016: 99). In essence, the employment of control methods is to establish the trafficker’s absolute dominance and seemingly omnipotence (Baldwin et al. 2014: 1172) by enforcing complete rule over all aspects of a victim’s life, including their physical, mental, and emotional condition (Perrin 2011: 80). As vectors of criminal activities, victims’ belief of their own complicity in the criminal enterprise serves as a disincentive for reporting to authorities which creates additional layers of dominance by traffickers. Victims systematically become convinced of this dominance by traffickers who owns and controls everything (Halley et al. 2015: 239) and whose omniscience will render any attempt to escape futile (Perrin 2011: 83). The eventuating commodification of a victim stems from the complete rule effected by traffickers. Victims’ subjugated state becomes the norm which secures a predictable, stable, and guaranteed income for exploiters with a high degree of financial certainty in the future. This subjugated state of being becomes visceral when considering a victim’s testimony in a 2017 trial during which the primary author testified. In a clarity-seeking question, the prosecutor asked the victim what it means “if you are sold to a person?” The victim responded:

*It means that you are sold to that person with all of your body and all of your soul, and you have to work for that person.*

In the next section, the *multiple coercive tactics* (Baldwin et al. 2014: 1177; see also Demir 2010: 318) used by traffickers to deprive the dignity and autonomy of victims, while rendering them dependent and compliant, will be explored.

The Arsenal of Control Methods Used by Traffickers: An Overview

A range of control methods and paternalistic behaviors are used by traffickers to assert control (Hopper and Hidalgo 2006: 195) over victims of trafficking. These various control methods are used in different stages (Demir 2010: 335; Kingshott 2015: 107) or scenarios and may be used individually or as a combination (Jeter 2016: 100; Verhoeven et al. 2015: 59). Control methods may also overlap or be blended (UNODC 2009: 1) in response to a specific set of circumstances or risks that need to be mitigated by traffickers. The nature and extent of a trafficker’s control and authority over a victim may also impel compliance of victims against their own morals or belief systems (Hopper and Hidalgo 2006: 196). Intrinsic to the use of control methods by traffickers is the imburement of fear as an antecedent for victim compliance. Victims of trafficking not only experience *multiple sustained fears*
(Logan et al. 2009: 15), but the notion of fear itself is complex and may be a composite of many sources and not only one event (Logan et al. 2009: 15). Such a fear amalgam may include the fear of pain, abuse, threats to family members, the inability to pay of a debt, deportation, an illegal status, or the absence of legitimate documentation for employment purposes which exposes a victim to arrest and possible secondary abuses. Not being qualified for anything else, the fear to change, and the “haunting” fear of physical pain associated with drug addiction and concomitant drug withdrawals are some of the dreads communicated by victims of trafficking (Van der Watt 2018: 258). The fear factor can “impose serious constraints on thinking and decision making” (Logan et al. 2009: 15) and should be considered when interrogating the appearance of volitional compliance and the reason as to why victims do not abscond when they seemingly have the opportunity to do so.

The element of vulnerability is a common denominator in human trafficking victimhood. The vulnerability factor requires consistent mindfulness when pursuing a whole understanding as to how a state of control over a specific victim emerged and why a specific method of control, or a combination of control methods, have proven to be effective. Extreme poverty makes people vulnerable to being lured by traffickers’ false promises and subsequently being enslaved (Hopper and Hidalgo 2006: 194). Other vulnerability factors include a lack of education (Hopper and Hidalgo 2006: 194), victims’ lack of knowledge about their rights and where to get help (Logan et al. 2009: 10), unemployment, homelessness, lack of economic opportunities in a country of origin, discrimination (Hopper and Hidalgo 2006: 194), physical impairment, mental impairment, and substance dependence (Hopper and Hidalgo 2006: 194). Cultural factors may also enable vulnerability. Certain actions or practices which constitute the crime of trafficking are still considered as part of culture in some communities (Van der Watt and Ovens 2012). Alternative options are frequently nonexistent for victims (Logan et al. 2009: 13), while poor language skills often inhibit victims’ ability to access help.

The arsenal of control methods used by traffickers will now be discussed in two broad categories, namely, physical coercive control methods and nonphysical coercive control methods. It must be pointed out that these control methods are the most documented type of coercive tactics used by traffickers and do not represent an exhaustive list. Each control method, whether categorized as part of physical or nonphysical coercive control methods, is not necessarily used in isolation but frequently forms part of a combination of coercive tactics employed by traffickers whose decisions to use them, and the degree of that use, are guided by unique circumstances, contexts, and risks.

Physical Coercive Control Methods

The application of direct violence and the use of various methods of physical assault and force by traffickers are well documented (Demir 2010: 328–330; UNODC 2009: 3). Also referred to as the Gorilla approach (Beeson 2015: 51), the documented brutality of these methods can be considerable and may include assault
(Aronowitz 2017: 107; Ioannou and Oostinga 2015: 39), sexual assault (Hopper and Hidalgo 2006: 208), rape (Jeter 2016: 100–101), abduction (Perrin 2011: 78), burnings, and starvation (Kingshott 2015: 106). Burning with irons, beatings with steel rods, and pulling of teeth are some of the more brutal methods of harm and control suffered by victims at the hands of traffickers (Van der Watt 2018: 183). Control through the use of weapons (Hopper and Hidalgo 2006: 192) and the use of gang rape as a cruel catalyst for breaking down any will or hint of resistance on the part of the victim are also characteristic of some initiation phases into the trafficking process (Hopper and Hidalgo 2006: 195).

Other physical control methods consist of forcibly confining trafficked victims and physically restricting their movement by using locks (Verhoeven et al. 2015: 57), chains, handcuffs, cages, barbed wire fences, and locked rooms (Hopper and Hidalgo 2006: 208; Jeter 2016: 105–106). Physical imprisonment may include agricultural workers guarded in secure compounds and domestic servants who are not allowed to leave houses (UNODC 2009: 5). Human- and technology-based surveillance methods are employed by traffickers which include cameras in rooms and showers, which cause not only shame and fear (Jeter 2016: 106) but an acute sense of vulnerability on the part of victims. Monitoring and supervision by traffickers mean that victims are also constantly watched (UNODC 2009:5). Traffickers are known for dropping off victims at places of exploitation and picking them up again. They remain in frequent telephonic contact with victims during business hours, monitoring their movements and collecting money earned for “security” reasons (Verhoeven et al. 2015: 57).

Traffickers also induce debility which often leaves victims physically fatigued and neglected (Jeter 2016: 101–102; Hopper and Hidalgo 2006: 197). The literature confirms that victims are deprived of basic human needs, such as the deliberate limitation of food, water, and sleep. Victims frequently work very long hours and are often also denied access to health care (Baldwin et al. 2014: 4–5; Jeter 2016: 101–102). The deprivation of exercise, personal hygiene, and privacy (Hopper and Hidalgo 2006: 197) compounds the overall draining of the victim. Such tactics by traffickers stimulate “physical impairment and exhaustion” (Hopper and Hidalgo 2006: 197) and a sense of “hopelessness and powerlessness in victims” (Jeter 2016: 101–102). The core purpose of these control tactics is to weaken a victim’s mental and physical ability to resist (Baldwin et al. 2014:1172), deters any notion of escape by the victim and increases the victim’s overall position of vulnerability.

Drug and alcohol addiction is a common predisposition exploited by traffickers to physically (Jeter 2016: 102) and psychologically (Logan et al. 2009: 14) abuse and control victims of trafficking. Not only are victims frequently forced to take drugs as a means to create dependency, but they become dependent on their traffickers to provide them with alcohol and drugs like cocaine (Jeter 2016: 102; Perrin 2011: 88; US Department of State 2011: 25). Such dependency, again, has the effect of lowering any resistance offered by trafficking victims (Baldwin et al. 2014:1174) while deteriorating the health of victims, who increasingly lose control over their own bodies (Jeter 2016: 102). The physical and physiological effects of drug
addiction become clear in the following experience shared by a victim of trafficking, who became physically ill as result of her addiction to heroin which was used as a means of control by her trafficker:

... it’s so incredibly painful. Your entire body does that, including your eyelids and your heart and your diaphragm, simultaneously for seven days. You vomit and shit blood the same time. You convulse. You would sell your soul for a hit cause it’s the only thing that takes it away. That’s why heroin is the devil. It’s the greatest trick the devil ever played on anybody... (Van der Watt 2018: 254)

Physical abuse as a coercive control tactic cements traffickers’ dominance. It is, however, “balanced by traffickers’ need to maintain victims’ ability to work and avoid detection” (Jeter 2016: 102). The nonphysical coercive control methods used by traffickers will now be discussed.

**Nonphysical Coercive Control Methods**

Deception and fraud are often used by traffickers as nonphysical coercive instruments to persuade victims in the recruitment phase (UNODC 2009: 4). Deception is a foundational tool used to control victims to either fully or partially deceive and then trap them (UNODC 2009: 4). Victims are lured by false promises or dreams of a better life which are craftily pitched by traffickers. Once victims are ensnared by these ideals of prosperity, traffickers change the circumstances or labor agreement to trap victims into servitude and exploitation (Jeter 2016: 113). The non-reporting of a compromised or exploitative situation is often impelled by victims being deceived about the lawfulness of a specific job and them coming to terms that they are in fact complicit in the commission of a crime (Logan et al. 2009: 12). Victims are also made to believe that reporting to police is of no use, since police are complicit in the syndicate’s activity and will arrest the victim (Jeter 2016: 117–119).

Psychological confinement is a highly effective nonphysical control method. It may be created through the control of trafficking victims’ money and the incurring of a debt bondage (Logan et al. 2009: 14) that is characterized by a disproportionately high interest rate payable on the “debt” (UNODC 2009: 8). Traffickers typically prey on “economically-insecure populations with false promises of quality labor opportunities and labor conditions” (Jeter 2016: 111). Victims are deceived during the recruitment phase for the “job” and must pay back the debt incurred even before the employment begins. Debts are structured by expenses such as the victim’s purchase price, travel costs (Demir 2010), accommodation, food, drugs, and the provision of false documentation (Jeter 2016). These expenses are often fictitious and greatly exaggerated (UNODC 2009). Debt is frequently compounded by a fine system. Fines are imposed for victim “transgressions,” which include, among others, smoking in the room (Perrin 2011: 116), being late, not being on the dance floor, exceeding allocated times for specific sexual services, not wearing the correct lingerie, or not changing outfits during the course of a shift (Van der Watt 2018).
This never-ending cycle of debt (Jeter 2016; Logan et al. 2009) amplifies the dominance of the trafficker which is juxtaposed by fear and a psychological burden experienced by the victim.

Contributing to the psychological confinement of trafficking victims is the sustained degradation (Logan 2007: 5), shaming (Logan 2007: 28–29), and abuse (Logan et al. 2009: 14) that they suffer at the hands of their traffickers. Victims are dehumanized and treated as commodities and dispensable property (Hopper and Hidalgo 2006). They endure degrading punishment, assaults, public abuse, and insults (Perrin 2011) and are humiliated and denied privacy and dignity (Baldwin et al. 2014). The degrading process of removing the personhood of an individual contributes to feelings of hopelessness, helplessness, and a loss of will (Hopper and Hidalgo 2006). Psychological control over victims of trafficking is thus pervasive and plays a key role in entrapment and continued enslavement (Logan et al. 2009).

By exploring the tactics of psychological coercion, a more nuanced and complex appreciation of the trauma experienced during human trafficking comes into being which breaks down the false dichotomy between freedom and captivity (Baldwin et al. 2014). A similar sentiment is offered by Elrod (2015) who refutes dichotomous representations of third-party actors in the sex trade. He proposes that the reprehensibility and culpability of pimps’ and traffickers’ conduct be positioned along a continuum based on the degree of coercive and exploitative behavior employed. At the one end of the spectrum is what he refers to as the “benevolent” pimp, and at the other is the ruthless trafficker. He concludes that pimps do not engage in conduct at either end of the continuum but rather in the gray areas between “benevolent” pimp and forced sexual slavery. A psychological captive environment is thus created by traffickers similar to that experienced by those who are physically imprisoned against their will (Baldwin et al. 2014; Biderman 1957). Trafficked persons are thus trapped without any visible locks or chains (Baldwin et al. 2014).

Trauma bonding, as a defense mechanism by victims “to protect themselves from relentless trauma” (Perrin 2011: 84), often plays a key role in controlling victims. Similar, and often interchangeably referred to as Stockholm syndrome (Jeter 2016), brainwashing (Jeter 2016), and indoctrination (Halley et al. 2015), trauma bonding is characterized by a strong dysfunctional emotional tie between victims and traffickers which develops in times of danger, shame, or exploitation (Perrin 2011). It features a significant power imbalance between the victim and trafficker, which is fueled by the intermittent bad and good treatment of the victim (Baldwin et al. 2014). The “granting of small indulgences” by the trafficker may destabilize the psychological resistance of the victim “far more effectively than unremitting deprivation and fear” (Hopper and Hidalgo 2006: 197). Thus, beside violence and control, these relationships can be characterized by affection and attachment which provides insight into why these relationships do not simply end when violence occurs (Verhoeven et al. 2015). Fear is created by the inconsistent and unpredictable outbursts of violence by the trafficker, which results in an anxious attachment formed between the victim and trafficker. The victim is vulnerable and dependent on the trafficker and considers compliance as an essential means to avoid outburst of anger (Hopper and Hidalgo 2006). As captives, victims initially bond with captors as defense
mechanism and for the sake of survival, but trauma bonding eventually sets in and reinforces the control by the trafficker (Hopper and Hidalgo 2006).

Relationship control (Jeter 2016: 114; UNODC 2009: 9) is another prominent control method used by traffickers. Here the close relationships between people, including their familial, friendship, and romantic relationships, make victims vulnerable to traffickers who exploit these relationships as a means to control victims (Jeter 2016). Threats to these relationships by traffickers may serve to intimidate. In addition, fear aids in subverting criminal justice processes, which include preventing victims from providing court testimony against traffickers (Van der Watt 2018). Human trafficking for the purpose of sexual exploitation, in particular, is a crime that presents strong relational (Verhoeven et al. 2015) and interpersonal features between victims and traffickers. The “love” approach by a boyfriend (UNODC 2009: 10) or a person fulfilling a feigned caregiver role (Beeson 2015) and the “Romeo” pimp approach (Ioannou and Oostinga 2015; Verhoeven et al. 2015) feature strongly in the arsenal of control methods used by sex traffickers. Here grooming (Beeson 2015), seasoning (US Department of State 2011), and “wine and dine” tactics (Jeter 2016: 115–116) by traffickers serve to create a relationship based on domination and dependency (Beeson 2015: 50). These elements are also present in the so-called love bombing by street gangs (Perrin 2011: 61–63). Traffickers are “calculated, persistent, and patient in their pursuit of a possible victim” and can spend as much as 2 years grooming one girl by using the “love” approach (Van der Watt 2018: 176). Sex trafficking is frequently embedded in intimate relationships in which intimidation, control, and violence play a role, along with affection and dependency (Verhoeven et al. 2015). The trafficker boyfriend sets the rules that include limited movement and contact with others and he determines the minimum daily earnings that must be generated by the victim (Verhoeven et al. 2015). These interpersonal features resemble typical domestic violence situations where violence and abuse do not consist of a single event, but involve a continuous process which cannot be easily stopped. In such cases domestic violence literature may assist in better understanding the interpersonal dynamics present in certain cases of human trafficking (Verhoeven et al. 2015).

Another common method of nonphysical coercive control used by traffickers is the isolation of trafficking victims (Demir 2010: 332; Hopper and Hidalgo 2006: 20; Jeter 2016: 100–101; Logan 2007: 28–29; UNODC 2009: 3). By depriving victims of all social support systems (Bouchè and Shady 2017), they are basically “walled off from society” (Logan et al. 2009: 6) which provokes a feeling of disconnection (Hopper and Hidalgo 2006). The imbued level of isolation may vary (Bouchè and Shady 2017) but exacerbate power imbalance between the victim and the trafficker with the former becoming increasingly dependent on the latter (Baldwin et al. 2014). Diminished contact with family and friends (Hopper and Hidalgo 2006: 195), assistance providers, the police, public, and members of their religious and ethnic community (Logan 2007) is among those factors contributing to a lopsided power currency that reinforces the overall compliance by trafficking victims. Cultural and language barriers (Kingshott 2015) may also contribute to the isolation equation and inhibit the victim’s ability to access help (Hopper and Hidalgo 2006). Isolation and
the limitation of a victim’s movement are compounded by the trafficker withholding the victim’s passport which inhibits any attempt to travel or even renting a room (Verhoeven et al. 2015). Here again, psychological confinement can be created through the trafficker’s control of victims’ passports, visas, and identification documents (Logan et al. 2009). By controlling access to all the victim’s personal documentation, the trafficker effectively controls the victim’s movement (Demir 2010; Kingshott 2015). Sex traffickers also make calculated decisions whether or not to allow victims access to telecommunication devices (i.e., phones or the Internet). These decisions by traffickers are informed by a focus on optimal income with minimal risk (Bouchè and Shady 2017) and a consideration of what will best advance their goal and lead to the most preferred outcome (Bouchè and Shady 2017).

Closely related to isolation as a means of control by traffickers is the disorientation of trafficking victims by frequently moving them from one unfamiliar place or country to the other (IOM 2006; Jeter 2016). Apart from offering clients a variation of victims to choose from, these disorientating movements prevent victims from developing ties with clients (Jeter 2016), and it averts victims from becoming familiar with their location (Hopper and Hidalgo 2006) and decreases their likelihood of locating and accessing assistance (Jeter 2016). Such movements and the concomitant sense of disorientation on the part of victims increase their dependence on traffickers (Hopper and Hidalgo 2006) and compound counter-trafficking responses by police agencies (IOM 2006).

Corruption, as a fundamental enabler and perpetuator of human trafficking (Van der Watt 2018), is another means of nonphysical coercive control used by traffickers. Corruption not only plays a significant role in the modus operandi of traffickers but instills fear in victims of trafficking, fuels distrust toward law enforcement officials, and constrains reporting to authorities who are the very entities implicated in the trafficking enterprise. Victims are thus controlled and trapped by corruption as traffickers pay bribes to public officials (Jeter 2016). Police officials are also implicated in visiting brothels in full uniform, using the “services” of trafficking victims and disregarding victims’ complaints by taking them back to their exploiters (Van der Watt 2018).

In addition to other control mechanisms, traffickers also keep victims’ children as a means to instill fear and ensure continued compliance with exploitative “work” commitments (Demir 2010) or to create a distorted sense of “familial loyalty” by impregnating trafficking victims (Perrin 2011). The actual branding of victims by their traffickers has also been recorded. Tattoos are, for example, used to imprint the name of the trafficker or the name or logo of a gang or syndicate on the body of the victim (Aronowitz 2017). Whether being constantly watched and monitored (Jeter 2016) or whether being fearful and paranoid as result of traffickers’ claims of powerful connections in organized crime (Hopper and Hidalgo 2006) and law enforcement (Baldwin et al. 2014), the perceived omnipresence and omnipotence of traffickers have a significant impact on victims’ predisposition to remain compliant.

The final nonphysical coercive control method that is to be discussed here forms the basis of the next section of this chapter that explores “juju” rituals as a spiritual or
psychological control mechanism used by traffickers to dominate victims. Cultural-based control and the manipulation of belief systems (UNODC 2009) are increasingly proven to be an efficient method of nonphysical control exercised by traffickers. Traffickers often share “culture, nationality, ethnicity, and/or language with victims” which provides them entry to vulnerable populations and the “cultural knowledge to control them” (Jeter 2016: 112). Traffickers thus abuse their cultural knowledge of norms, values, and beliefs to control victims (Jeter 2016). The abuse and distortion of cultural and customary practices by traffickers who understand the intricacies and vulnerability dimensions of these practices have also been recorded. One such example is the practice of *Ukuthwala* in the rural KwaZulu-Natal and Eastern Cape provinces in South Africa, which is resorted to by a suitor when an obstacle to a customary marriage presents itself. Described by Bekker (in Koyana and Bekker 2007) as a “romantic procedure,” the suitor organizes the *ukuthwala* ceremony, which resembles a mock abduction of the bride to be. The purpose of this “abduction” is to initiate marriage negotiations between the suitor’s family and the family of the girl or woman he wants to marry (Mwambene and Kruuse 2017). The genuine formation of a customary marriage has traditionally been the essence of *ukuthwala* (Koyana and Bekker 2007: 141) which was targeted at girls or women who were of a marriageable age (Maluleke 2009). However, as pointed out by Van der Watt and Ovens (2012), this customary practice has been distorted by some whose actions clearly constitute the trafficking of women and girl children. In this manner these women and girls are kept in a subjugated state among communities who approve of the “pure” customary form of the practice.

The multiple control methods used by traffickers to manipulate and overpower victims break down their natural survival responses, leaving them most often physically, emotionally, and spiritually shattered (Hopper and Hidalgo 2006). The use of control methods to activate chronic fear may lead to physiological changes that impair the ability of victims to mobilize the physical and psychological resources needed to escape. The natural survival mechanisms [fight, flight, or freeze] disintegrate. This physical and psychological erosion becomes the tie that binds victims into slavery (Hopper and Hidalgo 2006). The literature on various control methods used by traffickers to subjugate victims suggests that a nuanced understanding of these methods is a vital part of an effective multidisciplinary response. Against the backdrop of the array of control methods used by traffickers to manipulate victims, the focus now turns to a specific control instrument, namely, the use of juju rituals.

**Juju and Human Trafficking**

The term *juju* lacks a clear definition with most Nigerians cognizant that it may come in a range of manifestations (Dunkerley 2017: 85). Van der Watt and Kruger (2017: 78) document that juju is interchangeably referred to as “witchcraft,” “voodoo,” “spirits,” “muti,” “black magic,” “demons,” “satanism,” and “curses,” while UNICRI (2010: 15–16; 37) and Taliani (2012: 589) point to the interchangeable use
of terms such as “juju,” “voodoo,” “woodoo,” “vodo,” and “vudu.” Ambiguity in the use of the term juju is also present in Ikeora’s view that the main method of control used is actually traditional oath-taking, and not juju per se. For the purpose of terminology and clarity of argument, she does, however, use “juju” interchangeably as a concept throughout her text on African traditional religion (ATR) and juju in human trafficking (Ikeora 2016). Juju refers to “the collective traditional ancestral religious beliefs of the Yuroba people of Southwest Nigeria” (Anti-trafficking Consultants 2015a) and “covers a wide range of traditional practices that are local [ly] based ones and . . . to some extent religious practices” (Aghatise 2015). The use of juju and juju rituals is described by Dunkerley (2017: 83) as a “seemingly unique methodology” employed by Nigerian traffickers to psychologically subjugate Nigerian women and children to their traffickers. Van der Watt and Kruger (2017) document that in South Africa, Nigerian traffickers use juju as control method or a combination of arcane procedures, over victims who are not even of Nigerian descent. This development is described as a “subversive reality” that “poses significant challenges for an efficient counter-trafficking response” (Van der Watt and Kruger 2017: 82). In order to facilitate both an understanding of this control method and an appreciation of the multilayered complexities associated with its gripping effect on victims, it becomes important to shed light on the spiritual and belief systems that underpin and enables its efficacy.

**Divination and the Spirit World**

Divination, according to Ellis (2016: 17), has always been integral to religious communication in West Africa which involves people influencing their own destiny by means of a “dialogue with the spirit world.” This can take place through a skilled intermediary, a shrine, or an oracle. A resolute belief in the supernatural thus prevails in West Africa, especially in Nigeria, and includes witchcraft, voodoo, or juju practices (Johnson et al. 1990; Nwauche 2008; Baarda 2016). Traditional religious practices, which include juju practices (Van der Watt and Kruger 2017: 73), are treated conflictingly in the Nigerian legal system (Nwauche 2008). The Nigerian Criminal Code, with its roots firmly in colonial history, criminalizes witchcraft and various juju rituals, although these rituals remain widely accepted and practiced in traditional communities (Nwauche 2008). Paradoxically, and despite some developing criticism, the legal system recognizes the lawful validity of some juju practices. These practices are customarily coupled with oath-taking which forms part of binding customary law arbitration (Nwauche 2008; Oba 2008). Traditional oaths, as a commonly accepted method of dispute resolution in Africa, not only bind parties but are recognized as a pivotal part of customary law arbitration (Oba 2008).

Three well-known deities that are often invoked by people smugglers of the Edo State include Ogun, Isango, and Ayelala. Popular all over Western Nigeria, Ayelala is a deity considered to be a truth-telling juju that can be invoked to chastise those who transgress predominant notions of law and order (Ellis 2016). When young sex workers swear an oath to Ayelala as required by pimps and Ayelala priests, they are
“actually invoking a known and respected spiritual force” (Ellis 2016). The cult of Ayelala has become so popular in Benin City that it has developed into an alternative to the official justice system of the state. Accordingly, local people approach a shrine of Ayelala more readily than they would the police, when crimes such as house-breaking are committed. Ayelala inspires respect and fear even among criminals and means that complainants are more likely to get their stolen goods back (Ellis 2016). When people swear on a so-called dreaded juju charm, Oba (2008) points out that they invoke a provisional curse on themselves during which they invite the juju to punish them should they lie. It is believed that anyone who disregards the oath “will be dead or smitten with grave misfortune . . .” (Oba 2008: 141). A belief in the supernatural and juju practices continues to regulate the lives of many Nigerian communities and serves as a springboard for traffickers who cunningly manipulate this reality to control victims for sexual exploitation (Baarda 2016). Cultural congruencies, superstition, ancestral worship, and sensitivity to the spiritual realm were highlighted by Van der Watt and Kruger (2017) as predisposing factors to an actual belief in the power and control of juju. Ikeora (2016:8) agrees that “the traditional beliefs in ancestral spirits and the supernatural” by African communities place them at risk to this form of control by traffickers. For this reason, it is crucial to thoroughly explore juju as a control mechanism in the perpetration of human trafficking.

**Juju as Control Mechanism**

Juju ceremonies do not have a fixed pattern (Dunkerley 2017; Taliani 2012) and may present in a variety of ways. Important though is that juju ceremonies are cunningly tailored to the circumstances of each case and geared to best exploit the vulnerability of a specific victim (Baarda 2016). The multidimensional and bizarre nature of juju ceremonies has significant implications for victims. The juju ceremony usually begins with the victim being brought before a juju priest. Here the victim is instructed to undress which contributes to an acute sense of vulnerability (Dunkerley 2017; Anti-trafficking Consultants 2015b). The priest continues to chant over a bowl of soot and calls upon a spirit to enter the soot (Anti-trafficking Consultants 2015c; UNICRI 2010). Numerous cuts are then made by the priest to various parts of the victim’s body. These include the area above the breast bone and across the whole perimeter of the stomach, arms, legs, and feet (Dunkerley 2017; Anti-trafficking Consultants 2015c). It is purported that the soot, intermixed with samples of human tissue obtained from the victim, contains the spirit. By rubbing the soot into the victim’s open wounds, it is believed that the spirit has entered the victim’s body and she can never escape from it (Van der Watt and Kruger 2017; Baarda 2016; Anti-trafficking Consultants 2015c). These juju rituals thus empower traffickers to exercise remote control over their victims without even being physically present. The priest also collects a number of human tissue samples from the victim which include menstrual blood, nails, as well as scalp, underarm, and pubic hair (Dunkerley 2017). The use of oils and powders, praying and chanting, sexual intercourse and giving the victims “stuff to eat” are also documented by Van der Watt and Kruger (2017). The
removal of human tissue samples, rubbing the soot into the cuts, and mixing these items are common practice during such ceremonies (Dunkerley 2017; Baarda 2016).

After the first part of the ceremony has been concluded, an important oath-taking ceremony follows during which the victim is instructed to repeat the words dictated by the juju priest (Anti-trafficking Consultants 2015b). The victim is then required to take a variety of oaths which may include paying back the debt “owed” to traffickers and not disclosing their identities (Anti-trafficking Consultants 2015c; Aronowitz 2009; Kara 2009). Other oaths made by victims include subservience, obeying every instruction of the trafficker, and not escaping nor disclosing to anyone what had happened to them (Dunkerley 2017; Okogbule 2013; Aghatise 2004). Traffickers and juju priests emphasize to victims that nonadherence to instructions and disobedience to the oaths taken will result in a variety of misfortunes, including death (Van der Watt and Kruger 2017; Dunkerley 2017). Traffickers are also cunning in their use of fear-inducing stories of death and calamity as a means to reinforce and emphasize the severe consequences of victims absconding, disclosing, or not obeying the oath (Van der Watt and Kruger 2017). Other bizarre and fear-inducing rituals that have been documented to transpire during the juju ceremony include the witnessing of animal sacrifice, the eating of raw chicken livers and chicken hearts, as well as the drinking of blood or an alcohol concoction (Dunkerly 2017). Forcing the victim to drink the water used to wash a corpse (Aghatise 2004) and victims being locked up in coffins (Dunkerley 2017) have been documented. When considered within the broader framework of physical and nonphysical coercive control methods discussed in this chapter, it becomes apparent why juju rituals are such a highly effective and fear-inducing control mechanism. Not only do juju rituals provoke profound fear, but it aggravates a sense of uncertainty and confusion, which seriously exaggerate victims’ vulnerability and their obedience to traffickers (Baarda 2016; Taliani 2012).

The control wielded by traffickers is further amplified by the fact that juju rituals form part of the Nigerian culture and traditional religious belief systems which, according to Oba (2008), are solemnly complied with to ensure that the gods do not punish the disobedient. The abuse of juju ceremonies by traffickers thus creates “multiple layers of domination” (Taliani 2012: 582) over victims and brings about a substantial power imbalance and a relationship of dominance (Baarda 2016).

Suggested Response Mechanisms

The toxic and enigmatic blend of surreptitious, manipulative, and violent control methods used by traffickers to silence their victims is arguably the most important dimension of the human trafficking process to understand if appropriate response mechanisms are to even be remotely successful. In this chapter deliberate reference was made to the “arsenal” of control methods used by traffickers. Traffickers, as fellow human beings, are not always wolverine-like perpetrators, but rather shape-shifts between the monster and the benevolent pimp, the carer and the persecutor, the friend and the foe. They are able to confuse, abuse, charm, and captivate all at once with the aptitude to exploit a victim’s unique vulnerabilities with skillful precision.
The physical and nonphysical coercive control methods discussed in this chapter are by no means an exhaustive list; neither should it be considered dichotomously. Also here the shape-shifting capacity of traffickers is evident as their control methods form part of a toolbox of coercive tactics from which they, guided by unique circumstances, contexts, and risks, choose and use. The compelling influence of these control methods on victims’ physical, emotional, and psychological state is far reaching which has a compounding effect on the counter-trafficking response. Practitioners, policy makers, and scholars must be cognizant of emerging unidentified and clandestine methods used by traffickers. Juju rituals, as one of these arcane control methods used predominantly by Nigerian traffickers, represent the interspersing of cultural, spiritual, and psychological factors. These factors and belief systems are acutely manipulated and distorted by traffickers who are not only familiar with it, but many of whom even ascribe to and practice the rituals. When investigating and considering the nature of control that traffickers have over their victims, it becomes essential for every aspect of the counter-trafficking response to be cognizant of potential hidden transcripts embedded in a victim’s verbal and nonverbal behavior. Important also is an acute awareness that the absence of locks, chains, scars, or bruises means precious little in determining the culpability of a suspected trafficker and should rather be considered as the base from which alternative lines of enquiries are generated. Human trafficking is a multilayered and immensely complex phenomenon (Van der Watt and Van der Westhuizen 2017) that requires a “constellation of circumstances to establish the crime” (UNODC 2017: 53). The notion of a constellation of circumstances becomes particularly important when confronted with juju as a control mechanism and its intersection with arcane rituals, cultural practices, traditional belief systems, superstition, and fear. It is further important to note that victims of trafficking are also not a “universal or homogenous group” (Van der Watt and Kruger 2017: 81) and, as individuals, do experience coercion differently.

The response to cases where juju was used should therefore be an informed one during which the lived realities of victims are acknowledged (Van der Watt and Kruger 2017: 81). Here it becomes important to understand and empathize with the victim’s fear of spiritual retribution (Dunkerley 2017) while guarding against the notion of “brainwashing” which Ikeora (2016:13) argues “undermines the ability to bring forth the dilemma into mainstream anti-trafficking discourse.” Moreover, an “assessment of what is irrational and what is rational may depend on the eye of the beholder” and necessitates a subjective valuation of the beliefs of the victim, especially when religious or cultural beliefs are involved (UNODC 2017: 122). Gaining the trust of the victim through a rapport-building process (Dunkerley 2017: 7) must be situated within a wider multi- and interdisciplinary approach. Such an approach must consider the incorporation of disciplines and perspectives from African traditional religion (Ikeora 2016) and sociology (see Van der Watt and Kruger 2017: 82). Practitioners should also guard against a “juju conclusion” without “contextual appreciation” (Van der Watt and Kruger 2017: 82) of all the constituent elements that make up the complex constellation of circumstances and “mosaic of evidence” (UNODC 2017: 8) in such cases. Further research into the
multidimensional and complex realities of juju must be encouraged. The lived experiences (phenomenological studies) of victims can help inform how to best intervene from a psychosocial support perspective, while research on traffickers and juju priests who use this method of control can generate knowledge regarding modus operandi and how such incidents can be dealt with from “crime scene to court and beyond” (Van der Watt and Kruger 2017: 81). The incorporation of larger sample groups as a means to examine the phenomenon in greater scale (Dunkerley 2017) and exploring the possibility that juju rituals as control mechanism are also used for other forms of human trafficking, such as labor trafficking (Van der Watt and Kruger 2017), must be included in the scope of future research.

Summary

The blend of physical and nonphysical coercive control methods used by traffickers to subdue their victims, and its constraining effect on response mechanisms by criminal justice practitioners and service providers, is perhaps the most formidable strategy employed by the complex human trafficking system. Not only does it silence trafficking victims and confound practitioners, but it fuels impunity and serves as a catalyst for staggering aggregates of illicit proceeds. Control mechanisms and its gripping effect on victims of trafficking must be thoroughly understood by all counter-trafficking agents and an informed response crafted which positions the best interests of the victim at the core of such a response. Juju rituals, predominantly used by Nigerian traffickers to subjugate victims for sexual exploitation in many parts of the world, are an emerging, arcane, and clandestine method of control. Not only is it intensely fear inducing but frequently bizarre and taps into the complex array of belief systems and visceral superstitions held by victims. Juju rituals enable traffickers to effect remote control over their victims without being physically present. Victims, on the other hand, know that it may be possible to escape from a trafficker but firmly believe that escaping the spirit and the curse is an impossibility. Physical and nonphysical coercive control methods used by traffickers, especially the more unfamiliar cultural, spiritual, and psychological control mechanisms, must be exposed as a critical step toward liberating victims and holding traffickers to account.

Cross-References

▶ A Complex Systems Stratagem to Combating Human Trafficking
▶ The Challenge of Addressing Both Forced Labor and Sexual Exploitation
▶ The Investigation and Prosecution of Traffickers: Challenges and Opportunities
▶ Trafficking and the Boko Haram Conflict: The Not So Good, the Bad, and the Outright Ugly
▶ The Quest for Education as a Factor of Vulnerability to Child Trafficking: Reflections on “Child Rescue” from the Perspective of West African Children
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The Quest for Education as a Factor of Vulnerability to Child Trafficking: Reflections on “Child Rescue” from the Perspective of West African Children

Ifeyinwa Mbakogu and Jill Hanley

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Abstract

While there is increasing attention to the perspectives of people caught up in human trafficking – attention that has helped illuminate the cloudy nature of consent and agency in situations of human trafficking – the perspectives of children are relatively absent from the debate. Western notions of childhood downplay children’s agency and decision-making. In this chapter, the results of a study that explored the perspectives of over 50 West African children “rescued” by Nigeria’s NAPTIP, a governmental agency mandated to fight human trafficking.
trafficking and protect its victims, are shared. One theme that emerged strongly from the children’s narratives was the centrality of their quest for education, training, and other life opportunities as a factor that led them into situations of human trafficking, a situation likely to exist in other contexts as well. The children’s desire for education was often part of what led them away from home, kept them in their situations of trafficking, and made many of them unwilling to return home after being “rescued” by NAPTIP. These findings suggest a critical need to provide for children’s educational needs if we hope to combat child trafficking, as well as the need to provide meaningful alternatives to children we purport to “rescue.”

**Keywords**

Human trafficking · Child trafficking · West Africa · Nigeria · Education · Child labor · Children’s agency

The trafficking of children is one of the most egregious forms of human trafficking, one that elicits a desire to protect and “rescue” children. Normally absent from discussions of child trafficking, however, is attention to children’s understanding of the situation and their agency and motivations in seeking migration opportunities. Outright kidnapping of children for the purposes of trafficking appears (with a few countries being exceptions) to be rare (Aronowitz 2009, p. 55); rather, on a global scale, in both high- and low-income countries, it seems that children and youth seeking to leave home for other reasons become vulnerable to those that would exploit them. Traffickers abuse this vulnerability (economic, emotional, developmental, legal) precisely as a means of exploitation (UNODC 2013). In a recent study with over 50 West African children caught up in human trafficking in Nigeria (Mbakogu 2015), the desire for educational and training opportunities emerged as a critical element of the children’s vulnerability, a situation that is likely to exist in other low-income contexts that serve as sources of children into trafficking.

This chapter affirms the importance of making children and their voice the center of child trafficking research. First, a review of the existing literature on the concept of child trafficking in general is offered, before situating the West African literature on the topic within an international context and making an argument to counter dominant views about children’s experiences. The methods of a recent study (Mbakogu 2015) facilitated by funding from the International Development Research Centre (IDRC) are presented before turning to the narratives of two girls, Praise and Daniella, to illustrate the study’s finding that children’s agency and desire for education plays into the phenomenon of child trafficking in West Africa. In conclusion, there is a discussion of the way that a new understanding of child trafficking that considers children’s desires and motivations might guide better interventions to both prevent child trafficking and protect children who have already been affected – interventions that should take children’s desire to pursue education into central account.
The Challenge of Defining Child Trafficking

Child trafficking is an activity that is complex to understand and explain. However, in its simplest form, the concept of child trafficking has been used to depict situations in which children are recruited and exploited for domestic work, farm work, or commercial sex, among other forms of exploitation (Fitzgibbon 2003; UN.GIFT 2008). Under the Palermo Protocol (OHCHR 2000, Article 3c), “the recruitment, transportation, transfer, harbouring or receipt of a child [under the age of 18] for the purpose of exploitation shall be considered ‘trafficking in persons’ even” in the absence of the use of force, coercion, deception, or other means, making it sometimes difficult to distinguish child trafficking from other forms of legitimate child migration (Huijsmans and Baker 2012). While child labor migration could be beneficial and less harmful to some children (compared to other phenomenon such as the sexual exploitation of children), it can lead to trafficking when children are recruited by intermediaries who have the intention of handing them over to other people who could exploit and control them for work. It is difficult to determine when child labor migration moves from harmless to exploitative work or acts that are similar to forced labor (De Lange 2009). For some policy makers and researchers, all unaccompanied child migration fits into the trafficking discourse (Huijsmans and Baker 2012); as O’Neill (2001) asserts, the migration of children, especially for exploitation through domestic labor or prostitution, involves the commodification of migrating children and the eventual stripping of their autonomy. It is noteworthy that Dougnon (2011) expressed the need for clarification and setting parameters about what constitutes child trafficking versus child labor migration because to him, what researchers present as “a new disaster called ‘child trafficking’ is as old as migration itself” (p. 100). The confusion also stems from the platforms for discourse on child trafficking and whose voice has the most capital. Moreover, are we looking at the international framework for distinguishing between what falls under child trafficking and child labor migration or approaching it from a local understanding of the concepts?

The Palermo Protocol is considered a major step in situating trafficking within the violation of the human rights of persons (UNESCO 2006), shifting the focus of conceptualizations of trafficking from sex trafficking to include other forms of human trafficking. Notwithstanding, Garrard (2007) suggests that further progress will be made when a new international instrument is created within the human rights framework that is focused entirely on child trafficking. Garrard (2007) acknowledges the achievements of the Protocol but faults it in terms of protecting vulnerable children. For instance, while states are required to take the needs of vulnerable children into account, the Protocol “...makes no specific demands on States in this area” (p. 164). Moreover, it could also be assumed that the protection of children is augmented by other instruments intended to protect children from trafficking as the Armed Conflict and Sale of Children Protocol, the CRC and ILO 182. But these instruments have their limitations, beyond the focus of this chapter.

The question then becomes if children will be served better when efforts are combined or when there is a single international instrument that effectively
accommodates their needs. Considering that the Protocol draws a lot of attention to the trafficking of persons for prostitution with less attention to other forms of exploitation (such as child soldiering, domestic servitude, and bonded labor), some suggest that a stand-alone instrument within a human rights context be designed for children rather than fitting children within adult frameworks (Edelson 2001). When frameworks are specifically designed for children, then their problems—vulnerability and protection of children in the course of trafficking—which are currently haphazardly identified and treated, will be accommodated. This inclusive Protocol will hopefully begin with such missing pieces as a concise definition of who is referred to as a “child” and questions of an absolute minimum age (Edelson 2001). A new Protocol specifically designed for children within a human rights framework will be more focused on the child survivor and understanding the child rather than concentration on perpetrators as happens within an organized crime framework. Furthermore, when the trafficking Protocol functions within an organized crime framework, some aspects of trafficking, especially those perpetuated by family members, could be ignored.

From the foregoing, the implication is that the way a country understands or defines child trafficking will determine its stance on the issue and how it will design its anti-trafficking programs or policies. One thing in common internationally, however, is an impulse to “rescue” children deemed to have been trafficked. That is where the present chapter comes in by presenting children’s voice as they ask: what are you rescuing them from; and where are you taking them to after the rescue mission?

**The Context of Child Trafficking in Nigeria/West Africa**

Several explanations are presented in the literature on child trafficking as to why parents and children could look for alternative means of survival. A common explanation is traced to modernization and western education which resulted in children being sent from rural areas to urban settings to assist relatives in exchange for access to better educational opportunities (Dottridge 2002; Scarpa 2006). Recently, this child-fostering practice became monetized with “employers” colluding with trafficking agents to take children away from their parents to be placed in homes or establishments where children face maltreatment and death at the hands of employers, whether relatives or not (Abdulraheem and Oladipo 2010; Okafor 2009).

In terms of empirical research conducted by West African scholars, studies conducted in Nigeria have predominantly dwelt on understanding the effects of trafficking for domestic work on children’s physical and mental capacity (Okafor 2009; Oluwaniyi 2009). These studies have been successful in providing information on children’s high school dropout rates and its relationship to trafficking and child maltreatment by employers (Okafor 2009). These studies typically adopt qualitative methods with a preference for interviews. This could be because the respondents were few, a hidden population with busy schedules. Other studies with larger samples sought information about female perception of trafficking from working women and school children. The intention was to determine people’s
level of awareness of the physical, emotional, economic, and health implications of the problem (Adejumo 2008; Okonofua et al. 2004). Additionally, though there is a vast global literature on trafficking, mostly written by foreign experts (Boyden 2015; James and Prout 2015; Ray 2006), little attention is given to listening to the narratives of trafficked West African children themselves.

In patriarchal societies such as Nigeria, where women are unable to inherit their father’s property or lands, they are marginalized in terms of employment and relegated to positions of second-class citizens (Opara 2007). Linked to the cultural practices that limit the social, educational, and economic opportunities accessible to female children is the demand for girls to work as domestic servants in affluent households in the oil-rich countries of Gabon and Nigeria (Dottridge 2002; Jordan 2002) and in prostitution in European countries (Nwogu 2006). Though reports by researchers such as Dottridge (2002) attest to the high vulnerability of African girls to trafficking, a small number of studies have spoken to female survivors to hear, in their own words, what made them more vulnerable to trafficking than their brothers. Understanding the factors making girls vulnerable to trafficking will help in designing programs to reduce their vulnerability.

Children’s Perspectives on the Trafficking Experience

Regardless of the contribution of the literature for understanding the causes of trafficking and the situation of trafficked children, a common trend is the absence of children’s voices to help us understand why they are involved in trafficking and knowing from children what they want after they are “rescued” from trafficking. Researchers are not incorporating children’s narratives or focusing interventions and policy making within the lived realities of children involved in trafficking (Mbakogu 2012). The literature focusses on poverty as the driver of children’s movement from home without attending to other variables such as children’s agency (Mbakogu 2015) and children’s quest to access education as argued via the children’s narratives presented in this chapter.

Accommodating Children’s Agency and Resilience Within Child Trafficking Interventions

Children’s narratives counter the dominant narrative by presenting new perspectives on their trafficking journey and their experience within it. Children’s narratives attest to their agency in either initiating the initial journey into trafficking or finding the journey not meeting their expressed needs, getting out of trafficking. Based on her study with young trafficked persons in Marseilles, Breuil (2008) found that children do not feel they have lost their agency or ability to make choices simply because they have been trafficked. With evidence from her study with children of diverse nationalities trafficked to the United States, Gozdziak (2008) adds that accepting the tag of victim would go contrary to children’s reasons for migrating to a different country, which is often to earn money, some of which is remitted home or used to offset their
smuggling costs. Why is the literature silent on children’s agency and resilience? The literature could be silent because professionals see children as passive and helpless victims of trafficking in need of rescue and reintegration (Harrington 2005; Jordan 2002), an image that may differ from interactions and discussions with the children documented in this chapter.

It is normal for society to question children’s agency, preferring to consider children to be simply in need of protection. However, children with agency can still be vulnerable and in need of protection, especially when they face harmful situations. But while children may be vulnerable, it need not imply that they are passive victims, constantly requiring people to "rescue" them and provide for their needs. Woodhead (2004) elaborates that the only aspect of work in which children may be passive participants or victims is in the area of forced or bonded labor. But in other forms of harmful work, he sees children as “...social actors, trying to cope with their situation, negotiating with parents and peers, employers and customers, and making the best of oppressive, exploitative and difficult circumstances” (p. 327). Children’s negotiating skills are evident in their interaction with potential traffickers, foster families, or employers, to determine the best alternatives between remaining at home with family and moving to work.

James and Prout (2015) explain that the fact that children have agency does not mean that they work in isolation. The decisions children make are achieved through the interaction of social relationships that are built and influenced by their beliefs, parental relationships, education, culture, religion, and past experiences. Berlan (2009) indicates that child workers exhibit great resilience in dealing with situations they find themselves in and do not consider themselves “victims,” in contrast to the dominant discourse on child trafficking. This view is shared by Montgomery (2001), who voiced wariness for interventions claiming to be in the child’s best interest, without consulting with children or sharing their everyday experiences.

Seeking Children’s Perspectives in Nigerian Trafficking Situations

Building on the argument for an alternative conceptualization of children’s reasons for leaving their home in Nigeria and West Africa that considers child agency and challenges their rescue from trafficking, children who have experienced trafficking were at the core of the research design. The study relied on Nigeria’s anti-trafficking agency, The National Agency for the Prohibition of Traffic in Persons and other related Matters (NAPTIP), for access to children in their shelters. The decision to use children in agency care is largely informed by Goździač’s study (2008), in which she explains that since it is nearly impossible and dangerous to have access to children while they are still with their traffickers, the only time to interact with children is when they have been removed from trafficking and in the care of a rescue agency.

The case examples used to illustrate the arguments here draw on one year of research with 50 trafficked children (aged 7–17) and 12 NAPTIP personnel from five shelters in five states (i.e., Lagos, Cross Rivers, Edo, Enugu, and Abuja) in Nigeria, conducted in the context of the first author’s doctoral dissertation supervised by Jill Hanley (Mbakogu 2015). The child participants were citizens of Nigeria,
Benin, Togo, and Ghana. The study adopted qualitative research methods involving
documentary analysis, participant observation in NAPTIP and NGO shelters, semi-
structured interviews and focus group discussions with children (including drawing
as a tool), and semi-structured interviews with NAPTIP and NGO representatives.

**Child Agency in Seeking Educational Opportunities: The Limits of Addressing Children’s Needs After “Rescue” from Trafficking**

Are children almost always lured away from home based on the manipulations of unscrupulous trafficking agents, poverty in households, or at the request of parents, as the literature tells us (UNICEF 2007a; UN 2001)? Findings from this study reinforce the need for further insight into the reason for children’s movement away from home. Many of the children in this study were trying to carve out a future for themselves, thinking of fulfilling their educational dreams and aspiring for economic independence in future. Some children attested to instigating their trafficking by expressing their frustration with idling away at home in rural settings with minimal access to education. All these factors are ignored when efforts to understand children’s reasons for leaving home do not include the voices of children removed from diverse types of trafficking.

In order to better understand the way children’s quest for education – and their agency in trying to reach that goal – leads them into trafficking situations, we consider the trafficking experiences and narratives of 14-year-old Daniella and 14-year-old Praise (these names are pseudonyms), two of the children “rescued” from trafficking by NAPTIP, as the focus of the discussions. We see how their desire for education led them to leave home in search of opportunities, kept them in trafficking as the girls hoped a better situation (giving them access to education) would materialize, and ultimately meant that they did not wish to return home after being “rescued,” preferring to persist in their quest for education in the urban area.

Daniella’s parents have ten children, five boys and five girls. Daniella is the last child. Daniella’s parents are farmers, and she had completed the fifth year of primary school in her village school before leaving home. Praise is the third child of her parents’ five children, four girls and a boy. Her parents are farmers, but her mother also sells cooked rice in the market. Praise had spent four years in primary school. Neither girl was kidnapped, so it was important to know why the girls’ parents allowed them to leave home. Daniella’s parents clearly allowed her to leave the village for a distant city in Lagos State to increase her chances of finishing school:

> ... my father said that I should go and find money so that I can go and finish school. I didn’t have money to go to school. So, I said I will come to Lagos and find money to finish school.

Daniella wanted to go to school and since her father could not fund her education and was willing to allow her to earn money to fund her education, Daniella made the decision to leave home with the support of a family friend who was already in the business of recruiting children as domestic servants. Praise’s reason for leaving home were similar to Daniella’s:
I came [to Lagos] to look for money. I want to learn tailoring. I tell them that I want to learn tailoring. My father and my mother said that I will learn.

Praise had given up on acquiring formal education from secondary to university level because of her low socioeconomic background. She opted to learn something that would make it possible to earn a living, whether she remained in Lagos or returned to her village. Praise had narrowed her vocational objectives down to dressmaking, which her parents would only support after she had made adequate money working as a domestic servant. Her parents could not afford to pay for her training as a dressmaker, but she did have their blessings when she has her own money for the training.

Praise’s dreams were cut short, however, because during their journey to Lagos, they were apprehended by police concerned about the trafficking of several young persons. The failure of the initiative may not have come as a complete surprise, as people in the village knew of other girls who left home and later returned without reaching their educational objectives. Praise tells us:

My father knows one girl that lives [in the village]. He [the trafficker] carried the girl away to look for work in Lagos. The girl is back in the village now. She did not learn anything in Lagos. She went to work as house-girl.

Praise’s narrative leads us to question the basis for parents’ decisions and negotiations about their children’s future prior to leaving home. Are these decisions made in a hurry? Or are they built on hopeful dreams that when a child leaves a rural area for an urban setting she is assured of a brighter future? This, despite being faced with evidence, such as the case of the girl from Praise’s village, that such dreams are not always realized? It may be difficult to understand why Praise could leave with the same middleman, when another girl from her village had worked as domestic servant in Lagos only to return to the village without skills or anything to keep her busy on returning home. While the other girl returned to the village without learning any skills to keep her busy, Praise believed that unlike her, she would enroll for a vocational program and make a difference on returning home.

Building on Praise’s narrative, one can observe a close link between education and children’s desire to leave home. Although this link is mentioned and/or addressed in literature on child labor (Dar et al. 2002; Guarcello et al. 2006), it leaves one to wonder if the lack of emphasis on this link in the child trafficking literature is because the literature usually concentrates on children leaving home to be absorbed in formal school settings rather than the informal, vocational training options that some of the trafficked children aspire for as substitutes for the more desired formal programs.

From the findings, one can see that children’s inability to bring about changes to their current situation may cause them (children) to endure and make the best of the situation they have found themselves. This is illustrated by Daniella’s, who was sent by her uncle to work as a domestic servant in a woman’s house in Lagos. It was only after traveling home for Christmas and returning to Lagos State in the company of Praise and other children her uncle was sending to his customers that they were
“arrested” by the police and sent to the NAPTIP shelter. Daniella recounts her experience at the woman’s house:

I have stayed with a madam before the police came to catch me. My uncle took me to this madam that has four children. I was working. I will wash toilet, I will wash clothes, I will cook, wash car and I will do many things. She was not treating me well. She was beating me even though I was not doing bad things. She will not give me food. I will eat in the morning [rice] and I will not eat in the night.

Daniella was the one cooking the food and feeding the children. When asked why, she could not dish some of the food for herself since she was the one cooking the food; she responded that she could not because:

She [the madam] will come and stay in the kitchen and she will be looking at me.

Sometimes children put their dreams ahead of their discomfort. Daniella knew she was treated unfairly in a home where she was only sure of breakfast, but she remained because she wanted to collect her monthly salary and make enough money to return to school. She recounts feeding the madam’s children on an empty stomach and not having the opportunity to taste even bits of her cooking because the madam remained in the kitchen until all evidence of the meal is cleared.

There is further evidence of children’s agency displayed in their readiness to withstand exploitation to meet their objectives for leaving home in Praise’s elaborate
description of the process devised by her trafficker to recruit and distribute children via his depot in Ogun State:

*We got to Sagamu and we entered another bus that carried us and dropped us at Ikode. He cooked food, we ate... It's the uncle that carried us that gave us everything. People were plenty. So, we will buy food and cook on the stove. That uncle used to bring people to Lagos, so he has bought everything and kept inside the house, pot, everything is there. It is a mud house that he showed us to sleep. The next day, he carried another set of people [children] to go and give them work. He didn't come back again. He carried people for work around 5 o'clock. He will carry people for work until they finish...*

**Praise’s drawing of her journey away from home**

From Praise’s narrative, in the excited words of a child who had never left home, she unconsciously provides useful details about ingenious or carefully orchestrated business networks. In addition, from the child’s description, one discerns a mind that understands that what the trafficker was doing was wrong, but she considers him the link between herself and her dreams. Moreover, Praise was the person that initiated and negotiated her departure from home (with the support of her parents). The child is willing to turn a blind eye to her trafficker’s transgressions if she is eventually sent to a good place to work and earn money needed to pay for her vocational training.

The way income generated from a child’s work during trafficking is used generated a lot of debate among the trafficked children in the study. While some children expected that their earnings would be used to take care of their family’s household needs, others, especially those who had moved away from home to access education, felt it was their personal money and should be kept solely to finance their education. Consider the positive outlook to income spending, evident in the discussion with
14-year-old Daniella. Daniella agreed before leaving home that she would earn 8000 Naira (41 USD) monthly.

*My madam will give my salary to my oga [master or male employer] . . . the man that carried me from home. He will give the money to my mama. She will use it for farming. She will keep it for me. She will take some and the remaining one she will keep for me.*

Daniella felt that, since she left home because there were insufficient funds to meet even her basic educational needs, this arrangement was only fair.

Another aspect of this quest for education by children “rescued” by NAPTIP is their immense hope, but also dependence, that NAPTIP would remove them from the condition of trafficking that warranted their “rescue” to a new situation with promises of a future better than what their parents or relatives could offer. This is expressed by Praise when she is asked what she hopes NAPTIP can do for her:

*I want them to help me to go to school.*

To this child, it is a simple request and one that, in her innocence, she hopes the agency can meet. Praise knows what to expect from home, and she expressed this knowledge when asked what she would do in the likelihood that NAPTIP would reunite her with her family. She was quick to respond that if NAPTIP chose to return her to her home, she would refuse to go:

*I don’t want to go. I want to go to school. If I reach my village, I will still come back to Lagos.*

Praise’s response may sound poorly informed, but the response comes from a mind that has spent time weighing her options: returning home, then searching for another channel to return to Lagos; and remaining at the shelter to lean on NAPTIP for support. She has gone so far as to plan a strategy for obtaining that support. Other children face the likelihood of returning home and getting re-trafficked by their parents. On the one hand, if Praise is returned home, she will find alternative means of returning to Lagos since home, for her, calls up associations of a place where there is no money to fund her dream of learning to sew. On the other hand, Praise’s parents have assured her of being able to learn dressmaking after she had made enough money to cover her training. In the absence of alternatives, Daniella also falls back on NAPTIP to assist with either enrolling her in school or being able to learn a vocation. Daniella and Praise both know that their trafficker was arrested, which should mean the end of their trafficking journey, but they are keen on remaining in Lagos and achieving their goals of leaving home in the pursuit of education. Importantly, Praise and Daniella were both able to self-advocate so that, rather than being returned home after their stay in the NAPTIP shelter, they were able to negotiate being moved to a residential NGO facility where they were enrolled for training in their preferred vocation, dressmaking or sewing.
Discussion: Protecting Child Trafficking Survivors by Integrating Education into “Rescue” Efforts

Daniella and Praise’s “rescue” by NAPTIP follows a pattern that was common among the 50 children interviewed for this study. Most of the children left home willingly, with earning money to pursue education, vocational training, and apprenticeships being the most common motivation. In their home villages, such opportunities simply did not exist, were inaccessible to them because of cost, or were of poor quality because of woeful underfunding.

Unfortunately, the difficulty of accessing education is a struggle for children in many regions of the global south, with 264.3 million children reported out of school in 2015 (UNICEF 2017). Children and youth in sub-Saharan Africa (particularly Nigeria and Ethiopia) are the most likely to be out of school, followed by Central and South Asia (particularly Pakistan and India) and Eastern and Southeastern Asia (particularly Indonesia), all source regions for child trafficking. Globally, the likelihood of being out of school increases sharply with age (UNICEF 2017).

The two main reasons for children being out of school are either the lack of nearby facilities or a family’s inability to pay the required fees. Both are directly related to poor investment in public education. And as we have seen in the case examples, such situations can lead to children’s departure from home, using their agency to seek opportunities for education and training but also making themselves vulnerable to trafficking. Ordinarily, the trafficking literature lays emphasis on children leaving home because they aim to earn an income to assist their financially strapped households. But almost all the children in the study left home because they wanted better access to education. Poverty was a related issue, but education remained the children’s motivation. Children sought to earn an income that could later be plunged into their own education or that could be used to fund the education of the siblings they left behind.

With the importance of education to the children participating in the study, it stands to reason that a key strategy for preventing child trafficking is increasing government investment in education. At the moment, for example, Nigeria operates the Universal Basic Education (UBE) program where children are expected to have access to 9 years of free, compulsory, and uninterrupted education from the age of 6–14 at the primary and junior secondary school levels – that is, 6 years of primary education and 3 years of secondary school education (Okoro 2014; UBE 2004; UNESCO 2014; WENR 2011). Obviously, from children’s narratives, this seems to be promises made on paper, because children are either willingly dropping out of school or having their parents withdraw them from school because of inadequate funds (Mbakogu 2015).

With most countries worldwide providing free primary and early secondary education, what could be going wrong? Is education completely free when some parents cannot buy school uniforms and books and pay for supplemental services needed for children such as sports uniforms, after school classes, drama, and parent-teacher association dues? Children also complain of the absence of good and dedicated teachers, poorly equipped library and classroom facilities (Nwagwu 1994, 1997;
UNICEF (2007b), poor standard of education in rural schools, and the transportation costs of moving between home and school (UNICEF 2007b). Also, the budgets allocated to education ministries are sometimes inadequate to meet free education obligations for the entire child population.

**Conclusion: Preventing Child Trafficking by Investing in Free and Universal Education**

As previously discussed, the problem society has with children’s involvement in decision-making could be because of societal perception of children and the notion of childhood. Nieuwenhuys (1996), working from a sociological approach, sees childhood as a time for play and learning and considers work to be exploitative and harmful to children’s health. Yet children questioned the direction of their “rescue” or removal from trafficking. Children wondered what they are being rescued from, when for the most part they are unsure what they are doing in NAPTIP shelters and what they will be doing after leaving the agency. A small number of studies attest to the resilience displayed by trafficked children (Hynes 2010; Ní Raghallaigh and Gilligan 2010), yet this came through loud and clear in this study. Children, like Daniella, who participated in the study gave evidence of their resilience by remaining in their trafficking situation not because they are unable to make it out of the environment but mostly because they are more interested in meeting their goals for leaving home. These goals could be saving up for their education, financing learning a vocation, enhancing household income, or settling a family loan. The resilience and agency displayed by the trafficked children attest to their discomfort with the tag of victimhood or trafficking victims in need of a messiah. Simply removing them from the trafficking situation is inadequate. These children are seeking real alternatives and believe they deserve viable opportunities to improve their lives.

Viewed in this way, the state responsibility to make provisions for free, quality education becomes paramount to anti-trafficking efforts. The prevention of child trafficking must go beyond a concern with the incomes of their families. While income is of course an important factor, children are also seeking opportunities, opportunities that they conceptualize as being linked to access to education. Feasible access to secondary and vocational schools, in terms of both geographic location and affordability, is an important part of the prevention of child trafficking. If the children in this study had not been pushed to leave home to pursue their education, they would have been much less vulnerable to trafficking.

**Summary**

This chapter argues that children in West Africa depart from home, using their agency to seek opportunities for education and training. Yet this very initiative also makes them vulnerable to trafficking. Upon “rescue,” children often do not
wish to return home but rather prefer to persist in their quest for education. The chapter counters the general notion in current trafficking literature that children leave home because they aim to earn an income to assist their financially strapped households. Given the evidence that many children are motivated by a desire to access higher education or vocational training, it stands to reason that a key strategy for preventing child trafficking is increasing government investment in education. Viewed in this way, the state’s responsibility to provide free, quality education becomes paramount to anti-trafficking efforts, and providing access to educational opportunities for those children “rescued” from trafficking becomes essential to preventing their re-trafficking.

Cross-References

▶ Dynamics of Child Labor Trafficking in Southeast Asia: India
▶ Defining Child Trafficking for Labor Exploitation, Forced Child Labor, and Child Labor
▶ Domestic Sex Trafficking of Children
▶ Genealogies of Slavery

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Deportation: Challenging the Caribbean’s Anti-trafficking Policy

Joan Phillips

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Abstract

Human trafficking has become more recognized as an issue of global concern. The idea of vulnerable women, men, and children forced to work under deplorable conditions for an interminable amount of time is of serious concern. Although there are many dimensions to human trafficking, including forced labor, this chapter will be focusing on one particular element of human trafficking, that of sex trafficking in the Caribbean, which has garnered recent attention. The chapter explores the importance of developing an evidence-based policy in tackling sex trafficking in the region. It argues that the punitive practice of deportation put in place by Caribbean governments does nothing more than punishing victims of sex trafficking. The chapter consequently argues that the use of ethnographic case studies can inform critical policy and practices by giving

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a voice to these vulnerable women and their stories to support the development of more nuanced targeted policies and practice aimed at reducing exploitation and trafficking.

**Keywords**

Caribbean · Migration sex work · sex trafficking · Post-colonialism · Discourse · Ethnography

**Introduction**

The English-speaking Caribbean is made up of an archipelago of islands between mainland America and the North Atlantic Ocean stretching from the Bahamas in the North to Guyana in the South. One cannot discuss the English-speaking Caribbean without understanding its history of exploitation, colonialism, and slavery along with debates around the geographical demarcation of the region. For example, some scholars have highlighted the shared experiences of colonialism, slavery, and plantation agriculture and have therefore included Belize, Bahamas, and the Guianas in their definition of the Caribbean, while others have extended the Caribbean boundaries to the subtropical plantation zone, which incorporates the Carolinas and parts of Brazil (see Petley 2011: 856). Despite this ongoing debate, there is an agreement on the uniqueness of its Caribbean past. Mintz (2010: 6) maintains that the region is “anciently Caribbean.” It is a region whose history has been shaped by conquest and exploitation which began with the Spanish decimation of the Amerindians in 1492. The Spanish conquest was subsequently followed by three hundred years of British colonialism buttressed by the Atlantic slave trade and plantation agriculture. Control of some territories was highly contested and interchanged between Caribbean powers; however, for the most part, most islands remained under British control until the 1960s (Petley 2011).

British colonization relied heavily on the importation of slaves to work on the sugar plantations by white migrant planters (see James 2001; Petley 2011). The Caribbean islands also played an important role not only as an essential destination for enslaved Africans but they were also a vital supply route along the British American Caribbean system to the metropole, and thus the economic development of the British Empire (see Petley 2011: 857, See ▶ Chap. 1, “Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking”).

The British slave trade was abolished in 1807 including its vital slave trade to the Caribbean. Slavery was then abolished in 1834 due to many factors including resistance from the enslaved and the anti-abolitionist movement in England. Slavery in the British Caribbean ended on August 1, 1834. Enslaved Africans in the Caribbean did not achieve their full freedom until 1838, having to undergo a transitionary period of apprenticeship, where they were forced to work on the plantations for low wages under slavery-like conditions.

This period of colonization changed the very fabric of Caribbean societies. An example of this is the change in its demography. There remained little evidence of its original population Amerindians. Instead, the islands were now made up of a
predominantly Black population dominated by a small, white, elite planter class, and a small percentage of Indians and Chinese who came under indentureship to work on the plantations. Colonization left its mark and continued to do so even after independence and the period of decolonization. (Is used here to refer the process where a colony becomes independent of its Caribbean power.) Former colonies retain a British (Caribbean) identity up to today. Social, political, and economic systems are based on an Englishness/European identity and maintenance of Caribbean relationships. Despite its early period of colonization, the Caribbean has made great strides in its economic and social development. The islands score high on the Human Development Index (HDI) (HDI index is based on a set of development indicators including life expectancy, education, and income per capita.) (UNDP 2018) with Barbados and the Bahamas ranking 58 and 54, respectively in the very high human development category comparable to the United States and Canada in North America and the Caribbean region, while Antigua and Barbuda, Jamaica and St. Kitts are ranked in the high human development category. Political systems of governments are stable, and tourism, bauxite, construction, and petroleum are now primary income earners. Nevertheless, there remain issues of persistent poverty, and inequality is mainly affecting young people, women, and other minorities; this mix can provide opportunities for exploitation (UNDP 2018). Indeed, the islands have been ranked quite poorly on the 2018 Global Slavery Index in assessing their vulnerabilities to modern slavery with Barbados ranked 112th, Guyana 116th, and Jamaica 117th, out of 167 countries (Walk Free Foundation 2018).

The Role of Postcolonialism Theory in Examining Human Trafficking

Based on the preceding discussion, it is, therefore, essential to understanding the role that colonialism has played and continues to play in the context of the Caribbean and its impact on human trafficking and Caribbean governments’ response to the issue.

Postcolonial theory is a contested field of debates and contradictions. According to Williams and Chrisman (1994), Said’s (1979) Orientalism is an essential text in navigating these murky waters. Said (1979) illustrates the way in which the (metropole) has codified and constructed knowledge about countries with a Caribbean past, thereby setting representation of the West as is and former colonies as new Caribbean representations. The dominant narrative of privilege and superiority is culturally expressed and represented as a mode of discourse with supporting institutions, vocabulary, scholarship, even bureaucracies and Caribbean styles (Said 1979). The West is presented as having a cultural superiority to that of the former colonies’ inferior status. Postcolonialism theory thus challenges a system of knowledge stemming from a “superior-inferior” Caribbean construction which is embedded in institutions and the minds of peoples of the Caribbean and acknowledges the role that colonialism has played in this dominant mode of thinking where “West, i.e., Europe is seen as best.”
This chapter builds on the body of current discourse that seeks to examine human trafficking through the lens of postcolonial theory (Spivak 1988; Sharma 2014; Kempadoo 2016). Whereby, any analysis of human trafficking and the strategies used to address the problem are framed within a historical framework of slavery and colonialism.

**Human Trafficking and Sex Trafficking in the Caribbean: An Overview**

Scholars have recently outlined the historical development of international law in the Caribbean which led up to the UNOTC Convention in 2002 (see Durbin and George 2013). International concern around human trafficking in the Caribbean can be traced back to the 1929 League of Nations Slavery Convention. It aimed to combat all forms of slavery. Article 1 of the Convention defined slavery as:

> status or condition of a person whom any or all powers attached to the right of ownership are exercised.

Article 1.2 also offers a useful definition of the slave trade. It sets out the main parameters of the slave trade, including “all acts involved in the capture, acquisition, or disposal of persons with intent to reduce him to slavery.” The 1929 Convention was supported by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).

The most recent accepted definition of trafficking is contained in the protocol to the United Nations Convention against Transnational Crime (UNOTC) 2000 and its twinned protocols: The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (TIPP) and the United Nations Protocol against Smuggling of Migrants by Land, Sea, and Air (UNOTC). The UNOC defines human trafficking based on three elements: the act (i.e., recruitment, transfer, harboring or receipt of persons), the means (i.e., threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability or giving payments or benefits to a person in control of the victim), and lastly, the purpose (i.e., for purposes of exploitation, including prostitution, sexual exploitation, forced labor, slavery, or similar practices including the removal of organs). The term “coercion” is reinforced in the definition since actual exploitation does not have to take place to view the victim as being trafficked (ILO 2017: 16). Human trafficking involves, therefore, the acquisition of people by means such as force, fraud, or deception. Exploitation in this context consists of forced labor, sexual services, human tissue removal, and organ removal.

Trafficking in persons is seen as a global epidemic (Durbin and George 2013: 127). It is argued that human trafficking is big business and a common occurrence according to ILO (2017) since an estimated 24.9 million people were in forced labor conditions in 2016. A recent report by the United Nations on the Office of
Drugs and Crime indicates that most people trafficked are female and children (71%) and often for reasons of sexual exploitation (UNODC 2017).

**Sex Trafficking in the Caribbean**

The Caribbean has been identified as a source, transit, and destination region for human trafficking (Seelke 2016: 4). There is a dearth in empirical evidence on human trafficking in the region including sex trafficking. Nevertheless, the limited academic material available on sex trafficking in the region has highlighted the complexities of undertaking empirical research on sex trafficking in the Caribbean. As such, there is a very little reliable, empirical data with regards to identifying how many people have been trafficked to the region, though there is some evidence to suggest that illegal migrants from Jamaica, Guyana, and the Dominican Republic are more vulnerable to being sex trafficked (see Durbin and George 2013). Data collected are often collated with Latin America figures. Therefore, it is difficult to extrapolate on incidences of trafficking despite evidence of anecdotal reports (see Kempadoo 2016; Phillips 2017). Hence, this is a challenge for informing effective strategies to combat trafficking.

For instance, researchers writing on sex trafficking in the region have pointed to the difficulties of differentiating between voluntary and forced sex work, and the complexities involved (see Doezema 1998; Kempadoo 1998; Nixon 2016). In other words, there are very few instances of what is generally understood as trafficking exists concerning the UN definition, where they must be evidence of forced migration along with forced labor. Sex work itself operates in an informal, regulated sector which cannot be defined as forced or voluntary but coerced and controlling mechanisms (e.g., lack of contracts, sick pay, lousy working conditions, and debt bondage) (Kempadoo 1998; Doezema 1998; Nixon 2016: 116). Besides, there is also little commentary in the trafficking discourse that explains the existence of the structural inequalities that allows trafficking to take place in the first place. Nixon (2016: 117), for example, argues the “Caribbean region offers a challenge to the existing discourses precisely because of its invisible and unique, postcolonial and neocolonial experiences.” The point being made by theorists is the fact that sex trafficking and human trafficking cannot be discussed without acknowledging the Caribbean’s positionality within a globalized economy in which sun, sea, and sand and sex is routinely sold to tourists as part of its tourism packages (see Kempadoo 1998; Doezema 1998; Nixon 2016). As Nixon (2016: 118) points out the costs of producing “Caribbean Paradise” is high and includes sexual and cultural exploitation of people, the environment, and social inequalities.

Consequently, the region sells culture, desire, and sex (Black and mix-raced bodies) all neatly packaged (Phillips 2001; Nixon 2016). A packaged holiday that privileges tourism and at the same time opens a space for the consumption of racial and sexual desires (Phillips 2001; Nixon 2016). This consumption pattern around the racial and sexed Caribbean body is facilitated through informal economies of sexual labor, where people can be coerced into sex work or may choose to engage in sex
work because of its financial benefits. Herein lies the challenge of Caribbean governments and policymakers who are requested to embrace an anti-trafficking framework that ignores the uniqueness of the Caribbean positionality. The Caribbean sells sex as part of its tourism package, to dismantle this system speaks to dismantling a long-established history.

Critics too have argued that the existence of sex trafficking must be understood in the context of the stark disparities between the developed North and the developing South (Kempadoo 2007, 2016; Santos et al. 2010; Phillips 2017). (The North/South divide refers to the socio-economic distinctions between countries in the global north such as Europe, the United States of America, Canada, parts of Asia and Australia and countries in the global south such as in Latin America and the Caribbean, Africa, parts of Asia and the Middle East.) They propose, for example, that the emergence of sex trafficking can be viewed through the conceptualization of Marx’s *primitive accumulation of capital* (see Marx 1977). That is, sexual trafficking can be considered as part of the exploitation and commodification of labor – element of neoliberal globalization. Academics point to factors such as the privatization of capital, the rise in the global economy, and the development of a global sex industry, which have fostered the growth of sexual trafficking in women. The privatization of capital has led to the erosion of social rights and protection and consequently the increased vulnerability of the poor (Jeffreys 2009).

Taking these factors into consideration presents us with the necessary conditions in which the over-exploitation of labor comes into play, where migrants are the most vulnerable to exploitation. Sexual trafficking must be understood in the context where usually (migrant) women sell their sexual labor, as in the case of migrant sex workers plying their trade in Barbados from Guyana, Dominican Republic, and Jamaica (see Kempadoo 2016; Phillips 2017). Santos et al. (2010) suggest that the issue of sexual trafficking comes with a myriad of challenges for governments and policymakers. Perhaps the basis of such problems is the fact that there is minimal consensus on the definition of trafficking for sexual purposes (see Kempadoo 2016; Nixon 2016). Consequently, the evidence is vague with regards to stable, reliable data. This is undoubtedly being made evident by the ongoing criticisms offered by researchers about the discrepancies in the available human trafficking data (see Chuang 2006, 2013; Merry 2015; Kempadoo 2016).

Exploitation of a people within the Caribbean is indeed not a new phenomenon as previously outlined. What is new is the dynamics in which it is being carried out under the umbrella of “sex trafficking.” This new consumption pattern is defined as the subjection of men, women, and children to compelled services for exploitation (CRS 2016). Seelke’s report on sex trafficking in the region draws the attention to the fact that human and by extension sexual trafficking is a multidimensional and multifaceted problem with some risk factors including sex tourism, poverty, unemployment, illiteracy, or sexual abuse and other factors including sexual orientation. Other factors or structural factors of the neoliberal economy include the high global demand for sex workers and labor for the tourism industry, lingering machismo, and the establishment of trafficking networks in the region. There is also the existence of sex tourism in the region that has provided a ready market for traffickers to supply...
tourists, who come to the Caribbean blinded about ideas of having a raw, authentic Caribbean sexual experience (Kempadoo 2016).

Commentators analyzing state policy around trafficking have suggested that policies are more about border control and monitoring migration flows, and legislation often results in the criminalization of those “trafficked” (see Sharma 2014; Kempadoo 2016). Governments in the Caribbean face a similar dilemma where the legislative response appears to condemn rather than support those who are “trafficked” into the region (Kempadoo 2016). The conundrum faced by Caribbean governments is to challenge a system which has become inextricably linked with its tourism product. More importantly, any response to human trafficking cannot be discussed without critically analyzing how gender, inequality, sexuality, power, and race are intrinsically and historically intersected within the narrative of (neo)colonialism (Sharma 2014; Kempadoo 2016; Nixon 2016).

Scholars have pointed out (e.g., Kempadoo 2016; Sharma 2014: 47; Phillips 2017) that anti-trafficking mandates support the practices of states in criminalizing the vulnerable migrants. It is, therefore, essential for criminologists and policy practitioners to recognize how the history of the Caribbean has impacted the way in which human trafficking is approached and examined. For example, it is often people of a particular color (darker hue) that are the most vulnerable, the poorest and therefore susceptible to being trafficked due to demands of the sex tourist industry based on neocolonial desires of tourists. The authors argue that the dominant discourses on human trafficking serve to mask the inequality on which capitalism is based (see Sharma 2014; Kempadoo 2016). In the context of the Caribbean, there is also repeated evidence of “conflation of sex trafficking with sex work” Kempadoo (2016: 19).

The Role of Ethnography in Human Trafficking

According to Yates (2004), criminological research has traditionally concentrated on the marginalized. He further argues that marginalized people are not given a “voice” concerning their experiences. Thus, more use of ethnographic criminological research can provide an opportunity for the experiences of marginalized groups to be heard. Similarly, of note, scholars have noted the dearth in ethnographic empirical evidence on human trafficking including sex trafficking.

Ethnography is both a methodological and theoretical framework from which to provide in-depth, experiences of key informants. According to Katz (2012), ethnography is a framework through which sociologists play an intermediary role by providing readers with an opportunity to understand the meanings and experiences of people we otherwise would not know. Katz argues that “every ethnographer offers positive and negative knowledge, a contribution to understanding the social logic that organizes some area of social life and a contribution to the logic of knowledge, or more precisely to the sociology of ignorance.” (p. 259).

However, what becomes important in this era according to Denzin and Lincoln (2018: 13) is that the nature of research has changed following the historical present.
They suggest that it is time to “open up new spaces, time to decolonize the academy and create new spaces for the indigenous voices, time to explore new discourses, new politics of identities, new forms of critical identities... with social justice methodologies. This is a post-or neo-Caribbean world. It is necessary to think beyond the nation or local group.” The authors point to the need for researcher undertaking investigations in a rapidly changing world to undertake studies that are transformational – challenging new forms of inequality, human oppression, and injustice. Nonetheless, the question must be asked: “what does this all mean about conducting human trafficking research through the lens of the criminology?” Therefore, the findings of this chapter are based on putting the voices of the “trafficked” at the forefront.

**Ethno-studies and Sexual Trafficking**

The role of the ethnographer is critical to a new kind of research inquiry, which can, according to Lincoln and Denzin (2018), give voice to those on the margins (e.g., victims of human trafficking). The ethnographic criminologist’s work should challenge the status quo (Lincoln and Denzin 2018). Qualitative research and by extension criminological research should no longer be based on the paradigm of neutrality. Instead, there should be recognition that researchers too come with various interrelated reflexive voices which should be part of the research process. Deconstructing the way in which scholars and policymakers’ approach human trafficking presents a formidable challenge (see Yates 2004). To do so, there must be some critical reflection on the hegemonic discourses on around human trafficking, recognizing that there is more than one voice in the narrative. Thus, this chapter draws upon ethnographic research and other secondary available data and draws on the work of other post-Caribbean feminists (Kempadoo 2007, 2016; Santos et al. 2010; De Shalit et al. 2014), to provide an in-depth account of key players deemed to be involved in sex trafficking by the State and policymakers.

**The Silent Crime in the Caribbean**

Some Caribbean islands have made headlines recently regarding sex trafficking in the region (see CaribbeanNewsNow 2018). A case in point, as evidenced by a recent Al Jazeera news report in April 2018 which claimed that over 350 suspected victims of trafficking were rescued by INTERPOL (the International Criminal Police Organization) from Latin America and the Caribbean including Brazil, Jamaica, Trinidad and Tobago, and Venezuela. The report alleges that these victims may have been subject to sexual exploitation and forced labor. Victims of trafficking were rescued from nightclubs, factories, mines, farms, and markets. The report quoted from Tim Morris, the executive Director of police services, who made the critical statement “but what sits behind these numbers is the human story” (Al Jazeera news 2018). What makes the issue even more complicated is the fact that these glaring headlines
seem to point to the ineptitude of Caribbean governments to deal with this issue happening on their very doorstep. These reports suggest that although trafficking in persons is viewed as an international global problem, recent data show that 40.3 million people were victims of modern slavery; of these 24.9 million were forced into labor and women, and girls are the highest percentage of victims (Human Rights 2017; Brooks and Heaslip 2018).

Nonetheless, as pointed out by Brooks and Heaslip (2018), there still exists a dearth of systematic literature about accurate numbers of the total amount of people being trafficked. Reasons highlighted have been the invisibility of the marginal population, the unknown nature of the crime, and high profits of the activity (UNODC 2016). In the case of the Caribbean, sex trafficking is very much linked to the sex tourism industry.

There is, however, ongoing contestation by the Caribbean governments concerning the reliability of the data presented in the TIP reports, and other anecdotal accounts. Caribbean governments have argued that there is a lack of substantiation and misinterpretation of the TIP reports (see Kempadoo 2016: 15). Indeed, data derived from the TIP reports have come under more extensive scrutiny with researchers challenging the “politicized” nature of the data, and the report’s role in policing anti-trafficking programs and funding (See Wooditch 2011; Gallagher 2015). The TIP report provides an assessment of countries progress concerning their anti-trafficking initiatives based on the three Ps of prevention, protection, and prosecution. It includes information on countries of origin, transit, and destination for human trafficking and countries included in the TIP reports have increased (Wooditch 2011).

Despite being widely referenced, the TIP reports have also come under scrutiny regarding their lack of acknowledgment of local initiatives (Wooditch 2011). This appears evident in the case of the Caribbean, where there is a level of willful ignorance of local initiatives to tackle sex trafficking, despite contrary evidence. Caribbean governments have established anti-trafficking units, developed anti-trafficking legislation, established a Crime and Security Strategy through CARICOM, and trained police, coast, and immigration personnel in detecting and supporting victims of trafficking through technical cooperation of regional and bilateral partners (Durbin and George 2013).

Despite the prevalence of protests by local governments and social scientists regarding the reliability of the TIP report (see Doezema 2010; Kempadoo 2016), anti-trafficking successes are overtly measured about criminal convictions and prosecutions. Indeed, the most recent Trafficking in Persons (TIP) (2018) shows most countries in the Caribbean have been placed on the Tier two or Tier three among countries, having not met “minimum standards” of prosecution and convictions (TIP 2018). For instance, in assessing Barbados anti-trafficking strategies, the TIP report makes the point that Barbados has undertaken no prosecutions for the fourth consecutive year and therefore secured no trafficking convictions:

The government demonstrated increased efforts by conducting a raid on a nightclub suspected of trafficking, providing anti-trafficking training for government officials and
NGO leaders, and conducting public awareness campaigns. The government, across its interagency, conducted education and training through senior and working level commitments to combat trafficking. However, the government did not meet the minimum standards in several key areas. The government identified no victims during the reporting period, initiated no new prosecutions for the fourth consecutive year, and had yet to secure a trafficking conviction. For the third consecutive year, the government did not complete its national action plan or an anti-trafficking manual for interviewing and providing assistance for suspected trafficking victims. Government agencies reported a lack of resources for their anti-trafficking activities. The government’s anti-trafficking law did not provide penalties that were commensurate with other serious crimes.

The report indicated that:

Authorities conducted five investigations in 2017 (compared with three in 2016, six in 2015, eight in 2014, and three in 2013). One of these investigations stemmed from a raid on suspected trafficking activities in a nightclub (compared with two raids in 2016). Police found no evidence of human trafficking in these five investigations. There were no new prosecutions initiated under the TIPPA during the reporting period; the government has not reported initiating a prosecution since 2013. A 2013 case involving two suspected traffickers remained pending before the court. To date, the government has not convicted any traffickers. The government did not report any investigations, prosecutions, or convictions of government employees complicit in trafficking offences.

Jamaica was also assessed similarly:

The Government of Jamaica does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated increased efforts compared to the previous reporting period; therefore, Jamaica remained on Tier 2. The government demonstrated increased efforts by increasing funding for victim assistance, publishing standard operating procedures (SOPs) for labor and health care officials, passing a constitutional amendment designed to enhance the government's efforts to prosecute and convict traffickers under its anti-trafficking law, and increasing awareness efforts. However, the government did not meet the minimum standards in several key areas. In particular, under Jamaica’s anti-trafficking law, penalties for trafficking are not commensurate with other serious crimes. The government initiated significantly fewer investigations compared to the previous year, did not provide adequate protection for some potential or confirmed trafficking victims, and did not publish an annual report on government efforts.

So, local efforts though set out in the reports are ignored since there are no persecutions. Again, this approach reinforces the idea that only local initiatives are categorized as having met standards dictated by TIP reports and begs to question the use and credibility of the reports.

Indeed, arguably while Caribbean governments have made strides in the development of anti-trafficking policy and legislature, commentators writing on sex trafficking in the region have pointed to the punitive nature of these responses. Researchers suggest that these responses are often more about border control, monitoring migration flows and deportation (see Phillips 2017; Kempadoo 2016; Santos et al. 2010). Take the case of Barbados, which passed the Transnational Crime Bill in 2011. Part three of the Bill deals with the offence of “Trafficking in
Persons” and includes deception with regards to the “provision of sexual services,” arranging or having knowledge of the arrangement of sexual services and Coercion around sexual services. There is also provision made for victim restitution through any compensation deemed applicable by the Court (see Durbin and George 2013). It also recently passed the Trafficking in Persons Prevention Act (TIPPA), enacted in 2016, criminalized sex and labor trafficking. The Barbados government was criticized by the TIP report (2018) for not enacting stiffer penalties on sex trafficking. There is evidence that the Barbados government is doing exactly as requested but again because there were no actual prosecutions, the policies set in place are deemed as inadequate.

Aside from legislative intervention, there is limited evidence of “on the ground” intervention programs aimed directly at providing rehabilitation support for those suspected of being sex trafficked in the region. Indeed, while there exist some organizations that can provide support for those being trafficked under the purview of “violence against women,” this is not their only mandate. For example, the Professional Women’s Association (BPW) in Barbados, and the Bureau of Gender Affairs in most islands assist victims of trafficking under a much larger function. Victim protection appears low on Caribbean governments’ agenda. There is little evidence of rehabilitation intervention programming to support victims of sex trafficking in the Caribbean. This lack of “victim-centered” type of program questions Caribbean’s governments focus on sex trafficking.

Researchers have demonstrated that Caribbean governments approach to sex trafficking is to conflate it with illegal migrant sex work, which serves to criminalize the victims, who are often arrested and deported (Kempadoo 2016; Phillips 2017). There have been numerous instances of arrest since the clamp down on sex trafficking. However, these have been cases where women suspected of being trafficked were often illegal aliens primarily from Guyana who consequently have been removed from Barbados.

The system of deportation as intervention makes minimal allowance for a victim-centered approach to sex trafficking. This approach denies the voices of victims to be heard and consequently their ability to inform sex trafficking policy. Phillips (2017: 320) makes the point that “we know little about their stories, working conditions, and their outcomes.” At the same time, we are very aware that anecdotal evidence about those who are sex trafficked present a much more complicated narrative than policymakers, and governments would have us believe.

Qualitative ethnographic research focusing on exploring the decision-making processes of victims, motivations, and understanding their experiences of exploitation is one way out of this conundrum. In order to combat sex trafficking, policy making must take in account women’s experiences of the phenomenon (see Chap. 15, “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal”). Indeed, anecdotal research conducted by Phillips (2017) showed that fear of deportation was a central feature in trafficked women’s narratives. (These findings were part of an on-going Qualitative study conducted on Trafficking in Barbados.) However, the need to support their families was much stronger than their
fear of exploitation. Trafficking was something that they had heard about but felt that it did not align with their circumstances. Even though holding on to passports by the owners of clubs is officially defined as trafficking under Barbados law. Key informants felt that holding on to passports was “business” – a means to ensure that expenses were repaid since a lot of “women ripped off managers.” (An interview from a migrant sex worker). As Phillips (2017) maintains deportation may be the official narrative of the state’s ideology. However, findings from ongoing research demonstrate a situation is much more complicated.

**Conclusion**

The use of an ethnographic framework in criminology, according to Cunneen and Rowe (2014), means an articulation of how the discourse criminalizes and silences the voices of the disadvantaged, and marginalizes – in this case – victims of sex trafficking. There is also agency involved in experiences of victims of trafficking. Sex trafficking has many elements. Therefore, any approach targeted at tackling the issue must also be multidimensional.

The purpose of the chapter was to provide a new understanding that can inform sex trafficking intervention program and policy by adopting an ethnographic method of inquiry. By focusing on the voices and experiences of victims of trafficking the intention was to challenge the punitive practice and in so doing respond to the neo-Caribbean, official ideology embedded in Caribbean government’s approach. If one takes on the framework of sexual trafficking used by the US state department and other NGOs, then we ignore the complexities of poverty, agency, and entrepreneurship that are also embedded. By giving voice to the often-silenced voices of trafficked victims, the chapter argues that the need for a multipronged approach to sex trafficking that considers all such factors. It argues it is too simple to paint a picture of a helpless victim and her/his exploitation at the hands of a trafficker. Instead, the narrative derived from ethnographically informed approach opens the door to an appreciation of its linkages and complexities surrounding the issue of sex tourism, poverty, gender, and labor relations (Nixon 2016). This discourse through a complex framework of sex tourism migration, poverty, agency, and limited economic opportunity and a history of colonialism. Therefore, the challenge here is for government and nongovernmental organizations is to adopt more of a human rights approach to looking at sex trafficking in the region. Utilizing an anti-trafficking framework that is “feminist, anti-racist, class-focused and supports women, migrants and sexual minority rights to mobility, security, and justice” (Nixon 2016: 120) means supporting policies that reduce exploitation and criminalization in the informal economy (Kempadoo 2016). It would be naïve to ignore that sex trafficking along with sex tourism is big business both for the criminals and Caribbean governments. Critics (see Brooks and Heaslip 2018) have also pointed to the moral and ethical responsibility of those working in the tourism and hospitality sector to support the reduction of exploitation of sex trafficking through the development of ethical codes of practice. In the Caribbean too, there must be a point where
Caribbean governments acknowledge that sex tourism does exist and therefore develop codes of practice that reduce the endemic exploitation that is part and parcel of the sex tourism industry. The point is that Caribbean governments can do more. The use of deportation as a tool to reduce sex trafficking is not the answer. Rather it sweeps sex trafficking under the proverbial carpet, and it devalues women’s rights to support their families in the informal sector. “Lip service” policy and practice are not enough. Island governments can look to their neighbors like the Bahamas who have gone a bit further regarding their victim-centered approach. Regarding implementing a formal victim-centered-approach protocol and supporting trafficking victims care which also include their children.

Cross-References

▶ Ethical Considerations for Studying Human Trafficking
▶ Is It Time to Open a Conversation About a New United Nations Treaty to Fight Human Trafficking That Focuses on Victim Protection and Human Rights?
▶ Measuring the Nature and Prevalence of Human Trafficking
▶ “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal
▶ The Swedish Approach to Prostitution and Trafficking in Human Beings Through a Gender Equality Lens
▶ Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking

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The Role of the Border and Border Policies in Efforts to Combat Human Trafficking: A Case Study of the Cascadia Region of the US-Canada Border

Laurie Trautman and Mary Moeller

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Abstract

Human trafficking in the Cascadia region of the USA and Canada is an issue that is receiving more attention and concern, both in the media and by public officials. There are many assumptions about the state of trafficking in the region, yet little data exists on who is trafficked, the origin and destination of trafficking flows, and the extent to which the phenomenon is a regional network operating between the large cities of Vancouver and Seattle. That lack of information makes it challenging to create evidence-based policies. Additionally, although federal and regional networks of collaboration are well established, Canada and the USA struggle to develop effective cross-border partnerships against human trafficking. This chapter focuses on the state of human trafficking across the US-Canada border in the Cascadia region of Western British Columbia and Washington State by mapping the policies, institutions, and networks of collaboration that are working to

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combat the phenomenon. Cascadia is a case study of the ways in which an international border influences collaboration.

Keywords
Canada · USA · North America · Bilateral · Collaboration · Cross-border

Introduction

The USA is a major draw for human trafficking, with thousands of people trafficked across its land borders with Canada and Mexico annually, although estimates of these flows vary significantly (Winterdyk et al. 2011) and there is no official government estimate. While the US-Mexico border has a well-known reputation as a trafficking pathway, there is relatively little attention paid to the US-Canada border as a site of human trafficking (The New York Times 2016). In 2004 the Royal Canadian Mounted Police (RCMP) estimated that between 1,500–2,200 people were trafficked from Canada into the USA every year, but these numbers were later redacted for being inaccurate (International Centre for Criminal Law Reform and Criminal Justice Police 2010). The Interstate-5 highway connects the Mexican border to the Canadian border, running through Los Angeles, San Francisco, Seattle, and Vancouver – all of which are popular destinations for trafficked persons through the west coast of North America.

Trafficking between the USA and Canada is primarily described as third-party flows passing through Canada into the USA, but both countries are also sources of trafficking victims (Perrin 2010). Most trafficking victims transited through Canada into the USA are from Asia, particularly South Korea and China. Both Canada and the USA have openly discussed Canada’s status as a transit country, indicating that both countries are aware of the issue. Despite this portrayal, it is also important to highlight that Canada is both a destination and a source country. The US State Department has identified US residents as a major source of demand for sex tourism in Canada (Ferguson 2012) and there have been instances where Canadians were trafficked in the USA.

Both British Columbia (B.C.) and Washington State have been unusually successful in cracking down on human trafficking, with B.C. operating the only regional anti-trafficking body in Canada, and Washington the first state to make trafficking illegal.

Policy Context

Internationally, both the USA and Canada tend to engage with the same platforms in their fight against trafficking in persons (TIP), working with multiple United Nations bodies (see Table 1). While the USA held the rotating Presidency of the
UN Security Council, it prompted an unprecedented debate on “Trafficking in Persons in Situations of Conflict,” which demonstrates the US view that TIP is an issue of peace and security. The USA also works on TIP with the UN’s International Labour Organization (ILO), and has referred to the ILO as “a key US partner... to combat slavery and human trafficking” (International Labour Organization n.d.). Canada works with the UN’s Interagency Program (UNIAP) to address TIP in East Asia and with the International Organization for Migration (IOM) with a focus on child sex tourism, migrants, and women. Both countries also have a strong engagement with the International Criminal Police Organization (INTERPOL). The USA and Canada also work against trafficking together in the Group of Eight (G8), the North Atlantic Treaty Organization (NATO), the Organization for Security and Cooperation in Europe (OSCE), and the Organization of American States (OAS).

The USA and Canada have several bilateral bodies working to secure their shared border. Integrated Border Enforcement Teams (IBETs) are a collaboration between USA and Canadian law enforcement to investigate and indict persons on either side of the border, under either set of laws. IBETs were originally developed for use along the B.C.-Washington border, demonstrating the region’s long history of cross-border cooperation. Integrated Border Intelligence Teams (IBITs) are binational teams of analysts who support IBETs and their partners by sharing intelligence on cross-border crime. Shiprider teams are similar to IBETs, but function as maritime units. The Shiprider Program, which allows for enforcement of both Canadian and US law in the waters between the two countries, was created

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<td>The International Organization for Migration</td>
<td>Integrated Border Intelligence Teams (IBITs)</td>
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<td>The Violent Crimes Against Children International Task Force (VCACITF)</td>
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by the Integrated Cross-Border Maritime Law Enforcement Operations Agreement in 2009. Border Enforcement Security Task Forces (BESTs) are similar to IBETs but focus specifically on the trafficking of drugs, arms, and persons by transnational criminal organizations. There is a BEST in Blaine near the Peace Arch crossing, which is the largest port of entry in Washington State (US Department of Homeland Security n.d.).

Although the US-Canada security relationship has deep roots, their collaboration against TIP is relatively recent. All major TIP-specific legislation was passed since 2000, meaning both countries have a modern strategy with little historical experience to guide them. Both Canada and the USA have ratified the Convention against Transnational Organized Crime (CTOC) and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (referred more commonly to as the Palermo Protocol). These are the two most important documents in the international framework against human trafficking because they give a universal (but nonbinding) definition of trafficking and set best practices for dealing with the issue. The UN’s language centers around “the 4Ps of trafficking,” or protection, prevention, prosecution, and partnerships, and this is reflected in the USA’s and Canada’s strategies. Individually, the USA and Canada operate under a number of anti-trafficking laws and each have a complex network of agencies involved in anti-trafficking efforts.

**British Columbia and Washington State**

Trafficking in Washington State is criminalized under three primary laws, two of which are federal – the Trafficking Victims Protection Act (TVPA) and the Prosectorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act. Washington State also created HB 1175, a state law that makes human trafficking a felony. It was the first state to create such a law, demonstrating the importance of the issue to the region. Washington’s primary actors are concentrated in the Attorney General’s office but there are also several bodies in other branches of the government. The Washington State Task Force Against the Trafficking of Persons consists of four legislators (two each from the House and Senate), state agencies, a survivor of human trafficking, and civil society organizations. They coordinate resources and prosecute offenders (State of Washington, Department of Commerce n.d.).

In British Columbia, the Office to Combat Trafficking in Persons (OCTIP) is the main anti-trafficking body, responsible for developing and coordinating their strategy against TIP, and was the first of its kind in Canada. OCTIP was created as a provincial initiative after rapid growth in awareness and a US State Department TIP Report, which named Vancouver as a transit and destination point for TIP. OCTIP created B.C.’s Action Plan to Combat Human Trafficking as a supplement to the National Action Plan with buy-in from provincial governing bodies and civil society organizations. Contrary to the rest of Canada, OCTIP focuses more on victim-side prevention services than prosecution or demand reduction, and they currently work...
with Public Prosecution Services, Canada Border Services Agency (CBSA), and other agencies (The Government of British Columbia n.d.). OCTIP is often praised as a model organization for other provinces to implement. For instance, the B.C. provincial government runs a 24/7 TIP and domestic violence hotline available in B.C. and the Yukon which provides services in 110 languages, including 12 North American Aboriginal languages. This is a critical resource because Canada does not currently have a national trafficking hotline (Taylor 2016).

Cross-Border Collaboration

Although Canada and the USA do collaborate on human trafficking, these partnerships are not as fully developed as other aspects of security collaboration between the two countries. Despite the importance of their relationship (Public Safety Canada has stated that “Human trafficking has a strong Canada-US cross-border component”) (Public Safety Canada 2006) there is no existing bilateral body with frequent meetings solely dedicated to coordinating anti-TIP strategies, and no repository of current collaborations exists. A survey of government employees in both countries found that many were largely unaware of any ongoing collaborations (Reichel 2008). When they did express knowledge of these partnerships, they considered them largely ad hoc, existing on the whims of individuals, and almost exclusively intended for people higher up the chain of command. This is partially because government organizations have been willfully recalcitrant in revealing the nature of their partnerships. The US Human Smuggling and Trafficking Center, US Immigration and Customs Enforcement, and the RCMP’s HTNCC do collaborate, but they have refrained from discussing the details of these efforts. Despite this acknowledgment, communication between the complex array of American and Canadian organizations is likely complicated by the border, which may present barriers to the efficient coordination of anti-trafficking efforts between the agencies within each country.

The USA and Canada have several means of bilateral coordination already at their disposal. The Canada-US Cross-Border Crime Forum (CBCF) is likely the most useful in the fight against trafficking because it allows law and justice representatives from both countries to collaborate against issues involving transnational organized crime. The forum focuses on obstacles to enforcement and is a partnership between Public Safety Canada, Justice Canada, the US DOJ, and the US DHS. The USA and Canada have also attended collaborative events organized by third parties. In 2008, federal and NGO representatives from the USA and Canada attended a bilateral consultation hosted by Shared Hope International (an NGO) to prepare for the World Congress Against Sexual Exploitation of Children and Adolescents (Shared Hope International 2008). This is an excellent example of the fourth P – partnerships.

Individual federal bodies also develop partnerships on their own. HSI has dedicated human trafficking investigative groups and subject experts in their field offices, three of which are located in Canada, including one in Vancouver. The FBI’s Office
for Victim Assistance (OVA) has trained Canadian law enforcement officials, service providers, attorneys, and others on child sexual exploitation. The FBI’s self-described greatest achievement in partnerships is the Innocence Lost National Initiative, a collaboration between the FBI, DOJ, and the National Center for Missing and Exploited Children designed to identify and rescue children who had been forced into prostitution (FBI 2015). On the fifth anniversary of the Innocence Lost National Initiative, Operation Cross Country was born. This semiannual, cross-jurisdictional tandem sting is used to identify victims of trafficking, rescue victims, and prosecute traffickers. Canada joined the FBI’s international partners in the 10th Operation Cross Country in 2016, but in Canada, the project is called Operation Northern Spotlight. Washington State’s three Child Exploitation Task Forces (CETFs), which are funded by the Department of Justice, partner with the US CBP and the Coast Guard during Operation Cross Country (FBI Seattle 2016).

The RCMP has been extraordinarily active in engaging with US partners. In 2013 the RCMP participated in the US State Department’s International Visitor Leadership Program (IVLP) on human trafficking (Public Safety Canada 2013). Inversely, the RCMP hosts a biannual training for Immigration and Passport Investigators. This training devotes an entire day to human trafficking, and is attended by members of the RCMP, CBSA, US DHS, and other international police forces. US ICE worked with the RCMP on Project SECLUSION, a 2010 study on the situation of human rights in Canada that later became declassified. Like Operation Cross-Country, the National Johns Suppression Initiative is a month-long sting against johns in the USA. In 2017, Seattle was among the top three cities for most johns arrested and in the 2017 sting, the Portland Sex Trafficking Unit arrested a Canadian john from Montreal, demonstrating the interconnectedness of the trafficking market (Fox12 Oregon 2017).

Outside of government agencies, there are some key efforts led by nongovernmental organizations (NGOs), some of which involve the sharing of binational resources. The Canadian Alliance Against Modern Slavery (AAMS) received funding from the US embassy to provide a 5-day TIP training session to law enforcement and service providers in Toronto (Public Safety Canada 2015). By contrast, Public Safety Canada and the Washington Attorney General’s office frequently engage in partnerships with NGOs on their own side of the border. In November 2004, the Attorney General of British Columbia and Public Safety and Emergency Preparedness Canada co-hosted a regional round table in Vancouver to discuss best practices for prevention and awareness of TIP (House of Commons 2007). NGOs from B.C. were invited, but NGOs from Washington were not. More recently, the Canadian Parliament formed the All Party Parliamentary Group (APPG) to End Modern Slavery, which is a group of parliamentarians supported by the University of British Columbia’s School of Law, constructing a critical bridge between lawmakers and academia (APPG 2018).

In contrast with Public Safety Canada, OCTIP has been much more proactive in developing international partnerships. OCTIP works with the Polaris Project, the US Freedom Network, Payoke, and the European Union Study Programme. OCTIP also works with federal bodies like the US State Department, which they send
information to about TIP in B.C. This information is used in the annual Trafficking in Persons Report. It is notable that OCTIP’s website has links to US-based resources, including the Department of State’s TIP Reports and a link to Polaris, a TIP NGO based in D.C. OCTIP also engages in substantial intra-country partnerships. In 2011, OCTIP, Public Safety Canada, and Justice Canada launched an online training course in human trafficking. OCTIP also worked with the Vancouver Police Department and Vancouver Olympic Committee to build anti-TIP measures into the security plan for the Vancouver 2010 Winter Olympics (The Government of British Columbia 2009).

Despite a lack of direct bilateral partnerships between organizations, the USA and Canada perform relatively well when collaborating on ongoing international investigations. In 2012, the US Human Smuggling and Trafficking Center and the Canadian HTNCC signed an MOU on a strategy against human trafficking (US DHS 2012). The details of this MOU are not publicly available, but they likely involve strategic coordination. More concretely, the VCACITF hosts an annual meeting where members discuss best practices and coordinate international investigations. For instance, in 2001, an 11-year-old child was kidnapped from Portland and sex trafficked in Vancouver. Vancouver PD found the child and communicated information through the Deter and Identify Sex Consumers (DISC) database, which links USA and Canadian police forces. They initiated a joint investigation and charges were made in both the USA and Canada. The traffickers were successfully prosecuted and jailed in the USA (The Government of Canada and the Government of the United States 2006).

Despite some successes, as noted earlier, the USA and Canada have different strategies for combating TIP, which sometimes interferes with their ability to cooperate. For example, Canada’s National Task Force on Sex Trafficking notes that the USA places “far less emphasis on Indigenous children and youth than is warranted in Canada” (National Task Force on Sex Trafficking of Women and Girls in Canada 2014, page 63). One key area of tension between the USA and Canada has been the prosecution of sex tourists. Between 1993 and 2009, the Canadian Department of Foreign Affairs gave consular assistance to more than 150 Canadian men charged with exploiting children abroad, including cases in the USA (Perrin 2010). For example, a Calgary resident was allowed to travel unrestricted despite being convicted of molesting children. In 2010, the USA prosecuted another Calgary native who was allowed to travel to Thailand, despite being convicted of molesting children in Canada, because he arranged sex tourism vacations for Americans (Perrin 2010). This reflected US frustrations about Canadian inaction on the case. It also underlined a discrepancy between USA and Canadian law; in the USA it was illegal for a sex offender to travel without notifying the government, while in Canada it was not.

Collaborations across the Washington-B.C. border are interesting case studies of human trafficking in the developed world. Canadian and USA law enforcement work together on the ground on a daily basis, yet only occasionally collaborate against TIP. Despite the struggles both countries face in organizing collaborative efforts, both seem willing to pursue closer partnerships, at least within their own
borders. Canada’s recently expired National Action Plan to Combat Human Trafficking describes “maintaining and developing strong partnerships” as “critical” (Government of Canada 2012). The National Action Plan also mentions collaboration through reciprocity, an ethic that is reflected elsewhere in the US-Canada relationship (i.e. The Beyond the Border Action Plan’s framework of “cleared once, accepted twice”). While both countries’ National/Federal Action Plans emphasize partnerships across different levels of government, international partnerships are hardly mentioned. This same ethic is reflected on a regional scale: none of B.C.’s status reports on its Action Plan to Combat Human Trafficking indicated partnerships with Washington State of any kind. Despite the conspicuous absence of international language, both countries are very aware of their importance to each other from a security standpoint. According to the Bi-National Assessment of Trafficking in Persons presented by the governments of the USA and Canada at the 2006 Cross-Border Crime Forum, “the proximity of the USA and Canada, the extensiveness of our shared border, and the two-way movement of people and goods require both countries to continue to work closely together to deter human traffickers from exploiting our relationship” (Government of Canada, Government of the US 2006).

It is interesting to note that when Canada’s Committee on the Status of Women made their initial report on human trafficking in 2007 they only included three Ps: protection, prevention, and persecution. In contrast, B.C.’s Action Plan to Combat TIP (2013) included “partnerships,” which demonstrates a shift in B.C.’s tactics against TIP. This fourth P was first introduced by the UN Secretary General in 2008. After this, Canada’s language shifted to include the fourth P, and they claim they were one of the first countries to do so (Government of Canada 2012). Both countries see the value of partnerships, and as their institutional infrastructures become better established, they may increase efforts to look outside their borders for willing teammates.

Challenges to Measuring Policy Efficacy

Of the many barriers to creating effective policy on human trafficking, collecting accurate data is the most challenging. According to a CBSA officer, “[The difficulty in obtaining] reliable and accurate information about the nature and extent of trafficking of persons within Canada... is attributable to several factors: the difficulty in identifying victims, differences in the reporting methods used, and the constantly shifting nature of trafficking activity itself” (House of Commons 2007). These factors and many others make collecting data difficult or impossible, and any data that does exist is likely to be unreliable.

The first of these difficulties comes from the fact that human trafficking is defined differently depending on the source. Both Canada and the USA loosely base their definition of human trafficking on the Palermo Protocol, but the definitions are not identical. Perrin (2010) claims the Criminal Code’s focus on fear for safety is too narrow and may exclude psychological/emotional manipulation, fraud, and deception, all of which must be added to bring the Code into line with the Palermo
Protocol (Winterdyk et al. 2011). In contrast, the US TVPA is better at recognizing these subtle techniques. According to the former chair of Canada’s Standing Committee on the Status of Women, Yasmin Ratansi, “The definition of human trafficking is important because witness testimonies sometimes say that prostitution is itself a form of violence and therefore cannot be distinguished from human trafficking.” More recently, Canada has rejected the notion that anyone can consent to his or her own exploitation, meaning all survivors of human trafficking and all sex workers have legal immunity to any crimes committed from being trafficked (House of Commons 2007, n.p.). This contrasts strongly with the USA, where sex workers are generally considered fully responsible for their actions.

As shown in Table 1, both countries’ laws look remarkably similar. However, their strategies vary substantially, with the USA placing a much heavier emphasis on labor trafficking and Canada focusing on trafficking of indigenous women. Washington is generally an exception to the rule: of the more than 30 anti-TIP bills passed in Washington, only 10 deal with labor trafficking. This may be because labor trafficking is considered to be more important internationally and sex trafficking is considered more important domestically. As exemplified by the Northern Border Strategy, the USA considers TIP to be a security issue that interlocks with terrorism and drug trafficking (US DHS 2012) more strongly than Canada, which sees trafficking as an issue of safety and crime (Wong 2013). Because Canada and the USA have different definitions of human trafficking and different strategies for fighting it, they report two disparate, myopic data sets, making it very difficult to compare data between the two countries. Problems extend even deeper than inter-country reporting: in 2014, the US federal government identified a lack of consistency in the definition of trafficking within the USA itself, as individual states have different legislation (U.S. Government et al. 2014). NGOs and intergovernmental organizations may also have different definitions of TIP. This is further complicated by the fact that NGOs have an incentive to inflate TIP numbers (so that they can keep their funding), while governments have an incentive to deflate numbers (to show that their policies are working). Because there is no universal standard, data collection methods vary substantially, with the result that most statistics on human trafficking have little scientific value, making it almost impossible to evaluate the size of the problem.

Once trafficking has been defined, it may still be difficult to distinguish it from other crimes. Human trafficking masquerades as prostitution and smuggling and migrant sex work is frequently conflated with human trafficking (Chuang 2010) (Winterdyk et al. 2011). Although there are generally agreed upon distinctions between those who are trafficked and those willingly engaging in prostitution, they are advertised in the same places and are functionally part of the same market, indistinguishable to the consumer (Canadian Women’s Foundation 2014). Many cases of human trafficking in Canada deal with trafficker “boyfriends” who use subtle techniques rather than outright force, making it difficult to prove if the victim feels unsafe or has been coerced. The RCMP itself has reported that estimates of human trafficking in Canada were unreliable, and many accidentally included smuggled persons. Trafficked women often come face-to-face with law enforcement
personnel without being recognized, with 80% of trafficked indigenous women in one study having been forced to have sex with police while under their trafficker’s control (Canadian Women’s Foundation 2014).

Additionally, a lack of knowledge among border agents and police seems to contribute to low numbers of human trafficking convictions. Perrin (2010) found that knowledge saturation about human trafficking was low in Canada, including among law enforcement. This was highlighted by a 2009 case where a Toronto police spokesperson, when questioned about why human trafficking charges had not been laid in an obvious trafficking case, responded “Human trafficking? Is there such a Criminal Code charge for human trafficking?” (Perrin 2010). Even if a prosecutor recognizes a case as human trafficking, they may opt for a related offense because “exploitation” and “fear for one’s own safety” are difficult to prove or measure (RCMP 2010). The RCMP Operational Police Officer’s Handbook attempts to raise awareness of this, going even further by saying that collateral crimes like kidnapping, assault, and extortion are more familiar to the courts and may be easier to prove than TIP. Winterdyk et al. (2011) note that this is especially true when considering transit (cross-border) trafficking, which may help explain the large discrepancy between the numbers for domestic and international arrests. Identifying trafficking victims is difficult unless they have already reached their final destination, because while the victims are in transit there is little evidence of their exploitation. These individuals may be misidentified as being smuggled and deported only to be trafficked again.

For instance, Statistics Canada’s data on TIP only includes information on cases where traffickers were prosecuted, omitting cases where a prosecutor chooses to try for smuggling or prostitution instead (Barrett 2013). Additionally, these prosecutions rely heavily on testimony by the victims, who are often too afraid to testify, severely impeding efforts to enforce the law. According to INTERPOL, less than 0.5% of victims worldwide agree to testify and most human trafficking tips given to police are insufficient for police to commit to a resource-intensive investigation, meaning the cases never even come close to being prosecuted (RCMP 2010). Trafficking investigations are extremely resource-intensive, with Canada’s first human trafficking prosecution costing $250,000 and requiring the full-time attention of nine law enforcement officials for 6 months (Perrin 2010). Canadian police officers have had wiretapping requests rejected due to a lack of funding, hampering investigations. Statistics Canada also does not count cases filed under IRPA, meaning that no overseas cases are included. Statistics Canada is an example of how even a well-intended organization with freely communicated information is hampered by the complexities of human trafficking.

In addition to these constraints, human trafficking is also inherently hidden as traffickers have strong financial incentives to hide their actions and their victims. Once investigators become suspicious and initiate investigative efforts (as they did with Craigslist), traffickers will relocate to new platforms, or will otherwise alter their methods to escape detection. This cycle of evolution is ongoing, with law enforcement typically one step behind. One recent development is a shift from thinly veiled trafficking enterprises like escort services and massage parlors to harder-to-
detect micro-brothels in apartment complexes (FBI 2016). Another shift involves using the internet in trafficking ventures, with 70% of child sex trafficking survivors in one study indicating that they were sold on the internet (Thorn 2014). The human trafficking landscape is constantly shifting in these ways, deepening the challenge of evaluating the state of human trafficking in the USA and Canada.

Given the difficulties with obtaining data, there is a dearth of research on the subject in general; Perrin’s in-depth book on trafficking in Canada was published almost a decade ago. This lack of knowledge is especially true for labor trafficking and is not simply an issue of researchers under-prioritizing labor trafficking: a Northeastern University study found that local law enforcement agencies tend to under-prioritize labor trafficking investigations, meaning case numbers don’t reflect realities on the ground (Urban Institute, Northeastern University 2014). All of these factors contribute to a lack of the basic foundational knowledge needed to understand TIP. Without this data, it is impossible to assess the scope of the problem and respond accordingly.

Quantitative Data

The number of human trafficking victims in Canada is unknown, and although previous estimates have been made, as by the RCMP in 2004, those estimates have been rescinded (International Centre for Criminal Law Reform and Criminal Justice Police 2010). Public Safety Canada estimates that statistics based on victim reports substantially under represent the actual frequency of trafficking for reasons mentioned previously. Despite these confounding factors, data does exist, although it is well acknowledged as largely inaccurate. The Global Slavery Index estimated that in 2016 there were 6,500 people enslaved in Canada and 57,700 slaves in the USA. Although the number of trafficking cases reported to the police in Canada per year remains low, there has been a steady increase from 2009 (0.12 cases per 100,000) to 2014 (0.58 cases per 100,000). According to Statistics Canada and the National Action Plan to Combat Human Trafficking, the increase in reported violations “may be influenced by improved methods of reporting, detecting and investigating these incidents” (Karam 2016), making it difficult to assess the value in using this data to assess changes.

Conclusion: The Path Forward

There is a misconception that neither Canada nor the USA could learn from each other. Some US NGOs have been unusually successful in identifying TIP victims. Many Canadian victims-services programs report that few victims are using their services, or none at all. If cross-border partnerships were encouraged, Canadian NGOs and government bodies could make use of the same techniques as American NGOs, fixing a critical gap in anti-trafficking infrastructure. By contrast, the US could learn from Canada’s focus on Aboriginal communities and work more
closely with tribes on human trafficking prevention. This is already in motion, as a bill has been introduced in the US federal legislature to require reporting on how many Indigenous women go missing every year. Unlike the USA, Canada does not currently have a national TIP hotline. Developing a hotline would improve data collection substantially and allow for the identification of trafficking hotspots, which will assist enforcement efforts. A hotline is currently being created in partnership with the Polaris Project, an American NGO who runs the national hotline in the USA. Although this progress is welcome, this remains an excellent example of a best practice that the two countries could share with one another proactively rather than reactively.

Without stronger quantitative data, it will be nearly impossible to create evidence-based policy. The Canadian Centre to End Human Trafficking is pushing for a national data collection mechanism that reaches beyond prosecutions. In the Washington Statewide Coordinating Committee on the Commercial Sexual Exploitation of Children’s 2014 report to the legislature, one of their first recommendations was to improve data collection. There is a dire need to create better partnerships in the realm of data collection. A bilaterally agreed means of improving the uniformity of data would make cross-comparisons and collaborations much easier. Because Canada and the USA share many similarities, they have an excellent opportunity to learn from each other by collecting and sharing accurate data on their successes and challenges. In addition to the need for evidence-based policy, there is also a lack of political capital. A study by Public Safety Canada showed that stakeholders perceived that statistical data was a key means of influencing public opinion. Because of this, accurate data may increase public willingness to devote resources to fighting trafficking, which will aid in investigations by providing access to resources.

As Canada and the USA harmonize their border and visa policies, trafficking patterns shift. This was visible in 2009 when the USA made it legal for South Koreans to travel directly to the USA without a visa, whereas previously only Canada had allowed visa-free travel. Prosecutions in Washington State have contributed to disrupting criminal networks smuggling women from South Korea through Canada into the USA, identifying a need to coordinate anti-trafficking efforts at the national level to prevent the “leaky dike” effect of trafficking flows shifting rather than disappearing (Perrin 2010). This should also be applied to cross-border, regional partnerships. Operation Cross Country is an excellent example of an (inter)nationally coordinated effort which prevents these shifting flows. As Temporary Protected Status for Haitians and El Salvadorians expires in the USA, disenfranchised people have fled to Canada, causing Quebec to experience a shocking uptick in human trafficking. With a little more coordination and awareness, the two countries could at least be prepared for the impacts of policy shifts. Although both countries have different strategies against TIP, a bilateral strategy that reaches above national differences would provide clarity and direction to people on the front lines.

In reviewing the now-expired National Action Plan to Combat Human Trafficking, Public Safety Canada recommends forging closer partnerships at all levels of government, including bilateral and multilateral partners (Public Safety Canada 2012). Although Canada and the USA are countries with different institutions,
policies, and strategies to combat TIP, there is great potential for them to collaborate, and the benefits of doing so are immeasurable.

Conclusion

Human trafficking between the USA and Canada is an excellent case study of TIP in more-developed nations. Because human trafficking is a relatively new field of interest, networks of collaboration are still evolving, but effective partnerships are emerging. Even in this case, where both countries share numerous similarities, there are still differences in the way various aspects of TIP are prioritized and in how data on TIP is measured. These differences must be rectified or at least accounted for in order to strengthen bilateral efforts to combat TIP.

Cross-References

▶ Child Trafficking for Adoption Purposes: A Criminological Analysis of the Illegal Adoption Market
▶ Domestic Sex Trafficking of Children
▶ Is It Time to Open a Conversation About a New United Nations Treaty to Fight Human Trafficking That Focuses on Victim Protection and Human Rights?
▶ Measuring the Nature and Prevalence of Human Trafficking
▶ Measuring Trafficking in Persons Better: Problems and Prospects
▶ Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications
▶ The NGO Response to Human Trafficking: Challenges, Opportunities, and Constraints

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Human Trafficking in Southeastern Europe: Council of Europe Perspective

Davor Derenčinović

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Abstract

In this chapter the author analyzes human trafficking trends in Southeastern Europe from the perspective of the Council of Europe – the regional organization that, since its foundation, has been dedicated to the promotion and protection of the most fundamental human rights enshrined in the European Convention on Human Rights. He focuses on a unique twofold monitoring/evaluation system setup under the Convention on Action against Trafficking in Human Beings – Group of Experts on Action against Trafficking in Human Beings (GRETA) and

The author is a member of Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). However, the views and opinions expressed in this paper are those of the author and do not necessarily reflect the position taken by GRETA on any issue contained to it.

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Committee of the Parties. Trafficking trends and counter-trafficking mechanisms in selected Southeast European state parties (i.e., Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Slovenia, and Macedonia) have been examined from the perspective of the Convention that is built upon four pillars – prevention of trafficking, protection of victims, prosecution of perpetrators and partnership with civil society, as well as from the reports adopted by GRETA and recommendations issued to the state parties by the Committee of the Parties.

**Keywords**

Trafficking in human beings · Victims of trafficking · Council of Europe · GRETA · Committee of the Parties · Southeast European countries

**Introduction**

In the context of this paper, Southeastern European (SEE) countries are (in alphabetical order) Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Slovenia, and the former Yugoslav Republic of Macedonia (after this: FYROM). Due to their geographical position, these countries were for years part of what has colloquially been referred to as the Balkan route, a popular route for the smuggling of goods and migrants as well as for trafficking in firearms, drugs, and human beings, both from east to west and from the south to the north of Europe. However, during the armed conflicts in the 1990s in the territory of the former Yugoslavia, of which all six SEE countries were republics, the Balkan route was restructured and to some extent reshaped into several sub-routes (Vujin 2009).

A series of conflicts and mass violations of both human rights and humanitarian law in the 1990s also contributed to significant victimization and the spread of trafficking in human beings (after this: THB). Armed conflicts in the former Yugoslavia resulted in hundreds of thousands of refugees and internally displaced persons who became particularly vulnerable to trafficking, and the International Criminal Tribunal for the former Yugoslavia, which lasted from 1993 to 2017, found responsible several persons for sexual slavery offences in Bosnia and Herzegovina (see ICTY Kunarac case). Not limited to local warlords, representatives of the international peacekeeping forces were also involved in illegal sex markets that were active at that time.

However, the linkages between their vulnerable position and risk of being subjected to human trafficking have been insufficiently addressed by the authorities in the SEE countries. Of the six countries, two have joined the European Union (EU) – Slovenia in 2004 and Croatia in 2013 – while Serbia and Montenegro have candidate status and are in negotiations with the European Commission, and Bosnia and Herzegovina and FYROM remain on the waiting list (Meszaros 2017).

As members or prospective members of the EU, SEE countries adhered not only to European values but also to European acquis committed to the prevention of human trafficking and assistance to victims. A majority of the SEE countries, FYROM, Serbia, Croatia, and Slovenia in particular, were also affected by the transiting of many migrants (Meszaros 2017) during the recent migrant crisis in
Europe. Not very well prepared for the disaster, the anti-trafficking mechanisms of these countries were tested due to the risk that several of the people traveling to western Europe might have been victims of human trafficking.

The SEE countries recognized the importance of both preventing and prosecuting THB, as well as helping victims by joining the first comprehensive multilateral treaty in this field that goes beyond mere criminalization of traffickers and but also encompasses the prevention of THB. This involves the protection of victims and partnership between authorities and NGOs through the Council of Europe Convention on Action against Trafficking in Human Beings (after this: Convention), which entered into force on February 01, 2008. By becoming parties to the Convention, the SEE countries came under the scrutiny of the monitoring mechanisms that consist of the independent Group of Experts on Action against Trafficking in Human Beings (GRETA) and Committee of the Parties.

Under the Convention, the responsibility of state parties in the prevention of anti-trafficking goes well beyond the criminal prosecution of the perpetrator. By designating THB as a human rights violation, member states assume affirmative obligation to prevent human trafficking and to provide sufficient protection within its authority. However, this concept has not been universally recognized: it is restricted to Council of Europe member states as well as to those states outside this regional organization who decide to accede to the Convention, for example, Belarus agreed to the Convention in November 2013. As of 2018, the Russian Federation remains the only Council of Europe country that has not yet become a state party to the Convention.

The Convention established a unique twofold monitoring system. The first pillar of the system, the Committee of Parties, is a political body tasked with issuing anti-trafficking recommendations to the state parties and observing their implementation. The second pillar, the Group of Experts on Action against Trafficking in Human Beings (GRETA), is composed of 15 independent experts and functions as a human rights quasi-judicial body competent for evaluating state parties by using different methodologies including country visits. The Committee of the Parties recommendations is based on the GRETA proposals for further action to be taken in a given state party (Derenčinović 2014–2015).

At the time of this writing, all SEE countries have been evaluated in two rounds. The first evaluation took place between 2010 and 2014, while the second evaluation was undertaken between 2014 and 2018. The analysis in this paper has been carried out based on the two GRETA reports in the first two rounds of assessments and on recommendations adopted by the Committee of the Parties in the second round of evaluation.

Recent THB Trends in SEE Countries

Due to the internal dynamics of the phenomenon of human trafficking (e.g., see Part 2 in this Major Reference Work), SEE countries are affected either as origin, transit, or destination countries. Trafficking trends have been changing throughout the years: their geographical position makes Slovenia a country of transit and to some extent destination country, while Croatia, which until recently been predominantly a transit
country, has become a country of origin for trafficking victims. Other countries in the region predominately served as countries of origin (e.g., Serbia, FYROM, Bosnia and Herzegovina, and Montenegro) during the period covered by GRETA reports in the first two evaluation rounds.

Regarding the number of victims, more have been identified in countries of origin when compared to countries of transit and destination.

- Trafficking victims might not be aware that they are victims.
- However, there may be other reasons why the number of identified victims in both transit and destination countries are lower than in origin countries, such as insufficient or ineffective mechanisms for the prevention of trafficking victims and the identification of foreign victims.

Regarding the numbers, more victims have been identified in the countries of origin in comparison to the nations that are predominantly countries of transit or destination. This could be explained by difficulties in determining victims of THB who are transiting due to the fact they might not know they are in fact victims of trafficking. For this reason, it is more challenging for the country of transit to identify victims of THB. However, there might be some other reasons why the number of detected victims in transit and destination countries is lower than in origin countries, such as insufficient or ineffective mechanisms for the prevention of trafficking in human beings and the identification of foreign victims.

Some highlights from the GRETA reports adopted in the first two evaluation rounds (transnational vs. internal trafficking and trafficking of nationals vs. trafficking of foreigners) include:

- In Bosnia and Herzegovina, a total of 79 victims of domestic trafficking were identified in the years of 2009–2010, while 15 persons were trafficked transnationally (Bosnia and Herzegovina Rep. 1). For the period 2013–2016, 140 out of 145 victims were Bosnian nationals (Bosnia and Herzegovina Rep. 2).
- In Croatia, 12 out of 22 trafficking victims identified during the period of 2008–2010 were Croatian nationals; however, a total of 15 victims were subjected to transnational trafficking (Croatia Rep. 1). During the period 2012–2014, 63 out of 79 victims were nationals (Croatia Rep. 2).
- In Serbia, a total of 323 victims were identified between the years of 2009 and 2012, with an overwhelming majority being Serbian nationals. According to information provided by the Serbian authorities, in 2012, domestic trafficking involved 60% of the identified victims and, in the first 8 months of 2013, 58% of the total number of identified victims (57) (Serbia Rep. 1). During the period between 2013 and 2016, a total of 296 trafficking victims were identified in Serbia – 76 in 2013, 125 in 2014, 40 in 2015, and 55 in 2016; most of the identified victims were Serbian nationals. Internal trafficking has continued to affect a substantial number of people (116) (Serbia Rep. 2).

In Slovenia, there were 33 formally identified victims of trafficking in 2010, 21 in 2011, 4 in 2012, and 32 in the first 6 months of 2013. The main countries of origin of
the victims were Romania, Hungary, Ukraine, and the Dominican Republic. In 2011, eight of the identified victims were Slovenian women who had been trafficked within the country for the purpose of sexual exploitation (Slovenia Rep. 1). In the period between 2013 and 2016, a total of 119 trafficking victims were formally identified (40 in 2013, 5 in 2014, 47 in 2015, and 27 in 2016); of these victims, only five were Slovenian nationals (Slovenia Rep. 2).

As indicated in the first two evaluation rounds of the GRETA reports, many victims identified in most of the SEE countries – notably Bosnia and Herzegovina, Croatia, and Serbia – are nationals of these countries. There are also a significant number of those who were trafficked within the state. However, it is not possible to precisely determine the scope of the internal trafficking due to inconsistent and incomplete statistical data gathered and processed by the SEE authorities in a non-systematic manner. There is also an assumption that countries with a low number of identified trafficking victims, such as Slovenia, do not pay due attention to the phenomenon of internal trafficking. Furthermore, SEE countries affected by recent migration flows that took place during the second evaluation round, notably FYROM, Serbia, Croatia, and Slovenia, failed to adjust their identification mechanisms to the crisis. This presumably remains the main reason why many foreign victims of trafficking – largely unaccompanied minors – remained unidentified.

Most of the identified victims and potential victims of trafficking are women who have been trafficked largely for the purpose of sexual exploitation but also for some other forms of exploitation, such as forced marriages and forced begging. In Bosnia and Herzegovina, women are victims in around 65% of all cases of trafficking (Bosnia and Herzegovina Rep. 2). Most of trafficking victims in Croatia (Croatia Rep. 2), FYROM (FYROM Rep. 2), and Slovenia (Slovenia Rep. 2) are also women; in Slovenia, the victims are also mostly female foreign citizens. Although traffickers primarily target women, there has also been an increase of male victims that are subjected to labor exploitation (Croatia Rep. 2). For example, in Serbia, many of the victims identified in the period between 2013 and 2016 \((n = 130)\) were men who were subjected to trafficking for the purpose of exploitation through forced labor. Nevertheless, it would not be correct to suggest that there has been a constant increase in male victims of trafficking, as while 98 male victims were identified in 2014, this number dropped to 1 in 2015 and 6 in 2016 (Serbia Rep. 2).

The predominant type of exploitation is still sexual exploitation of female victims, including young girls. For example, in Croatia, 79 victims of trafficking for the purpose of sexual exploitation were identified in the period of 2012–2015, while only 23 victims of labor exploitation were identified in the same period (Croatia Rep. 2). In the first evaluation round, Serbia reported 62 victims of labor exploitation and 178 victims who were subjected to sexual exploitation (Serbia Rep. 1). Most of the female victims (more than 80%) identified in Serbia from 2013 to 2015 were trafficked for sexual exploitation (Serbia Rep. 2).

The same is true for Slovenia, where most of the identified victims were women from abroad (Slovenia Rep. 2). Despite many seasonal workers from neighboring countries who are employed in the tourism and construction sectors in Montenegro, the number of identified victims of labor exploitation remains very low, and sexual exploitation of women is still a prevalent type of exploitation in that country (Montenegro Rep. 2).
An exception to this trend is Bosnia and Herzegovina, where in 2010 there were 17 persons identified as victims of labor exploitation and only 8 as victims of sexual exploitation (Bosnia and Herzegovina Rep. 1). Similarly, of the total number of identified victims during the period 2013–2016, a total of 92 were victims of forced begging, followed by 34 victims of sexual exploitation (34) and 15 victims of forced labor (15) (Bosnia and Herzegovina Rep. 2).

Apart from sexual and labor exploitation, there has been an increase in victims trafficked for the purpose of forced marriage as well as an increase in cases of combined exploitation, most often seen as sexual exploitation combined with labor exploitation and forced begging (Bosnia and Herzegovina Rep. 2).

Another GRETA finding that is ground for concern is that more than half of the identified victims are children (under the age of 12). In Bosnia and Herzegovina, from 2013 to 2014, more than 50% of all identified victims were children (Bosnia and Herzegovina Rep. 2). The same is true for Montenegro, in which 8 of the 15 victims identified in the period 2012–2015 were children (Montenegro Rep. 2). In Serbia, children account for 42% of all victims for the period 2009–2012 (Serbia Rep. 1), while in FYROM between 70% and 80% of identified victims during the referral period were children (FYROM Rep. 1, FYROM Rep. 2). In several of the SEE countries, such as Slovenia, the number of identified children remains low (Slovenia Rep. 2), but trends show an increase in several other countries such as Croatia, in which an increase in the years 2013 and 2014 can be attributed to the identification of victims of child image abuse over the Internet (Croatia Rep. 2).

According to the GRETA reports, children (mostly girls) in SEE countries are most often trafficked for sexual exploitation, forced begging, forced marriage, and forced criminality.

**Counter-Trafficking Issues and Shortcomings in SEE State Parties Evaluated by GRETA**

In the second round of evaluation, GRETA has identified several areas that have not been sufficiently addressed by the SEE state parties. Areas of concern include labor exploitation, child trafficking, identification of victims, and assistance to victims, as well as compensation and legal redress. Based on the GRETA reports, the Committee of Parties issued recommendations to the SEE state parties. The most important recommendations are presented in this section; their overview shows that SEE countries encounter similar problems in creation and implementation of measures against THB.

**Labor Exploitation**

An area that requires further attention is the development and implementation of legislation concerning trafficking for purposes of labor exploitation. Bosnia and Herzegovina was invited to strengthen the monitoring of recruitment and temporary work agencies and was further encouraged to review the legislative framework for
temporary work agencies, including the introduction of licensing and stronger efforts to curb fraudulent job offers disseminated using the Internet (Bosnia and Herzegovina Rec. 2). Croatia, meanwhile, falls short in its identification of victims of trafficking for labor exploitation. It was recommended that they increase efforts to proactively identify victims of trafficking for the purpose of labor exploitation, including among irregular migrant workers, by reinforcing the role and training of labor inspectors and providing the Labor Inspectorate – including construction and agriculture inspectorates – with the resources required to effectively prevent and combat trafficking in human beings (Croatia Rec. 2).

Further recommended measures for most SEE countries concern the training of relevant officials, including labor inspectors, about trafficking for labor exploitation and the rights of victims. They were further encouraged to work closely with the private sector, in line with the Guiding Principles on Business and Human Rights.

The GRETA findings concerning labor exploitation trafficking in SEE countries correspond to the earlier results on this type of exploitation in other state parties in the first round of the evaluation. In the state parties to the Convention, from 2009 to 2013, trafficking for the purpose of sexual exploitation was the predominant form of trafficking in the majority of the evaluated countries. At the same time, trafficking for the purpose of labor exploitation is on the rise and has emerged as the predominant form of trafficking in several countries (e.g., Belgium, Georgia, and Ukraine). In Portugal, 46% of the victims identified between 2008 and 2011 were subjected to labor exploitation. Furthermore, in the Netherlands, the proportion of victims trafficked for labor exploitation increased from 6% in 2007 to 20% in 2011. Linked to this trend is the increasing number of identified male victims being trafficked. The GRETA reports reveal that trafficking for labor exploitation is neither recognized nor addressed by any policy, and consequently, the number of identified victims may be artificially low (Derenčinović 2014–2015).

**Child Trafficking**

Among the most important measures to prevent child trafficking is the training in trafficking indicators for professionals who encounter children. Given the results presented above, training should include various aspects of providing protection and assistance to child victims (Bosnia and Herzegovina Rec. 2, Slovenia Rec. 2). Furthermore, countries in the region must also provide human and financial resources to social work centers in order to assist identified victims in transitioning back to normal life (Bosnia and Herzegovina Rec. 2), and risk assessments should be made mandatory before returning child victims to their families or foster care placements in order to mitigate the risk of re-trafficking (Bosnia and Herzegovina Rec. 2, FYROM Rec. 2). Given the number of children trafficked in their region, Bosnia and Herzegovina was invited to commission research about the phenomenon of child trafficking as an objective method for designing future prevention measures (Bosnia and Herzegovina Rec. 2), and similar reports were issued in Croatia and Slovenia. Issues that arose from these reports included the need to adequately train
foster parents in issues related to trafficking as well as recommendations to address the vulnerability of unaccompanied children placed in institutions (Croatia Rec. 2). An additional problem that arose in some reports is the disappearance of unaccompanied children from their safe accommodation (Slovenia Rec. 2), calling for the need to appoint guardians to these unaccompanied children in order to provide timely and adequate guardianship (Serbia Rec. 2).

In addition to unaccompanied minors, children from minority communities have been identified as a vulnerable category of children. Bosnia and Herzegovina was tasked with addressing the issue of low school attendance of Roma children and their overrepresentation in individual schools, while FYROM was invited to ensure that relevant actors take a proactive approach and increase their outreach work to identify child victims of trafficking by paying attention to vulnerable children including those living on the street, those unaccompanied children, and those from Roma communities.

Methods of protecting vulnerable children should include but are not limited to providing further training to stakeholders (i.e., police officers, social workers, healthcare, and education professionals) as well as guidance for the identification of child victims of trafficking, providing suitable accommodation for child victims, and providing them access to vocational training. Migrant and refugee children, as well as unaccompanied children, should not be detained, and governments must find appropriate alternatives for their safe accommodation in line with the best interests of the child (FYROM Rec. 2). Meanwhile, vulnerable children in Montenegro (i.e., Roma, Ashkali, and Egyptian) should be removed from the streets and provided with adequate support and services which are adapted to the needs of child victims of trafficking, including appropriate accommodation, access to education, and vocational training (Montenegro Rec. 2). Additionally, reception centers for migrants, centers for social work, and facilities for children must have adequate human and financial resources to fulfil their tasks efficiently (Serbia Rec. 2).

Identification of Victims

Following the two GRETA reports, measures that apply in this context should be improved by providing periodical and targeted training in victim identification to relevant stakeholders (Slovenia Rec. 2, Bosnia and Herzegovina Rec. 2, Montenegro Rec. 2). State parties should encourage law enforcement officials (including border police), social workers, labor inspectors, and other relevant actors to pursue a more proactive approach and increase their outreach work to identify potential victims of trafficking, especially related to forms of trafficking other than sexual (such as labor exploitation, forced marriages, and forced begging) (Slovenia Rec. 2).

In order to improve the attention needed to assist in the identification of victims, increased attention should be paid to detecting victims of trafficking among asylum seekers and foreign workers (Slovenia Rec. 2, Croatia Rec. 2). The reports also suggest that this could be accomplished, among other things, by reinforcing the role and training of labor inspectors and providing the Labor Inspectorate (including construction and agriculture inspectorates) with the resources required to effectively
prevent and combat trafficking in human beings (Croatia Rec. 2, FYROM Rec. 2). Furthermore, providing training and sensitizing the reception center staff are considered indispensable to ensure valid identification of victims who are accommodated there (Croatia Rec. 2). Additionally, adequate financing should be provided to any specialized NGOs (Croatia Rec. 2), which should be included in the multiagency involvement in victim identification (FYROM Rec. 2, Montenegro Rec. 2). Finally, the GRETA reports recommend that the formal identification of victims of human trafficking should not depend on their cooperation with the investigating and prosecuting authorities (Bosnia and Herzegovina Rec. 2).

**Assistance to Victims**

Possible and formally identified victims of trafficking, irrespective of their nationality and regardless of whether they cooperate with the investigating and prosecuting authorities, should receive adequate assistance for their needs. There must be sufficient accommodations in place to assist victims, including male victims (Serbia Rec. 2), and victims should have access to healthcare, vocational training, and assistance in finding employment (Bosnia and Herzegovina Rec. 2, FYROM Rec. 2).

The GRETA reports also recommend that governments provide adequate human and financial resources and mandate specialized NGOs to assist trafficking victims (FYROM Rec. 2, Serbia Rec. 2). Foreign victims of trafficking should be moved to shelters as soon as there are reasonable grounds to believe that they are victims of trafficking (FYROM Rec. 2). Finally, any new legislation should ensure that all foreign persons for whom there are reasonable grounds to believe that they are victims of trafficking are systematically informed of the possibility to benefit from recovery and reflection period and that they offered and provided such services in a timely manner (Slovenia Rec. 2).

**Compensation and Legal Redress**

Victims of trafficking should be systematically informed, in a language that they can understand, their right to claim compensation and the procedures to be followed (Bosnia and Herzegovina Rec. 2, FYROM Rec. 2, Serbia Rec. 2, Slovenia Rec. 2). In this regard, governments should guarantee effective access to legal aid (Bosnia and Herzegovina Rec. 2, FYROM Rec. 2, Slovenia Rec. 2). In addition, access to compensation should be provided to all victims regardless of their nationality and residence status (Croatia Rec. 2, Serbia Rec. 2) and regardless of the means used by traffickers (Slovenia Rec. 2). In Slovenia, for instance, this could be accomplished by including all victims of trafficking under the Crime Victim Compensation Act, irrespective of victim nationality and of whether force or violation of sexual integrity was used against the victim (Slovenia 2). Severe injury as an eligibility criterion for state compensation seems to be too restrictive and should be reviewed (Croatia Rec. 2).
In addition to the legal possibility of victims claiming compensation from the perpetrator, governments have been invited to set up a state compensation scheme (Bosnia and Herzegovina Rec. 2, FYROM Rec. 2, Serbia Rec. 2). Concerning criminal proceedings, prosecutors should be encouraged to request compensation and judges to decide on compensation claims without referring the case to the civil actions (Serbia Rec. 2); additionally, relevant stakeholders (i.e., attorneys, prosecutors, judges) have to be appropriately trained about compensation issues related to trafficking victims (Bosnia and Herzegovina Rec. 2, Croatia Rec. 2, FYROM Rec. 2, Montenegro Rec. 2, Serbia Rec. 2, Slovenia Rec. 2). Finally, assets obtained by committing criminal offences could be used to secure compensation to victims of trafficking (Montenegro Rec. 2, Serbia Rec. 2).

**Other Issues**

In the second evaluation round, GRETA identified a few serious shortcomings in SEE countries regarding the gathering and processing of statistical data about victims and traffickers. Therefore, it was recommended that state parties set up a comprehensive statistical system on data related to measures to protect and promote the rights of victims, as well as on the investigation, prosecution, and adjudication of human trafficking cases that would allow disaggregation by sex, age, type of exploitation, country of origin, and state where the exploitation took place (Bosnia and Herzegovina Rec. 2).

Another identified area of concern was the prosecution and adjudication of trafficking offences. In this regard, it was recommended that Croatia proactively investigate and successfully prosecute cases of human trafficking that would lead to effective, proportionate, and dissuasive sanctions. In GRETA’s opinion, the offence of trafficking in human beings should be excluded from the plea bargaining procedure (Croatia Rec. 2). Investigative work of the police should be adequately funded and carried out by sufficient staff, and investigators, prosecutors, and judges must not only be sensitized about the rights of the victims but provided with further specialized training in dealing with human trafficking cases (FYROM Rec. 2). Authorities in Montenegro were invited by GRETA and the Committee of the Parties to provide specialized training to investigators and prosecutors to reinforce financial investigations and the confiscation of criminal assets (Montenegro Rec. 2).

Finally, several countries have been encouraged to take additional measures to ensure compliance with the principle of non-punishment of victims of trafficking. The recommendations rebased on their (alleged) involvement in unlawful activities. The extent to which they are compelled to do so is prescribed in Article 26 of the Convention. According to the Article, such measures should include the adoption of a specific legal provision and the development of guidance for police officers and prosecutors on the scope of the non-punishment provision, including regarding administrative/civil law sanctions (FYROM Rec. 2, Montenegro Rec. 2, Slovenia Rec. 2).
Conclusion

The GRETA reports and recommendations issued by the Committee of the Parties highlight some of the issues that have, at the time of this writing, not yet been sufficiently addressed by the SEE countries. One of these issues is trafficking for labor exploitation. In fact, some indicators suggest that forced labor trafficking has increased in the SEE region in recent years, while available figures do not reveal the real scope of the problem. Secondly, countering trafficking in human beings for the purpose of labor exploitation has become more important after the European Court of Human Rights (ECHR) judgment in the case of Chowdury and Others v. Greece (2017). The case concerned 42 Bangladeshi nationals who were recruited in Athens and other parts of Greece between the end of 2012 and early 2013 to work at the central strawberry farm in Manolada without Greek work permits. Their employers failed to pay the applicants’ wages and obliged them to work in difficult physical conditions under the supervision of armed guards. The workers alleged that they had been subjected to forced or compulsory labor. They further submitted that the State was under an obligation to prevent their being subjected to human trafficking, to adopt preventive measures for that purpose, and to punish the employers. The Court held that there had been a violation of Article 4 § 2 (prohibition of forced labor) of the Convention, finding that the workers had not received effective protection from the Greek State. The Court further noted that the workers’ situation was one of human trafficking and forced labor and specified that exploitation through labor was one aspect of trafficking in human beings. The Court also found that the State had failed in its obligations to prevent the situation of human trafficking, to protect the victims, to conduct an adequate investigation into the offences committed, and to punish those responsible for the trafficking (ECHR 2016).

In their reports, GRETA recognized the importance of the identification and prevention of trafficking for labor exploitation by including this type of exploitation in its 7th thematic annual report, emphasizing that trafficking in human beings for labor exploitation is one of the most challenging aspects of “modern-day slavery.” It is challenging on many accounts: because differences arise in practice in the interpretation and application of labor standards and in defining labor exploitation, because victims prefer not to lodge complaints or stand as witnesses as they are often dependent on their traffickers for work and housing, and not least because combating trafficking for the purpose of labor exploitation requires coordinated action between the state, civil society, trade unions, and the private sector (7th GRETA report).

In GRETA’s General Report for the previous year (2016), the thematic issue focused on the trafficking of children. This is also an issue of concern in SEE countries given the number of child victims that have been identified in last several years. Several categories of child victims are vulnerable, including unaccompanied and separated children, street children, and Roma children, and should be treated with due care and with their best interests in mind. Children, especially those categorized as vulnerable children, are subjected to several types of trafficking; girls, for example, are often exploited for prostitution and forced marriage, while boys are mostly victimized for labor exploitation, forced begging, and forced criminality.
State parties, including those from the SEE region, do not always adequately respond to the vulnerability of trafficked victims. In fact, awareness of child trafficking is shallow, not only in public but also among professionals who are not systematically trained about the pull and push factors related to child trafficking. Child victims, when identified, usually do not receive assistance tailored to meet their unique needs. Such needs include support in schooling, access to vocational training, etc. Another issue that was identified in the GRETA reports was the age assessment in cases of undocumented children. It is recommended that age assessment should not rely solely on medical examination (for instance, X-ray) but should preferably be combined with other methods of assessment (e.g., psychological, behavioral, etc.).

Another issue that has not been sufficiently addressed in SEE countries is that of non-punishment provisions. One of the significant challenges for sound anti-trafficking strategies and policies is to recognize that those who were trafficked (or intended to be trafficked) for any form of exploitation should be treated as victims, not as criminals. Condicio sine qua non for such recognition is the enactment and effective implementation of the non-punishment provision. For State Parties to the Convention, legal ground for introducing a non-punishment provision in domestic legal systems is defined and articulated in Article 26 of the Convention. As an exclusionary norm aimed at the prevention of THB victim’s secondary victimization, it lays down an obligation of a Party to, “in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so” (THB Convention). Furthermore, each Party can comply with the obligation established in Article 26 by providing for a substantive criminal or procedural criminal law provision, or any other measure (THB Convention, Explanatory Report).

Derenčinović (2014) suggests that according to legal theory, imposing a penalty on an innocent agent (victim) instead of focusing law enforcement infrastructure on the organizer (i.e., trafficker) cannot be justified neither from a moral blameworthiness perspective nor from a sentencing goal perspective. As a proverbial cog, easily replaceable in the mechanism, a trafficked person is often not more than an instrument under the perpetrator’s control. In addition to the theoretical considerations, the non-punishment provision also has an extensive practical potential as a conjunction of three essential pillars or foundations of the Convention – prevention, protection, and prosecution. Non-criminalization of a victim for status-related offences creates an environment indispensable for appropriate identification as well as to meaningful protection and assistance. It is a well-known fact that likelihood of getting trafficked persons to collaborate with law enforcement authorities significantly increases if they are treated as victims, not suspects.

With a few exceptions, such as the recent adoption of a legal provision on the non-punishment of victims of trafficking for offences committed because of being trafficked in Bosnia and Herzegovina, legislation in most of the SEE countries does not provide for specific non-punishment provisions. In their replies, authorities refer
to general regulations on the state of necessity as a ground for non-punishment for underlying offences (e.g., prostitution, illegal border crossing, overstay, etc.). For various reasons, these provisions cannot adequately protect victims of trafficking from prosecution for offences that are a consequence of their victimization. Therefore, State Parties are invited to introduce specific provisions or to issue guidelines to law enforcement, prosecutors, and judges on how to handle the cases that imply non-punishment obligation. Apart from the proposed normative framework, the GRETA reports note that any efforts to implement the various recommendations still require a degree of sensitization and education of the relevant stakeholders toward the victims if the proposals are going to be successful.

Furthermore, according to the GRETA reports, SEE countries have also been faced with some difficulties related to coordinated activities, providing human and financial resources for implementation of anti-trafficking activities, and involvement of the civil society in anti-trafficking coalitions. These findings were also confirmed by various NGO reports and from NGO activists with whom the GRETA delegation met during their country visits. For example, strategies and action plans are not always prepared on time nor are they being adequately implemented. The reasons for delays vary from country to country, but from a purely technical point, these challenges rest primarily with the lack of political will to seriously tackle the difficulties surrounding trafficking in human being. Furthermore, the SEE countries are in generally reluctant to entrust periodic evaluation of their strategic documents to independent institutions and individuals. For example, coordination authorities, who are in charge of the implementation of self-evaluations, tend to carry out self-evaluation without including others in performing this critical task. The commissioning of national action plans and strategies to independent third parties (e.g., national rapporteurs or same institutions) would significantly improve the establishment of anti-trafficking measures in the short-, mid-, and long-term.

Finally, the time of preparing this entry coincides with the organization of the Conference “Ten years of implementation of the Convention on Action against Trafficking in Human Beings: impact and challenges ahead,” held on May 22, 2018, in Strasbourg under the Croatian Chairmanship of the Committee of Ministers of the Council of Europe. Marking the 10th anniversary of the entry into force of the Convention will be an opportunity to discuss the most critical issues that concern anti-trafficking efforts taken by the state parties, including those from the SEE region, as well as an opportunity to discuss the failures and problems that require further development. Conference conclusions could be considered by GRETA in selecting issues that should be prioritized in a third evaluation round.

Cross-References

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An Attempt to Control Human Trafficking from a Human Rights-Based Approach: The Case of Spain

Silvia Rodríguez-López

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Abstract

Anti-trafficking mechanisms in Spain can only be understood within the context of a general strategy set out in European Law, characterized by the adoption of a human rights-based approach. Thus, the Spanish Criminal Code has been modified on several occasions to criminalize human trafficking in accordance with European legislation. Moreover, with the goal of implementing other international obligations beyond mere criminal prosecution, several measures have been...
adopted, framed within two comprehensive plans to combat human trafficking for the periods 2009–2012 and 2015–2018. This chapter shall critically analyze the application of these mechanisms in theory and in practice, aiming to offer an unclouded vision of the response to this crime in Spain.

**Keywords**

Human trafficking · Human rights · Victim protection · Spanish criminal law

**Introduction**

The adoption of measures related to human trafficking in Spain needs to be framed within the evolution of international and European anti-trafficking legislation. As in many other western countries, concerns about human trafficking reappeared in Spain at the beginning of the 1990s (De León Villalba 2010). At this time, when the first international anti-trafficking instruments were adopted, human trafficking was a problem strictly connected to sexual exploitation, organized crime, and irregular migration, which could only be solved by means of a crime-centered approach. In this context, several international instruments were ratified. The first one was the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Palermo Protocol), which was opened for signature in November 2000, and ratified by Spain in December of the same year. The signature of the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter Warsaw Convention) took much longer. Although the European text had been passed in May 2005, the Spanish government did not ratify it until July 2008.

It was precisely the need to fulfill the obligations undertaken by the ratification of the Warsaw Convention that determined a change of direction in anti-trafficking policies. A correct implementation of the Warsaw Convention required not only the adoption of criminal law responses aimed at the prosecution of traffickers, but also the enactment of administrative and social measures to protect and assist victims (Milano 2016). One illustrative example of this turnaround is the fact that the Warsaw Convention foresees a long and detailed article concerning the identification of victims (Article 10), while there is not a single mention of the process of victims’ identification in the Palermo Protocol (Milano 2016). The same strategy based on the so-called three Ps, namely, prevention, protection and prosecution, is also present in Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (hereinafter EU Directive). This European legal instrument, adopted in April 2011, is also binding for Spain.

The three above-mentioned supranational instruments have aimed to create a holistic strategy to control human trafficking from a human-rights approach. This strategy tries to focus attention on the victim, rather than on the perpetrator, to guarantee that their basic human rights are safeguarded (Villacampa Estiarte 2014; Pérez Machío 2016). A full implementation of this approach requires focusing on
prevention, particularly on addressing the root causes of trafficking, as well as ensuring that victims are adequately informed and advised, and can have adequate access to forms of reparation, including assistance, protection, and compensation, regardless of their ability or willingness to testify in criminal procedures (Villacampa Estiarte 2014).

Attempting to follow this strategy, Spain has enacted, or modified, several antitrafficking instruments. Some of them are binding norms, such as the Criminal Code; Organic Law 4/2000, of January 11, on the rights and freedoms of aliens in Spain (hereinafter Immigration Law); Royal Decree 557/2011, of April 20, which approves the Regulation of Immigration Law; and the recently passed Organic Law 4/2015, of April 27, of the Statute of Crime Victims. Others are not legally binding and thus are dependent on the political will of state agents (Rodríguez de Liévana and Waisman 2017). These are the Framework Protocol for the Protection of Trafficking Victims adopted in 2011, and Instruction 6/2016 on the action of State Security Forces in the Fight against Trafficking in Human Beings and in the Collaboration with Organizations and Institutions with Accredited Experience in Assisting the Victims. The above-mentioned instruments need to be framed within the two subsequent Comprehensive Plans to Combat Trafficking in Persons adopted in Spain. The first one came into force for the period 2009–2012. The second was adopted for the period 2015–2018. The principal areas of action of these plans are raising awareness, prevention and investigation, education and training, victims’ assistance and protection, and coordination and cooperation (Villacampa Estiarte 2014).

This chapter analyzes the most relevant anti-trafficking measures adopted in Spain, together with the most recent data about their application in practice, to determine to what extent, the attempt to control human trafficking from a human rights-based approach has been successful. It focuses on prosecution, the identification of victims, the granting of reflection and recovery periods as well as residence and work permits, and victims’ protection and assistance. The final sections offer an overall assessment and point out some aspects that need to be improved.

---

**The Prosecution of Human Trafficking in Spain**

**Historical Evolution of Human Trafficking in Spanish Criminal Law**

The original version of the Spanish Criminal Code, which dates from 1995, did not criminalize human trafficking at all. Four years later, the Organic Law 11/1999 modified the Criminal Code and introduced a new sub-paragraph in Article 188, regarding forced prostitution, to criminalize the facilitation of the arrival, stay or exit of persons from or into Spanish territory, for the purposes of sexual exploitation, by means of violence, intimidation, deception, or abuse of a position of vulnerability or necessity of the victim. Although the three elements of human trafficking (i.e., action, means, and purpose of exploitation) were present in this article, the definition was limited to transnational trafficking, and solely for the purposes of sexual
exploitation. Trafficking was somehow considered as an aggravating form of forced prostitution.

Later, in 2003, this paragraph of Article 188 was deleted, and a new section was added to Article 318 bis, which criminalized human smuggling. With this change, human trafficking was conceived as a form of human smuggling, aggravated for having been committed for the purposes of sexual exploitation. Therefore, human trafficking was systematically located in the Criminal Code together with “offences against foreign citizens’ rights,” which excluded from its scope of application cases in which the victims were Spanish or nationals of a Member State of the European Union. The Supreme Court confirmed this position in its Judgment 625/2007 of July 2, establishing that Article 312, concerning the offences against workers’ rights, should apply to non-foreigners (De León Villalba 2010). It is worth mentioning here that, at this point, 3 years after the ratification of the Palermo Protocol, the Spanish Criminal Code did not mention the terms “human trafficking” or “trafficking in persons,” but rather “illegal trafficking” and “clandestine migration” (De León Villalba 2010). This way of criminalizing human trafficking illustrates the confusion between this crime and human smuggling, and the focus on controlling irregular migration flows instead of victims’ protection, which is still patent nowadays (Faraldo Cabana 2017).

It was in 2010 when human trafficking was finally criminalized as an independent offence. Organic Law 5/2010 introduced Article 177 bis, which foresees a definition of trafficking closer to that included in the Palermo Protocol, Warsaw Convention, and the EU Directive. For the first time, trafficking for purposes other than sexual exploitation was considered a crime, and it was recognized that victims could also be Spanish, nationals of EU Members, or regular migrants coming from third States. Article 177 bis was ultimately modified in 2015.

**The Concept of Human Trafficking in Spanish Criminal Law**

As a result of the reform carried out in 2015, the current definition of human trafficking in Spain is the following:

**Acts:** The acts criminalized are the recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over them. The act must have been committed within Spain, from Spain, in transit or with destination therein.

**Means:** Except when the victims are minors, the actions must have been committed using violence, intimidation, deceit, abuse of a position of superiority, necessity or vulnerability of the victim, or by means of the giving or receiving of payments or benefits to achieve the consent of a person having control over the victim.

**Purposes of exploitation:** Forced labor or services (note that labor exploitation is not mentioned), slavery or practices like slavery, servitude, begging; sexual exploitation, including pornography; exploitation with the purpose of performing criminal activities; the removal of organs; and the celebration of forced marriages.
In general terms, the reform of the Criminal Code carried out in 2015 deserves a positive assessment. By including the exchange or transfer of control over people among the actions and the giving or receiving of payments or benefits to achieve the consent of a person having control over the victim, Article 177 bis explicitly criminalizes the sale, purchase, and interchange of human beings for the purposes of exploitation (Cano Paños 2015; Villacampa Estiarte 2015). Besides, the express inclusion of forced marriage and the commission of criminal activities among the purposes of exploitation serves to remove any possible doubt about its criminalization as human trafficking. It is no longer necessary to redirect these exploitative purposes to sexual exploitation and forced services, respectively (Villacampa Estiarte 2015). Also deserving of a positive evaluation is the inclusion of a clarification regarding the abuse of a position of vulnerability, which is defined in the same terms as in the EU Directive, that is, following the “non-option principle” (GRETA 2017, p. 39).

Despite these improvements, there are still some controversial aspects regarding the criminalization of human trafficking in Spain. The fact that Article 177 bis requires that the acts must have been committed “within Spain, from Spain, in transit or with destination therein” has been criticized for introducing a requisite that does not exist in international anti-trafficking legal instruments (Villacampa Estiarte 2014). Furthermore, it is remarkable that the Criminal Code does not include an autonomous offence of slavery, servitude, or forced labor. Thus, only the process that leads towards those forms of exploitation is punished as trafficking, but the effective exploitation remains unpunished, unless it can be redirected to an offence against the workers’ rights (Articles 311 and 312). This situation poses two problems: first, the offences foreseen in Articles 311 and 312 are too broad and leave a wide margin of appreciation to the courts; secondly, they foresee less harsh penalties than trafficking, leading to the paradoxical situation in which the process leading towards exploitation is more harshly punished than the situation of exploitation itself (Valverde Cano 2017; Villacampa Estiarte 2014). Another important shortcoming is the fact that, although Article 177 bis provides for the criminal liability of legal persons responsible for human trafficking, the Criminal Code does not impose sanctions on the users of any service exacted from a victim with the knowledge that the person has been trafficked, as suggested in Article 18.4 of the EU Directive (GRETA 2017; Villacampa Estiarte 2014). Between 2013 and 2015 only two sentences imposed the closure of establishments where trafficking in persons was committed (GRETA 2017).

Finally, concerning the sanctions imposed on traffickers, the Criminal Code prescribes penalties from 5 to 8 years of imprisonment, with enhanced penalties of up to 12 years in certain circumstances, including when the victim is a minor or especially vulnerable, when the life of the victim has been severely endangered, or when the offence was committed by a public official or by a member of an organized crime group. These penalties not only fully comply with international obligations, but also exceed them, if we consider that the EU Directive, for example, establishes maximum penalties of at least 5 years of imprisonment (Villacampa Estiarte 2014).
Convictions for Human Trafficking in Spain

As stated above, the Spanish Criminal Code did not create an independent offence for human trafficking until 2010. For this reason, data is available only from 2011. In its reply to the questionnaire for the evaluation of the implementation of the Warsaw Convention, the Spanish Government submitted the information Table 1 to GRETA on October 27, 2016 (GRETA 2017).

The 2017 Trafficking in Persons Report published annually by the Secretary of State of the United States reported 24 convictions in 2016: 22 for the purposes of sexual exploitation and 2 for forced labor.

The Spanish National Institute of Statistics (INE) provides the information about adults convicted for human trafficking in Spain between 2013 and 2016 (see Table 2).

These data show an increase in human trafficking convictions, particularly in 2015 and 2016, perhaps because of the reform of the Criminal Code. However, the number of convictions is very low, and there are many more cases identified by police than actual condemnations (Faraldo Cabana 2017). One possible explanation for this is the fact that evidence to obtain convictions is often based solely on victims’ testimony, when it should be supported by an adequate patrimonial investigation of the trafficker (Torres Rosell and Villacampa Estiarte 2017).

Besides, it is also patent that some progress in being made in the prosecution of trafficking for purposes different from sexual exploitation. In 2015, two important judgments can be highlighted. First, the Judgment of the Provincial Court of Seville, on October 20, 2015, in which two Romanian citizens were convicted for three crimes of trafficking for practices similar to slavery. Secondly, a Judgment from the Provincial Court of Almería, on November 13, 2015, in which six Romanian citizens were convicted of human trafficking for the purposes of begging. In the same line,

<table>
<thead>
<tr>
<th>Table 1  Number of convictions for human trafficking in Spain</th>
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<tbody>
<tr>
<td><strong>Convictions for trafficking for sexual exploitation</strong></td>
</tr>
<tr>
<td>2011</td>
</tr>
<tr>
<td>2012</td>
</tr>
<tr>
<td>2013</td>
</tr>
<tr>
<td>2014</td>
</tr>
<tr>
<td>2015</td>
</tr>
</tbody>
</table>

Source: GRETA (2017)

<table>
<thead>
<tr>
<th>Table 2  Number of adults convicted for human trafficking in Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
</tr>
<tr>
<td>2016</td>
</tr>
</tbody>
</table>

another case worth mentioning is the Judgment of the Provincial Court of A Coruña, on July 29, 2016, in which two Portuguese citizens were convicted for trafficking four Spanish men who suffered from mental and physical illnesses, for the purposes of forced labor and begging (GRETA 2017). However, the Spanish Government itself recognizes that there are still serious problems in identifying and prosecuting cases of trafficking for the purposes of forced labor, slavery, and similar practices (GRETA 2017).

Identification of Human Trafficking Victims in Spain

The Process of Identification

The process of identification of human trafficking victims in Spain is contained in the Regulation of Immigration Law and the Framework Protocol for the Protection of Trafficking Victims, both adopted in 2011. These texts state that the identification of the victim will be exclusively conducted by police units with specific training in the prevention and investigation of human trafficking (Article 141 and Section VI respectively). The designation of the police as the only agency in charge of identification is “highly problematic” (Rodríguez de Liévana and Waisman 2017, p. 511).

In this sense, it is important to highlight that the lack of training of public agents is one of the factors hindering the identification of human trafficking victims in Spain. Both the EU and the Spanish Ombudsman have warned that the training of border agents is insufficient and that there are not enough proactive mechanisms to identify victims: victims are expected to report their own trafficking situation (Defensor del Pueblo 2012; Milano 2016). In addition, a recent study, in which several professionals working in the identification and protection of trafficking victims were interviewed, showed that many of them stated that they did not know the contents of the Framework Protocol for the Protection of Trafficking Victims. Eight out of 28 officials interviewed said that they did not even know what they were being asked for (Torres Rosell and Villacampa Estiarte 2017).

The Spanish Government reported to GRETA that the process of identification relies on three pillars: evaluation of indicators, interviews with the potential victims, and information from third parties (GRETA 2017). It also added that each case is analyzed individually, considering all corresponding circumstances (GRETA 2017). However, there is no protocol setting out how the identification process should be carried out, so the process ends up being “in the hands of the director of each detention center, or even each police officer or team of officers” (Rodríguez de Liévana and Waisman 2017, p. 511).

When the identification process requires the testimony of the potential victim, a personal interview can be carried out, provided that it is conducted under conditions appropriate to the victim’s personal circumstances, ensuring the absence of anybody who could be linked to the traffickers, and, insofar as possible, providing due legal, psychological, and material support (Article 141 of the Regulations and Section VI of the Framework Protocol). However, in practice, interviews aimed at identifying
victims are not usually carried out under conditions that guarantee their privacy and security (Martínez Escamilla 2013). Besides, potential victims cannot be adequately informed about their rights because of the lack of trained interpreters (Martínez Escamilla 2013), when most of them do not speak Spanish (GRETA 2017).

**The Role of NGOs in the Process of Identification**

One of the biggest criticisms that the identification of human trafficking victims in Spain has faced is the limited role that civil society organizations have been given in this process. A study carried out by the European Parliament qualified cooperation between NGOs and official authorities as “unsatisfactory” (European Parliament 2016, p. 19). Article 141 of the Regulations simply indicates that organizations dedicated to the promotion and defense of the rights of trafficking victims may provide whatever information they consider relevant for this purpose. In this sense, specialized NGOs have informed that levels of cooperation with authorities are highly variable (Milano 2016). Although improvements in collaboration practices have been reported, specialized associations can only be observers in identification procedures, without being allowed to intervene or speak with victims beforehand (Milano 2016). Identification is exclusively carried out by police units, whose duties are not only the identification of trafficking victims, but also the fight against clandestine migration. This is impeding the correct identification of victims that are usually reluctant to talk to police officers, who they do not trust because they fear sanctions or deportation (Faraldo Cabana 2017; Rodríguez de Liévana and Waisman 2017; Milano 2016).

Fostering cooperation with organizations with proven experience in attending victims of human trafficking is one of the main objectives of the Framework Protocol for the Protection of Victims of Trafficking. This instrument reaffirms that these organizations can offer relevant information about trafficking cases, and it establishes that they can accompany and assist victims. With the same aim, a new instrument has been recently approved: Instruction 6/2016 on the action of State Security Forces in the Fight against Trafficking in Human Beings and in the Collaboration with Organizations and Institutions with Accredited Experience in Assisting the Victims. This Instrument foresees the creation of a Social Partner in Trafficking in Human Beings to facilitate coordination between the National Police, the Civil Guard, and specialized social institutions (GRETA 2017). This new figure is supposed to entrench and make more efficient the established channels for informing State Security Forces about potential cases (GRETA 2017).

**Data on the Identification of Trafficking Victims in Spain**

The data about the number of human trafficking victims identified in Spain has been obtained from the Spanish Government’s reply to the questionnaire for the evaluation of the implementation of the Warsaw Convention published by GRETA in 2017.

This information shows that most victims identified in Spain are women (see Table 3) trafficked for the purposes of sexual exploitation (see Tables 4 and 5). It

### Table 3  Number of human trafficking victims identified in Spain, by sex and age

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total (children and adults)</td>
<td>234</td>
<td>125</td>
<td>264</td>
<td>153</td>
<td>267</td>
<td>193</td>
</tr>
<tr>
<td>Boys</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>–</td>
</tr>
<tr>
<td>Girls</td>
<td>7</td>
<td>6</td>
<td>12</td>
<td>4</td>
<td>3</td>
<td>–</td>
</tr>
<tr>
<td>Total number of children</td>
<td>7</td>
<td>6</td>
<td>12</td>
<td>12</td>
<td>3</td>
<td>–</td>
</tr>
<tr>
<td>Adult males</td>
<td>17</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>101</td>
<td>–</td>
</tr>
<tr>
<td>Adult females</td>
<td>210</td>
<td>117</td>
<td>251</td>
<td>142</td>
<td>163</td>
<td>–</td>
</tr>
<tr>
<td>Total number of adults</td>
<td>227</td>
<td>119</td>
<td>252</td>
<td>146</td>
<td>264</td>
<td>–</td>
</tr>
</tbody>
</table>

Source: GRETA (2017), CITCO (2016)

### Table 4  Number of human trafficking victims identified in Spain, by type of exploitation and sex

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of victims trafficked for sexual exploitation</td>
<td>234</td>
<td>125</td>
<td>264</td>
<td>153</td>
<td>133</td>
</tr>
<tr>
<td>Total number of men trafficked for sexual exploitation</td>
<td>17</td>
<td>2</td>
<td>1</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Total number of women trafficked for sexual exploitation</td>
<td>217</td>
<td>123</td>
<td>263</td>
<td>146</td>
<td>129</td>
</tr>
<tr>
<td>Total number of victims trafficked for forced labor</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>134</td>
</tr>
<tr>
<td>Total number of men trafficked for forced labor</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>97</td>
</tr>
<tr>
<td>Total number of women trafficked for forced labor</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>37</td>
</tr>
</tbody>
</table>

Source: GRETA (2017)

### Table 5  Most common nationalities of human trafficking victims in Spain

<table>
<thead>
<tr>
<th>Year</th>
<th>Nationalities of most victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>Romania and Russia</td>
</tr>
<tr>
<td>2012</td>
<td>Romania and Paraguay</td>
</tr>
<tr>
<td>2013</td>
<td>Romania, Nigeria, and Paraguay</td>
</tr>
<tr>
<td>2014</td>
<td>Romania, Nigeria, and Bulgaria</td>
</tr>
<tr>
<td>2015</td>
<td>China, Romania, and Portugal</td>
</tr>
</tbody>
</table>
| 2016 | Sexual exploitation Romania, Nigeria, and China  
|      | Forced labor Romania, Portugal, and Bolivia   |
|      | Forced marriages Romania, Bulgaria, and Morocco |
|      | Forced criminality Romania, Bulgaria, and Morocco |
|      | Begging Romania                     |

Source: GRETA (2017) and CITCO (2016)
is unclear whether this occurs because this modality of trafficking is more prevalent in our society, or because law enforcement authorities are more aware of and trained to identify these cases. As is the case with prosecution, there are difficulties in identifying victims of trafficking for the purposes of forced labor or services, slavery or similar practices, and recently criminalized modalities such as begging, forced marriages and the exploitation of criminal activities (Faraldo Cabana 2017; GRETA 2017). The Labor Inspection Agency reported that between 2009 and 2011 only 21 cases of trafficking for the purpose of labor exploitation were detected in Spain (Defensor del Pueblo 2012). This happens because police and labor inspections usually occur in places where prostitution is practiced, with much less attention paid to places where labor exploitation exists, such as agricultural sectors, the textile industry, domestic service, construction, and hospitality (Faraldo Cabana 2017; Rodríguez Montañés 2015; US Department of State 2017).

In general, the identification process has been considered highly defective (Milano 2016; Rodríguez de Liévana and Waisman 2017). The number of identified victims is considerably inferior to the number of individuals in a situation of risk (Faraldo Cabana 2017). The Spanish Ombudsman has particularly highlighted the shortcomings in the identification of victims at the border (Defensor de Pueblo 2012). The most noteworthy evidence of the failure of the identification process are two studies showing the existence of trafficking victims held in a Migration Detention Center (CIEs) in Madrid (Martínez Escamilla 2013), and in two prisons in Lleida and Barcelona (Villacampa Estiarte and Torres Rosell 2012). Both pieces of research evidence the fact that victims of trafficking can be in touch with authorities and not only not be identified as such, but also be punished as a consequence of the trafficking process.

**Recovery and Reflection Period and Residence Permits for Human Trafficking Victims in Spain**

**Period of Recovery and Reflection**

Organic Law No. 4/2000, of January 11, on the rights and freedoms of aliens in Spain and their social integration (hereinafter Immigration Law) was amended in 2009 to allow the possibility of granting a recovery and reflection period to human trafficking victims with irregular migration status. Originally, the reflection period lasted 30 days, but in 2015 it was extended to a minimum of 90 days. During this period, victims cannot be sanctioned or deported due to their administrative situation, and so they can decide if they want to collaborate with law enforcement authorities in criminal proceedings against their traffickers (Article 59 bis). Besides, the State must provide for victims’ subsistence, and guarantee their safety, and the safety of victims’ underage or disabled children, as well as, in exceptional cases, the safety of some of their relatives who are in Spain (Article 59 bis).

According to the Spanish Ombudsman Institution (Defensor del Pueblo 2012), the recovery and reflection period is comprised of two phases. First, the victim...
should recover and feel safe. In the second phase, once the initial objective has been achieved, victims should be informed about the possibility of cooperating with relevant authorities (Defensor del Pueblo 2012). In practice, the granting of the recovery and reflection period will depend on the information that the person provides in relation to the traffickers and their willingness to collaborate in criminal proceedings (Faraldo Cabana 2017; Milano 2016). Even the European Parliament (2016) has warned that victims are often asked to cooperate with the criminal justice system before being given protection, since authorities seem to give priority to prosecution over assistance.

The Regulation of Immigration Law makes an important clarification in relation to the recovery and reflection period. Once the trafficked person has been identified by immigration authorities (note that the Regulations do not mention police officers specialized in trafficking but immigration authorities here), and if the victim consents, a proposal for granting a recovery and reflection period will be raised within 48 hours before the Delegation of Government of the province where the identification was carried out (Article 142). The Delegation of Government will then have 5 days to grant a reflection period if it considers that there are reasonable grounds to believe that the foreigner is a potential victim of trafficking. Despite this, the threshold required by the police and the Delegation of Government in practice is much higher than “reasonable grounds” since objective evidence is demanded instead (Milano 2016).

In this search for certainty, a requisite that the law does not include for identification, authorities may consider that erratic and unclear testimonies resulting from the traumatic experiences victims have lived through are lies (Martínez Escamilla 2013). State authorities can be influenced by the stereotypical ideas of how victims are supposed to behave, and their status can be questioned if they do not behave accordingly. Besides, women held in detention centers who claim to be trafficking victims are often believed to be making up stories so as not to be deported (Rodríguez de Liévana and Waisman 2017).

For these reasons, the Spanish Ombudsman Institution has expressed concerns over the “very low number of applications for the recovery and reflection period, which it attributes to officials using a too routine approach to offer the measure” (Defensor del Pueblo 2012, p. 9). The Spanish Government gave GRETA the following information concerning periods of recovery and reflection granted between 2011 and 2015, which indeed shows very small numbers compared to the number of victims identified in the same period (see Table 6).

**Residence and Work Permits**

At the end of the recovery and reflection period, the Administration must decide whether to provide assisted return or to grant the victim a residence and work permit due to exceptional circumstances (Article 59 bis). The residence and work authorization for human trafficking victims is further regulated in the Regulation of Immigration Law. In particular, Article 144 of this legal instrument establishes that
the permit can be granted for two distinct reasons: for collaborating with law enforcement authorities in the criminal investigation of a case, or due to the victims’ personal circumstances. The permit will last up to 5 years, and it will involve the possibility of working, self-employed or for others, in any occupation, sector of activity and territorial scope. Besides, victims have the possibility of accessing a long-term residence authorization (Article 144.5).

Thus, in theory, victims are not obliged to cooperate with the justice administration to be able to obtain a residence and work permit; it can also be granted if the return to the country of origin can put the trafficked person’s life or health in danger, or if there is a risk of revictimization (Milano 2016). The Spanish Government provided GRETA with information about temporary residence and work permits granted to trafficking victims between 2012 and 2015 (see Table 7).

Although the increase in permits for personal circumstances reported in 2015 deserves a positive assessment, it is remarkable that permits in Spain are mainly granted for cooperating with the authorities. GRETA has expressed concerns about the very small number of permits granted for personal reasons, underlining that in this way a message is being sent to the victims that they can only obtain permission if they collaborate with the authorities (Milano 2016).

### Table 6  Number of trafficking victims granted periods of recovery and reflection

<table>
<thead>
<tr>
<th>Year</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>62</td>
<td>4</td>
<td>63</td>
<td>5</td>
<td>92</td>
<td>7</td>
<td>59</td>
<td>3</td>
<td>86</td>
<td>9</td>
</tr>
<tr>
<td>Total: 66</td>
<td>Total: 68</td>
<td>Total: 99</td>
<td>Total: 62</td>
<td>Total: 95</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: GRETA (2017)

### Table 7  Number of work and residence permits granted in Spain

<table>
<thead>
<tr>
<th>Year</th>
<th>Total work and residence permits granted</th>
<th>For collaborating with law enforcement agencies</th>
<th>For personal circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>7</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>2013</td>
<td>21</td>
<td>19</td>
<td>2</td>
</tr>
<tr>
<td>2014</td>
<td>33</td>
<td>25</td>
<td>8</td>
</tr>
<tr>
<td>2015</td>
<td>54</td>
<td>38</td>
<td>16</td>
</tr>
</tbody>
</table>

Source: GRETA (2017)

Concerning victims’ assistance, the Regulation of Immigration Law of 2011 only includes a succinct reference to a public network of migration centers, which can eventually carry out assistance and social intervention tasks (Article 264). This has been interpreted as evidence of the little importance that has been given to assistance, a

### Protection and Assistance of Human Trafficking Victims in Spain

Concerning victims’ assistance, the Regulation of Immigration Law of 2011 only includes a succinct reference to a public network of migration centers, which can eventually carry out assistance and social intervention tasks (Article 264). This has been interpreted as evidence of the little importance that has been given to assistance, a
fundamental aspect of the human rights-based strategy (Villacampa Estiarte 2014). This aspect is further developed in the Framework Protocol for the Protection of Victims, also adopted in 2011. The Framework Protocol gives special importance to the obligation of Security Forces to inform the victims about their rights in criminal proceedings, the possibility of being granted a period of recovery and reflection and a work and residence permit, as well as the safety measures and resources at their disposal. These resources include convenient and safe accommodation; material, psychological, and medical assistance; and interpretation and legal advice services (Section VII).

A study carried out by the European Parliament (2016) indicated that victims are “often not adequately informed of their rights, the assistance and support measures that are available to them” (p. 19). “Police officers simply give them a piece of paper with the information about a reflection period when they have just arrived, they do not interview victims or explain the procedure to them” (Rodríguez de Liévana and Waisman 2017, p. 519; Torres Rosell and Villacampa Estiarte 2017). The tendency in practice is to give priority to the prosecution of crime over the recovery of the trafficked person (Pérez Machío 2016).

Assistance to victims depends heavily on NGOs and other civil society entities (European Parliament 2016; Torres and Villacampa 2017). Most public officers performing tasks related to human trafficking admit that they do not know the type of assistance received by the victims since this is a question entrusted to other institutions (Torres Rosell and Villacampa Estiarte 2017). The Spanish government claims to have allocated €4.9 million for the protection and support of trafficking victims, including €2 million for NGOs providing services and shelter to victims. However, the EU has noted that funding is still very limited (European Parliament 2016). Police Officers and Public Prosecutors also denounce the lack of both economic and human resources that assistance agencies are facing (Milano 2016; Torres Rosell and Villacampa Estiarte 2017). This lack of resources becomes especially patent when victims are minors, people with disabilities or when they have been found in rural areas (Torres Rosell and Villacampa Estiarte 2017).

Funding is particularly necessary to provide victims with convenient and safe accommodation. Shelters for trafficking victims are run by NGOs, but they are partly financed by the government (Rodríguez de Liévana and Waisman 2017). The Spanish Government has informed about the existence of the following accommodation options (see Table 8).

As the Ombudsman criticized in 2012, the lack of specialized housing centers for trafficking minors is particularly worrying (Defensor del Pueblo 2012). Because of this shortage, the few children who are identified can either be sent to shelters for adults where they do not receive child-oriented care, or they can be referred to general children’s homes where they can easily be reached by traffickers again (Rodríguez de Liévana and Waisman 2017).

Finally, the most recent legal instrument concerning victims’ protection is Organic Law 4/2015, of April 27, of the Statute of Crime Victims. It foresees measures to protect victims during criminal investigations and proceedings, such as the right to avoid contact between victims, their relatives and the alleged perpetrator (Article 20); the right to be accompanied by a person of their choice during formalities (Article 21); or the
right to have a statement taken by a person of the same gender, if requested by the victim, when they have been subject to sexual exploitation (Article 25). This new law also contains special provisions for children and victims with special protection needs (Article 26). Despite recognizing the advantages of these new regulations, it still has not solved the problem posed by the fact that, although victims’ identities can remain hidden during the investigation of the case, judges must disclose them at the request of any party once the trial starts (Torres Rosell and Villacampa Estiarte 2017).

Summary: Critical Assessment and Proposals for Improvement

The above sections have shown that Spain has taken several positive measures to comply with international requirements regarding the fight against human trafficking. It is remarkable that mechanisms concerning the prosecution and the migration status of the victims are enshrined in legal provisions, while prevention, protection and assistance is mainly foreseen in plans and protocols (Milano 2016). Besides, by contrasting law in theory with available data of law in practice, it becomes patent that Spain has not yet fully succeeded in its attempt to tackle human trafficking from a human-rights perspective, especially in what concerns victims’ protection and assistance.

Overall, three primary flaws can be identified in the general strategy against human trafficking in Spain. The first one is that human trafficking policies in Spain have almost exclusively addressed the sexual exploitation of women, overlooking other purposes such as forced labor, forced begging, the removal of organs, etc. (Faraldo Cabana 2017; Pérez Machio 2016; Rodríguez de Liévana and Waisman 2017; Torres Rosell and Villacampa Estiarte 2017). The Comprehensive Plans, particularly the second one, are supposed to adopt a gender perspective in the fight against trafficking, arguing that most victims of sexual exploitation are women. However, the gender approach here seems to be used as an excuse to cover the lack of ability to identify and assist male and children victims of trafficking and other modalities of exploitation (Faraldo Cabana 2017; Torres Rosell and Villacampa Estiarte 2017).

Secondly, human trafficking is still seen as a mere problem regarding irregular migration. The Comprehensive Plans are not able to differentiate between human

---

**Table 8** Accommodation options available for human trafficking victims in Spain

<table>
<thead>
<tr>
<th>Accommodation options</th>
<th>Total number of accommodation options</th>
<th>Total number of places</th>
<th>Total number of accommodation options for children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>Places for child victims</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Places for women with under-age children</td>
</tr>
<tr>
<td>45</td>
<td>420</td>
<td>3</td>
<td>28</td>
</tr>
<tr>
<td>Other resources</td>
<td>Day-care assistance centers</td>
<td>Accommodation options offering 24-h hotlines</td>
<td></td>
</tr>
<tr>
<td>138</td>
<td>57</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: GRETA (2017)
trafficking and migrant smuggling, and the interest in controlling irregular migration seems to prevail over the obligation to guarantee victims’ human rights (Defensor del Pueblo 2012; Faraldo Cabana 2017; Villacampa Estiarte 2014). Evidence of this approach is the fact that legal provisions concerning identification, assistance, and protection are still regulated in the Immigration Law (Milano 2016). Thus, national victims and foreign victims with a regular migration status are overlooked and, at the same time, victims with an irregular migration status are not adequately identified either, because they are reluctant to approach authorities due to fear of being detained and deported (Faraldo Cabana 2017). Indeed, the condition of irregular migrant prevails over the status of trafficking victims, and many trafficked victims are not only not identified but also punished for their administrative situation (Martínez Escamilla 2013, Pérez Machío 2016).

The third flaw is that anti-trafficking plans in Spain have mainly followed a securitarian or crime-centered approach. Human trafficking has been conceived as a threat against the diffuse interests of the State instead of a violation of victims’ human rights (Faraldo Cabana 2017). Consequently, victims are only offered protection if they are willing to collaborate with the police in the identification and prosecution of traffickers (Faraldo Cabana 2017; Rodríguez de Liévana and Waisman 2017; Torres Rosell and Villacampa Estiarte 2017; Milano 2016). This strategy is so deeply rooted that some police officers in charge of victim identification seem to consider that the need to grant victims some time to reflect before being able to interview them may hinder criminal investigations, which seem to be the first and most important objective (Torres Rosell and Villacampa Estiarte 2017).

Despite these criticisms, it would be unfair to say that there have been no improvements since the approval of the first measures in 2009. In terms of prevention and the identification of victims, the implementation of the Comprehensive Plans leads to the creation of a Central Brigade against Trafficking in Human Beings, the establishment of a free telephone line to assist victims, the setting up of a website with specific information, and the launching of campaigns to raise awareness on social media (Milano 2016; Villacampa Estiarte 2014). There have also been advancements in the coordination between public prosecutors, Civil Guard, National Police, Immigration units, and NGOs, although it still needs to be further fostered (Torres Rosell and Villacampa Estiarte 2017). Authorities in charge of identifying victims are not only better coordinated but also better trained. In 2015, the first online training course on trafficking in women and girls for sexual exploitation aimed at professionals at the local level was conducted (GRETA 2017). In 2016, the government trained 300 new Civil Guard officers in victim identification, all-new prosecutors in trafficking issues, and 600 civil servants and social workers in rural areas (US Department of State 2017). In terms of assistance and protection, Organic Law 4/2015, of April 27, of the Statute of Crime Victims has introduced important novelties for protecting victims in criminal proceedings. Finally, the levels of prosecution have increased overall. More cases of national and EU victims, as well as labor trafficking cases, are being identified, which constitutes a sign of the incipient abandonment of the focus on sex trafficking (Faraldo Cabana 2017).
Overall, the change towards a human rights-centered approach is taking place slowly (Faraldo Cabana 2017). Several improvements still need to be made. It is important to continue improving the training of authorities that might enter contact with trafficking victims, so that they can correctly identify and assist them, without being influenced by stereotyped and simplistic conceptions of trafficking. It is mandatory to raise awareness on labor exploitation and forced criminality, increasing the inspections of risk areas. Publishing a Plan to Combat Trafficking for the Purpose of Labor Exploitation would be highly beneficial (Defensor del Pueblo 2012). In addition, it is necessary to develop formal mechanisms of cooperation and coordination between authorities and civil society organizations specialized in the care and protection of trafficking victims (Rodríguez de Liévana and Waisman 2017; Defensor del Pueblo 2012). Identification should not be entrusted solely to police immigration units; social agents should be given a greater role in these processes, as has been done in other countries such as Italy and the United Kingdom (Milano 2016). Moreover, the granting of a recovery and reflection period and a residence and work permit should be a possibility given to all victims of human trafficking, regardless of their migration status, and regardless of whether they want to collaborate with law enforcement authorities (Pérez Machío 2016).

All these aspects should be addressed by a Comprehensive Law against the Trafficking of Human Beings, which puts an end to the normative dispersion in the matter and the connection and confusion with immigration law, paying special attention to the protection of victims (Milano 2016; Torres Rosell and Villacampa Estiarte 2017). This Comprehensive Law should be accompanied by the establishment of a National Rapporteur who assesses trends in human trafficking, measures the results of anti-trafficking strategies, and coordinates the work of different public administrations and civil society organizations (Rodríguez de Liévana and Waisman 2017). Spain already formally appointed a National Rapporteur on April 3, 2014, to fulfill the obligation enshrined in the EU Directive. However, the Spanish National Rapporteur is a representative of the Secretary for Security within the Ministry of the Interior and, consequently, statistics gathered on trafficking are conflated with information about irregular migration, criminal investigations, and prostitution (Rodríguez de Liévana and Waisman 2017). In order to fully comply with international obligations, the National Rapporteur should be an independent figure (European Parliament 2016). Only then will we be able to talk about the achievement of a human-rights-based strategy to combat human trafficking, and not simply an attempt.

Cross-References

▶ European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking
▶ The Praxis of Protection: Working with – and Against – Human Trafficking Discourse
▶ UN Palermo Trafficking Protocol Eighteen Years On: A Critique
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Response for Human Trafficking in Poland in a Nutshell

Zbigniew Lasocik

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Abstract

Human trafficking made its first appearance in Poland 20 years ago in the form of exploitation of women in the sex-trade industry. Around the same time, the first victim of forced labor was identified. Since making its first official appearance, new forms of human trafficking have appeared, forms which include individuals being forced to take out bank loans and the coercion of both adults and children to commit various crimes. Poland is one of the few European countries that serve not only as a country of origin for trafficking victims but as a country of destination and a country of transit as well.

In Poland, efforts to control human trafficking are primarily regulated by criminal law. The main provisions for penalizing human trafficking, in the country, include commercial adoption and the enticement and transportation of women into prostitution, as well as crimes involving the slave trade. One other valuable addition to Polish criminal law is the Transplantation Act, which regulates the harvesting, storage, and transplantation of cells, tissues, and organs.

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The current protocols used in Poland to combat human trafficking include legal regulations, directives of the National Action Plan, activities of the Interministerial Team for Combating and Preventing Trafficking in Human Beings, institutional infrastructure, operations of law enforcement agencies and prosecutors, as well as activities of nongovernmental organizations. However, this system lacks a long-term strategy, independent evaluation, and a research agenda or program, and despite efforts to eliminate human trafficking from public life, the phenomenon has continued to expand. This chapter seeks to identify these efforts by the Polish government system and analyzes their effectiveness in eliminating human trafficking.

Keywords
Poland · Human trafficking · Sexual exploitation · Forced labor · Organ harvesting · Slave trade

Introduction

Despite all formal efforts to combat human trafficking in Poland, the fundamental contention of this chapter is that the coordinated response to human trafficking remains largely inadequate. Considering the scale of human trafficking in Poland, the current response is both detrimental to the human rights of victims and a threat to the foundations of the political and social order established after 1989, and further steps should be set in place to control the prevalence of trafficking in Poland. The relatively extensive system of public institutions, including both state and local governments and social institutions that deal with human trafficking, is inefficient, inflexible, and severely underfunded.

To understand Poland’s efforts to combat human trafficking, it is essential to understand the past 80 years of the country’s tumultuous history. Following a period of German occupation that spanned 1939–1945, Poland was classified as part of the “Eastern Bloc,” where it remained a Soviet satellite state until 1989. During this period, the country was ruled under a totalitarian regime by the Communist Party, where it saw the implementation of the model of a centrally planned socialist economy that was based on common ownership. Poland gained both sovereignty and a traditional market economy after a series of peaceful systemic changes between the years of 1989 and 1990. It became a member of the Council of Europe in 1991 and in 1999 was admitted to the North Atlantic Treaty Organization (NATO), which has a zero-tolerance approach to human trafficking. This was followed by Poland’s entry to the European Union in 2004. The membership that had the most notable effect on human trafficking in Poland was the country’s 2007 entry into Europe’s Schengen Agreement, through which internal border checks have primarily been abolished for member countries. This open-border policy, with minimal checks and passport control, provided an open door for human trafficking between member countries (see other entries in this section).
Officially, the first criminal offences of human trafficking appeared in Polish courts around 2001; despite efforts to eliminate it from public life, it has continued to grow and diversify. However, as Karsznicki (2010) noted, its nature has continually changed since first being detected: trafficking has increasingly become a well-organized activity of criminal groups that involves new and increasingly sophisticated forms of servitude and exploitation. Analyses of the number of criminal cases and the sociodemographic profiles of identified victims illustrate several growing concerns. For example, while victims once came mostly from Belarus and Ukraine, victim origins today include a wide variety of countries from virtually every region of the world.

Public perception of human trafficking has also shifted. When it first emerged in Poland, the dominant belief was that human trafficking exclusively involved the exploitation of young women through prostitution. However, recognized forms of human trafficking now include forced labor and forced begging, and victims can include persons of any age, race, or gender. As recently as 2005, those involved in the field believed that the arrival of the La Strada Foundation, a Polish-based network of anti-trafficking NGOs, would help solve all human trafficking problems. Unfortunately, as Pearson (2005) pointed out, it is widely recognized that the infrastructure of civil society cannot sufficiently match the scale and nature of the problem. This is especially true in Poland, where state tools available for the prevention of and response to cases of human trafficking remain severely inadequate.

As Baumeister and Fink (2005) note, despite the tremendous change that the phenomenon of human trafficking has undergone since the early 1990s, it still does not attract the interest of political authorities it deserves. After issuing the Framework Decision of 2002 regarding human trafficking, the European Union fell silent for nearly a decade, with the next significant legal act on the subject being the directive of 2011.

Currently, in Poland, human trafficking is not the subject of much systematic research, nor is it the focus of any comprehensive range public campaigns. Even though the creation of such a system is the regular subject of public debate and though several public institutions collect statistical data on human trafficking in Poland, the country lacks a unified system for organizing the data in ways that could be made useful.

**Human Trafficking in Poland: Genesis and Specifics**

Perrin (2010) reported that Poland is one of the few European countries that serve not only as a country of origin of trafficking victims but as a country of destination and transit as well. This distinction arose out of a series of political and economic changes that occurred between the years of 1989 and 2007. Much like other Eastern European countries, the history of contemporary crime in Poland coincides with the economic reforms that arose with the collapse of the communist system in 1989. Macro-social phenomena such as the elimination of the socialist system, the introduction of a democratic system, and the liberalization of regulations concerning the
movement of people, coupled with the inefficiency of police services, meant that the early 1990s saw a sharp increase in criminal behavior. As Bales’ (2005) study reported, “pull factors” which direct market demand brought with it the rapid development of the sex-trade industry, including prostitution, and the production and distribution of pornography.

After 1990, Poland saw a rise in previously unseen or well-camouflaged institutions that served as covers for sexual services, including massage parlors, escort agencies, nightclubs, and “wellness spas.” These facilities were typically managed by organized crime groups that controlled the acquisition and sale of illegal drugs and alcohol, sexual services, and “underground” gambling. However, the rapid development of the sex industry in Eastern Europe was only possible due to the informal links between criminal groups and law enforcement agencies tolerating this kind of activity. With growing demand from Western European societies for more sophisticated services – sexual services among them – it was natural for Eastern Europe to become a productive and relatively safe source of potential trafficking victims. What arose was the creation of an effective system for the recruitment of young women who were already providing sexual services in Poland and who were ready to perform such work throughout Western Europe. While these women were mostly aware of the offers being made to them, they failed to realize how the expectations of their new employers and their new working conditions would quickly devastate their lives (Lasocik 2012).

As the Christian Action and Network against Trafficking (2007) reported, in addition to recruiting existing sex workers from Poland, another method of recruiting women for work in the Western European sex industry was solicitation based on false offers of employment. Initially, recruitment was conducted “legally,” usually through newspapers or online advertisements for work in beauty salons, the food industry, childcare, and agriculture. Over time, recruiters began to use direct contact instead of newspaper or online advertisements. Taking advantage of these women’s naiveté and desire to achieve financial success made it easy to recruit dozens of women in short (or a shorter) period of time (Bales 2005).

Another mechanism for recruiting women was, and still is, the “lover boy” method. In this method, the perpetrator pretends to have an affair with a young woman and then uses any excuse to take her abroad and then sell her to traffickers. As some commonly used recruitment methods involve the use of coercion, some women who ended up in brothels and nightclubs in Western Europe were kidnapped, illegally transported across the border, and forced to work (Situation Report 2016).

An article called Trafficking in Ukraine (2005) cited that organized criminal groups quickly discovered markets with great potential for the recruitment of victims of human trafficking, namely, coming from countries of the former Soviet Union. Rapid economic changes in Poland, combined with an almost complete lack of reform in these countries, quickly deepened the differences in wealth between neighboring societies. As a result, young Eastern European women appeared in Poland, where they expected to make good earnings in exchange for sexual services. As the Situation Report (2016) noted, this is the moment when Poland became a destination country of human trafficking.
As noted in Knap (2000), this new phenomenon was controlled almost entirely by international criminal groups, and at this point, leaders of the criminal underworld in Poland and neighboring countries took the risk of transporting Polish women to Western Europe instead of engaging Ukrainian and Belarusian women. Despite the dangers of crossing the borders, organized crime groups from Poland, Bulgaria, Russia, Turkey, and Germany felt impunity to the extent that in Poland they organized “castings” or, rather, “markets” of unsuspecting women who were to be sold abroad.

Knap’s study also cited information from the National Program for Combating and Preventing Human Trafficking which noted that between 1995 and 2002, law enforcement agencies completed nearly 260 criminal proceedings, 53 of which focused on the exploitation of foreign victims in Poland. Law enforcement identified 480 perpetrators – mainly Poles, but also Russians, Bulgarians, and Germans – and nearly 1250 female victims of human trafficking. Many of these victims came from Belarus, while others came from Ukraine, Bulgaria, Vietnam, and Mongolia.

Current statistical data shows a shift in victim distribution. For example, 2015 statistics released by the Ministry of the Interior and Administration called Trafficking in Human Beings in Poland (2015) shows that the number of Belarusian victims has decreased significantly from 7 to 2 persons since 2009, while the number of victims coming from Vietnam and Ukraine has increased from 52% in years 2012–2013 to 78% in 2015.

Based on this data, one can form five general statements regarding human trafficking for sexual exploitation in Poland between 1995 and 2005:

1. The modus operandi of human traffickers involved the transport of young women from Poland to other countries, either voluntarily or under duress, where they were enslaved and forced to provide sexual services.
2. Young women from neighboring countries, voluntarily or under duress, were transported to another country, where they were enslaved and forced to provide sexual services.
3. Poland continued to serve as a country of origin of victims to countries including Germany, the Netherlands, Great Britain, Sweden, Belgium, Italy, Spain, and France.
4. Poland continued to serve as both a destination country and a transit country for victims from countries including Ukraine, Bulgaria, Vietnam, Romania, the Philippines, Belarus, Moldova, and Russia.
5. Sexually exploitative offences dominated Polish trafficking until the early 2000s, when the first victim of forced labor – a Vietnamese man – was identified in Poland and his traffickers sentenced (Lasocik 2007).

As Wieczorek (2017) reported, forced labor first officially appeared in Poland in 2003. Identification of the first victim, a Vietnamese man known as “V,” marked the beginning of a period of intense change in the phenomenology of human trafficking in Poland. A Vietnamese national (“X”) living in Poland victimized “V.” Because “V” did not have the money to pay for his trip to Poland, “X” offered to cover the costs so long as “V” worked off his debt. “V” agreed and was illegally transported to
Poland, where he worked for “X”; however, after some time, he was sold to another Vietnamese man, “Y,” for whom he was forced to work for several months. Following a routine inspection carried out by border guards, “V” was identified not only as an illegal immigrant with fake identity documents but also as a trafficking victim. He was deported to Vietnam, while both “X” and “Y” were arrested and sentenced for human trafficking.

This case was a milestone in the development of the Polish response system toward human trafficking. The fact that the victim was subjected to the servitude of debt bondage illustrated that human trafficking is not limited to the sex-trade industry. Furthermore, the nationalities of both the victim and the perpetrators, both X and Y, proved that parties involved in trafficking could come from countries other than where the crime is committed, which can hinder opportunities for the identification of victims and which creates new challenges for law enforcement agencies. In addition, the case serves to illustrate the importance of sensitivity when dealing with minor crimes committed by trafficking victims, such as the violation of immigration laws: the deportation of trafficking victim “V” was undoubtedly a mistake on the part of the Polish authorities. Finally, the mode of identifying the trafficking victim confirmed the importance of routine checks and proper preparation of law enforcement officials for valid identification of victims of human trafficking.

Another significant case detailed by the Washington University Global Studies Law Review (Dyk 2013) involved the exploitation of Poles working on fruit and vegetable plantations in Southern Italy. The situation was widely reported by the Polish, Italian, and international media and helped bring human trafficking to public awareness and reoriented law enforcement practices that the victims were not only “naive” young girls but common workers as well. During the 2006 summer holiday period, the Polish media published a series of articles that described the challenging conditions faced by fruit and vegetable pickers working in the Italian province of Bari. While these workers voluntarily accepted seasonal legal work for local growers, the living and working conditions they faced were deplorable. Many were housed in primitive barracks, sometimes without electricity or sanitation, and workers were monitored continuously by employer-provided security. The press reported that the workers were forced to toil in hot temperatures without regular access to drinking water and were denied breaks for rest and shade. The remuneration provided was much lower than the agreed-upon price, and they faced financial penalties for insubordination. Men who tried to stand up for their rights were beaten and women raped. These workplaces were branded “concentration camps” by some Polish newspapers, demonstrating the severity of the negative sentiment generated toward the employers given the very significant meaning of such a label in Poland. An intervention was finally carried out by the Italian Carabinieri (i.e., a military force responsible for various national police duties) due to both the inaction of the local Italian authorities and the links between the employers and the local police. Records from the Regional Court in Krakow show that the officers rescued nearly 200 out of the 870 victims and arrested the perpetrators. At the same time, Polish authorities arrested those responsible for recruiting the Polish victims. The ministries of justice in both countries took steps
to open and close the investigation quickly. The Italian perpetrators were tried in Italy and sentenced rapidly relatively. However, sentencing for the Polish recruiters was not carried out in Poland until 2013 and not enforced until 2016 (District Court Cracow, file no: III K 21/07).

Much like the Vietnamese case, this case yielded new knowledge for the public and vital experiences for law enforcement. The case, which law enforcement agencies dubbed *Terra Promessa* (Promised Land), highlighted the need for a critical look at Polish criminal law and for consideration of the criminalization of forced labor, which up until the time of this writing has been without results. In fact, while a full 12 years have passed since this exploitation of Polish workers was first reported, Poland still lacks a provision penalizing forced labor. The case also challenged the misconception that human trafficking victims are only young women who agree to prostitution in exchange for financial gain, as the victims identified in Italy included adult men, homemakers, and students, all of whom were seeking well-paid seasonal work abroad.

As Dąbrowski (2014) reported, the following years continued to see several high-profile cases of the exploitation of foreigners from Bangladesh, Thailand, the Philippines, and North Korea in Poland. Each case sounded very similar: low-income victims took out loans to come to Poland with the promise of work, although they were misled as to their working conditions. Upon arrival, they were forced into low-paid and challenging work and had most of their earnings withheld for “expenses.” These cases have illustrated problems not only related to trafficking but also to intercultural communication, as the homogeneity of Polish society meant that public agencies were unprepared to deal with issues faced by people from different cultural backgrounds.

Another common problem, seen almost from the beginning of reports of human trafficking in Poland, involved begging – usually forced begging – which has been a regular occurrence on the streets of Polish cities. Such begging was and still is generally organized by international criminal groups, whose members include Poles, Romanians, Ukrainians, and Moldovans. Common victims include Romanian, Ukrainian, and Bulgarian women and children; some children were even forced to beg in the company of people they did not know (Wieczorek 2017).

The period between 2010 and 2015 saw a mass migration of Poles to countries such as Great Britain, Ireland, Germany, Norway, and Sweden, mostly due to economic reasons and a search for a better life. In most of the cases, these migrants did well; however, some of them fell into various forms of exploitation. It was around this same time that three new types of exploitation of human trafficking victims appeared: (1) forcing adults to take out loans in banks or to purchase luxury items (mainly in Germany), (2) pushing adults to fraudulently obtain undue social benefits (mostly in Great Britain and Ireland), and (3) forcing adults and children to commit crimes (mainly in Sweden).

The only recognized form of human trafficking that is not currently present or identified in Poland is trafficking in human organs and tissues. According to Polish transplant surgeons, this is likely due to the strict transplant laws and restrictive practices of medical facilities (Rowiński 2006).
While trafficking in human organs and tissues is not currently seen in Poland, the country does see the practice of surrogacy, in which a woman consents to the conception, birth, and surrender of a child for an agreed-upon price (Lebensztejn 2014). Surrogacy is not yet regulated by law in Poland: no legislation forbids it, but there is also no protective legislation in place. As reported in 2016 by a Polish news website called “NaTemat,” for some time, there was an agency near Warsaw that aided in matching married couples with paid surrogates. In recent years, information has become available online about similar agencies, such as Ukraine’s BioTexCom, operating in Poland and abroad (i.e., mother-surrogate.com).

Finally, there is the issue of illegal commercial adoption. While commercial adoptions are a crime under Polish criminal law, prosecution can be challenging as it must be proven that a perpetrator organized an illegal adoption for financial gain. Article 211(a) of the Polish Penal Code places sole liability for the crime on the organizer of the adoption, leaving the individuals responsible for giving up or purchasing a child unpunished. Polish police statistics report that 14 cases of illegal commercial adoptions were confirmed between the years of 2012 and 2016.

**Legal Regulations on Human Trafficking in Poland**

Poland has held two criminal codes in the years after World War II: the Code of 1969 and the Code of 1997. Each of these codes included rules penalizing slavery and the trafficking of women. Although the 1969 Code did not include relevant provisions on slavery and human trafficking within its main text, provisions were later contained within a separate legal act that introduced new criminal codification and accompanied the entry into force of the new code (Polish Journal of Laws of 1969, No 13, item 95).

The most comprehensive scope of penalization was laid down in Article VIII, under which “whoever causes another person to go into a state of slavery or is involved in the slave trade is subject to imprisonment of not less than 3 years.” This regulation was introduced to fulfill Poland’s international commitments to the Slavery Convention, signed at Geneva on September 25, 1926, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, signed in Geneva on September 07, 1956. However, what was adopted in practice was very narrow compared to the expectations of the international community. Areas omitted in this provision include serfdom, debt bondage, and forced labor. Article IX (§ 1) stated: “Whoever provides, entices or abducts another person for prostitution, even with their consent, is subject to a punishment of not less than three years.” Under § 2 of the same article, the same punishment applied to anyone who traffics women or children, even with their consent.

Regulations were introduced as the result of Poland’s accession to numerous international agreements that prohibit human trafficking and exploitation for prostitution, including the Convention of Lake Success of 1950 (Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of
While these provisions were introduced into Polish criminal law, they were barely applied and did not arouse the interest of the doctrine of criminal law. In democratic Poland – after 1989 – human trafficking was penalized under the Penal Code of 1997, which was primarily influenced by the first cases of trafficking for sexual services. Particularly important for the penalization of human trafficking was Article 253(1), which stated that anyone who trafficked human beings, even with their consent, was subject to punishment ranging from 3 to 15 years imprisonment. Namysłowska (2011) brought out that the laconic wording of this provision led to significant problems with interpretation and significantly limited the effectiveness of the penalization of traffickers, leading some to argue that the rule contradicted the principle of *nullum crimen sine lege* (“no crime without law”).

Article 253(2) stated that whoever organized the commercial adoption of children for the intent of material gain was subject to imprisonment of between 3 months and 5 years. Article 204(4), in which the enticement and abduction of another person for prostitution abroad, is punishable by 1–10 years in prison. The prototype of this rule was Article IX of the Act on Regulations Introducing the Penal Code of 1969.

An essential supplement to the regulations, as discussed in Article VIII of the Act on Regulations Introducing the Criminal Code of 1997, states that “whoever causes another person to go into a state of slavery or keeps them in this state or is involved in the slave trade is subject to imprisonment of not less than 3 years.” Identical to the abovementioned provision of Article VIII of 1969, it remained in effect because it fulfills the requirements of the international agreements to which Poland is a party. These include the Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others, 1949, and the Supplementary Convention on the Abolition of Slavery, 1956.

Although there was a lack of a legal definition of human trafficking in the Penal Code, the Polish legal system had a chance to integrate at least three definitions of trafficking as found in international law. According to the Polish Journal of Laws, on September 29, 2003, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the “Palermo protocol”), entered into force for Poland; this made the definition of human trafficking contained within Article 3 of the protocol part of national law. Because Poland joined the European Union on May 01, 2004, a substantial portion of the acquis communautaire (Acquis of the European Communities) became part of the applicable national law. Thus, the Council Framework Decision of July 19, 2002 regarding combating trafficking in human beings (2002/629/JHA), which in Article 1 also contained a definition of human trafficking modelled on the definition provided in the Palermo protocol, became part of Polish law. Finally, the definition of human trafficking was contained in Article 4 following the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 (Polish Journal of Laws No 20, item 107).

As noted by Namysłowska (2011), an analysis of case law from this period shows that law enforcement agencies and courts only occasionally referred to these definitions. This situation was met with harsh criticism from NGOs, representatives of the academic community, and eventually high-level members of the Polish government, who perceived it as a threat to the effective elimination of human trafficking from
Poland. The only solution was to try to reform criminal law, a task undertaken in the National Action Plan against Trafficking in Human Beings for 2003–2004.

Despite the widespread belief in the need to define human trafficking within Polish law, the process took almost 8 years. High-level ministerial officials within the Ministry of Justice, primarily prosecutors and judges, provided the most resistance to its introduction because of their prevailing attitude that the victims (i.e., prostitutes) were as much, if not more, to blame as the perpetrators. And yet it was the prosecutors who were most often criticized by the police and the border guards, for obstructing or blocking criminal proceedings by rejecting the qualification of specific acts under Art. 253 (human trafficking). The judges repeatedly renounced convictions for such crimes, stating that they could not “find” elements of a typical civil law transaction in the described crimes. The Ministry of Justice finally prepared appropriate amendments of the Penal Code Act, the Act on the Police, the Act on Regulations Introducing the Penal Code, and the Code of Criminal Procedure Act, which was adopted on May 20, 2010 (Polish Journal of Laws of 2010, No 98, item 626). With this initiative, two definitions were introduced to Polish criminal law under Act 115 of the Penal Code: Definition of Human Trafficking and the Definition of Slavery. Under § 22 of this article, human trafficking was defined as:

The recruitment, transportation, delivery, transfer, harboring or receipt of persons by means of: violence or unlawful threat, abduction, deception, misleading, the exploitation of a person’s mistake or their inability to properly comprehend the action being undertaken, the abuse of a relation of dependence, taking advantage of a critical situation or state of helplessness, giving or receiving of payments or benefits or the promise thereof to achieve the consent of a person having control over another person – for the purpose of exploitation, even with the person’s consent, in particular in prostitution, pornography, or other forms of sexual exploitation, forced labor or services, begging, slavery or other forms of exploitation degrading human dignity, or for the removal of cells, tissues, or organs against the regulations of the Act.

Under this provision, if a perpetrator’s behavior involves a child (under 18 years of age), it also constitutes human trafficking even if the abovementioned methods and means of victim enslavement have not been used. Under § 23 of the same provision, slavery was defined as “a state of dependency in which a person is treated as an object of property.”

In addition to providing definitions for human trafficking and slavery, the Act repealed and rewrote multiple articles of the Penal Code. Articles 253(1), on human trafficking, and 204(4), enticing and transporting women into prostitution, were combined and written as the new Article 189(a). This was not a simple numerical change, while Article 253 was classified as a crime against public order, Article 189 (a) was rightfully classified as a crime against freedom. Article 253(2), which penalized commercial adoption contrary to the provisions of the Act, was also repealed and moved in its entirety to Article 211(a) of the Penal Code, making it a crime against the family. Nowadays, the newest European Union regulation in this area is in force in Poland, namely, the Directive 2011/36/EU of the European Parliament and of the Council of April 05, 2011.
The Directive focuses on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA of July 19, 2002 (OJ L 101/1 of 15.4.2011). This comprehensive legal Act includes the latest definition of human trafficking, which differs slightly from its predecessor in that the scope of the forms of exploitation within trafficking has expanded to include organ trafficking, begging, and forced criminal activity. In this regard, the definition of trafficking within the Directive of 2011 is the most consistent with the definition contained in the Palermo protocol.

An essential addition to criminal law is the Transplantation Act of July 01, 2005 (Polish Journal of Laws of 2005, No. 169, item 1411), which under Article 44(1) regulates the harvesting, storage, and transplantation of cells, tissues, and organs. Perpetrators who have used organ trafficking as a steady source of income are subject to imprisonment of 5 years under Article 44(2), while the harvesting of cells, tissues, and organs for transplantation is also punishable by a fine, the restriction of liberty, or imprisonment of up to 3 years under Article 46. The dissemination of advertisements on the sale or purchase, or the mediation of the sale or purchase, of a cell, tissue, or organ for transplantation is further punishable by a fine, penalty of restriction of liberty, or imprisonment for up to 1 year under Article 43.

As noted earlier, trafficking in organs is regulated in Poland by international standards that prohibit paid organ donation from living persons. The prohibition on the harvesting of tissues and organs for transplantation was first formulated in Article 11(2)(c) of the First Protocol Additional to the Geneva Conventions of August 12, 1949 and related to the Protection of Victims of International Armed Conflicts. The Protocol entered into force on December 07, 1978, and Poland ratified it on September 19, 1991 (Polish Journal of Laws of 1992, No 41, item 175). The provision was repeated in Article 7 of the Rome Statute of the International Criminal Court of July 17, 1998 (Polish Journal of Laws of 2003, No. 78, item 708) which recognized slavery that could lead to organ trafficking as a crime against humanity.

Finally, pursuant to Article 21 of the [European] Convention for the Protection of Human Rights and Dignity of the Human Being regarding the Application of Biology and Medicine (the Convention on Bioethics) of April 04, 1997, the Article states that “the human body and its parts may not, in and of themselves, constitute a source of profit.” The Second Protocol Additional to the Convention of January 24, 2002 requires that the member states penalize organ trafficking.

A System of Eliminating Human Trafficking in Poland

Such a severe and complex phenomenon as human trafficking could not remain ignored by public institutions, and an organized government response began to emerge in Poland in the mid-1990s. A series of efforts, connected both institutionally and functionally, were put into effect with the goal of comprehensively responding to human trafficking in Poland.

Legally, the Polish system established a series of regulations at both the national and international levels (as described above) that define human trafficking, the scope
of the criminalization of behaviors relating to trafficking and slavery, state obligations, victims’ rights, and preventative measures. Politically, the system allows state authorities to define priorities in responding to trafficking and sets out detailed tasks for specific institutions in a 3-year plan titled the National Plan against Trafficking in Human Beings. The system includes institutional solutions for monitoring, analyzing, and preventing human trafficking and addresses all aspects of the effective prosecution of trafficking-related crimes under both national and international law. Additionally, the Plan established a complex set of legal and organizational solutions at both the state and local levels to ensure the highest standards of care and support for trafficking victims. In addition to state-sanctioned changes, the Polish system now integrates initiatives and organizational activities established by citizen and professional groups, as well as the use of the media as a tool to not only build public awareness of human trafficking but to assess the effectiveness of Poland’s efforts to eliminate the phenomena (GRETA 2017).

Despite the various initiatives, Poland has faced criticism for its response to human trafficking, as seen in a study conducted by the Human Trafficking Studies Centre at the University of Warsaw (Lasocik and Wieczorek 2016). Much of the criticism surrounds the lack of foundation for Poland’s current system: the individual components of the system emerged spontaneously in response to the needs and requirements of the time, without a planned and implemented rollout. While the current system is representative of the Polish models of governance, justice, and social assistance, it requires fundamental changes to its strategic planning and the identification of a leader to become more active. Additionally, Poland lacks a long-term strategy to deal with human trafficking and related phenomena, resulting in a system that is inherently more or less suspended in a vacuum. As Zielińska (2011) pointed out, while Poland legally meets minimum international standards in its anti-trafficking efforts as mentioned in Trafficking in Human Beings (2015), it is far from perfect. This is due, in part, to the imprecise definition of human trafficking adopted in 2010, as well as the insufficient description of the legal status of the victims of human trafficking. Currently, there is no provision to penalize forced labor.

A principal instrument guiding the system of elimination of human trafficking in Poland is the National Plan against Trafficking in Human Beings (“National Plan”), adopted for a 3-year period by the Council of Ministers in 2003. In principle, such a plan should formulate the position of state authorities, precisely assign tasks to public institutions, inform about available funds, and identify evaluation mechanisms. However, Poland’s National Plan remains vague in formulating a long-term strategy for the elimination of human trafficking and in setting tasks and imposing responsibilities on public institutions and has yet to create or support methods of evaluation of the Polish system. Nevertheless, the Plan was designed and is monitored by the Interministerial Team for Combating and Preventing Trafficking in Human Beings, which is considered the primary method to eliminate human trafficking in Poland. This Team is comprised of representatives of ministries, public institutions such as the labor inspectorate, and NGOs, and is administered by the Human Trafficking Team under the Department of Migration Policy of the Ministry of the Interior and Administration.
Nevertheless, despite its impressive title, the Team should not be looked upon or treated as an entity managing the system to eliminate human trafficking in Poland. Instead, the Polish government should look toward other organizations, such as the Dutch independent office of the special rapporteur for human trafficking, as examples of how to successfully administer an anti-trafficking program (National Rapporteur 2010). As the operational services of the Interministerial Team carried out by the Department of Migration Policy of the Ministry of the Interior and Administration are unfortunate, as in effect, both structurally and functionally, it focuses on its central ministry without making it directly responsible for preventing and combating human trafficking in Poland.

Perhaps the governmental agency with the most need for improvement in its treatment of human trafficking is the Polish judicial system. Both the police and the border guard agency have the authority to conduct investigations into human trafficking and are trying to adapt their internal structure to the challenges they face by creating a network of well-trained special teams and local coordinators. In recent years, the border guard has focused more on this action than the police. Despite their efforts, problems arise with the prosecutor’s office and in court. The lack of a legal definition of human trafficking until 2010, coupled with the deficiencies in training for prosecutors and judges and the prevailing negative attitudes toward victims of trafficking, hinders efforts. In Poland, the association between human trafficking and prostitution has led to criticism over the practices of the prosecutor’s office and courts about it. As Namysłowska (2011) suggests, there are glaring differences in the interpretation of human trafficking between law enforcement agencies and the prosecutor’s office. Furthermore, the penalties issued to traffickers by the courts were mostly disproportionate to the seriousness of their crimes. Although the issue of human trafficking remains the occasional subject of discussions in judicial circles, as of 2018, the Ministry of Justice has not yet established a unit responsible for countering these issues.

Another area of weakness in Poland is its lack of a reliable support system for trafficking victims. This is due, in part, to financial difficulties as funds from the state budget are insufficient (approx. equivalent of $350,000 USD) for this purpose. Furthermore, considering the size of Poland and scale of the problem, it falls to local authorities and social welfare agencies to find funding to assist the victims (GRETA 2017). Obtaining financing is made even more difficult due to the prevailing adverse attitudes toward trafficking victims by both the government and the public. Migrants, refugees, or foreign victims of human trafficking should not expect a welcome from Poland’s ruling Law and Justice party (PIS – Prawo Sprawiedliwości) nor from the conservative Catholic society.

A series of amendments to the Act on social assistance of 2004 (Polish Journal of Laws of 2004, No. 64, item 593) brought some improvement to victims of trafficking to the law. Amendments included the Act of 12 February 2010 (Polish Journal of Laws of 2010, No. 40, item 229) that imposed on voivodes the obligation to coordinate local efforts to establish a system of effective assistance for victims. While the Ministry of the Interior and Administration created a special team to deal with human trafficking in all voivodeships, the analyses carried out to date have
shown that, like the Interministerial Team, these teams are only mere fronts at the central level that lack any useful administrative power (Lasocik 2011). Although it has not yet been published by the voivodeship’s authorities, the author carried out an evaluation in 2015–2016 in Poland’s Lubuskie voivodeship confirming these facts.

As already mentioned, the formation of a system to eliminate human trafficking in Poland began in the mid-1990s with the introduction of the La Strada Foundation, which also operates in the countries of Ukraine, Bulgaria, Belarus, Moldova, the Republic of Macedonia, and Bosnia and Herzegovina. The Foundation publicized the problem of human trafficking, mobilized state authorities to take further action, and assisted public officials in performing their tasks. However, due to a misguided development policy, it remains the only professional organization dedicated to the victims of human trafficking in Poland (Lasocik 2011). Information provided by the La Strada Foundation shows that Poland is seeing the creation of a network of organizations dealing with human trafficking; however, despite these efforts, currently these networks are not particularly visible or active. Instead of mobilizing local communities and state authorities to create new organizations, La Strada expanded its mission and now monopolizes the provision of assistance to victims of all forms of human trafficking. The creation of such a network poses severe problems in a country as vast as Poland, which continues to see the expansion of human trafficking both in numbers and in new forms. The number of victims served by the National Consulting and Intervention Center for the Victims of Trafficking increased from 109 in 2012 to 136 in 2014 (Trafficking 2015), and new forms of trafficking have arisen, including reports of perpetrators forcing victims to commit petty crimes, exploitation for the purpose of obtaining loans and social benefits by deception, and domestic slavery (Trafficking 2015).

Increasing public awareness and education are seen to be vital elements in the elimination of human trafficking, which are unfortunately both severely lacking in Poland. Although some public campaigns have been initiated, in general, Poland requires comprehensive programs to build public awareness of the issue of human trafficking, and informational campaigns that address the problem effectively are rare. However, there is a system in place that informs Poles going to work abroad of the dangers and warnings signs of trafficking which is working relatively well, as is the distribution of educational material among foreigners coming to Poland. It should also be noted that the media have been devoting more attention to the problem of human trafficking in recent years.

**Conclusion**

To summarize, several conclusions can be drawn about the current Polish system for the elimination of human trafficking. Although in some respects the system does seem to be somewhat expanding its scope in the right direction, this process is happening far too slowly. Most notably, Poland currently lacks any clear and sustainable plan to build a system to eliminate human trafficking nor does it have any long-term strategy in place to reduce it.
As emphasized in this entry, the current Polish system is highly ineffective and inefficient. Some of the leading causes include the slowness of the legislative scheme to enact clear and effective legislation and the judicial system’s lack of agreement or interpretation of these laws, as well as clear guidelines as to how they should be implemented. To make matters worse, the courts seem to be at odds with efforts by the few government agencies entrusted with enforcing efforts against human trafficking such as the police and border guards. As follows, apprehension and prosecution of perpetrators of human trafficking are severely hindered, ineffective, and often lacking or minimal at best. This is coupled with the prevailing fact that often there is more of a negative attitude toward the victims (e.g., prostitutes) themselves, rather than the organizers and perpetrators of the crimes. It is a desolate situation, where the opportunism of bureaucrats seems to prevail over the organization and implementation of practical measures to help eliminate or at least curb this problem.

Furthermore, the system lacks any reliable mechanism or institution for collecting and harmonizing data related to crimes, victims, and perpetrators, as well as any concrete tools for external evaluation of the problem. Until now, any positive steps of progress to change the system have only been made possible due to intense pressure from experts, the academic community, and various NGOs. These steps highlight a significant flaw in Poland’s governmental system which is establishing cohesive plans to correct the situation.

Despite these stinging criticisms, there is no need for Poland to establish a brand-new system to respond to human trafficking, as these challenges can be eliminated with the political will to do so. However, this has proven highly problematic as politicians show little interest in modern slavery, especially the ruling Law and Justice (PIS) political party, nor does civil society have the strength to make these changes.

Several of the experts in the field recommend that an institution based on the Dutch Special Rapporteur should be created in Poland. This institution should be structurally and financially independent, both in its scope and in its personnel, and its independence should be treated as a condition sine qua non (an indispensable or essential action or condition) for effectiveness rather than treated as a luxury. Establishing such an institution would create a long-term strategy and standing institution for the elimination of slavery, would ensure more considerable financial resources to devote to prevention, research, and victim support, and would facilitate cooperation between various state and social entities. Although the establishment of such an institution is recommended by Directive 2011/36/EU of the European Parliament and the Council of 2011, the ruling Polish authorities have shown little interest in enforcing such an initiative, and until now there is little or no indication that Poland’s current state leadership will show more significant interest to do so.

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Tackling Modern Slavery and Human Trafficking in Wales

Kim Ann Williamson

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Abstract
This chapter details the concerted effort to fight human trafficking and modern slavery in Wales. It documents efforts to date, beginning with a very brief overview of actual political engagement leading to a full structural approach that uses the partnership model to fight human trafficking. The specific unique structure to training, law enforcement, and non-governmental organization (NGO) involvement in Wales helps to serve the objectives of the strategic plans that are possible because Wales is geographically smaller than the other administrations which make up the UK. There is, however, an acknowledgment that there is more to do across the criminal justice landscape to identify and support more victims.

Keywords
Wales · Modern slavery · Strategic delivery plan and objectives · Multiagency approach · Coordination · Partnership working

Introduction
Slavery is a heinous crime that, according to the International Labour Organization (ILO), affects an estimated 40.3 million people across the globe (ILO 2017). Organized crime groups and criminals use force, fraud, or coercion to exploit victims in slavery. Tackling slavery requires coordinated action (i.e., fourth ‘P’ UNODC) cutting across the boundaries of the four governments in the UK. Wales has worked hard since 2011 on its aspiration to be slavery-free. In order to achieve this, it has been essential to recognize and understand that this cannot be achieved in silos or by any one agency but by hard work and determination with a strategic and multiagency approach. In this chapter, we will outline the Wales-specific approach to human trafficking and modern slavery, which is characterized by one of the multiagency partnerships across multiple layers of action, as outlined in the delivery plan for a Wales free from slavery.

A Brief Historical Overview of Action to Tackle Human Trafficking in Wales
The modern political history of tackling human trafficking in Wales started in the spring of 2007 with the establishment of the Cross-Party Group on Human Trafficking in the National Assembly for Wales with the aim of providing coherent information concerning aspects of trafficking in women and children into, out of, and around Wales for the purposes of sexual exploitation in particular as well as for the purposes of forced labor. It also aimed to provide some legislative or policy proposals that could be
implemented in the context of the devolution settlement (the UK is made of four nations with asymmetrical powers – Wales, Scotland, Northern Ireland, and England – each with their own legal and policy frameworks). To that end, it acknowledged the policy and legal context in which it works, namely, that migration law and criminal lawmaking are outside of its current remit. Having said this, several recommendations could be put forward to help fulfill the UK’s and Wales’ international human rights obligations, most notably, the obligations vis-à-vis children as espoused in the United Nations Convention on the Rights of the Child (UNCRC). The Welsh Government (WG) has made the Convention the basis of all policy making for children in Wales. In 2009 (only 5 years after the Palermo Protocol and 1 year after the Council of Europe Anti-Trafficking Convention came into force) the then Minister responsible for Social Justice and Communities, Dr. Brian Gibbons AM, announced funding for refuge in Wales for women who have been trafficked. Hosted by the Poppy Project (managed by Eaves Housing in London), it received many referrals from practitioners (including the police) in Wales. The services were commissioned to BAWSO and StreetWise, organizations based in Wales which had and still do have the expertise, especially around translation and interpretation services and effective responses to prostitution. By 2010 the Cross-Party Group published its policy recommendations in their report Knowing No Boundaries: Local Solutions to International Crimes (National Assembly for Wales 2010), recommending, inter alia, an Anti-Trafficking Coordinator be set up, partnership working to end human trafficking and various policy goals that the Welsh Government (WG) should pursue to reduce trafficking and help victims/survivors. Later that year, Carl Sargeant AM, Minister for Social Justice and Local Government, established the Anti-Trafficking Coordinator’s role, the first in the UK. In the same year, he published The Right to be Safe. It set out the WG’s integrated strategy for tackling violence against women and girls for the next 6 years. The strategy referred to trafficking in several places and set out a time frame for setting up standard protocols for Wales. The strategy helped progress the agenda to tackle human trafficking by setting up structures and protocols to aid multiagency cooperation that is continuing to the present day. Since then, WG, along with other agencies, is developing an all-Wales protocol on the identification of child trafficking. It will be based on the All Wales Safeguarding Children who may have been Trafficked protocol. Both developments are significant advances in trying to address trafficking in Wales. They only cover some of the issues. Significantly, yet, no overall strategy for safeguarding victims of trafficking in Wales has been adopted.

The Wales-Specific Structure to Tackling Human Trafficking

From these modest beginnings, a whole suite of measures has been developed and tested, with the aid of many different actors from a variety of fields coming together to provide multilayered responses to human trafficking and modern slavery in Wales. In brief, they comprise, at the apex, the Wales Anti-Slavery Coordinator, overseeing and managing action in Wales, from the Wales Anti-Slavery Leadership Group. Delivery is led by the Anti-Slavery Operational Lead, overseeing several operation-
specific subgroups and regional and local anti-slavery community groups. The system allows for movement up and down to inform policy and action as well as sideways as memberships overlap (see Fig. 1).

This structure in Wales has been recognized as “good practice” in the independent assessment undertaken by the University of Nottingham, highlighting that Wales had the most developed national arrangements in the UK, with six national partnerships covering functions including leadership, operations, casework, and training in addition to three regional partnerships (University of Nottingham Rights Lab and the Office of the Anti-Slavery Commissioner 2017). It also stated that the system was working well to tackle modern slavery. This “good practice” will now be described in more detail.

### Wales Anti-Slavery Coordinator

Although human trafficking has been present in Wales for a long time, the post of Welsh Government Anti-Slavery Coordinator was not created until April 2011. The role is to make Wales hostile to slavery, to coordinate the best possible support for survivors, and to establish a coordinated response to tackling slavery. The

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**Fig. 1** The Wales structure
Coordinator facilitates in getting the right people around a table to fulfill the partnership working obligation, for instance, the police, the National Health Service, academics, NGO representatives, and frontline officials. The Welsh Government is the only government in the UK to fund an Anti-Trafficking Coordinator, again demonstrating the high level of political engagement with the topic. Following the enactment of the Modern Slavery Act 2015 and a recommendation from the Wales Cross-Party Group on slavery, the Coordinator has been renamed Anti-Slavery Coordinator.

**Wales Anti-Slavery Leadership Group**

The Wales Anti-Slavery Coordinator was instrumental in setting up the Wales Anti-Slavery Leadership Group which comprises representatives from the Crown Prosecution Service, Home Office, the Police, the Police and Crime Commissioner, National Crime Agency, the Children’s Commissioner for Wales, and nongovernmental organizations such as BAWSO and New Pathways. Chaired by the Head of the Community Safety Division of the Welsh Government, the Leadership Group brings together the leaders from the relevant partners in Wales from the public, private, and the third sector. The Leadership Group is comprised of four subgroups:

1. The Wales Anti-Slavery Training Group
2. Wales Anti-Slavery Casework Review Group
3. Wales Threat Group for Modern Slavery
4. Wales Sex Worker Support Group

These groups meet several times per year and feed into the main Leadership Group concerning intelligence, victim support, trends, and consultation of the delivery plan, providing an evidence base on the scale and scope of the problem, as well as setting the strategic direction of the agenda in Wales. Also, the Leadership Group supports and encourages the Wales Anti-Slavery Operational Delivery Group and the Regional Anti-Slavery Groups to share “good practice” with partners and report progress to the Leader of the House and Chief Whip.

Established in 2013, the Leadership Group has several interrelated functions, some of which will be highlighted here. Firstly, it provides strategic leadership and direction across the country for tackling slavery in Wales as well as collaboration between devolved and non-devolved (UK) partners and NGOs (e.g., BAWSO/New Pathways) working in the field. Secondly, unlike what occurs in several other jurisdictions where most anti-trafficking initiatives fall under the umbrella of NGOs, the Wales strategic priorities and objectives are overseen by the Wales Anti-Slavery Leadership Group Strategic Objectives Lead from the Crown Prosecution Service Cymru/Wales. This makes it a multiagency-led approach. Thirdly, the Wales Anti-Slavery Leadership Group provides strategic leadership in coordinating the identification and recovery of victims and to bring their perpetrators to justice. Fourthly, it coordinates raising awareness to prevent slavery in Wales,
which has increased significantly year on year. The Leadership Group drafts a Wales Anti-Slavery Delivery Plan to deliver key strategic priorities. In Wales, the strategy to tackle slavery is being delivered in line with the UK Modern Slavery Strategy, launched in 2014 by the Home Office, which details four main areas for action (overlapping with the prevent duty) which are integrated into each of the strategic objectives in the Wales Delivery Plan (detailed below):

• Pursue

“Prosecute and disrupt individuals and groups responsible for slavery.”

• Prevent

“Prevent people from engaging in slavery.”

• Protect

“Strengthen safeguards against slavery by protecting vulnerable people from exploitation and increasing awareness of and resilience against this crime.”

• Prepare

“Reduce the harm caused by slavery through improved victim identification and enhanced support.”

As described in the delivery plan, the terms of reference and governance of the Wales Anti-Slavery Leadership Group seek to achieve the Welsh Government’s aims by:

• Being the reference point on all matters relating to slavery in Wales
• Working collaboratively to promote awareness of slavery in Wales
• Providing direction and advice to the leadership subgroups
• Providing direction and advice to the Wales Anti-Slavery Operational Delivery Group and Regional Anti-Slavery Groups
• Providing statistical data and developing meaningful data analysis
• Promoting good practice across Wales
• Promoting research and evaluation
• Reaching out to organizations and communities we have yet to connect with that impact on the anti-slavery agenda in Wales

To assist this undertaking, it is the responsibility of the Wales Anti-Slavery Leadership Group to:

1. Receive and consider reports from the Leadership Group members.
2. Request and consider additional, ad hoc reports from the Wales Anti-Slavery Operational Delivery Group and the Regional Anti-Slavery Groups. This includes working cohesively with safeguarding partners.
Members provide professional advice on the development, delivery, and quality assurance of the Delivery Plan Strategic Objectives, as relevant to the sector they represent. Members of this group are also members of the UK Anti-Slavery Quarterly Jurisdictional Meetings which have been established to facilitate sharing of good practice across all four UK Administrations.

### A Structured Response to Modern Slavery in Wales

To support the Wales Anti-Slavery Leadership Group, the Strategic Objectives Lead (SOL) established a Wales Anti-Slavery Operational Delivery Group which is a multiagency response to help to deliver the Wales Anti-Slavery objectives. The Operational Delivery Group is underpinned by six regional fora from the counties across Wales (i.e., North Wales, Dyfed Powys, Swansea and Western Bay, Cardiff, Cwm Taff, and Gwent). The Wales Anti-Slavery Operational Delivery Group coordinates and delivers the work taking place across Wales to tackle modern slavery and facilitate the sharing of good practice and local delivery through the Regional Anti-Slavery Groups. The local groups are chaired by a range of organizations from the statutory, non-statutory, and nongovernmental organizations (NGOs) and have local representation for a variety of individuals and agencies. This gives a clear message that we are multiagency focused and that no one organization can eradicate this heinous crime alone.

The Regional Anti-Slavery Groups are responsible for operational activity and report their progress against the strategic objectives on a quarterly basis to the Strategic Objectives Lead. They also have an information/intelligence sharing function. The membership of the Regional Anti-Slavery Groups mirrors the Leadership Group with “local” representation from the respective member organizations. The Rights Lab report highlighted that Wales had the most developed national arrangements, where there are six national partnerships covering functions including leadership, operations, casework, and training in addition to three regional partnerships (University of Nottingham Rights Lab and the Office of the Anti-Slavery Commissioner 2017).

The policing lead on the Wales Anti-Slavery Leadership Group is the rank of Chief Constable, demonstrating the high-level commitment of the police to tackling modern slavery in Wales. The Chief Constable also supports the Wales Anti-Slavery Leadership Group in leading the direction on intelligence sharing and investigations. In order to achieve this, a Chief Constable is required to chair a Wales Anti-Slavery Threat Group to provide direction and intelligence for law enforcement and the broader partnerships. The role of this group is to ensure targeted activities take place. The incumbent is the Chief Constable of Gwent Police. The purpose of the role is to coordinate the response of the four Welsh police forces and link to the National Police Chiefs’ Council (England and Wales) Lead for Modern Slavery who also chairs the UK Threat Group for Modern Slavery. Membership of the Wales Threat Group is made up of law enforcement agencies and the criminal justice sector and includes the National Crime Agency, Police, Gangmasters and Labour Abuse...
Authority, UK Border Force, UK Visas and Immigration, HM Prisons and Probation Service, HM Customs and Revenue, Department of Work and Pensions, Local Authority Regulator Services, as well as the Crown Prosecution Service Cymru/Wales. The Wales Threat Group meets quarterly, and the chair reports progress on tackling modern slavery to the Wales Anti-Slavery Leadership Group.

The Wales Strategic Objectives Delivery Plan

The Wales Anti-Slavery Strategic Objectives are clearly outlined within the Annual Delivery plan, and many of the critical areas of work are explained in detail. The objectives within the delivery plan are overseen by the Wales Anti-Slavery Academia Group who oversees local, national, and international research, policy, and reports to help support and advise on these priorities. The plan is the operational manifestation of what each of the sectors working on modern slavery does on the ground. The objectives of the Strategic Plan are outlined in the following sections.

Pursue: “Prosecute and Disrupt Individuals and Groups Responsible for Slavery”

Strategic Objective 1: In Wales to Increase Investigations and Prosecutions of Modern Slavery Offenses

Prosecutor Commitments

It is acknowledged that across the globe, there is a lack of prosecutions for new slavery offenses. That position is no different in Wales. In order to be more successful in Wales to prosecute and disrupt individuals and groups responsible for modern slavery, action was required. This included the need to ensure that the Crown Prosecution Service works under the Director of Public Prosecutions Prosecutor Commitments and reviews the way in which Wales deals with casework locally and how the recording of cases can be made more accurate throughout the criminal justice process. These commitments signify the importance attached to tackling modern slavery by the prosecutors and demonstrate the criminal justice and human rights-based approach to prosecuting human trafficking. They are:

<table>
<thead>
<tr>
<th>Crown prosecutors service prosecutor commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>We will build stronger cases to support these most serious offences</td>
</tr>
<tr>
<td>We will ensure that the rights and welfare of victims are at the heart of our approach to investigation and prosecution</td>
</tr>
<tr>
<td>We will continue to deliver training and development to prosecutors and law enforcement to improve our expertise</td>
</tr>
<tr>
<td>We commit to developing and maintaining effective means of engagement with NGOs</td>
</tr>
<tr>
<td>We will work closely together to learn lessons, exchange good practice, and share relevant information, data, and contacts</td>
</tr>
</tbody>
</table>
Work was undertaken in 2015 to “pilot” a process for which all Welsh First Responder organizations reported to the police all potential cases of modern slavery as soon as possible, and the police then had a requirement to crime all cases received. This work was then cascaded throughout all Welsh police forces and those in England. The UK Independent Anti-Slavery Commissioner supported the “pilot,” the National Police Lead for Modern Slavery, and the Home Office Modern Slavery Unit, demonstrating the high-level significance of partnership working. Consequently, reported cases of human trafficking and modern slavery have increased. It is hoped that the practice of non-criming (non-criming is where there is a report of a crime but the police, in the end, decide that no crime was committed) will thus be eliminated or instances reduced in order to garner a more accurate picture of the scale of modern slavery in Wales.

The police and other law enforcement agencies are responsible for the investigation of possible crimes. In severe and complex crimes, such as modern slavery and human trafficking, the police will seek early investigative advice from prosecutors. In Wales, this advice is generally sought from the CPS Wales Complex Casework Unit based in Cardiff where highly experienced and trained prosecutors review modern slavery and human trafficking cases following a two-stage test which is set out in the Code for Crown Prosecutors. The law enforcement agencies in partnership with our multiagency partners have brought to justice and successfully prosecuted high-profile cases.

**Casework Review**

The Wales Anti-Slavery Casework Review Group is chaired by the Crown Prosecution Service Cymru/Wales and is a strategic multiagency forum that has been set up to review new slavery criminal justice cases to identify best practice and areas for improvement in casework and victim care. The overarching aims of the Group are to assist criminal justice agencies to ensure the effective delivery of anti-slavery casework; undertake scrutiny of casework to improve local performance; provide support to victims and witnesses; and undertake consultation with local communities on strategies, plans, and policies to inform and improve policy, casework, employment, and a compendium of multiagency training courses for different levels of awareness. Key work to date has been to review section 45 of the Modern Slavery Act 2015 (Section 45 MSA 2015 provides victims of trafficking a defence if they have been caught undertaking a criminal activity. See, for example, MK v R [2018] EWCA Crim 667 (28 March 2018)) and “County Lines” casework. The establishment of the Wales Anti-Slavery Casework Review Group was highlighted as good practice in 2017 by Her Majesty’s Crown Prosecution Service Inspectorate (HMCPSI). The HMCPSI inspects the work carried out by the Crown Prosecution Service and other prosecuting agencies (HMCPSI report 2017).

**Police Response**

To tackle slavery in England and Wales, the Home Office, in November 2016, awarded £8.5 million to national policing, delivered through Devon and Cornwall
Police by the Police Transformation Fund Board with the support of the Home Secretary, Chief Constables, and police and crime commissioners. Part of this work was to set up the Modern Slavery Police Transformation Unit (MSPTU) regional transformation teams which in Wales are a coordinator in the south and north of the country supported by strategic analysts. The teams assist all four Welsh police forces to improve their response to modern slavery and work together to increase consistency in modern slavery investigative processes across the country. The program will be evaluated in spring 2019. They also support the forces in their region to evaluate local responses to modern slavery and to identify opportunities for improvement. The regional transformation teams work together to improve intelligence sharing arrangements and develop the understanding of the threat and raise investigative standards. The modern slavery coordinators’ primary purpose is to embed nationally recognized good practice and investigative approaches within forces, in part by supporting peer reviews and audits. The teams support forces to access the training and knowledge products developed by the wider MSPTU. As subject matter experts they offer practical advice to investigators, sharing knowledge and best practice in the use of the Modern Slavery Act 2015 and broader powers. Members of the Wales Anti-Slavery Leadership Group also support the national program team by sharing their methodology and strategic oversight for consideration for adopting this approach across their regions.

Prevent: “Prevent People from Engaging in Slavery”

Strategic Objective 2: Tackling Child Exploitation

Wales Anti-Slavery Leadership Group works cohesively with the national and regional safeguarding boards and local Anti-slavery fora to raise awareness and work collaboratively to protect children and young people from exploitation.

Children Who May Be Trafficked

Wales has practice guidance to safeguarding children who may be trafficked, which was developed in 2011. More recently the Wales Anti-Slavery Strategic Objective Lead has established a “Task and Finish Group” to develop the content of guidance on children in specific circumstances, which will act as supplementary guidance to the National Protection Procedures. This will create concise and accessible practice guide to provide additional information about safeguarding responses when a child is in specific circumstances. This practice guidance will be used in conjunction with Wales National Protection Procedures and to ensure alignment with the Social Services and Well-being (Wales) Act 2014 and the National Protection Procedures. This practice guidance will be primarily for frontline practitioners and professionals working with children and young people. It includes those working in social care, education, health, the police, youth offending and youth, community and family support services, and foster carers and residential staff.
The Independent Child Trafficking Advocate

The role of the Independent Child Trafficking Advocate (ICTA) is outlined in Section 48 of the Modern Slavery Act of 2015. The ICTAs are professionals who support children who have potentially been trafficked. The Home Office funded the ICTA provision, and it was initially trialed by Barnardo’s in 2014–2015 within a small number of local authorities in England. At the end of the trial, it was decided the service required to be refined and tested further. The Home Office identified three Early Adopter sites – Greater Manchester, Hampshire including the Isle of Wight, and Wales. The Early Adopter, ICTA Service sites, was launched on January 30, 2017, with Barnardo’s Cymru managing the ICTA Service for Wales. Barnardo’s have a wealth of experience in dealing with all forms of exploitation of children. The Service allocates an ICTA within 24 h to all children who have been identified to be potentially trafficked. Between January 30, 2017, and February 28, 2018, the ICTA Service identified 92 children in Wales aged between 2 and 17 years, with most victims being female, for sexual exploitation. The ICTA Service has started to refer to children engaged in “County Lines” related exploitation. It is too early for a clear assessment as to the effectiveness of this role, but early indicators are that this role has helped provide a voice for those who are often unable to speak for themselves in a very complex system.

Gwent Missing Children’s Hub

*Breaking the Cycle* is derived from a Welsh Government work stream: “Improving Outcomes for Vulnerable People.” A Gwent multiagency team is currently trialing the model and concept will be evaluated by the Welsh Government. This multiagency model has been adopted by a coalition of Gwent public sector services, including the five Gwent local authorities, Gwent Police, Aneurin Bevan Health Board, five Gwent educational authorities, and a third sector debrief service which has been provided by Llamau. More recently, one of the Gwent Housing agencies has signed up to the Wales Accord on the Sharing of Personal Information (WASPI) to test how working with housing will improve the system. In 2016 the process was endorsed by the Welsh Government. It is planned in 2019 for a scoping exercise to take place to extend this hub across Wales and to consider the feasibility of taking reports of missing vulnerable adults.

One of the Wales police forces, Gwent Police, which includes Wales’ third largest urban area, established its first Multi-Agency Safeguarding Hub in 2014 to safeguard and protect those most vulnerable in our society. The Missing Children’s Team incorporates the police, health, education, and social services and not only provides an extensive and comprehensive risk assessment for missing children but also conducts debriefs with those children who have been missing, in order to understand why they went missing in order to prevent recurrence. This initiative was independently evaluated for the Welsh Government in 2016 by Cordis Bright.
Protect: “Strengthen Safeguards Against Slavery by Protecting Vulnerable People from Exploitation and Increasing Awareness of and Resilience Against this Crime”

**Strategic Objective 3: Preventative Measures to Tackle Labour Exploitation in Wales**

**The Welsh Government’s Code of Practice: Ethical Employment in Supply Chains**

In order to meet the requirements of section 54 the Modern Slavery Act 2015, to tackle exploitation in supply chains, the Welsh Government has created the *Code of Practice: Ethical Employment in Supply Chains*. As well as being Wales’ response to the supply chain provision in the Modern Slavery Act 2015, the Code of Practice is Wales’ response to concerns around ongoing problems with unfair employment practices. These include false self-employment, blacklisting of unionized workers, unfair use of umbrella employment schemes, and unfair zero-hour contracts. It also acts to support the Welsh Government’s commitment to promoting the Living Wage Foundation’s Living Wage. It is expected that Welsh public bodies, higher and further education institutions, and third sector organization in receipt of public funds and businesses involved in Welsh public sector supply chains commit to the code. Business and other public bodies in Wales are also encouraged to sign up. Welsh Government has partnered with TISC to manage sign-ups to the Code of Practice, help organizations to measure their progress, as well as invite their suppliers to also sign up. In return for registering on TISC Report, organizations can make use of the Wales anti-slavery logo (Dewi). In spring 2019 it is intended that a formal academic review will take place as the code will have been embedded for 2 years.

**Gangmasters and Labour Abuse Authority (GLAA)**

The Gangmasters and Labour Abuse Authority (GLAA) is a member of all the Anti-Slavery groups across Wales, including the Wales Anti-Slavery Leadership Group. The GLAA is available to assist with investigations and to host awareness sessions across the country concerning their role but also to raise public awareness on how to spot the signs of forced labour. Wales is working with a few organizations in public, private, and third sector to encourage them to sign up to the Code of Practice and to join the Wales Anti-Slavery Business Group, where best practice and joint working are discussed.

**Strategic Objective 4: “Improve Awareness and Availability of Information on Slavery”**

**Awareness**

As part of raising awareness of modern slavery, Wales has introduced monthly awareness campaigns referred to as the Twelve Welsh Multi-Agency Themes for tackling modern slavery. Every month this awareness campaign outlines...
exploitation types and provides awareness materials for circulation for use on social media and during face to face interactions. The Wales Anti-Slavery Leadership Group and local groups utilize the Welsh Government website to host necessary anti-slavery materials and work closely in partnership with UK Modern Slavery Helpline and Crimestoppers. These help Wales to raise awareness through local campaigns and Twitter activity to share key messages across the public and private sectors. Members of the Leadership Group are also members of the UK Modern Slavery Helpline and Crimestoppers Wales Boards. Wales Anti-Slavery Leadership Group members and organizations that represent the group are regularly involved in media activities to raise awareness to discuss the challenges and ways to deal with this heinous crime. They range from radio interviews and local news bulletins to feature-length television programs. Wales has created powerful anti-slavery posters and stickers to raise awareness. The stickers highlight that Wales says NO to slavery and includes the UK Modern Slavery Helpline and Crimestoppers contact numbers to aid referrals. These templates have been used across the country and have been adopted in other parts of the UK for other local delivery. In addition to monthly targeted campaigns, Wales has an excellent reputation for hosting ambitious and effective conferences to raise awareness. Conferences have been hosted at the Celtic Manor Resort with keynote speaker, actor, and UNICEF Ambassador, Mr. Michael Sheen. Another conference was hosted at the Principality Stadium in Cardiff, on Aviation and Hospitalities Response to Combatting Modern Slavery and Human Trafficking, with the International Air Transport Association (IATA). These conferences have resulted in crucial work being taken forward on a multiagency and international level.

Many young people are at risk of exploitation, and in order to include young people and create a vehicle for them to be listened to, Wales has worked with young people to assist in creating a video called “Caught in Traf” to raise awareness of exploitation. This is now used in local schools across Wales by police officers from the All Wales School Liaison Core Programme. Raising awareness of exploitation in primary schools is also vital, and Wales has worked with Just Enough UK to roll out sessions in a cluster of primary schools to help make sense of this challenging subject. This has been strengthened by bespoke anti-slavery awareness training created in partnership with local youth work provision for youth workers and young people.

Members of the Wales Anti-Slavery Leadership Group are regularly asked to be guest speakers at conferences across the UK and internationally to share good practice and outline the strategic partnership approach to deal with this crime. Some examples have been at the 2017 Soroptimists International Conference in Cardiff for over 1200 Soroptimists who had travelled internationally and had the opportunity to hear about the work undertaken in Wales which has resulted in creating a Modern Slavery and Human Trafficking booklet for this UK-wide non-governmental organization (NGO) to aid member awareness. The Wales Strategic Objectives Lead launched this and the Soroptimist Federation Programme Director & Chairman of United Kingdom Programme Action Committee (UKPAC) in the Summer of 2017. National Health Service (NHS) Wales and Public Health Wales
(PHW) are members of the Wales Anti-Slavery Operational Delivery Group, so there have also been opportunities to work collaboratively with them to guest speak at their national conferences in Wales and to host workshops for staff to raise awareness.

**Booklets**

It is a well-established fact and part of most crime prevention initiatives to use education as an instrument for informing people. Therefore, in order to provide guidance and awareness to important organizations that may be at risk of exploitation, Wales has created modern slavery booklets in English and Welsh languages for the hotel, aviation, and the higher education sectors. Once the booklets are trialed in Wales, they are then offered to organizations and governments across the UK for their local use. This has been hugely successful. These hotelier booklets have been used overseas to complement the combat toolkit for hoteliers. With so many reports and guidance in existence locally, nationally, and internationally, the Wales Anti-Slavery Leadership Group commissioned the chair of the Gwent Regional Anti-Slavery Group to address this, which has resulted in a Wales Policy Briefing document being created for practitioners as a compendium of all current policies and reference materials.

Feedback from the public and private sector have welcomed the Wales Awareness Strategy and its supporting materials.

**Strategic Objective 5: Addressing Prostitution and Sexual Exploitation – Wales Sex Worker Support Group**

The national adviser has recognized the work of the group for Violence Against Women and other forms of Gender-based Violence, Domestic Abuse and Sexual Violence (VAWDASV) and the Welsh Government VAWDASV team. The needs of sex workers in Wales have now been included in the WG VAWDASV Strategy. WG VAWDASV is working with the chair of the group to ensure the needs of the sex workers are within the WG VAWDASV framework. This will be a consistent approach across Wales. This group is a first for Wales as it works collaboratively with Swansea University to underpin all the research published by the University over the 7 years into the priorities for the group.

**Strategic Objective 6: “The Protection of Vulnerable People in the Homeless Sector in Wales”**

The Welsh Government’s data suggests a 10% increase in rough sleeping in 2018 (Rough Sleepers Rise in Wales, latest counts, 2018, BBC). However, women are more likely to experience “hidden homelessness” and as a result are harder to reach to offer support, particularly around issues of exploitation and abuse (Women’s Hidden Homelessness, 2018, Homeless Link). There are also alarming examples
of landlords advertising for sexual favors in exchange for accommodation in Wales ("Tenant with Benefits Wanted" – “The sleazy online ads showing landlords are offering vulnerable lodgers rooms in exchange for sex,” 2017, Wales Online).

The Welsh Government has recently established a work stream to help all Welsh local authorities and relevant organizations, including charities, to address the growing concern of homelessness in Wales and that of young people. The Anti-Slavery Coordinator is working with colleagues in the Welsh Government as part of this initiative and will be updating the Wales Anti-Slavery Leadership Group as to progress. This is in its early stages but gathering pace and interest from partners. The report highlighted by the Passage Project team has provided a good base for this work stream as it highlighted the mechanisms by which homeless people can become vulnerable and at risk of being exploited.

Prepare: “Reduce the Harm Caused by Slavery Through Improved Victim Identification and Enhanced Support”

**Strategic Objective 7: Continue to Develop and Deliver a Consistent Anti-slavery Training Program for Wales**

Training and awareness have been key to Wales’ response to tackling modern slavery and human trafficking. Over the last few years, a structured and consistent extensive multiagency training program has been created and delivered by trainers from across Wales, supported by the Welsh Government National Training Framework. There have been tiers of training created ranging from a 45-min anti-slavery lunch and learn to a 3-day immersive learning Hydra which recreates live incidents so that delegates are immersed in a realistic environment and can experience the decision-making processes and complex issues faced in investigating and prosecuting this type of crime. Train-the-trainer events are offered throughout the year, and all training materials are hosted on the Cabinet Office Resilience Direct Website with password protection capability. Essentially, work has been to train students as part of their ongoing study within medicine, social work, and global governance.

Trainers are brought together on an annual basis to share best practice and meet with police officers that have dealt with human trafficking cases in order to share their work during training. The use of the Hydra simulation systems, which police use to develop skills and understanding, has been developed for the Joint Organised Crime Modern Slavery Hydra.

This course has been an excellent example of local training, for police officers and local prosecutors. In 2015 the Welsh Government commissioned an independent review of the training strategy and roll out which resulted in positive findings from Cordis Bright. Wales Strategic Objectives Lead is now leading this consistent training program for future roll out across the UK. A UK Modern Slavery Training Delivery Group has been set up on a multiagency basis, and the group has already created three tiers of training and awareness materials and undertaken a UK Modern Slavery Survey which
was led by Soroptimists on behalf of the group. These training materials are now hosted on an interactive IT platform with The Rights Lab, University of Nottingham.

Training has been developed and delivered as an approved anti-slavery training program across Wales to a consistent standard – slavery awareness, child sexual awareness, first responder, “lunch and learn,” and trainer awareness (train the trainer).

The Organised Crime and Modern Slavery Course has been developed, which is jointly attended by Police and Law Enforcement Senior Investigating Officers and local Crown Prosecution Service prosecutors – this is a first for Wales and the UK.

It is well recorded that many victims of modern slavery and human trafficking often seek refuge within local faith communities. To help support victims and faith communities, there is work being undertaken to provide a toolkit for faith communities to better understand the signs to look out for. The Anti-Slavery Coordinator is a member of the First Minister’s Faith Community Group, and progress will be reported to the Wales Anti-Slavery Leadership group. In addition to this work, there is support from the RED Community who have established a coffee-making company called Manumit Coffee which provides paid work to survivors of slavery (see Table 1). (This initiative supports survivors into the workplace and provides them with the opportunity with support to get their lives back).

It is fair to say that Wales has been at the forefront of the development of practical training and has taken a leadership role as the statistics below demonstrate.

**Strategic Objective 8: Wales Victim Response Pathway**

**Victim Response Pathway**

In order to deal effectively and sensitively with victims of modern slavery, Wales has developed and operated a Victim Response Pathway, and it has incorporated a Multi-Agency Risk Assessment Conference (MARAC) for survivors (adults and minors). This is led by BAWSO and is seen to be good practice as it works well to strengthen victim support and multiagency approach to victim care and ultimately bring

**Table 1** Wales antislavery training data

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trainer preparation (train the trainer)</td>
<td>80</td>
<td>80</td>
<td>78</td>
<td>24</td>
</tr>
<tr>
<td>“Lunch and learn” session</td>
<td>–</td>
<td>781</td>
<td>1645</td>
<td>2520</td>
</tr>
<tr>
<td>Introduction to antislavery awareness</td>
<td>1784</td>
<td>3490</td>
<td>3247</td>
<td>5298</td>
</tr>
<tr>
<td>Child sexual exploitation awareness raising course – as from January 2016</td>
<td>–</td>
<td>–</td>
<td>480</td>
<td>50</td>
</tr>
<tr>
<td>First responder course</td>
<td>106</td>
<td>141</td>
<td>93</td>
<td>16</td>
</tr>
<tr>
<td>Modern slavery and organized crime course (SIO/CPS training)</td>
<td>60</td>
<td>36</td>
<td>52</td>
<td>80</td>
</tr>
<tr>
<td>Totals</td>
<td>2030</td>
<td>4528</td>
<td>5595</td>
<td>7988</td>
</tr>
</tbody>
</table>

perpetrators to justice and is a first for the UK. Using assets confiscated under the Proceeds of Crime Act 2002, Wales has funded a MARAC Coordinator to manage the MARAC process across Wales and to provide management information which feeds into the intelligence planning to identify trends and emerging themes.

The MARAC Coordinator is based with BAWSO and works with the Modern Slavery Police Transformation Programme Coordinator and Analyst at the Regional Organised Crime Unit. In 2015 the Welsh Government commissioned an independent review of the Victim Response Pathway and its rollout which resulted in positive findings from Cordis Bright.

The National Referral Mechanism (NRM)
The robust Welsh Anti-Slavery structure supported by local media and awareness campaigns has increased awareness across Wales and has provided confidence in its response to dealing with modern slavery and identifying the signs to look out for. National Referral Mechanism (NRM) referrals in Wales have increased from 34 referrals to the National Crime Agency in 2012 to 193 in 2017. In the UK, the number of victims referred to the National Referral Mechanism, the only legal way a person can be identified as trafficked and thus able to access the legal and support regimes for victims of human trafficking and modern slavery, are outlined below (see Table 2). There has been a steady increase in the numbers referred, including in Wales.

According to the Home Office Chief Scientific Advisor who carried out research and from the 2014 NRM data estimates, there are between 10,000 and 13,000 victims of modern slavery in the UK. However, the National Crime Agency in 2017 estimated that the number is likely to be hundreds of thousands of people in the UK (The Guardian newspaper, August 10, 2017). There is therefore a lot more that needs to be done to stop trafficking and to look after victims and survivors.

Strategic Objective 9: Working with “Source Countries”

In recent years, there has been a healthy appetite to work with source countries in order to better understand the issues that victims face locally from their originating country and to comprehend how they can be better supported locally. This resulted

<table>
<thead>
<tr>
<th>Year</th>
<th>UK</th>
<th>Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>1186</td>
<td>34</td>
</tr>
<tr>
<td>2013</td>
<td>1746</td>
<td>50</td>
</tr>
<tr>
<td>2014</td>
<td>2340</td>
<td>70</td>
</tr>
<tr>
<td>2015</td>
<td>3266</td>
<td>134</td>
</tr>
<tr>
<td>2016</td>
<td>3805</td>
<td>123</td>
</tr>
<tr>
<td>2017</td>
<td>5145</td>
<td>193</td>
</tr>
</tbody>
</table>

Source: National Crime Agency NRM data
in the Strategic Objectives Lead visiting Albania in 2016 and 2017 and subsequently hosting with the Welsh Government, a return visit of a senior Albanian delegation through the excellent coordination of the International Centre for Migration Policy Development (ICMPD). This was an excellent example of international collaboration and an improved sharing of understanding as well as the delivery of the strategic objectives. There was a Wales/Albanian Task and Finish Group locally established which reported to the Home Office directly to take forward actions.

One of the challenges Wales faced locally, nationally, and internationally was that modern slavery is the second most profitable crime behind drug crime. It is known that it often involves organized crime groups and with many new trends emerging. We know that traffickers do not respect borders, and so there is need to work even more closely with the aviation and hotel sector. The Wales Strategic Objectives Lead who also chairs the UK Modern Slavery Non-Law Enforcement Training Delivery Group co-hosted with IATA an aviation and hospitality conference in early 2018 to identify ways to strengthen this vital area of work and created a modern slavery master class for aviation students.

The Wales Anti-Slavery Leadership Group is fortunate to have the Vice President of the Group of Experts on Action against Trafficking in Human Beings (GRETA), Council of Europe, as a member. This provides opportunities to share the right practice in Wales, and the Strategic Objectives Lead was invited to present the Wales approach to Anti-Slavery to GRETA in 2017 at one of their meetings in Strasbourg. This was reported in the GRETA Report.

As Welsh Government chair of the Wales Anti-Slavery Leadership Group, it has been helpful to enable Welsh Government International Sustainability Development Officers to become involved in this work as they have established several offices across the globe to promote Wales including trade and tourism. This is part of the Welsh Government work plan.

**Wales Anti-slavery Logo: Tested Coordinated Action at a Glance**

In order to ensure uniformity in delivery and proof of tested multiagency involvement in Wales to tackle modern slavery, it was decided that a Wales anti-slavery logo should be created (See Annex). In Spring 2013 meetings were held between the then stakeholders involved in tackling this heinous crime. The Strategic Objectives Lead worked with colleagues to develop and agree on a single logo that would represent Wales. The logo represents the collective will and coordination of the main actors in Wales and formally acknowledges their work, providing a quality kite mark. The logo’s political significance and buy-in at the highest level can be seen by the fact that it was approved by the First Minister for Wales (the highest political office in Wales). The logo has been an enormous success and has brought organizations together, under one voice. The logo has been named Dewi and now features on all publicity and management documentation. The logo is also a kite mark, signifying that the program or action has been assessed by the Leadership Group and is a coordinated approach to tackling human trafficking.
Conclusion

Ever since the UN Palermo Protocol was signed in 2000, many countries have begun to take human trafficking and modern slavery much more seriously. Since 2010, with the publication of the Cross-Party Group report which made recommendations to Welsh Government on how to tackle human trafficking and the establishment of the first Anti-Slavery Coordinator in the UK, Wales has been at the forefront of the action. Its structured and strategic approach to the crime has yielded positive results. To date, the success of the Wales approach to tackling modern slavery and human trafficking has been due to the dedication and commitment of organizations from the public, private, and third sector, all joining together as one. This has raised awareness, identified and supported more victims, and led to increases in referrals to the national Crime Agency (NCA). These referrals, where necessary, have resulted in targeted investigations aimed at bringing perpetrators to justice. The Wales strategic structure and a robust delivery plan have been instrumental to this joint approach and have been recognized by the University of Nottingham Rights Lab to be UK good practice. Organizations, charities, and individuals have eagerly all come together in collaboration, to play their part to tackle this heinous crime but with one voice using the great Dewi logo. From the very start of the anti-slavery journey in Wales, it has been evident that a single organization cannot solely tackle modern slavery. It is a complex crime to identify, to investigate, and to prosecute. Wales’ approach has been to identify and support victims and bring perpetrators to justice by working together on a multiagency basis.

As a country, however, Wales must not be complacent and continue to be ever vigilant if it is to continue to respond to this heinous crime in order to safeguard the many children, women, and men from being exploited. In Wales, we have started the journey to tackle slavery, and we cannot be complacent in our endeavors. We have recognized that robust partnership working is our critical success factor to tackling slavery. We have gained experience and best practice which is attracting attention from across the UK and internationally.

Cross-References

▶ Multisector Collaboration Against Human Trafficking
▶ Soroptimist International’s Work in the Prevention of Modern-Day Slavery: Wales as a Good Practice Example of Partnership Working

References


Human Trafficking in the Russian Federation: Scope of the Problem

Irina Churakova and Amanda van der Westhuizen

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Abstract

According to international anti-trafficking standards (TVPA, EU Directive No 21011/36/EU), countries are required to demonstrate a commitment to eliminate all forms of trafficking, including, but not limited to, trafficking for sexual exploitation, forced labor, forced marriages, and organ removal. The chapter draws upon the scope of human trafficking in the Russian Federation in the twenty-first century,
investigating the policies and strategies of the state to combat human trafficking issues and considering the extent to which they are effectively reducing or responding to the exploitation. The chapter explores the role of state social services in addressing some of the solutions and challenges that the country faces in preventing and combating human trafficking and focuses on the partnership of NGOs and the state. Mentioning the latter war conflicts and some major national construction projects, the authors further illustrate the fundamental mechanisms that the Russian state has implemented in direct response to human trafficking and, more broadly, essential efforts to address the exploitation of vulnerable migrant populations. The chapter concludes with policy recommendations on the development and implementation of the National action plan and counter-trafficking strategies or the 4“P”s – prevention, prosecution, protection, and partnership.

**Keywords**
- Russian Federation · Human trafficking · Sexual exploitation · Forced labor · Migrant populations · Push and pull factors

**Introduction**

Russia (officially the Russian Federation) is a country in Eurasia, the largest in the world by territory and the ninth most populous. Its population is 144.5 million people and tends to grow in recent years. The largest city and the capital of Russia is Moscow, with a population of more than 15 million (Territory and population ... 2016). Russian Federation is a great power and a permanent member of the United Nations Security Council as well as other international political, economic, and security organizations. Russia is a presidential republic with a single dominant party in its political system. It is a leading member of the Commonwealth of Independent States (CIS), uniting ten post-Soviet republics formed following the dissolution of the Soviet Union. Having repaid massive foreign debts in 2006 due to the prudent fiscal policy, Russia now has one of the lowest foreign debts among major economies, and its Stabilization Fund helped the country to come out the global financial crisis with a much better state than expected (Debt – external 2017).

According to Bloomberg, Russia is considered well ahead of most other resource-rich countries in its economic development, with a long tradition of education, science, and industry. For example, the country has a higher proportion of higher education graduates than any other country in Eurasia (Russia: How long ... 2006). There is room for improvement. First, the economic development of the country has been uneven geographically with the Moscow region contributing a substantial share of the country’s GDP (Russia – Analysis 2014). Besides, oil and gas sector accounts for more than 80% of the country’s exports. Officially, about 20–25% of the Russian population is categorized as middle class; however, some economists and sociologists think this figure is overestimated. Approximately 19.2 million Russians lived below the national poverty line in 2016, some of them being prompting to trafficking (Number of Russians... 2016).
Studies estimating at-risk groups of population in the Russian Federation (RF) as “easy” groups for recruitment into human trafficking point to shares of a population with income below minimum subsistence level, which equals 13%, 50% of them are children and young adults (30 or younger). Children from families with income below subsistence level are next significant group, around 3%. The unemployed (based on ILO methodology) in 2012 counted 3.5%, women with no professional education – 2.5%, women with no secondary education – 0.1%, unemployed women – 0.5%, persons employed in the commercial services of a sexual nature – from 0.3% to 0.7%, children from “at risk” families – 0.4%, children left without parental care – 0.5%, and homeless and persons with no fixed abode – 2% (Zaibert 2014).

The main reasons for the existence of trafficking in persons in the Russian Federation presently are considered to be virtually transparent state borders between Russia and the Commonwealth of Independent States (CIS countries); increase in migration flows from and to Russia; economic disparity and employment challenges, when people from small cities are prone to false promises of better work and life in big cities and often end up in exploitation and slavery-like situations lured by nets of criminal businesses; the globalization of organized crime, and the existence of sustainable “delivery” channels (Tyuryukanova 2008).

The Scope of Human Trafficking in Russia: Pre the “Perestroika” to the Twenty-First Century

Studies report that the Russian Federation is one of a few countries that serves not only as a country of origin of trafficking victims but as a country of their destination and transit as well (Aronowitz et al. 2010; Vitkovskaya and Tyuryukanova 2009; Tyuryukanova 2006a, b). These peculiarities arose out of a series of political and economic changes that occurred after 1986 under Mikhail Gorbachev, the first secretary of the Communist party of the Soviet Union, who announced and started the “Perestroika,” a reformation period in the country. After the unsuccessful revolt of a small group of retrograde officials against Gorbachev in the summer of 1991, the Communist party lost its sole-directing role as an ideological leader in the country, initiating an era of the freedom of trade, speech, and faith. That same year, a referendum was held which eventually dissolved the Union of the Soviet Socialist Republics (USSR), referred to as the former Soviet Union. Therefore, after 70 years existence of the USSR, consisting of 15 republics or the Soviet States, the Russian Federation became its legal successor. Since 1991, Russia has accepted accountability for the former Soviet Union international financial debt, nuclear weapons, border protection politics, and matters pertaining to cultural heritage.

Hughes (2000) states that the collapse of the former Soviet Union created access to a pool of millions of women from which traffickers could recruit. Currently, former Soviet republics such as Ukraine, Belarus, Latvia, and Russia have become major sending countries for women trafficked into sex industries all over the world. As a result, in the sex industry markets, the most popular and valuable women were from Ukraine and the RF (Hughes 2000).
The period of modern Russian history begins in the early nineteenth century. In 1899 in London, the first International Congress against trafficking in women for prostitution which aimed to oppose white slavery for sexual exploitation of women and children started the fight against human trafficking in numerous countries. Delegates from Austria, Belgium, Denmark, England, Germany, Holland, Norway, Russia, Sweden, Switzerland, and USA appealed to the governments of their countries to unite forces for the elimination of trafficking in persons, including the sale of white European women for prostitution in South America, Africa, or Asia (Doezema 2000, pp. 23–24). Resolutions were adopted to form a permanent counter-slavery organization, known as the International Congress (Holman 2009, p. 6).

Following this Congress, in Russia, an all-Russian society for the protection of women launched its activity on January 13, 1900. The goals were the prevention of sex trafficking in women and children, spreading the information on ethics and morality with the at-risk groups, and rehabilitation of those already prostituted in St. Mary the Magdalene shelters. Many European countries such as England, France, Italy, and Spain, shared similar initiatives.

In 1904, the Congress adopted the first agreement to address the white slave trade (United Nations Treaty Collection 2018a), followed in 1910 by the International Convention for the Suppression of the White Slave Traffic (United Nations Treaty Collection 2018b), which was ratified in 1920, being the first and probably the best prototype of the Palermo 2000 Protocol. Russia was a notional signatory to both instruments (Galenskaya 2005).

The Convention held traffickers accountable for the use of force and fraud in their efforts to recruit and harbor women for sexual exploitation and regarded women up to 20 years of age as minors. After the First World War, the League of Nations (the UN predecessor), in which the USSR was a significant member state, considered the trafficking of persons as severe enough to adopt it as part of its mandate (League of Nations 1920) and to initiate the International Convention for the Suppression of the Traffic in Women and Children, 1921 (League of Nations 1921) and the International Convention for the Suppression of the Traffic in Women of Full Age, 1933 (League of Nations 1933).

After the Second World War, the USSR, as the primary victor over Nazism, was a prominent State party to the newly formed United Nations protocol, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (United Nations 1950), which consolidated all previous agreements drafted on the issue of sex trafficking (Holman 2009, p. 6). The Convention discharged the survivors from responsibility for some crimes committed as a direct result of trafficking, agreed to share the information, and extradite traffickers to the countries where the crimes were committed, and recommended the governments of countries-participants to pass on local legislation in line with the Convention. Such legislation, it has been argued, should allow prosecutions and convictions of a crime of trafficking in human beings, which is the crime of exploitation of the third person for labor, sexual, and other purposes (Galenskaya 2005; Tyuryukanova 2006a, b).

After the Second World War, the former Soviet Union, and the RF in particular, as well as many other Soviet Republics, had articles in their Criminal Code...
convicting, for example, pimping (article 226 of the Russian Criminal Code, UK
RSFSR), seduction of minors into prostitution (article 210 of the Russian
Criminal Code, UK RSFSR), and keeping and financing the brothels (article
226 of the Russian Criminal Code, UK RSFSR) (Galenskaya 2005). The laws
were so strict that prostitution, as well as any other forms of commercial sex (and
even sex itself), did not appear to exist in the USSR de jure. Therefore, officially
there was no sex trafficking in the Russian Federation during the Soviet era. This
was the prevailing situation in the country, though de facto at times things would
differ.

Interestingly, regarding labor trafficking, outstanding work as a substitute for
incarceration for certain criminal offences had always been the norm of the Russian
Criminal Code. This norm was excluded from the Code after the “Perestroika” for
a short time but was restored to the appropriate legislation recently. One could
perceive this as labor trafficking, though actually, it may not be the case, as some
Russian citizens would voluntarily exchange their fines or short imprisonment for
small offences for an opportunity to work as volunteers, which was unpaid (Chef of
the Interior. . . 2017).

Dramatic changes have taken place in the Russian Federation since the collapse of
the Soviet Union. This resulted in many positive changes for the Russian people.
Unintended consequences such as economic instability, looser travel restrictions,
and the absence of a functional legal system, however, facilitated a rise in human
trafficking in, from, and to the Russian Federation (Roache 2018). For example, as
for sex-trafficking, after 1991 a leading method of recruiting Russian women for
work in the Eastern European sex industry was solicitation based on false offers of
employment (Churakova 2014). Initially, recruitment was conducted “legally,”
usually through newspapers or online advertisements for work in beauty salons,
the food industry, childcare, and agriculture. Over time, recruiters began to use direct
contact instead of a newspaper or online advertisements. Taking advantage of these
women’s naiveté and desire to achieve financial success made it easy to recruit
dozens of women in a short period (Bales 2005). As there were no laws against
human trafficking during the Soviet era and public discussion about sexuality and
prostitution was a social taboo until the mid-1990s, no information exists regarding
the scope, nature, and extent of human trafficking during the Soviet period (Roache
2018).

In the early 2000s, after the Russian government acknowledged that human
trafficking is a national security issue about the threat of terrorism (Ivakhnyuk and
Iotsev 2013), Russia signed and ratified the Palermo Protocol, and created criminal
laws against some forms of human trafficking. This then allowed for the collection of
data on the scope, nature, and extent of the crime in Russia. The standard caveat for
researchers is the lack of reliable data on human trafficking. This further applies to an
accurate knowledge of the magnitude of the problem in the Russian Federation (De
Sas Kropiwnicky 2012) due to some context-specific factors. Besides that, human
trafficking may be too complex to be accurately represented through statistics
(Gallagher 2014). Russian legislation, for example, lacks a definition of a “traffick-
ing victim,” which makes it difficult to identify victims.
Furthermore, many victims are treated as illegal immigrants and immediately deported (Roache 2018). The Russian government does not have a central data collection body to collate data from government agencies and civil society organizations. Unfortunately, a significant factor that inhibits the collection and simulation of human trafficking data is the unexpected politicization of assisting victims of human trafficking.

Severe restrictions on civil society organizations started in 2012, when Russia adopted legislation which made it a crime for individuals or organizations to provide material assistance to people considered to be in Russia illegally (US Department of State 2018, p. 263). Also, nongovernmental organizations (NGOs) that receive foreign funding and engage in “political” activity were required to register as “foreign agents” with the government’s Justice Ministry. In 2015, a “patriotic stop list” was signed into law that authorizes prosecutors to shut down foreign-funded NGOs that engaged in activity deemed a threat or “extremist” to Russia. Unfortunately, this resulted in restricting the services to trafficking victims and at least one NGO registered in Russia was designated as a “foreign agent” (US Department of State 2016, p. 317).

These restrictions concerned not only nongovernmental but also religious organizations. Since 2016, in response to the essential anti-extremists “Yarovaya’s package” of laws (The International Center... 2016), some officially registered religious institutions, mostly Protestant in origin, were closed or subjected to pressure from the state (About the “Yarovaya law” 2018). For instance, this included downshifting of the Jehovah witness’s religious sect activity in RF as well as another prosecution against four volunteers who are members of a prominent and influential Protestant church in Moscow (How sectarians... 2017). The church is officially registered, and the volunteers were conducting psychological and social rehabilitation program for chemically dependent persons at their consent. It was somewhat analogous to the Alcoholics Anonymous 12-steps program. In this particular case, the trial continues for 2 years, and the four volunteers were kept incarcerated during all that time (Waiting for a miracle 2017). The senior pastor, a 35-year-old man with a family and two children, was perceived by the authorities as a religious extremist. He and his family were subjected to psychological pressure to leave the country, to bribe the prosecutors, etc., and finally, he was included in the trial as a witness for lack of criminal evidence against him. In November 2018, he was refused entrance to the country until April 2020, and the family separated, though his wife and children are Russian citizens (Declaration... 2018).

In 2016, the Russian government stopped providing prosecution or victim rehabilitation data to the United States Department of State for their annual Trafficking in Persons (TIP) report. This was mainly the result of increased international pressure and the Western interventions in Russian internal politics which also led to the downgrading of the Russian government to Tier 3 status on the annual TIP report rankings in 2013. The Annual TIP report ranks 187 countries and territories into four tiers based on the government’s efforts to meet the TVPA’s minimum standards for the elimination of human trafficking (US Department of State 2018, p. 39). Tier 1 refers to the governments of countries that fully meet the
TVPA’s minimum standards for the elimination of trafficking, while tier 3 are “governments of countries that do not fully meet the TVPS’s minimum standards and are not making significant efforts to do so” (US Department of State 2018, p. 41). The 2018 TIP report ranks the RF alongside 22 other poorly performing countries such as China, North Korea, and Syria (The Moscow Times 2018).

However, Reuters argues that the US Department office (known as J/TIP) set up to assess how well the world nations fight human trafficking was repeatedly overruled in 2015 annual report, for example, leading to inflated assessments of more than a dozen countries. Most US diplomats are reluctant to openly strike back at critics inside and outside of the administration who accuse them of letting politics trump human rights. However, privately, some diplomats say that J/TIP staffers should avoid acting like “purists” and keep sight of broader US interests, including maintaining open channels with all governments to push for reform and forging trade deals that could lift people out of poverty. Besides, officials who worked in the office over the past 15 years acknowledge that countries with sensitive diplomatic or trade relationships with the United States sometimes received special treatment following pressure from local embassies and other constituencies within the department (Reuters 2015).

NGOs such as the International Organization for Migration (IOM) which provides post-trafficking aftercare services to survivors were refused the state funding, as well as other shelters. This contributed to the lack of available statistics on the scope, nature, and extent of human trafficking in the country (US Department of State 2010, p. 281).

Available Statistics on Human Trafficking in the Russian Federation

Due to the abovementioned limitations, there is a lack of accurate statistics on the scope and extent of human trafficking in the Russian Federation. The International Labour Organization (ILO) attempted to measure those in conditions of modern slavery, encompassing forced labor in the private economy, forced sexual exploitation of adults, commercial sexual exploitation of children, and state-imposed forced labor as well as forced marriage in its Global Estimates of Modern Slavery report (ILO 2017, pp. 8–9). According to the report, in 2016 there were 40 million victims of modern slavery in the world; 24.9 million were in forced labor. Regionally, 3.9 per 1000 people were in conditions of modern slavery in Europe and Central Asia, while 3.6 per 1000 people were in forced labor in the same region (ILO 2017). The 2018 Global Slavery Index (GSI) (The Walk Free Foundation 2018) estimated that 794,000 individuals were living under conditions of modern slavery in the Russian Federation on any given day, reflecting a prevalence rate of 5.5 victims per 1000 people. The report conceptualizes modern slavery as an umbrella term for forced labor, including sex trafficking, human trafficking, and slavery and slavery-like practices such as forced marriage (The Walk Free Foundation 2018, p. 9). The GSI, however, has received severe criticism for its methodology and lack of
transparency (see Gallagher 2017), while the International Labour Organization (ILO) attempts to be more transparent regarding the difficulties of measuring this often-hidden population and thus the fragility of the resulting data (Gallagher 2017).

Despite the high figures stated by these reports in general, statistics from other sources (e.g., UN Office on Drugs and Crime (UNDOC) 2016; US Department of State 2018) revealed low numbers of identified victims in the RF. The main reasons were, possibly, the lack of integrated victim identification and referral systems, due to which the victims had fears of deportation and refusal of assistance, while the police were reluctant to register them in cases where convictions were not probable. Nevertheless, an NGO in the Russian Federation reportedly assisted more than 2,400 cases between 2015 and 2017 (US Department of State 2018, p. 363). UNODC (2016) indicated that in 2015, based on the data provided by the Ministry of Internal Affairs of the Russian Federation, 285 victims of trafficking were detected under the different trafficking-related articles. The most substantial proportion (71%) was minors trafficked via enticement into prostitution and used for the production of pornographic materials. The remaining 29% were adult victims of trafficking in persons and slave labor. Thus, while organizations such as the Walk Free Foundation (The Walk Free Foundation 2018) and the ILO (ILO 2017) have attempted to determine the prevalence of human trafficking in the RF, accurate statistics on the crime or the number of victims in trafficking situations is not available.

**Existing Types of Trafficking in Persons in the Russian Federation**

Despite the lack of information on human trafficking in Russia, J/TIP gathers information from parties such as journalists, human trafficking survivors, published reports, news articles, meetings with a wide variety of local and international NGOs, and US embassies (US Department of State 2018, p. 39). According to the 2018 TIP report, Russia is a country of origin, transit, and destination for victims of some forms of trafficking (Jarbussynova 2017, p. 7). The main form of adult human trafficking in the country is labor trafficking in the informal shadow-market economic sector as well as industries with a lower regulatory burden. These include the construction, manufacturing, agricultural, brick factories, textile, grocery store, maritime, illegal logging, and domestic service industries (Zaibert 2014). Forced labor also occurs in the forms of forced begging, waste sorting, and street sweeping. Exploited migrant workers, including irregular migrants or foreign citizens, originate from Central Asian countries such as Uzbekistan and Kazakhstan, and Ukraine, Vietnam, China, and the Democratic People’s Republic of Korea (DPRK) (US Department of State 2018, p. 364; The Walk Free Foundation 2018). Disabled persons are vulnerable to be trafficked into forced begging (Jarbussynova 2017, p. 7).

Women and children are trafficked for sex trafficking purposes to Russia from Eastern Europe, Southeast Asia, Central Asia, and Africa. NGOs reported identifying an increasing number of sex trafficking victims from Nigeria in 2017 (US Department of State 2018, p. 364). Some of these Nigerians (both adults and minors) were trafficked to Russia on student visas but rarely contact the universities once they had arrived in
Russia (Burrows 2016). Russian women and children are reportedly trafficked to Northeast Asia, Europe, Central Asia, Africa, the United States of America, and the Middle East for sexual exploitation (US Department of State 2018, p. 364). Forced prostitution occurs in settings such as brothels, hotels, and saunas. The Islamic State of Iraq and al-Sham (ISIS) reportedly recruit Russian women from the North Caucasus region and Central Asian women residing in Russia through online romantic relationships. These women are subjected to exploitation once they arrive in ISIS. Wives and their children of ISIS foreign soldiers were sold after their spouse was killed in action (US Department of State 2018, p. 364).

Russian women are trafficked from rural areas in the RF to big cities such as Moscow and St. Petersburg. Domestic sex trafficking of Russian adults and children within the RF, for example, trafficking of minors in St. Petersburg also reportedly takes place (Buckley 2013). Minors are exploited primarily in the sex trafficking trade. Adolescents are vulnerable for so-called pick up training – sexual education classes during which they are pressured into performing recorded sexual acts on course organizers. These recordings are subsequently used to force the victims into further sexual exploitation. Similarly, homeless children are victimized in sexual exploitation (US Department of State 2018, p. 364) and forced begging (Jarbussynova 2017, p. 7). New forms of potential exploitation are emerging, such as the sale of new-born babies by their parents (Jarbussynova 2017, p. 7). The sale of babies, however, is not criminalized as trafficking under the Russian Criminal Code. Rather, it falls outside the international definition of trafficking. So, some trafficking cases were reclassified as kidnapping or battery in order to secure a conviction. Minors in state and municipal orphanages are increasingly vulnerable to be lured into forced begging, forced criminality, child pornography, other forms of sexual exploitation, and even to be used as child soldiers in the Middle East (The Walk Free Foundation 2018).

**Recruitment Methods and Mechanisms of Human Trafficking**

Recruitment methods and mechanisms used to lure Russian citizens and foreign nationals into exploitative trafficking situations are varied and criminal networks continually adapt their modus operandi. The most common methods of recruitment into human trafficking are through friendships, private individual contacts, and recruitment agencies. The internet has become a significant platform for recruiting victims of human trafficking (Ryazantsev et al. 2015, p. 621; Zaibert 2014). The Russian Federation is a transit corridor between Asia and Europe due to its geographical position and transport links, which is used by criminal groups who organize human trafficking (Ryazantsev et al. 2015, p. 622).

According to Natalia Zaibert (2014), primary routes used by “transporters” out of Russia are the Baltic route (via Baltic states to Germany, then to other European countries and the USA), the Central European route (through Warsaw and Prague to Germany, Scandinavia, and other countries), the Mediterranean – to Turkey, Greece, Cyprus, Israel, and Italy; the Caucasus transit route – via Georgia and
Turkey to Greece and Italy; the Middle Eastern – via Egypt to Israel and the Middle East; and the Chinese – from Siberia and Primor’ye to Northern China.

As a country of destination, Russia encapsulates routes from the CIS countries and economically depressed Asian regions. Almost all of the CIS states are involved in the trafficking of humans into Russia as origin countries. The most vulnerable populations are those from Armenia, Georgia, Kyrgyzstan, Moldova, Tajikistan, Ukraine, and Uzbekistan. As a country of transit, Russian territory is a part of “Eastern European” and “Baltic” routes for the shipment from the Middle East and South-East Asia to Europe. Citizens of Afghanistan, India, Pakistan, and Iraq (primarily Kurds) get to Europe via trans-Caucasian countries (usually Azerbaijan) and then via Russia. Migrants from Afghanistan, China, Vietnam, and Bangladesh enter Russia via Central Asian countries (Zaibert 2014).

Push and Pull Factors of Human Trafficking in Russia

Although some theories can and have been used to explain human trafficking (see Winterdyk in Section 6), one of the more common explanatory models used is the push and pulls factor model. Each case of human trafficking is the result of a unique set of “mutually reinforcing” (Delport et al. 2007, p. 32) social, economic, and cultural factors, which can be described as push and pull factors (Bales 2005, p. 269). Push factors refer to challenges facing populations that make them vulnerable to be trafficked, while pull factors drive the demand for the exploitative use of individuals (Bermudez 2008, p. 12). Some push and pull factors increase the vulnerability of Russian citizens and persons outside of the Russian Federation to end up in trafficking situations in Russia. Push factors include gender and economic inequality, poverty, under and unemployment, a lack of access to formal education, the globalization of labor, and market diversity (The Walk Free Foundation 2018, p. 20; Turoff 2016, p. 4). Concerning sex trafficking, the free-market economy is one of the main reasons for the demand for prostitution, while gender bias is a push factor. Armed conflicts between states, governments, societies, and informal paramilitary groups also increases the risk of human trafficking as it leads to displacement, a breakdown of formal and family social support networks, disruptions in essential services provision, and economic hardship.

For example, since 2014 State pension funds were frozen for all Russian citizens in order for the State to be able to finance the Sochi Olympics, the “reunification” of the Crimea with the Russian Federation and the Football World Cup construction sites. In 2018, the age of retirement was increased from 55 to 63 years old for women and from 60 to 65 years old for men, which evoked waves of protesting petitions on behalf of social activists. State Duma deputy Denis Parfenov estimates more than 92% of Russian citizens object to increasing the retirement age. The subject is still highly sarcastic in the society, keeping in mind that statistically overall length of life in the country is considered several years less than the new retirement age (In regions of Russia...2018).
The 2018 Global Slavery Index indicated that Russia has one of the highest levels of vulnerability to trafficking in the Central Asian region due to the effects of conflicts in the East of Ukraine. The impact of Islamic militancy and Russia’s involvement in combating ISIS is further contributing to the vulnerability of the Russian population (The Walk Free Foundation 2018, p. 30).

Pull factors are the high demand for unskilled labor, the existing sex industry, visa-free travel to Russia, and the fact that trafficking in persons is a high profit, low-risk business. Impunity is exacerbated by corruption in the officials and outdated immigration laws between the former Soviet states (The Walk Free Foundation 2018, p. 20) and the low priority of human trafficking on the national and criminal justice agenda in the Russian Federation. In recent years, it emerged that Russian officials were investigated for facilitating human trafficking by aiding victims’ entry into Russia, providing protection to traffickers, and the return of the escaped or rescued victims to their exploiters (US Department of State 2017, p. 338).

**Existing Labor Practices in National Construction Projects as Pre-conditions for Trafficking**

The existing labor practices in the RF may also serve as a conduit for trafficking. For example, subcontracting practices in the construction industry often result in cases of non-payment or slow payment of wages, which potentially serve as a push factor into trafficking situations (US Department of State 2018, p. 264).

Nevertheless, if one considers the mentioned above domestic economic changes of the last decade compared to the “Perestroika” times, they have made Russia a country its citizens would not wish to leave, a country they are proud of. Social activists believe that the government needs to put efforts on the “inside” just in the same way it has put them on the “outside.” Nearly a decade, or so ago, several prominent major national construction projects were started and successfully finished. They included the building of the 2014 Sochi Winter Olympics sports facilities; the 2018 Crimean across-the-Black-sea fascinating bridge which united the central part of Russian Federation with the Crimea; and the 2018 FIFA World Cup stadiums in which Russia hosted the month-long football tournament.

The 2018 FIFA Soccer (Football) World Cup with events on numerous sites in eight different cities throughout Russia resulted in significant economic investments in the local infrastructure as well as the extraordinary growth of the migrant labor. Construction for mega-sporting events such as the 2018 FIFA Soccer World Cup and 2014 Winter Olympic and Paralympic Games reportedly served as pull-factors for labor trafficking. Human Rights Watch (2013) estimated that tens of thousands of migrant laborers from countries such as Belarus, Central Asia, and Ukraine (Williamson 2018) were attracted to RF where they faced conditions of exploitation such as withheld pay for up to 5 months, failure to pay full wages, failing to provide or disregarding of employment contracts, seizing passports and work permits to coerce workers to remain in conditions of exploitation, excessive working hours, and expecting outdoor work in temperatures as low as $-25\,^\circ\text{C}$ without legislated
assessment of conditions to ensure workers safety. Employers of various construction projects retaliated to protests from migrant workers by denouncing them to the authorities, resulting in the workers’ expulsion from Russia without any reported efforts to screen them for human trafficking (US Department of State 2018, p. 324).

Unlike the cases in previous mega-sporting events such as the FIFA World Cup soccer tournaments, the Russian World Cup lacked a countrywide anti-trafficking campaign. By contrast, the tournaments in Brazil, South Africa, and Germany all mounted comprehensive anti-trafficking campaigns aimed at educating football fans about the impact of human trafficking. Although human trafficking happens every day and is not limited to mega-sporting events, the incidents and busts are on the rise during major sporting events such as the Super Bowl, Olympics, and World Cup, which facilitate demand for sexual and other services (Dean 2018). That is why most countries and host cities wage aggressive anti-trafficking awareness and policing campaigns, such as, for instance, recently reported harassment of prostitutes on the Leningradskoye Highway near Moscow. Commitment to combating human trafficking needs to be made a priority in government legislation or law enforcement efforts, so that an estimated influx of a million football fans, combined with eased visa requirements, and limited services for victims, would not make such tournaments targets for human trafficking.

Irregular Migration and Human Trafficking Codependence

As there is a close link between labor and sex trafficking and the phenomenon of irregular migration (Ryazantsev et al. 2015, p. 622), regular and irregular economic migrants are vulnerable to be trafficked. Various factors have contributed to a reported increase in irregular migrants into the RF, including more restrictive migration policies aimed at, among other, Central Asian and Ukrainian migrants (Kuznetsova 2017). For example, in 2015, a new law introduced necessary tests in the Russian language and Russian history (as other countries have) and additional laws for all foreigner citizens who plan to work in Russia (Denisenko 2017). It is estimated that up to 40% (between 5 and 12 million foreign nationals, of who 1.5 million are irregular migrants) are vulnerable to both labor and sex trafficking. For instance, the armed conflict in the east of Ukraine in 2014 ended up with hundreds of thousands of migrants leaving for RF from Ukraine. According to press reports, 2.3 million Ukrainians resided in Russia, including more than 1 million who left the country in search of a better life (US Department of State 2014).

Foreign nationals work primarily in construction, housing, and utility industries, but also work as public transport drivers, seasonal agricultural workers, tailors, garment workers in underground garment factories, and vendors at markets and shops. Within this context, many experience coercive acts and exploitation that resembles human trafficking such as the withholding of identity documents, non-payment for services rendered, physical violence and threats of violence, long working hours, restriction of movement and communication, lack of adequate safety measures, and extremely poor living conditions (The Walk Free Foundation 2018).
The North Korean Labor Trafficking Case

According to official sources, in recent years, there have been several criminal cases involving Russian officials allegedly facilitating trafficking in the country (US Department of State 2017, p. 338). The cases involve facilitating victims’ entry into Russia, providing protection to traffickers, and returning trafficking victims to their exploiters, and of employers bribing Russian officials to avoid enforcement of penalties for engaging illegal workers. Organized crime syndicates from Russia were also involved in arranging the trafficking of individuals. According to the Federal Migration Service, under a state-to-state agreement, approximately 20,000 North Korean citizens are imported annually by the North Korea government to work in various sectors within Russia. The sectors include the logging industry in Russia’s far eastern region. Many of the North Korean citizens involved in this sector are subjected to conditions of forced labor (Rim 2017; US Department of State 2014).

The Russian Federation has bilateral contracts with the DPRK (North Korea) under which, according to The Database Center from North Korean Human Rights, annually up to 20,000 North Korean citizens are sent to Russia through the state-sponsored system. Approximately, 2,000 are working in logging camps in Russia’s Far East (Gyupchanova 2018), while the rest are employed in the construction, mining, and textile industries (The Walk Free Foundation 2018). The work conditions of the North Korean workers closely match the ILO’s system of 11 indicators to identify situations of forced labor. These indicators include abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, and retention of identity documents (Gyupchanova 2018). As the DPRK started the practice of dispatching laborers to earn foreign currency for the DPRK, 80% of North Korean migrant workers’ salaries are transferred to the DPRK regime. After North Korean managers have deducted money for food, accommodation, and party loyalty fees, North Korean migrant workers only receive up to 10% of their original salary (Gyupchanova 2018, p. 205).

In 2016, the bilateral agreement was extended to bring in more North Korean workers to the Russian Federation. Two years later, however, President Putin signed a restrictive policy which is aimed at reducing forced labor and human trafficking-like practices. The adoption of two United Nations Security Council (UNSC) resolutions in 2017 has reportedly resulted in the repatriation of North Korean migrant workers by the Russian government since early 2018. These two UNSC Resolutions are Resolution 2375, adopted on 11 September 2017, bans North Korean migrant labor, and UNSC Resolution 2397, adopted on 22 December 2017, demands the repatriation of all North Korean migrant workers.

This is somewhat confusing, as the restrictive policy on the first impression seems reasonable and could reduce forced labor and TIP practices. At the same time, since there is no transparent mechanism by which to monitor the policy, it remains unclear as to whether the practice has been reduced (U.S. calls... 2018). Furthermore, considering the complexity and the agility of trafficking practices, it is possible that human trafficking-like practices involving DPRK citizens may continue, albeit in adapted forms to circumvent the UNSC resolutions.
Solutions and Challenges in Preventing and Combating Human Trafficking in RF

In March 2004, Russia ratified the UN Convention against Transnational Organized Crime and the Protocols as well as the Protocol to prevent, suppress, and punish trafficking in persons, especially women and children. Since 2003, the Criminal Code includes provisions which criminalize human trafficking in persons (Article 127.1), exploitation of slave labor (Article 127.2), engagement in prostitution, and procuring prostitution (amended Articles 240 and 241). Articles 127.1 and 127.2 of the Russian Criminal Code prohibit both sex trafficking and forced labor, although they also cover non-trafficking offences. Officials also use other criminal statutes to prosecute trafficking offenders. They include, among others, Articles 240 and 241 for involvement in or organizing prostitution. Russian authorities reported they often charged sex trafficking cases under Articles 240 and 241, addressing the inducement to and organization of prostitution, as the elements of those crimes were often more natural to prove. Article 127 prescribes punishments of up to 10 years imprisonment, which are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape (US Department of State 2018).

The Federal Law of 20 August 2004 No. 119-FZ “On State Protection of Victims, Witnesses and Other Parties to Criminal Proceedings” entered into force on January 1, 2005. It enacts a set of state-guaranteed security measures for the protected persons. Under the Law, claimants, witnesses, and victims shall be eligible to the government protection. In 2007, Units for Combating Kidnapping and Human Trafficking within federal, regional (district) levels within the Interior Ministry structures were established. Also, the Programme for Cooperation among CIS Member states in Counteraction to illegal migration for 2012–2014 and Programme in Combating Human Trafficking for 2014–2018 were launched.


In 2013, the RF funded three projects to prevent trafficking. They included the prevention of the use of forced labor of soldiers in the armed forces; the development of a pilot prototype of the Russian National Monitoring Center for Missing Children and Child Victims. In June 2013, the prosecutor general’s office posted an article on its website providing an overview of Russian trafficking cases and international law on trafficking, including recommendations for increased activities to fight to traffic; the article advocated for prosecutorial oversight of the anti-trafficking fight in Russia.

In June 2014, a Federation Council Deputy submitted a bill to significantly increase the penalties for inducement to prostitution, organization of brothels, and advertisement of sexual services; the bill would increase the maximum sentence for these crimes to
10 years imprisonment, as opposed to a fine of 2,000–2,500 rubles ($30-$40US). The Duma Committee for Criminal Legislation had not received the bill for review yet.

In early December 2013, representatives of the prosecutor general’s office announced they had submitted a national anti-trafficking action plan that included a request to appoint an anti-trafficking rapporteur to the Russian Security Council for approval. Unfortunately, neither was implemented, so the CIS anti-trafficking plan remained the only effective anti-trafficking plan (US Department of State 2014).

Programme for Cooperation among CIS Member states in Combating Human Trafficking for 2014–2018, as the original anti-trafficking document, consists of the following activities:

• Strengthening of the international legal basis for the cooperation of CIS member-states
• Development and harmonization of their national legislation in the sphere of counteraction of human trafficking and provision of assistance to victims
• Organization of coordinated procedural actions; preventive, operative, and investigatory activities; and special operations
• Provision of information and scientific support for cooperation
• Conduct of joint actions in personnel advanced training and education
• Exchange of experience on the provision of state funding for nongovernmental public organizations, working in the sphere of victims’ assistance, develop measures on improvement of practical aspects of such assistance
• Analyze the organizational structure and work of specialized facilities for immediate assistance and social rehabilitation of victims of human trafficking, develop practical measures for strengthening the capacities and improvement of work of such facilities (Zaibert 2014)

In summary, the international partners see efforts for implementation of legal regulations on human trafficking in Russia (a system of eliminating human trafficking) as limited compared to the reported occurrence of human trafficking in the country (US Department of State 2018).

Cases of Successful Partnerships of NGOs and the State

Despite sharp criticism on the NGOs issue in RF, there is at least one recent regionally wide-spread (Moscow, Vladivostok, & Astrakhan) and two local (St. Petersburg & Moscow) on-going successful projects to illustrate the existing state and civil society partnerships in the elimination of human trafficking. For example, the IOM Russia project had branches or rehabilitation centers (RC) in several cities throughout the country. The RC in Moscow, Russia, was founded in April of 2007 and existed through to the end of 2009, providing medical and psychological assistance to survivors of human trafficking before they return to their home region and family. It was the first rehabilitation center of its kind in Russia.
Its’ sponsors were the European Commission, the Government of Switzerland, and the US Department of State. Following the law of the Russian Federation, the Center can only accommodate individuals of legal adult age (18) and/or minors accompanied by adults (IOM 2007). Accordingly, in line with international standards, the assistance to the survivors is offered regardless of sex, age, or religion (IASK 2014).

Each survivor was offered the same standard set of services:

• Welcoming at the airport or point of arrival
• Provision of temporary housing in the rehabilitation center at IOM RC Moscow
• Provision of professional medical assistance and psychological consultation, as well as consultation on social and legal issues in the rehabilitation center
• Organization of repatriation to the place of origin in Russia or another country: restoration of the ID documents, buying the tickets, etc.

Psychological care and support of survivors of trafficking at the IOM RC aimed to address survivors’ psychological needs and provide opportunities for a better future. Staff draws on IOM guidelines on the ethical treatment of victims of trafficking to ensure the best interest of each are considered throughout the provision of services (IOM 2007). A survey conducted by the primary author provided summary information about female survivors who were given support at the RC and their experiences. The survey was part of a case-control study on mental health of 78 sexually exploited females who accessed NGO post-trafficking support services at the IOM RC from May to December 2007. The primary author conducted 280 individual and 51 group-counseling sessions (training) with the survivors. We explored the association between traumatic events, psychological characteristics, and mental health among 78 girls and women trafficked for sexual exploitation, rescued and being in contact with the IOM post-trafficking services. Mental health was assessed using the Spielberger Anxiety Scale (anxiety), the Beck Depression Inventory (depression), and the Clinician-Administered PTSD Scale (post-traumatic stress disorder). Psychological typology of female survivors of sex-trafficking was portrayed based on the existing systems of attitudes and values in communication and interpersonal interaction between the women and their family, friends, and peers and reported to be predictive of various cognitive, emotional, and psychosocial characteristics. The total index of mental distress, as indicated by a composite score of PTSD, depression, and anxiety, was suggested to be less associated with the previously acquired psychological resources for coping with sexual slavery and more determined by the severity of trafficking-related trauma exposures (Churakova 2014).

In another project, the St. Petersburg facility for victims of human trafficking started as a pilot one with IOM (01/02/2013–30/06/2014), backed by an Agreement with the DFMS on information support. The shelter can care for eight survivors simultaneously and it employed professionals in psychological and legal counseling and social work.
provided the survivors with services such as personal legal consultations, psychological assistance, social support, restoration of the IDs and work with documents, and help in the voluntary return to the country of origin. For 1 year, more than 40 persons took part in the project, out of the 20 were accommodated in the shelter (Zaibert 2014). Results of the shelter project activities were:

- Wide dissemination of information about the shelter among representatives of state bodies, social workers, NGOs, mass media
- Three seminars and two conferences organized for representatives of the social sphere and law enforcement bodies on issues of migration and TIP (200 persons took part)
- A pilot Working group on referral mechanism organized in St. Petersburg with the involvement of state bodies and NGOs
- Conference with the participation of Baltic and Nordic representatives on 13 June 2013 in St. Petersburg
- More than 15,000 applications on migration legislation and prevention of human trafficking (Zaibert 2014)

After the pilot period, the Red Cross acquired space from the St. Petersburg authorities to continue its activities (US Department of State 2018).

Another example of successful NGO services to the victimized population is the “Stopnasilie” (stop family violence) psychosocial rehabilitation center for women (and their children) who suffered from the violence on behalf of their family partners. Reportedly, some of them have been trafficked. The center is located in the Moscow region where a team of seven volunteers take care of the women and the children. The project is not sponsored by state authorities; rather the finances come from private sources. Since its foundation on September 10, 2016, the Center has received 151 persons, they are 53 women and 88 children.

The program of psychosocial help consists of two parts: rehabilitation from the family violence, which is 9 months at a maximum length, and social adaptation period, which is usually 3 months long. As a result of care, three women decided to restore their relationships with their spouses, and four women had let go the damaging partnerships. One of the main principles of assistance at the center is the attitude of equal opportunity in receiving help. The center director and the families agree upon a comprehensive rehabilitation and adaptation plan, establishing specialized needs and requests in each assisted case. In the atmosphere of psychological and physical safety at the Center, the staff works on stimulating survivors’ psychological, spiritual, and other resources by drawing on their unique life experiences, creativity, the power of logical reasoning, and motivation.

The volunteers provide comprehensive support to survivors while acknowledging that many of the difficulties the families are going through are part of their healing process. During this process, the volunteers face tremendous financial, social, psychological, and even personal challenges. Among others, the center
provides referral of the children to public educational units for schooling; arrangement of cultural visits for the arrived families in the city; financial assistance to the families for the adaptation period to achieve healthy life upon the return; referral to local state services and NGOs for psychological counseling, etc. (Council... 2017; Stopnasilie 2018).

Conclusion

The prevention and elimination of human trafficking in the RF remain confronted with challenges. They include, among other factors, the availability of services and the standard of care for victims of trafficking. A working and synchronized system for the eradication of all forms of human trafficking in RF is direly needed. Despite the solid anti-trafficking legal base, international partners see Russia’s national government efforts in the implementation of such legislation as limited.

Policy recommendations for the Russian Federation are not unique, they may be similar to many other countries. Specific to the RF is the need to establish an institute of an anti-trafficking rapporteur/ambassador, responsible for centralized 4 Ps (i.e., prevention, prosecution, protection, and partnership) actions and the statistics gathering (either in the Russian Parliament, the Duma, or in its Peoples’ Charter, consisting mostly of prominent persons and NGO activists). The anti-trafficking rapporteur should coordinate his/her actions with the interagency anti-trafficking structure, and they both would assure that the CIS and the national anti-trafficking plans work well. Second, remove all obstacles and hindrances from NGOs, charities, foundations, and individuals providing care for the victims, and instead promote their partnership with the existing system of state social support institutions and agencies; they are: local social service centers, state children’s shelters, homeless facilities, women’s and family centers, state psychological services, etc.

Also, third, start again collecting and giving in yearly statistics of HT victims, court cases and prosecutions, as it was before the year 2013 when Russia had been downscaled in international reporting to Tier 3 level. It is, therefore, necessary to understand that interconnections between countries in a modern world are a matter of globalization, creating codependence, where no decisions are to be taken forward out of offence or “the rebellious spirit.” For sure, taking at least these three little steps would radically improve the country’s internal climate regarding HT, promote its social wellbeing, as well as strengthen the international positions.

Therefore, in the Russian Federation, global investments in the local social sphere, resolution of the sharp social protection issues, and small business development (e.g., introducing favorable tax burden) will result in the vast amount of new working places and vibrant and stable economic growth. Intensive development of labor conditions; implementing progressive taxing scale for multinational companies; development of educational, medical, cultural aspects of the countries’ life; as well as strengthening of the family as the basic construct of the state will make Russia an earnest, transparent, trustworthy, and attractive neighbor on the European continent and the world’s map.
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Abstract

Greece has been both a destination and a transit country for human trafficking since the 1990s. Public perceptions, the understanding, and policy responses towards trafficking have been shaped by its connection with migration and the conditions of migrant exploitation in various sectors of the Greek economy. Using the rubric of criminogenic asymmetries to bring the above dimensions fully into the analysis, this chapter builds on extant research and other open sources to offer an overview of the issue of trafficking and the development of policy responses in Greece.
Introduction

There is increasing awareness of human trafficking (HT) as an issue in Greece, and a robust policy response has been articulated in recent years. The present situation is very different from what it was in the early 1990s, when rapid geopolitical and socioeconomic turned Greece into a prime site for HT. As the country gained a new significance in the landscape of international migration, becoming a destination and transit country for migratory flows from eastern Europe, Africa, and Asia, it also came into the spotlight as a transit and, importantly, destination country for HT. The dramatic deterioration of the country’s economic situation after the 2008 crash and the imposition of a prolonged austerity regime beginning in 2010 have contributed to the abusive and harmful economic exploitation that now may even affect its own native population.

Greece offers an intriguing context for the study of the substantive issue and of the conditions that facilitate or impede the development of an anti-trafficking policy framework. The purpose of this chapter is to offer an overview and discussion of how both HT and the policy responses towards it have developed since the issue emerged. There is added value in attempting to capture the dynamics as it has unfolded during approximately 25 years. Conditions unknown and non-existent in Greece became a possibility and a reality for many in the sex-trade industry and the wider labor market. At the same time, a country that had no policy framework specifically addressing such conditions currently features regularized discourse and policy activity involving a diversity of institutional actors. This course has not been frictionless and uncontroversial. As the present analysis shows, HT did not latch on to Greek society as a predatory activity that was external to the latter’s socioeconomic conditions. Equally, the articulation of a policy framework has not been the result of a linear process, in which growing awareness of the issue led unproblematically to a rational and coherent policy response.

The remainder of this chapter addresses key aspects of the question of HT in Greece. The first section will provide the necessary background for understanding how trafficking emerged as an issue in the post-Cold War context. This section explores trafficking under the general explanatory rubric of criminogenic asymmetries (Passas 1999, 2001), aiming to explain the prevalence and dynamics of the problem. A more detailed discussion of the development of the reality of trafficking in Greece takes place in section “The Migration and Human Trafficking Nexus in Greece.” Section “Legislative Responses in a Changing Landscape” offers an overview of the legislative framework that was introduced in the early 2000s to address trafficking, whereas section “Trafficking in and Through Greece: What We Know” offers an overview and discussion of how Greece’s policy response towards the issue works in practice. The concluding section brings the various themes together to offer a more comprehensive evaluation of the situation in Greece.
The Migration and Human Trafficking Nexus in Greece

Academic and journalistic accounts have often raised acute concerns about the prevalence of HT in Greece (see, e.g., Christides 2013; Shelley 2010). In such accounts and other reports (e.g., US Department of State 2016, p. 182) Greece is identified as a significant destination and transit country for HT. This observation requires extensive contextualization: more specifically, to explain the issue of HT and to assess its prevalence in Greece is impossible without consideration of the country’s position within and response towards international migration flows since the 1990s. Most victims have been individuals belonging to the immigrant ethnic groups that have rapidly grown in size among the country’s population since the early 1990s. Therefore, migration trends provide the template on which the question of HT can be elucidated in terms of description and explanation.

The following discussion builds on the rubric of criminogenic asymmetries to account for three key dimensions defining the evolution of the issue of trafficking in Greece: firstly, Greece’s (re)positioning in international migration flows as a desirable destination or convenient transit point; secondly, the reception and administration of migrant populations within the given economic, sociopolitical and cultural conditions of modern Greece; and thirdly, the institutional infrastructure and actual capacity of that country to articulate responses towards the protection of immigrants from conditions of vulnerability and rights violations. As Passas (1999, p. 402) states, “criminogenic asymmetries refer to structural discrepancies, mismatches and inequalities in the realms of the economy, law, politics and culture,” causing higher demand for illicit goods and services, incentives for engaging in illicit activity or impairing the control capacity of authorities. Such conditions multiply and become more unpredictable in the contemporary fluid and interconnected international environment.

Greece’s relative levels of economic and social development account for its appeal as a destination country, while its position at the periphery of the more advanced western European countries accounts for a range of institutional weaknesses and inefficiencies. The country also sits geographically on traditional commercial and international migration routes that have gained a new relevance in the globalization era. The question of HT only emerged in the context of the dramatic changes end-of-twentieth-century Greece experienced, as a result of its geopolitical position and its economic and social standing internationally, and relatively to other countries in Southeast Europe.

Cold-War era Greece had been a source country for migration for most of the post-WWII era (Fakiolas and King 1996; Lianos and Cavoundis 2012). There were just under 170,000 foreign nationals were legally resident in Greece in 1989, the majority of them coming from EEC countries and North America (Fakiolas and King 1996; Petriniotis 1993). Overall, prior to the 1990s no conditions existed in Greece supporting the possibility that HT – as defined by the 2000 Palermo Protocol (United Nations 2004) was an issue, whether for Greeks or foreign nationals living in Greece. After 1989 the geopolitical change in eastern Europe gave rise to a sudden
and mass influx of migrants from the transitioning eastern European countries, leading to a dramatic transformation of Greece, which gradually became a destination or transit country for people migrating from primarily from Africa, the Middle East, and Southeast Asia (Lianos et al. 2004). This repositioning has been emphatically reaffirmed in the past decade as Greece receives sizeable waves of economic migrants and refugees from conflict countries in the above regions. While the ongoing economic crisis and deterioration of social conditions since 2010 may be currently emerging as risk factors (for an overview see Giannitsis and Zografakis 2015), the issue of HT can be understood primarily in the context of cross-border population flows, and particularly those originating from the Balkan and other Eastern European countries (ESYE 2007; Hellenic Statistical Authority n.d.).

A key driver of migration inflows to Greece in the 1990s and even into the late 2000s had been the widening difference between economic conditions in Greece and in the wider region. Greece experienced sustained and consistent economic growth contrasting the transition of those source countries to post-communism, which entailed a general deterioration of their micro- and macro-economic indicators (Gligorov et al. 1999) and inconsistent economic growth subsequently (Stanchev 2005, p. 26). The Greek economy provided employment opportunities particularly in the low skill, labor intensive sectors of the economy, such as agriculture, manufacture or construction. This capacity was also amplified by structural changes in the Greek employment structure, namely the gradual transition of small businesses based on self-employment or family labor to a generalized wage-labor structure. This development attracted migrant wage labor, but it was also fueled by the availability of cheap migrant labor (Cavounidis 2006).

The above “push-pull” conditions constitute the macrostructure of an asymmetry, which became criminogenic under the specific conditions of migration to Greece. As public perceptions are concerned, the phenomenon has been defined by the weight of mass inflows in the 1990s of irregular migrants from the Balkan and other eastern European countries. Until well into the 1990s, the process of migration to Greece involved crossing an unguarded border and a short journey to destinations in Greece that offered any prospect for employment (Lazaridis and Psimmenos 2000; Lazaridis 1999; Lianos et al. 1996; Markova and Sarris 1997). These flows were perceived as a threat to Greece’s social order and led to a hasty revision of the outdated legislative framework regarding foreign nationals (Law 1975/1991). The new legislation was primarily a defensive reaction, featuring a heavy emphasis on border and stay permit controls and the introduction of a framework for aggressive police action against “illegal migrants” (“lathrometanastes”) (Psimmenos and Georgoulas 1999).

The consequence of this reaction had been that for most of the 1990s the vast majority of the migrant population in Greece consisted of undocumented migrants. This rapidly growing population (Lianos and Cavounidis 2012) was employed predominantly as unskilled labor in low-status, low-paid jobs (Cavounidis 2013; Lazaridis 1999; Linardos-Rylmon 1993). Legal status and labor market conditions have been the drivers of the intensive economic exploitation and social marginalization of migrants. Particularly in the major urban centers such as Athens and Thessaloniki the migrants’ position as a labor force was interwoven with their
general living conditions, and prospects. The experience of undocumented migrants in Athens have been described in the relevant research literature as that of an “undocumented underclass” forced to exist with “periphractic spaces” (Psimmenos 2000; Lazaridis and Romaniszyn 1998). Additionally, they became the subject of increasingly hostile, if not openly xenophobic and racist public perceptions and discourse (see, e.g., Triandafyllidou 2000; Lazaridis and Wickens 1999). There has been a mainstreaming of the view of migrants as an existential threat to Greek society (Human Rights Watch 2012; Karydis 2016). In sum, the criminogenic condition has been the entrapment of migrants within a triangle of a lasting legal limbo, social marginalization, and the absence or the neutralization of any moral public sensibility towards their position and plight.

**Legislative Responses in a Changing Landscape**

Subsequent legislative interventions and policy actions towards the regularization of the undocumented migrants and the integration of migrants in Greek society have rectified the above conditions to a considerable extent. The process has been slow and long-winded, not least because of the political controversies it has involved regarding the regulation of the status of aliens and the control of illegal migration. The common characteristics of the successive regularization programs have been firstly, the restrictive procedural and financial conditions placed on applicants (Fakiolas 2003; Jordan et al. 2003), and secondly, the complexity of the legalization procedures and their actual outcomes in terms of the residence status granted (Baldwin-Edwards 2009). Little empirical evidence exists to evaluate the outcomes of these programs, but the restrictive legislative conditions prevented in principle the regularization of the most marginalized and exploited categories of migrants.

Greece ultimately introduced legislative revisions aiming to simplify and rationalize its regulatory framework (L.4251/2014 and L.4332/2015), but developments since the mid-2000s have complicated the situation with migration in the country. From 2007 onwards, the ethnic composition of irregular migrant (and refugee) inflows to Greece has changed, as Asian nationals (from Iraq, Afghanistan, Pakistan, or Bangladesh) began to arrive in Greece in large numbers. While for these individuals Greece is not necessarily the destination country, Greece’s gateway position to the EU in combination with EU migration control policies (e.g., the Dublin Regulation system) have entailed that large numbers of migrants remained in Greece, many of them in vulnerable and precarious conditions. These were also exacerbated by the tightening of police measures against illegal migration (Smith 2012). With the onset of the conflict in Syria, these inflows escalated since 2014 into a massive wave leading to a virtual collapse of border controls – just under 1m migrants and refugees arrived in Greece in 2015 alone (Triandafyllidou and Mantanika 2016; Triandafyllidou 2015). At the same time since 2010, Greece has plunged since 2010 into an economic and social crisis which has had a devastating impact on labor market conditions and the general standard of life. It has also given a boost to far-right political influence and thus brought to the forefront of public life openly
xenophobic and racist discourses among the general population (Vasilopoulou and Halikiopoulou 2015).

The preceding discussion has summarized the conditions which have contributed decisively to the emergence of HT as a significant issue in late-twentieth and early twenty-first-century Greece. The issue of HT is inextricably linked with the country’s geopolitical position, economic situation and social conditions as well policy approaches to migration and migrants. This context has been an active matrix for the generation of a significant and diverse array of criminal opportunities capitalizing on deeply entrenched conditions of vulnerability, and on possibilities for ruthless economic exploitation of the migrant population.

**Trafficking in and Through Greece: What We Know**

Indications about the prevalence of HT have been abundant since the onset of mass migrations to Greece in the early 1990s. The Greek context, however, offers a clear illustration of how contested the issue can be: estimates of the number of trafficked persons have varied wildly, depending on whether these are found in official, academic or civil society accounts. The image that emerges from the official data generated by the Hellenic Police regarding the prevalence and characteristics of trafficking is ambiguous, since the availability and quality of such data has been uneven. As is more generally the case with crime statistics in Greece, the reporting of police data on HT has been erratic and rudimentary. A relevant series available in the public domain has only existed since 2003 as legislation specifically addressing HT was first introduced in 2002 and civil society and international pressure on Greek authorities to take some action about the issue had been mounting at that time (Papanicolaou 2011).

In the absence of a legislative definition and of formal mechanisms to generate data in the 1990s, certain conflations have largely shaped the image of the phenomenon that emerges from the relevant research, civil society campaigns and also official approaches to the issue. Firstly, undocumented migration and the undocumented migrants’ participation in the labor market is sometimes taken as a general indication of HT. This was particularly true in the late 1990s and after as awareness towards HT as an issue was increasing. Earlier reports did not make this connection readily, but nevertheless noted clearly the conditions of vulnerability and exploitation experienced by migrants in the labor market (e.g., Linardos-Rylmon 1993). The groundbreaking study of Psimmenos (1995), and his research into the sex-trade industry more specifically (Psimmenos 2000) captured qualitatively and reported situations that could be identified as trafficking retrospectively. The migrant workers’ experience is approached through the much broader lens of structural transformations of the labor market and of the mechanisms producing and reproducing social exclusion and marginalization respectively. In contrast, subsequent reports focus on trafficking, and understand the illegal employment of women in the night time economy as a proxy to “hidden prostitution” (Emke-Poulopoulos 2001).
A second common conflation has been that between prostitution and trafficking for sexual exploitation. In the 1990s prostitution in Greece became a large and diverse industry pivoted on women from the Balkan and other eastern European countries. Prostitution in Greece has been tightly regulated business based on a system of licensing, under which prostitution is legal, but activities around it such as pimping and procurement are criminalized. Prior to the 1990s the population of sex workers was small and predominantly native Greek in ethnic composition. According to Lazos (2002a, b)’s major work on the sex-trade, the population of prostitutes had doubled to 11,600 persons between 1990 and 1993 and peaked at around 25,000 individuals in 1997. Starting from 1992 to 2000, Lazos estimates that most prostituted persons were forced into prostitution, peaking in 1997 at 87% of the total prostituted population, or 21,750 persons in forced prostitution, that is, victims of sex trafficking (ibid.).

The findings of Lazos’s study, which remains unique to date, had been widely used by civil society abolitionist campaigns against forced prostitution (e.g., STOPNOW n.d.). His account of the prevalence of forced prostitution in Greece, however, suffers from the ambiguity in the construction of the conceptual categories, such as the distinction between forced and voluntary prostitution (see Papanicolaou 2011). Lazos attributes the growth of the number of foreign women in the sex-trade industry to the operation in Greece of five transnational trafficking networks (i.e., Russian, Ukrainian, Albanian, Balkan, and Polish) during the 1990s. The presence of foreign women in various segments of the sex-trade industry is taken as indication of the activity of those trafficking networks and vice versa. As a result, the foreign women in the sex are approached as victims of trafficking by definition (Lazos 2002a). This is an oversimplified portrayal of the migrant women’s complex trajectories and experiences in the Greek labor market and society (Kasimatis 2003; Lazaridis and Psimmenos 2000; Psimmenos 2000).

A third source of the ambiguity regarding the prevalence of trafficking in Greece stems from its association with a particular idea of organized crime as a robust and hierarchical structure, predominantly or exclusively operated by foreigners or members of ethnic minorities within Greece. Criticisms of the “alien conspiracy” approach (Antonopoulos 2009; Stamouli 2016), which has informed public debates and official policies in Greece build on the empirical observation that it fails to recognize defining characteristics of the social organization of illicit markets, and of the modes in which migrants were involved in them either as offenders or as victims (Antonopoulos and Papanicolaou 2014; Antonopoulos and Winterdyk 2005; Papanicolaou and Antonopoulos 2010). Rather, the exploitation of migrant labor in the sex-trade and other industries has occurred in various business sectors heavily featuring SMEs and legitimate indigenous entrepreneurs. Trafficking has been a much more diffused reality, organized around loose networks of criminal actors combined with a multiplicity of legitimate small businesses as the front end. The upshot is that policy approaches geared towards the detection and suppression of ethnic-based robust criminal organizations yield results that may significantly underrepresent the prevalence of trafficking.
The organized crime (OC) reports of the Hellenic Police constitute the single most important domestic official source of information on HT in Greece. Produced on a yearly basis since the mid-1990s, these reports have tended to identify organized crime with the presence and activity of migrant ethnic groups. This identification had been consistent particularly in the 1990s and 2000s as the reports did not merely stress the serious threat of organized crime arising from the activity of foreign ethnic groups, but, in fact, organized the presentation and explanation of the phenomenon of organized crime around the category of ethnicity (Papanicolaou 2008; Stamouli 2016). This dominant conceptualization, in combination with the relative lack of investigative infrastructure and capacity specifically targeted at the issue of HT, which other sources have reported (see, e.g., US Department of State 2001, 2002, 2003, 2004), accounts for the element of structure featuring in the types of cases pursued by the authorities. It also explains the slow pace at which the anti-trafficking efforts of the Hellenic Police developed initially.

The characteristics of the official approach can be seen in the data about the activity of the Hellenic Police that have been more readily available since the early 2000s, when special anti-trafficking legislation was introduced (L.3064/2002), and international and domestic pressure regarding the anti-trafficking efforts of the Greek government was mounting. In the absence of special reports on HT made available by the Greek authorities on HT, the overall picture can only be compiled historically from several sources, namely, the annual OC reports of the Hellenic Police, the statistics published online by the Hellenic Police in a rudimentary form, and, interestingly, the section on Greece of the U.S. Department of State annual Trafficking in Persons report. The available data reported include the number of (a) cases investigated by the Hellenic Police; (b) organized crime groups investigated; (c) offenders, broken down in ethnic origin; (d) victims, again reported by ethnic origin; and, (e) victims to whom protection arrangements were offered.

Table 1 presents the complete series of the data for 2003–2017 that are available in the public domain in the above ways. In the 15-year period the Hellenic Police investigated 693 cases and 2,805 offenders, an annual average of 46 cases and 187 offenders. There are gaps in the reporting of the number of criminal organizations investigated, but other sources indicate that in the early 2000s and after the investigative productivity of the Hellenic Police improved significantly (US Department of State 2004, p. 145). As such, the Hellenic Police dismantled about 20 criminal organizations on average annually between 2004 and 2008, a figure which represents a significant improvement from the figure of ten criminal organizations dismantled in 1999 (Hellenic Police 2000). The reporting of criminal organizations is indicative of the operational mentality of the authorities: the qualitative information (case narratives) often included in the annual OC report of the Hellenic Police focuses heavily on the element of structure and division of labor within the investigated criminal organizations. Interestingly, however, the data for the 15-year period return an average of four offenders per case, a figure that clearly refutes the notion of either a tall, extensive or complex organizational structure. Similar indications can be derived from the number of the victims involved in the above cases, as the total of 1,376 or the
<table>
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Source: Hellenic Police (n.d.b)
average of two victims per case indicates an incidence that is a far cry from the victimization of industrial proportions suggested by Lazos (2002a)’s study.

The official data confirm some of the characteristics of trafficking explored by other studies and sources, but they also have important shortcomings as regards other aspects of the issue. The notion of organized crime, HT in this instance, as an ‘alien conspiracy’ is not supported since the number of offenders appears to be equally split between Greek and foreign nationals (48% and 52% respectively). The commentary in the OC reports often lends support to the idea that the involvement of Greek nationals particularly at the front end of the business has been key to the organization of the economic exploitation of the victims. In consecutive years, the OC reports have offered descriptions of the organization of the exploitation of the sexual labor of women-victims of trafficking in the context of which the (Greek) owners of the various establishments featured as the ‘leaders of criminal organizations’ (Hellenic Police 2005, p. 11). According to the police narrative, legitimate establishments such as bars, night clubs or cafes have played a focal role in the trafficking business since the victims were forced to prostitution under the cover of being employed as waitresses and artists (Hellenic Police 2004, p. 7, 2006, p. 11). The range of relevant establishments extended beyond night clubs, bars or cafes to include massage parlors, hotels, secret brothels or legal ones where the women would work illegally (Hellenic Police 2005, p. 12).

Furthermore, the published data confirm that the vast majority of trafficking victims were foreign nationals, originating predominantly (88%) from eastern European and Balkan countries. This characteristic of the victim population mirrors the composition of the migrant population in Greece, and therefore offers a strong affirmation of the association of trafficking with the conditions of marginalization that migrant populations have experienced in that country. A breakdown of the population of victims by gender or by type of trafficking has not been consistently available so as to allow the compilation of a series covering the 15-year period. The narrative of the OC reports is nevertheless clear about the fact that victims have been women in their overwhelming majority, and that sex trafficking has been the predominant form of HT in Greece. Indications of labor trafficking emerging as an issue appear only from 2004 onwards, involving the exploitation by traffickers of the conditions of vulnerability of minors or disabled individuals who were forced to beg or work as street traders.

Overall, the Hellenic Police data offer an image of trafficking that is qualitatively similar and quantitatively radically different to that offered by sociological or economic studies of migration and criminological works. Specifically, the OC reports affirm the characteristics of trafficking as an issue heavily afflicting female migrant populations involved in the sex industry. On the other hand, the police data offer no support to the estimates of victims widely used by civil society organizations around the time anti-trafficking advocacy was at its peak in Greece – and also internationally (see Kempadoo 2005). The composite image emerging when all the various sources of information have been considered supports the conclusion that the police data only offer a partial and conservative measure of the prevalence
of HT. The latter, however, was not the pandemic that anti-trafficking advocacy claimed it had been.

The key fact is that over a long initial period the economic, social and institutional environment in Greece brought very wide segments of the migrant population under conditions of marginalization, precarity and vulnerability such that abusive exploitation was a real possibility. In light of this, the longer-term trend emerging from the Hellenic Police data presented in Table 1 can be assessed as follows. The numbers of trafficking cases investigated offenders and released victims all declined steeply after 2009 reaching a 15-year low around 2017. This trend is due to the fact that in the second half of the 2000s Greece was already developing significant institutional and policy responses towards trafficking. Conversely, the absence of these responses in the preceding period had amplified the criminogenic asymmetries underpinning HT. The following sections examine the key characteristics of these responses.

**The Legislative Framework**

Up until the beginning of the 2000s, Greece lacked legislation explicitly targeting HT. Such legislation was introduced by Law 3064 in 2002 (L.3064/2002), which established the core of the anti-trafficking framework that is currently in place. This section offers an overview of Greece’s legislative response to HT.

Before the 2002 law, the types of criminal behavior typically associated with HT were addressed by various provisions of the Greek Penal Code (GrPC) included in the chapters on crimes against personal freedom (Chapter 18) and against sexual freedom (Chapter 19), as well as provisions included in other statutes. While from a criminal law viewpoint, the provisions preceding L.3064/2002, could, plausibly, fully support a robust criminal policy response to the issue of trafficking, legal commentators in Greece (2003) and international observers (e.g., US Department of State 2001, 2002, 2003) became acutely aware of the chronic and serious problem of the underenforcement of the relevant provisions, relating not only to technical issues in the application of the law by the courts but also to the investigative capacity and practices of the police. Thus, Law 3064/2002 was intended to articulate a response to the growing concern about HT within Greece by implementing the policy lines of the emerging international anti-trafficking regime articulated by the UN Convention against Transnational Organized Crime and, in Europe, by several policy documents of the EU and of the Council of Europe (Council of the European Union 2002). By doing so, it also addressed the political pressure mounting in connection with the enforcement of this regime (see Papanicolaou 2008; Bouklis 2016).

The new law modified extensively relevant parts of the GrPC. It introduced a new article (323A) criminalizing specifically HT for the purposes of organ removal, the exploitation of labor and the recruitment of minors for use in armed conflicts – these forms constituting “human trafficking” proper as per the title of the article. It took a different approach with regard to trafficking for the purpose of sexual exploitation, by amending or supplementing those articles of chapter 19 of the GPC which
deals crimes relating to prostitution and the protection of minors from sexual exploitation, including pornography. Incidentally, no changes were made in the regulatory framework of prostitution itself, which is legal in Greece under the conditions laid out by L.2934/1999. The legal framework differentiates clearly between adults and minors, in so far as the articles concerning pornography featuring minors (art. 348A) and the commission of indecent acts with or involving minors in exchange for money or gifts (art. 351A) prescribe mandatory minimum custodial sentences. The distinction also applies in art. 349 GPC that addresses pimping and distinguishes between pimping a minor, which is a crime punishing with imprisonment up to 20 years according to the circumstances of the case, and pimping adult women, which incurs a sentence of imprisonment of at least 18 months. Furthermore, the old article 351 GPC on procurement was replaced in its entirety by the new Law, and now punishes trafficking for sexual exploitation by imprisonment of up to 10 years, or up to 20 years if the victims is a minor, or when the offender intends to earn income from the commission of these acts. The new article also penalizes any individual who engages in sexual acts in the knowledge that the other person involved is a victim of trafficking; in this case, the prescribed custodial sentence is significantly higher when the victim is a minor (a minimum of 10 years of imprisonment).

The wording of articles 323A and 351 GrPC as introduced by L.3064/2002 follows closely the template offered by article 3(a) of the Protocol to Prevent, Suppress and Punish Human Trafficking of the UN Convention against Transnational Organized Crime (UNTOC). The Greek legal community overall has taken a skeptical stance towards this approach, due to the potential difficulties in the application of the law by the courts and has found that the improvement in terms of substantive criminal law was marginal (Dimitrainas 2003; Sykiotou 2003). Rather, the net gain of the legislative intervention of 2002 was found elsewhere.

Firstly, L.3064/2002 related directly with the special legislation on organized crime that was introduced at a slightly earlier point by L. 2928/2001. This controversial legislative initiative introduced the concept of criminal organization and raised the minimum sentences for members of such an organization committing named offences, among which trafficking offences are included. Additionally, it extended significantly the investigative powers of the authorities dealing with cases of organized crime, by making at once applicable such techniques as DNA analysis, undercover surveillance, controlled deliveries, or the monitoring of financial transactions. Subsequent modifications of L.3064/2002 such those effected by L.3875/2010, which ratified the UNTOC, or L.4198/2013 reaffirmed and reinforced this connection between anti-trafficking and organized crime legislation. These more recent laws also introduced a framework for the liability of legal persons involved in or benefiting from HT offences.

Secondly, the law established a framework for the protection and support of the victims of trafficking, including individuals deemed to be at risk. The original provision of L.3064/2002 extended the offer of support, including shelter, health care, counselling and legal aid “for as long as necessary” (art. 12); minors and young people were also granted access to education. The offer of victim support was
disassociated from the punitive measures against illegal immigration: L.2910/2001 on aliens had authorized prosecutors to defer the deportation of an undocumented migrant if the latter reported the traffickers, whereas L.3064/2002 framed this power directly in terms of victim protection. Nevertheless, uncertainty about the status of victims continued to exist since they could still be prosecuted for illegal entry to Greece under immigration law. Relatedly, L.3386/2005 made the deferral of the deportation conditional on the victim’s cooperation with the police. At the time of the ratification of the UNTOC by Greece in 2010, however, the framework was improved in favor of victims. The requirement of cooperation was removed and access to support became more dependent on the actual condition and needs of the victim rather than the formalities of criminal procedure. Additionally, the formal recognition by the authorities of a “victim of trafficking” status entitles the undocumented foreign national to a permit stay with full rights of access to the labor market, healthcare as well as education and vocational training (art. 54, L.4251/2014).

In practice, the Greek anti-trafficking framework has not represented even and unequivocal progress. The combination of the aims to deliver, on one hand, a convincing response to organized crime and to ensure, on the other, that victims are protected and assisted has involved conflicting priorities. These conflicts were bound to be experienced more acutely given that the country lacked solid institutional foundations regarding both the fight against organized crime and the protection of victims of crime. As a result, what officials often presented as a well-designed system of cooperation between competent organizations (see, e.g., Panouris 2007) has been in reality a complex, multifaceted and sometimes volatile system (Papanicolaou and Bouklis 2011) with three striking characteristics. Firstly, the premise of specialized victim protection has reflected the lack of a pre-existing actual model for victim support services in the form of generic service, mechanism or organization; it has had an ‘ad hoc’ character, appearing in the form of support to certain categories of victims only (FRA 2014; Papapantoleon 2014). Secondly, the framing of the regime by the logic of criminal procedure has dictated a ‘victims as witnesses’ approach, that is, seeing the victim not as a party to the investigation and/or the proceedings, but essentially as a witness. In effect, the role of the victim is to provide information that might lead to the case’s resolution and to a potential conviction. Thirdly, the expediencies of combatting organized crime have meant more generally that victim protection exists in a state of conditionality rather than standing on an equal balance with the interest to prosecute offenders (Bouklis 2016).

**Anti-trafficking in Practice**

This final section summarizes the emergence, growth and outlook of anti-trafficking practice in Greece. As noted above, the Greek anti-trafficking policy framework involved from its inception a tension between a set of policy lines and concerns reflecting developments outside Greece, and Greece’s own (low) levels of institutional infrastructure and preparedness, particularly with regard to victim protection.
mechanisms. The practical implications of this tension have meant that an assortment of institutional, domestic, international and both governmental and non-governmental actors have played an important role and have exercised influence in the translation of the policy framework into policy practice at different times.

Starting in 2001, an inter-ministerial and interdisciplinary committee, OKEA (Anti-trafficking Task Force/Omada Katapolemisis Emporias Anthropon), began to develop counter-trafficking efforts (Hellenic Police n.d.a). Various observers pointed at the time problems with the operation of this structure: the absence of comprehensive anti-trafficking legislation, explicitly mentioning “trafficking” as opposed to “slavery,” “prostitution” or “procurement” (“somatemporia”); the low number of prosecutions for trafficking under existing criminal law; the lack of witness protection programs for trafficking victims to facilitate their participation in prosecutions; the ongoing detention and deportation of trafficking victims; even the complicity of some officials in trafficking (Amnesty International 2007; Human Rights Watch 2001). These criticisms were addressed by Presidential Decree 233/2003, which set out principles recognizing victims’ rights and affirming entitlements applicable to trafficking victims. In its annex, a list of counselling services, medical units and shelters were included, provided by the General Secretariat for Gender and Equality along with three relevant ministries (of Health; Internal Affairs; Justice).

In 2004, an integrated National Plan of Action against trafficking came into force, attempting to introduce a broad spectrum of actions including locating, recognizing, providing shelter, issuing temporary residence and work permits, granting voluntary repatriation, offering education and labor integration. Revised in 2006, this action plan institutionalized a systematic, standardized and formalized cooperation of diverse actors. Additionally, a “permanent forum” introduced in 2005 was meant to enable the exchange of information and best practices between organizations. This development was consolidated by the 2005 Memorandum of Cooperation on Combating Trafficking in Persons and for Providing Aid to the Victims, signed by the jointly responsible Secretaries (Justice, Interior, General Secretariat for Gender Equality, Foreign Affairs, Employment and Social Protection, Health and Social Solidarity, Public Order), 12 NGOs and IOM. According to the views expressed at the time, this institutionalization of cooperation was vital, as it “lifted many coordination problems” and facilitated NGO access to the screening and referral process (Panouris 2007).

In 2006, an inter-agency action plan ("ILAEIRA") aimed to further strengthen the cooperation between the Ministry of Citizen’s Protection, law enforcement officials, the Greek Police Headquarters and an array of diverse IGOs and NGOs. The IGO and NGO components included a multifaceted group of bodies, NGOS, charities and advocacy groups which subsequently expanded to include actors such as the Greek Section of Amnesty International and international organizations with a longstanding presence in Greece such as Doctors Without Borders and Doctors of the World (see Papanicolaou and Bouklis 2011). The initial intensive institutional activity was succeeded by an emphasis on the search for new synergies by means of multilateral partnerships. Scarcity of resources has entailed that the above list of
participating organizations underwent various revisions with smaller NGOs battling for exogenous, discontinuous, and opportunistic funds. As financial considerations more actively influence the field of victim services, the policy choices of this period have juggled between punitive and victim welfarist anti-trafficking responses (Bouklis 2016). The strategic leadership of anti-trafficking has shifted away from the police, and since 2013 the leading policy-making role is held by the Ministry of Foreign Affairs within which the office of the National Rapporteur Office for Combating Human Trafficking resides.

The establishment of the office of the Rapporteur and the appointment of Dr. Iraklis Moskof in this role in 2013 indicates Greece’s full participation in the wider European and international structures and policy making networks in the issue area of HT. With Greece becoming entangled in multiple financial, border and international security crises, also entail its repositioning as a source country, too (see, e.g., US Department of State 2013, 2014, 2015), the Greek National Rapporteur is intended to play a vital role in the EU network of National Rapporteurs set up by the European Council. Aspiring to set in motion the “4 Ps” approach (i.e., prevention, prosecution, protection and partnerships), the Rapporteur’s role is intended to monitor and coordinate, as well as to enable the “integration of the National Referral Mechanism for the identification of victims, the creation of a national database, the training of agencies and the deepening of cooperation” between competent services (Hellenic Ministry of Foreign Affairs 2013). During this era, newer and older organizations such as PRAKSIS, A21 Campaign, the ‘No Project’, ARSIS and Smile of the Child (re)emerged to take on the prevention and awareness-raising component involved in the “4 Ps” approach (USAID 2013).

In line with the above developments, the current period since 2016 has been marked by the establishment of the National Referral Mechanism (NRM), which was organized by the National Rapporteur (Hellenic Ministry of Foreign Affairs 2017). The NRM is the most consolidated attempt towards a more so-called “victim-centered” coordinated approach having drawn funds from the EU structural funds (ESPA) and the Internal Security Fund (ISF). With the view to consolidate protections offered by state and non-state actors and to participate in a larger EU Transnational Referral Mechanism (European Commission 2018), the Greek NRA boldly aspires to include a wide array of law enforcement and other state agencies, as well as private and third sector actors in the articulation of responses towards the issue of HT (European Commission 2018).

These targets emerge naturally in light of Greece’s violations found in the judgments of L.E. v. Greece and the most recent judgment of Chowdury and Others v. Greece of the European Court of Human Rights. Whether all these cooperation targets and the ever-increasing focus on inter-agency cooperation actually benefits victims are a moot point. There is still no mechanism that independently guarantees that any kind of evaluation of the activity in this expanding domain takes place. The substantive challenge lies in ensuring that the copious efforts of the various actors setting targets and aiming to enhance cooperation and capture funding, actually corresponds to a growing capacity to articulate responses towards the protection of all immigrants from conditions of vulnerability and rights violations.
Conclusion: On Assessing Trafficking and Anti-trafficking in Greece

This chapter has offered an overview of the context, outlook and responses towards the issue of HT in Greece since the early 1990s. We have eschewed a discussion of merely the formal institutional arrangements relating to (anti-)trafficking or a “checklist” approach of the legal and organizational framework established in Greece. We have sought to analyze the dynamics underpinning the growth and challenges of that framework – and thus present a more accurate account of Greece’s “progress” in the issue area.

Viewed through the lens of criminogenic asymmetries, this chapter has unpacked two major aspects of the phenomenon in Greece. Firstly, the asymmetry between economic and social conditions in Greece as a destination country and the source countries, particularly in the Balkans and eastern Europe, and Greece’s response to this asymmetry in terms of migration policy have laid the foundations for the growth of deeply entrenched conditions of vulnerability intertwined with brutal economic exploitation of migrants. The analysis presented here has aimed to show that it is simply impossible to approach the question of HT outside the wider context of immigration and immigration policy. A second key asymmetry concerns the difference between Greece’s institutional infrastructure, in terms of both social and criminal justice policy, and the sensibilities, rationales and approaches that have defined anti-trafficking in other contexts internationally. The Greek anti-trafficking framework was not a native development but was drawn from – and is typically assessed on the basis of – these other contexts. For this reason, the policy practice in the issue area, beyond the delay of approximately a decade, has exhibited genuine advances, but also particularities, gaps and asynchronies that have not always or necessarily worked either to effectively address trafficking as a form of crime, or for the benefit of those affected by HT.

Conclusion

Casting the net more widely into the “structural discrepancies, mismatches and inequalities in the realms of the economy, law, politics and culture” (Passas 1999) has implications about the assessment of the development of Greece’s situation. For example, one single most important factor in the empirical uncertainty about the prevalence of trafficking in the 1990s and the slow ignition of policy responses is that the issue was not conceptualized and framed along the lines that have been established since at least the 2000 UN Convention. Despite the fact that substantive criminal law and criminal justice structures were in place to provide a census of the issue and a response, both the empirical records and the policy practice would not be conceptualized and framed as “human trafficking” as we now understand it. A wider substantive view of the factors shaping the issue and the policy response to it also underscores the dynamic nature of both the phenomenon and of the efforts to address it. While some widely agreed indicators of the issue and some minimum standards

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regarding policy responses are possible and necessary, the volatility of both the socioeconomic and the policy environment dictates a need for measures of success and effectiveness that must monitor closely the changing context of the issue and reflect realistic expectations of what policies can deliver.

Cross-References

- Explaining Human Trafficking: Modern Day-Slavery
- Human Trafficking in Southeastern Europe: Council of Europe Perspective
- The Failing International Legal Framework on Migrant Smuggling and Human Trafficking

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Legislation, Policies, and Practices Against Trafficking in Human Beings: The Case of Kosovo

Vasiliki Artinopoulou and Alexandra Koufouli

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Abstract
Kosovo is currently classified as a tier 2 source and destination country for female, male, and child victims of sexual exploitation and forced labor. Over the years, increasing efforts have been observed in the fight against trafficking in human beings, and anti-trafficking responses have been initiated and developed at

This chapter was developed based on experience and lessons learned within the framework of the EU-funded project “Moving Forward: Promoting Greater Efficiency and Effectiveness in the Fight against Trafficking in Human Beings in Kosovo,” implemented by Family and Childcare Centre (KMOP) in cooperation with European Public Law Organization (EPLO) and Centre for Protection of Victims and Prevention of Trafficking in Human Beings (PVPT). The project, funded by the EU Office in Kosovo, commenced in January 2017 and is expected to end on January 2020. Its overall objective is to enhance the efficiency of the Kosovo institutions in the fight against trafficking in human beings, in particular improving the investigation, prosecution, and conviction of traffickers, as well as improving support for victims.

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various levels. However, the country is not yet found to be fully compliant with the minimum standards for the elimination of trafficking, and important challenges remain in the investigation, prosecution, and sentencing of trafficking cases. Within this context, this chapter aims to provide an overview of the unique situation of human trafficking in Kosovo. For that purpose, the Kosovo national situation, including information on the legislative and institutional framework, is briefly presented. Insights and reflections drawn from a Training Needs Assessment, not only examining the training and capacity-building needs of the local judicial and law enforcement authorities but also reflecting the fragilities of the rule of law in the country, are presented and used to underline significant aspects of the local anti-trafficking responses. Finally, the lessons learned and the experiences acquired from the case of Kosovo are synthesized to convey potential implications, recommendations, and future directions.

**Keywords**

Trafficking in human beings · Kosovo · Transitional justice · Post-conflict · European Union policy · United Nations mission

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**Introduction**

Kosovo is a disputed territory in the European Western Balkans. With historical and political links to Serbia, as a part of the Socialist Federal Republic of Yugoslavia after the Second World War, Kosovo sought its independence in the late 1980s and 1990s. Serious and continuous conflicts with Serbs, repressive measures, and numerous violations of International Law in the area led to the placement of Kosovo under a transitional administration with the United Nations Security Council Resolution 1244 (1999). Negotiations and interventions on the determination of Kosovo’s final status lasted for almost 10 years and seemed to end with Kosovo’s declaration of independence in 2008. Today, the country is recognized as an independent state by 114 of the 193 United Nations members and 23 of the 28 European Union member states. Kosovo is a potential candidate for EU membership after signing the Stabilization Association Agreement with the EU in 2015, which entered into force on April 2016 (World Bank 2018).

Due to its geopolitical, historical, and political background, Kosovo is isolated from the economic and societal development trends in the Balkans and Europe. With poverty, unemployment, political instability, and corruption being the greater problems reflecting the structural political, economic, and sociocultural pathogens in Kosovo, trafficking in human beings and organized crime became endemic. The transitional dynamics, the supervised sovereignty, the fragilities in the legitimacy (Montanaro 2009), and the rule-of-law area, as well as the geopolitical conjuncture along with the internal sociopolitical problems, make the very complex context of Kosovo apparent.

Despite the notable progress and changes that have taken place since, Kosovo still faces issues related to the conflict and its aftermath. Approximately 1600 missing
persons remain unaccounted in the two decades since (International Committee of the Red Cross 2018), and the matter of reparations for victims of conflict-related sexual violence is still in progress (Amnesty International 2017). Most importantly, following a constitutional amendment (Article 162 Constitution of the Republic of Kosovo 2015) and the adoption of a relevant law in 2015 (Law No.05/L-053), the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (2018), located in The Hague, the Netherlands, was established. In response to the revelations of the 2011 Council of Europe Parliamentary Assembly Report, they have been tasked with the investigation and prosecution of cases of inhuman treatment, organ removal, and trafficking, reportedly committed by members of the Kosovo Liberation Army at the end of the conflict, between 1998 and 2000 (Kosovo Specialist Chambers and Specialist Prosecutor’s Office 2018). The Kosovo Specialist Chambers and Specialist Prosecutor’s Office (2018) started their operations in 2017, while later the same year, the eventually unsuccessful initiative of members of the Kosovo Assembly to abrogate the law has received significant attention and criticism from the international community (European Commission 2018a).

Since Kosovo’s declaration of independence in 2008, significant resources in the form of assistance and support have been devoted toward strengthening the rule-of-law sector and reforming the criminal justice system. Numerous programs, projects, initiatives, and missions funded by international donors and actors have been and are currently operating toward that end (Derks and Price 2010; Grevi et al. 2009). However, international reports continue to highlight the lack of implementation of effective responses and the limited results, and the significant dependency on foreign aid and remittances constitutes one of the major challenges (United Nations Kosovo Team n.d.-a).

Similarly, over the years, increasing actions have been observed in the fight against trafficking in human beings. Several trainings, workshops, seminars, and other capacity-building activities have been organized to enhance the efficacy of the rule-of-law institution (i.e., law enforcement, judicial, and prosecution authorities) responses and operations against trafficking.

Nevertheless, Kosovo, as a source and destination country for female, male, and child victims of sexual exploitation and forced labor, is not yet found to be fully compliant with the minimum standards for the elimination of trafficking. According to the annual Trafficking in Persons Report issued by the Office to Monitor and Combat Trafficking in Persons of the US Department of State, which ranks nations based on their compliance with the Trafficking Victims Protection Act (TVPA) of 2000, Kosovo is currently classified as a tier 2 country that does not fully meet the minimum standards but makes significant efforts toward compliance. Important challenges remain in the investigation, prosecution, and sentencing of trafficking cases, and the mandate for further training of the incumbent authorities has been repeatedly highlighted as an important requirement (United States Department of State 2017).

Within this context, this chapter aims to provide an overview of the unique situation of human trafficking in Kosovo. For that purpose, the Kosovo national situation, including information on the legislative and institutional framework, is briefly presented. Insights and reflections drawn from a Training Needs Assessment,
not only examining the training and capacity-building needs of the local judicial and 
law enforcement authorities but also reflecting the fragilities of the rule of law in the 
country, are presented and used to underline significant aspects of the local anti-
trafficking responses. Finally, the lessons learned and the experiences acquired from 
the case of Kosovo are synthesized in an effort to convey potential implications, 
recommendations, and future directions.

The Fight Against Trafficking in Human Beings in Kosovo

Facts and Figures

The number of foreign victims officially identified by the local authorities has 
decreased over the preceding years, with the majority of victims now being 
women and girls internally trafficked for the purpose of sexual exploitation (Ministry 
of Internal Affairs 2015; United States Department of State 2017). In 2017, a total of 
22 cases were reported to the police (Qosaj-Mustafa and Morina 2018), while during 
2016, out of the 36 trafficking victims officially identified by the authorities, 32 were 
Kosovo nationals and 4 were from Albania; 34 were female and 2 were male; and 26 
were victims of sexual exploitation, 9 of forced labor, and 1 a victim of “slavery and 
servitude” (United States Department of State 2017).

Table 1 below summarizes the available data on the number of trafficking investi-
gations, prosecutions, and convictions, as well as the number of trafficking victims 
officially identified through the national mechanism since 2007 (United States Depart-

Legal and Institutional Framework

Kosovo’s legal and institutional framework in response to trafficking in human 
beings strongly reflects the initiatives that the country is taking toward its alignment 
with the European Union and international framework and standards (for more 
information see European Commission 2018a), and any attempt to depict the post-
conflict developments in Kosovo’s framework can be viewed through the principles 
of rule of law and transitional justice.

The United Nations Secretary-General’s report on the rule of law and transitional 
justice in conflict and post-conflict societies describes transitional justice as:

...the full range of processes and mechanisms associated with a society’s attempts to come 
to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve 
justice and achieve reconciliation. These may include both judicial and non-judicial mech-
anisms, with differing levels of international involvement (or none at all) and individual 
prosecution, reparations, truth-seeking, institutional reform, vetting and dismissals, or a 
combination thereof. (United Nations Security Council 2004, p. 4)
Furthermore, European Union’s approach to transitional justice, which aims, among others, at strengthening the rule of law in post-conflict societies, mentions:

Transitional justice measures should contribute to re-establishing and strengthening the rule of law. Re-establishing the rule of law should be understood not only in the strict sense of reforming laws and institutions, but also substantively, as ensuring that nobody is above the law, that institutions have adequate resources and are accountable, and that people have equal and effective access to justice. This is particularly important as transitional justice interventions sometimes occur in countries or territories in which the rule of law was either not respected in the first place, or severely violated during conflict or by authoritarian regimes. (Council of the European Union 2015, p. 8)

As a result, Kosovo is now perceived to have sufficient legislative framework in place for fighting trafficking, broadly in line with the European Union requirements
(European Commission 2018b; KIPRED 2015), and making advancement toward compliance with the standards of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA 2016).

Notably, international agreements and instruments regarding human rights and fundamental freedoms, such as the Universal Declaration of Human Rights and United Nations and European Conventions, are directly applicable in Kosovo and have priority over national laws and acts, as established by Article 22 of Constitution of the Republic of Kosovo (2015).

Indicatively, Article 139(8)(1) of Kosovo’s Criminal Code (Code No. 04/L-082 2012) defines trafficking using the same wording as the Article 3 of the Palermo Protocol, United Nations’ (United Nations General Assembly 2000) “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime” (OSCE 2011). Article 171 of the Criminal Code (Code No. 04/L-082 2012) criminalizes trafficking in human beings, an offense punishable with 5–12 years of imprisonment and fined up to 500,000 Euros, whereas more severe punishments are foreseen in cases where minors or organized groups are involved.

Additionally, an anti-trafficking law, Law No. 04/L-218 “On preventing and combating trafficking in human beings and protecting victims of trafficking,” entered into force in 2013. The law sets a comprehensive framework for safeguarding the rights of the victims and the prevention and combating of trafficking. It includes, among others, provisions detailing the responsibilities and obligations of competent authorities and the roles of the involved ministerial, judicial, municipal, and law enforcement institutions. The law also establishes the National Authority against Trafficking which, comprised by the aforementioned institutions and chaired by the governmentally appointed National Anti-trafficking Coordinator (NACT) and his office (ONACT), serves as the competent authority for the implementation of the National Strategy and Action Plan against Trafficking in Human Beings (Administrative Instruction (GRK) No. 17/2013 2013).

Other pertinent legal Acts include Law No. 05/L-036 (2015) “On crime victim compensation,” establishing the victims’ right to state compensation; administrative Law 04/L-015 (2011) “On witness protection,” establishing the Kosovo Witness Protection Program; and the “Standard Operating Procedures for Trafficked Persons in Kosovo” (Ministry of Internal Affairs 2013), detailing the national coordinated response for the identification, referral, and assistance of victims.

The Kosovo Police Directorate for Investigation of Trafficking with Human Beings (DITHB) is responsible for the prevention, investigation, arrest, and criminal prosecution of trafficking perpetrators, as well as the assistance of victims of trafficking (Kosovo Police n.d.). The Directorate is composed of approximately 55 staff members (GRETA 2016) and is divided into the section of regional units, the section for the assistance and protection of victims, and the central investigation department (Kosovo Police n.d.).

The Directorate for Witness Protection was established in 2013 and became fully operational in 2014 and is tasked with the protection of witnesses in serious crimes, including victims of trafficking, both during the investigative and prosecutorial
proceedings and after the final verdict (Center for Research Documentation and Publication 2015). According to local officials, the Directorate’s staff varies to 16–25 officers at times. No witness has entered the witness protection program since its commencement (Council of Europe: Commissioner for Human Rights 2017).

Organized crime cases are, primarily, dealt with by the Special Prosecution Office (European Commission 2018b), and the prosecution of trafficking cases falls under the jurisdiction of the Serious Crimes Prosecution Departments (GRETA 2016) of the seven basic prosecution offices situated across the territory, staffed with approximately 130 prosecutors (Kosovo Prosecutorial Council n.d.). Currently, there are no prosecutors specialized in trafficking offenses. Nonetheless, a prosecutor of the Special Prosecution Office has been appointed as a focal point for all human trafficking cases (GRETA 2016). He is informed on all cases and activities and may intervene when necessary. First-instance cases are tried by the serious crimes departments of the seven basic courts across the territory of Kosovo (Kosovo Judicial Council n.d.), where no specialized judges in trafficking cases currently exist.

Framework in Theory and in Practice

In the decade that has passed since the Kosovo declaration of independence, a rather significant amount of donor funds has been allocated toward advancing its criminal justice system operations and addressing key need areas. For instance, The United Nations Kosovo Team (n.d.-c) is the umbrella for 19 agencies currently operating in Kosovo with approximately 30 million of funds foreseen for the period 2016–2020 (United Nations Kosovo Team n.d.-b).

Nonetheless, a common observation of various international actors is that, despite the reported increasing efforts, willingness, progress, and evident commitment of the local institutions, implementation and results are still lacking and progress simply remains on legislative and policy level only. Indicatively, according to the 2016 progress report of the European Commission, “Kosovo is at an early stage of alignment with the European standards,” and despite the continuing legislative alignment in certain areas, the implementation remains weak (European Commission 2016, p. 6). This finding is restated in the 2018 report (European Commission 2018b, p. 5), according to which the fragmented and polarized political situation appears to have a negative effect on the advancement of European Union-related reforms.

Similarly, attesting to the institutions’ progress and commitment to advancing the rule-of-law area, the 2017 report of the European Union Rule of Law Mission in Kosovo highlights the ineffective response to the spreading corruption and political interference that cast a shadow to the advancements made (EULEX 2017). Tackling high-level corruption remains a rather significant priority and central issue toward Kosovo’s fulfillment of European and international standards (Qosaj-Mustafa et al. 2016).
with the backlog of cases and slow judicial response often cited as a significant area of concern (Zulfaj and Bajram 2018).

Another relevant report starts by noting the apparent rhetoric toward combating corruption but lack of willingness to do so. The authors of the report suggest that Kosovo has adequate legislation and more than enough institutions to fight corruption and organized crime. However, it is the “extreme political impact and the lack of concrete results” violating the justice system’s integrity that hinder the public’s confidence to the system (Miftaraj and Musliu 2017, pp. 4–5).

Allegations and cases of high-level corruption and organized crime involving politicians and public officials emerge at times and raise reactions in the news (e.g., see Morina 2018; Reuters 2018). Complicity of officials in cases of trafficking remains a significant concern, with police officers, labor inspectors, and other government employees indicted and convicted of charges relating to trafficking and, in some cases, later acquitted (United States Department of State 2016, 2017).

An analogous situation is observed in the training and capacity building for local and national institutions involved in the fight against trafficking. Over the years, a significant number of initiatives have taken place, including a series of institutionally and externally organized seminars and workshops from international donors and institutions.

For instance, the Continuous Training Program of the Kosovo Academy of Justice includes a 2-day course on human trafficking and smuggling of migrants and a 1-day seminar on dealing with witnesses in criminal proceedings (Academy of Justice 2017a). The Initial Training Program for newly appointed judges includes one 3-h session on serious crime, examining trafficking in human beings among other topics, and 15 h of training on witness and criminal proceedings (Academy of Justice 2017b). Similarly, the 2017 training plan of the Kosovo Academy for Public Safety includes courses, for a specific number of officers, in human trafficking and interviewing techniques (Kosovo Academy for Public Safety 2017).

In addition, several training seminars are organized in cooperation with external actors and international donor programs. Indicatively, during 2016, seminars on trafficking issues were held by the Office of the Chief State Prosecutor for judges, prosecutors, and victim advocates. The Kosovo Academy for Public Safety organized 25 separate training workshops intended for investigators from the Police Directorate of the Investigation of Trafficking with Human Beings in 2016 (United States Department of State 2017).

Similarly, based on information provided by local stakeholders, a significant number of seminars, on various pertinent topics and involving diverse local actors, were also organized in 2017, and more than a few have already been scheduled for 2018, with the exact numbers difficult to accurately estimate.

However, despite the continuous training efforts and the numerous seminars organized throughout the years, there has been no monitoring, evaluation, or follow-up in terms of curricula and materials, effectiveness, and training impact assessment, often hindering the process of identifying potential gaps and existing needs, as well as planning targeted capacity-building interventions and future policy.

As a result, the sustainability and continuation of the capacity-building efforts remains a highly problematic area. Repetition of the same topics, replication of
similar basic curricula, and specific target groups as participants constitute a few of the issues identified, often resulting to reduced participant engagement and lack of further specialization on a more advanced level. For example, it is perceived that the law enforcement authorities have received more extensive training on trafficking issues in comparison with the prosecutorial and judicial authorities.

Thus, the need for continuation of training efforts aiming to the improvement of knowledge and sensitivity of all relevant professionals regarding trafficking in human beings and the rights of the victims has also been previously reported as one of the main recommendations for Kosovo (GRETA 2016).

Overall, as stated in the latest European Commission (2018b, p. 3) progress report, Kosovo’s judicial system is still perceived to be at “an early stage,” with the administration of justice remaining “slow and inefficient,” the judiciary being “vulnerable to undue political influence,” and the rule-of-law institutions in need for “sustained efforts to build up their capacities.”

Findings and Reflections from a Needs Analysis

In an effort to outline significant aspects and potential gaps in the local anti-trafficking responses, this section draws on the findings of a Training Needs Assessment analyzing the training and capacity-building needs of the local judicial and law enforcement authorities engaged in the fight against trafficking in Kosovo, performed during 2017. Reflections and findings of the original study, the authors’ experience with the national context, and findings from the existing literature are synthesized and used to offer insights on structural key issues in the rule-of-law sector.

The methodical approach of the Training Needs Assessment was based on combination of desk and primary research. The existing literature, including relevant reports, legislative and policy documents, project outputs, and information on previous and future trainings, were gathered and analyzed. Subsequently, interviews with key informants (Sava 2012) were conducted to confirm, supplement, and update the gathered information, as well as seek the inputs and perspectives of key stakeholders on the training needs of the targeted population.

Eight interviews with representatives of Kosovo institutions, agencies, and organizations were performed in September and October 2017. The selection of the purposive sample was made based on the stakeholders’ key positions, experience, and knowledge of the national context. An interview outline was developed to guide the discussion with the stakeholders and ensure the acquisition of sufficient information on the main areas that were identified during the review of the literature.

Key Findings

Identification of Victims
To the best of the authors’ knowledge, no victimization survey examining and providing reliable data on the extent of unreported crimes – including trafficking
offenses – that remain undetected and unreported to the official authorities has been conducted in Kosovo. Indications, however, strongly suggest that the number of actual victims might exceed that of the officially identified victims, both in cases of trafficking for the purposes of sexual exploitation and forced begging.

Although all local actors agree that the standard operating procedures (Ministry of Internal Affairs 2013), which regulate the process for the formal identification of trafficking victims and their referral to support services, are well implemented by the authorities, the proactive identification of individuals at risk appears significantly lacking.

Trafficking of children for the purposes of forced begging and other forms of forced labor has been reported as an emerging trend in recent years, with a number of reports recommending the increase of efforts in the identification of such cases (GRETA 2016; KIPRED 2015; Ministry of Internal Affairs 2015; United Nations Department of State 2017).

Contrary to the reports, the official statistical data do not reflect the reported trend. For example, in 2013, there was no formal identification of any victims of forced labor, even though the police identified 66 children who were found begging that same year (United States Department of State 2014). In a 2014 field assessment of child beggars, the police identified four potential victims, one of which was officially granted the status of victim of trafficking, while the remaining children were classified as victims of child abuse (United States Department of State 2015).

According to information gathered during the interviews, the police authorities tend to classify many of such cases as child abuse, abandonment, or maltreatment because the parent or guardian is the one forcing the child in coerced begging. The guardian consents to it, and, thus, the case does not constitute trafficking in human beings. On the contrary, cases where minors are forced by parents or guardians into sexual exploitation are mostly classified by the police as cases of trafficking.

**Prevention and Protection of Victims**

In terms of prevention, awareness-raising campaigns aimed at the public and vulnerable groups, such as children and minorities, are often organized both by local authorities and institutions, such as the Ministry of Education, Science and Technology, and by donor programs and international actors. Nonetheless, lack of steps to discourage demand for sexual and labor exploitation remains a significant area of concern (GRETA 2016; United States Department of State 2017) relatively neglected to this day.

Support services, such as shelter, psychological, medical, and legal assistance, vocational training, and programs for rehabilitation and reintegration, are offered by a state-run and two governmentally licensed NGO-run centers. The state shelter provides assistance and helps victims in high risk and the two NGOs to low-risk and child victims, respectively, irrespective of their willingness to cooperate with the authorities (GRETA 2016; United States Department of State 2017). However, due to delays in securing state funding and their continuous dependence on donor funding, one of the shelters had to temporarily shut down their operations, and the uncertainty of being on the verge of closing again constitutes a constant reality (see also Popova and Kika 2018).
Investigation, Prosecution, and Sentencing

Although the authorities have implemented important steps toward the improvement of trafficking investigation, prosecution, and conviction over the years, important challenges remain. The sentencing rate is an area of significant concern for many international actors, since on several occasions, lenient sanctions, even below the statutory limits provisioned by the law, are imposed (GRETA 2016; KIPRED 2015; United States Department of State 2017).

According to information from local stakeholders, within the first 6 months of 2017, 19 perpetrators have been convicted with sentences ranging from 7 months to 3 years and 7 months; 6 offenders were sentenced on parole status; and only in 1 case a fine of 1000 EUR was imposed. Even when decisions are appealed, the sentences imposed are often reduced or remain unchanged.

Indicatively, a relevant case that has received increased attention over the years is the Medicus case, an organ trafficking case uncovered in 2008 that resulted in a guilty verdict for the three main defendants in 2013 (Pineles 2018). Following several motions with the Court reaffirming the initial verdict, the convictions were finally annulled by a local-majority panel of the Supreme Court in 2016 based on procedural irregularities (Morina 2017; Pineles 2018). The case retrial began in 2017 at Pristina Basic Court (Morina and Gerxhaliu 2017) and concluded with the conviction of two of the defendants in May 2018, while the third suspect remains at large, imposing, however, lower sentences compared to the initial trial (Bytci 2018; Iberdemaj and Morina 2018). The retrial of this case, initially handled by EULEX, intensified concerns regarding the operations of the local judicial system, and the handling of sensitive and high-profile cases, as EULEX’s mission, was supposed to end in June 2018 (Bytci 2018; Pineles 2018) but was eventually extended until 2020 (EULEX 2018).

The structure of the current system not allowing for the specialization of judges and prosecutors was repeatedly highlighted during the interviews as an important factor. Reportedly, evidence gathering and prosecution of cases pursuant to the applicable law provisions were also among the key issues raised. On the contrary, others pointed that the lenient sentences are not a result of missing evidence or insufficient or lacking prosecution. Since enough evidence to secure a trafficking conviction is gathered and presented, the conviction rate is perceived as satisfactory, and the lenience of the sentences is, thus, not related to the investigation and prosecution of the case.

Similarly, it was noted that in several cases, mitigating circumstances are taken into account before sentencing; cases are often reclassified and downgraded to lesser crimes (e.g., facilitating or compelling prostitution and child abuse), thus resulting to a more lenient judicial treatment of a perpetrator. Reportedly, the acceptance of mitigating circumstances is often related to miscomprehension and misconceptions regarding the emotional and psychological aspects of the crime, the dynamics of control and coercion in trafficking, and the complicated issues attached to consent. This might result in authorities minimizing the impact that the crime had on the victim and thus imposing more lenient sentences.

Victims may withdraw or change their statements in court – mainly due to intimidation and/or fear of retaliation or the significant period that has passed since
the offense until the case is brought to court. The fact that a significant time, often more than 6 years, has passed until a case is brought to court and victims have since moved ahead in their lives has also been observed to contribute to the authorities’ assessment and estimation of the impact that the crime had to the victims, often resulting into its minimization.

Despite the diverse opinions expressed from various stakeholders, some consensus appears to exist in the significance of securing and maintaining the victim’s cooperation throughout the process, placing their testimonies into the center of the process. From an analytical point of view, the need for deeper understanding of the crime’s dynamics through the victim’s perspective appears to be an underlying common ground.

**Treatment of Victims and Trust Toward the Authorities**

It is perceived that considerable improvement has been achieved in the treatment of trafficking victims during their interaction with the Kosovo criminal justice system. Kosovo Police, and especially the Directorate for Investigation of Trafficking with Human Beings, is well regarded in their approach to victims compared to the prosecutorial and judicial authorities, where the need for further training has been highlighted.

However, lack of trust toward authorities, fear of retaliation, intimidation, and lenient sentences for perpetrators are among the most important reasons that influence victims’ decision not to report the crime or cooperate with the authorities. Noteworthy examples include cases of revictimization by the same offender shortly after his/her release and lack of information regarding the conviction, conviction rate, and release of the perpetrator, with victims suddenly encountering the perpetrator on the street. Similarly, multiple interviews of the same victim, especially child victims, have been reported.

**Victims as Witnesses**

An issue highly interconnected not only to the treatment of victims and their trust toward authorities, but to the prosecution and sentencing as well, is the victims’ witness testimony. Naturally, cases brought to court against traffickers often rely significantly on the victim’s testimony (KIPRED 2015).

Victims, however, are often afraid and reluctant to admit their victimization. Sometimes they opt not to cooperate with the authorities or to leave the country before the case is brought to court. Notably, victims’ noncooperation was explicitly reported by the local authorities interviewed as one of the most significant issues with regard to the prosecution of the offense.

Similarly, cases where the victims withdraw or change their testimony during the hearing constitute a major challenge. Victims tend to change their statements over time due to fear of retaliation, intimidation, or fear when facing the perpetrator in court or due to the long period that has passed since the offense until the case is brought to court and the victims have since changed their lives.

The issue of secondary victimization during the process remains a significant issue, as was also highlighted by the interviewees. Authorities stressed the need for
better training on how to approach the victims, noting that there have been cases where the questioning revolves mostly around the sexual abuse aspect of the crime and not that of the exploitation, thus significantly re-traumatizing the victims and impacting their willingness to cooperate. Victims perceiving the authorities to lack empathy was also mentioned during the interviews as an important need area toward building trust.

On the other hand, since the Kosovo Witness Protection Program became fully operational in 2014, no victims of trafficking, or other crime, have entered the program. Reportedly, this is attributed to a lack of trust toward the institution and the criminal justice system in general (Council of Europe: Commissioner for Human Rights 2017) but also to the absence of relevant decisions for witnesses’ participation in the program by judicial authorities. Although protection measures, foreseen by the Criminal Procedure Code, are implemented in cases of victims of trafficking and the victims are assisted by the police victim protection units, no decision has been so far issued based on the administrative law on witness protection.

Noteworthily, incidents where victims of trafficking have tried to flee the country through illegal routes due to intimidation and fear of retaliation have been observed.

**Interinstitutional Cooperation and Coordination**

The need for enhancement of interinstitutional cooperation and coordination in the fight against trafficking has been repeatedly highlighted (European Commission 2018b), with various reports recommending joint trainings for prosecutorial, judicial, and law enforcement authorities (KIPRED 2015). Similarly, representatives of local institutions have been continuously stressing the need for joint trainings of members of all incumbent authorities.

The level of cooperation between law enforcement and prosecutorial authorities in Kosovo has received increased criticism in the past (EULEX 2016), and although it is perceived to be improving on some level, facilitating stronger cooperation between incumbent institutions, bodies, and agencies remains an important requirement for combating serious and organized crime (EULEX 2017).

Most notably and according to local stakeholders, the lenient sentences imposed in cases of trafficking are the result of a chain reaction, involving all the stages of the procedure, starting from the moment that a case is initiated, and evidence is gathered, and continuing to how it is subsequently prosecuted and how a final judgment is reached.

**Recommendations and Future Directions**

Considering Kosovo’s complex situation and the initiatives of the European and international organizations in the area, a number of policy recommendations have been issued calling for action in tackling corruption, trafficking in human beings, establishing the rule of law, building trust and social inclusion of marginalized populations, protection of human rights, terrorism, and organized crime
(indicatively, the recommendations of the European Union – Kosovo Stabilisation and Association Parliamentary Committee (SAPC) 2016a, b).

Specific recommendations for the anti-trafficking policies in Kosovo focusing on the protection of victims and the prosecution of human trafficking cases have been thoroughly referred in the 2017 Trafficking in Persons Report of the United States Department of State and the 2016 report of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA 2016).

The findings of the current analysis appear to be in-line with the conclusions and recommendations that have been repeatedly highlighted by various reports and international actors. More specifically, in terms of prevention, the need for increased proactive efforts in the identification of victims, potential victims, and individuals at risk remains. Efficient boarder control and, most importantly, labor inspections could contribute toward that end. Similarly, systematic and periodic awareness-raising activities for the prevention of trafficking throughout the country but most importantly efforts to minimize demand for labor and sexual exploitation appear to be key need areas that require further focus. The intensification of victim support and assistance throughout all stages of the criminal justice process is also highly recommended.

The efficient investigation, prosecution, and appropriate conviction of traffickers constitute a major area of concern. The continuous training of all actors involved, but through an alternative multidisciplinary approach which places the emphasis on creating a deeper understanding of the specifics of trafficking, especially in relation to the victim and the dynamics of the crime, could potentially strengthen the effectiveness of the ongoing efforts. Similarly, regular and proactive collaboration between authorities and the establishment of cooperation between the Kosovo Police and the European and international authorities, such as Europol and Interpol, are highly warranted. On a societal level, the need to strengthen the trust of the citizens in public authorities and enhance the anti-corruption measures and policies is evident.

A crosscutting observation, taking into consideration the political, economic, and social context of Kosovo and through the authors’ experience and lessons learned from the national context, is that bridging the gap between theory and practice, framework and implementation thereof, legislation, and institutional responses appears to be the core challenge in implementing the abovementioned recommendations.

The adoption of a victim-centered approach in all stages of the criminal justice process, which has the protection of victims, the prevention of their revictimization, their social integration, and support as core values, could meaningfully contribute toward that end. Placing the victims and their needs in the center of the criminal justice response could significantly benefit both the victims and the authorities by preventing secondary victimization and increasing victim satisfaction, protection, and trust to authorities on one end, while also contributing to better identification of victims of trafficking, increased victim cooperation and investigative value, better collection of evidence, and ultimately appropriate sentencing and fair trial.
Similarly, effective, but pragmatic, monitoring and evaluation, continuity, and complementarity of all ongoing efforts and programs appear to be the other important aspect. The aim of all implemented actions, by national or international institutions and agencies, is to strengthen and increase the efficiency of the local responses against trafficking in human beings – or the criminal justice system and rule-of-law area in general – and ultimately ensure compliance with European and international standards.

In practice, though, more than one project working on the same sector in parallel; substantial dependency on donor funds for the operational capacity of key structures; and superficially addressing issues instead of cultivating organic change on cultural, political, or social level within the system itself are often the case. Thus, the concrete collaboration among authorities, institutions, civil society, and national/international actors and the accountability of all agencies involved, as well as the systematic evidence-based monitoring and assessment of the National Strategy against Trafficking in Human Beings (2015–2019) (Ministry of Internal Affairs 2015) based on quantitative and qualitative indicators, appear to be an integral part of the way forward.

Kosovo’s recent history in addition to its status and political situation makes Kosovo a notable case. The fight against organized crime in a post-conflict area with the involvement of several international actors constitutes a complicated case.

Although not fully compliant, many of the Kosovo legislative acts read very closely to the wording of European Union directives and international protocols. A number of relevant policies and mechanisms are in place, which seem to function well, at least on some level. And numerous institutions and independent protocols have been established. The majority of the relevant actors have received some level of training, in some cases quite specialized and advanced. However, lenient sentences are still being imposed, trafficking cases are downgraded to lesser crimes, only a few victims are officially identified as victims of trafficking, officials implicated to trafficking crimes are acquitted, and the idea of a victim-centered criminal justice system is still in its infancy.

Following the original 3Ps (i.e., prevention, protection, and prosecution) identified by the United Nations (United Nations General Assembly 2000), it could be proposed that Kosovo constitutes a representative example of what has been proposed as the fourth P – partnership (see Winterdyk 2018). Furthermore, partnership appears to have managed to bring together significant expertise and develop a comprehensive legal, institutional, and policy framework in Kosovo.

The implementation, results, and success, though, of this framework are still under examination. As is the dependency on donor approaches and international intervention, the long-term effect of which remains to be seen. Monitoring, evaluation, and impact assessment of the external partnerships – and ultimately the integration and sustainability of the implemented actions – could be the determining factor in systemizing all these efforts toward the development of truly systemic approach to organized crime.
Conclusion

Following serious and continuous conflicts during the 1980s and 1990s, Kosovo was placed under a transitional administration with the United Nations Security Council Resolution 1244 in 1999. In 2008, the country declared its independence, and since then numerous programs and initiatives funded by international donors and actors have been and are currently operating to strengthen the rule-of-law sector and reform the criminal justice system.

Increasing efforts have been also observed in the fight against trafficking in human beings, and anti-trafficking responses have been initiated and developed at various levels. However, Kosovo is not yet found to be fully compliant with the minimum standards for the elimination of trafficking. As source and destination country for female, male, and child victims of sexual exploitation and forced labor, the majority of victims are now women and girls internally trafficked for the purpose of sexual exploitation.

Although the country is now perceived to have sufficient legislative and institutional framework in place, principally in line with the European Union requirements and international standards, a lack of results and efficient implementation has been reported with any progress remaining mostly on legislative and policy level.

Proactive identification of individuals at risk appears significantly lacking, and although trends indicate an increase in children trafficked for purposes of forced begging, the official statistical data do not reflect the reported trend. In addition, despite the ongoing efforts for public awareness raising, discouragement of demand for sexual and labor exploitation services is relatively neglected to this day. Delays in securing state funding and continuous dependence on donor funding have resulted in instability in the victim support services offered.

The sentencing rate is an area of significant concern with lenient sanctions, even below the statutory limits provisioned by the law, imposed on several occasions. Mitigating circumstances are considered before sentencing, and cases are often reclassified and downgraded to lesser crimes, thus resulting to a more lenient judicial treatment of perpetrators. The level of cooperation between law enforcement and prosecutorial authorities in Kosovo has received increased criticism in the past.

Victim cooperation and trust toward the authorities appear to be core issues, as victims may withdraw or change their statements in court, reportedly due to fear of retaliation and intimidation and due to the lenient sentences for perpetrators. Revictimization during the criminal justice processes significantly impacts their willingness to cooperate, as victims perceive the authorities to lack empathy.

Although several policy recommendations have been issued by international actors calling for action in various sectors, the gap between the legislative and institutional framework and its effective implementation remains. The way forward appears to lie with the adoption of a victim-centered approach placing the victims and their needs in the center of all stages of the criminal justice process; the effective, but realistic, monitoring and evaluation of implemented actions; and the organic collaboration and accountability of all actors involved.
Cross-References

- (Anti-)trafficking for Labor Exploitation in Romania: A Labor Perspective
- Combatting Trafficking in Human Beings: A Step on the Road to Global Justice?
- Human Trafficking in Southeastern Europe: Council of Europe Perspective
- The NGO Response to Human Trafficking: Challenges, Opportunities, and Constraints
- Trafficking of Human Beings for Organ (Cells and Tissue) Removal

References


(Anti-)trafficking for Labor Exploitation in Romania: A Labor Perspective

Jing Hiah

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Abstract

Trafficking in human beings for the purpose of labor exploitation is increasingly investigated by law enforcement in the EU, leading to a rise in the number of identified victims and cases. However, differences between EU Member States in addressing trafficking have been observed. This chapter discusses the nature of (anti) trafficking in human beings for labor exploitation in Romania by utilizing a labor perspective. A labor perspective highlights how socioeconomic factors connect to the nature of (anti-)trafficking for labor exploitation in Romania. This chapter finds that the nature of trafficking in Romania should be regarded from the perspective of a source country that copes with high rates of victimization of trafficking among its emigrant population. As a result, the nature of anti-trafficking efforts is focused on the victim identification and assistance of Romanian nationals that have been exploited abroad. The nature of (anti-)trafficking in Romania can be explained by

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socioeconomic factors that contribute to labor market vulnerability in Romania, namely, a great number of working poor, poor employment conditions, and an extensive informal labor market along with limited enforcement capacity of the Labor Inspectorate. These further limits the attention for both internally trafficked Romanian and migrant victims of labor exploitation.

**Keywords**

Human trafficking · Labor exploitation · Migration · Romania · Source country · Labor perspective

**Introduction**

Romania is located at the crossroads of Southeastern and Eastern Europe and is a border state of the EU, bordering the Black Sea, Ukraine, Serbia, and Moldova. Initially, Romania was part of the cohort of countries of the fifth “Big Bang” enlargement of the EU in 2004. However, the country was excluded together with Bulgaria from the preparations for accession because of concerns addressed by Western European Member States on the state of their antihuman trafficking efforts, anti-corruption, and rule of law. These concerns locate human trafficking on the intersection of crime and immigration control. Although this so-called securitization discourse of human trafficking (e.g., Lee 2013) applies to lesser extent to sending countries of migration such as Romania, since the 1990s it has been observed how the prospect of joining the EU proves a powerful motivation for prospective Member States to enhance their capacities for border control and migration management (Jandl 2007:292). Indeed, in Romania, migration and human trafficking became a subject of public debate only after joining the EU. This was primarily stimulated by Western Member States’ concerns for border control and security of the Eastern borders of Europe and the expected large inflow of migrants (Sobis et al. 2016). Nevertheless, countries part of the EU must consolidate the uniform policy toward migration, and thus Romania complied with this requirement as well. Yet, as this chapter will argue below, Romania relates to questions of migration differently than Western European Member States, being primarily an emigration and source country of trafficking.

Human trafficking involves both labor and sexual exploitation. Whereas sexual exploitation pertains to exploitation in the sex industry, labor exploitation involves all types of forced labor that occur outside the sex industry. Not counting forced begging or criminal exploitation. The prevailing form of human trafficking in Romania is sexual exploitation. In Romania in the period 2011–2015, the registered number of sexual exploitation victims was with 54% the highest, followed by labor exploitation with 32% (GRETA 2016:7). Until recently, similar to various other EU countries, Romania has primarily focused on eradicating sexual exploitation. The attention for labor exploitation is however on a rise. Advocates for more attention for labor exploitation underline that labor exploitation is similar to sexual exploitation, a serious crime against universal human rights and endangers the physical and psychological well-being of its victims. Furthermore, the actual number of labor trafficking victims is suggested to be much
higher than the number of victims of sexual exploitation as it involves different types of labor and can occur in any economic sector.

On an EU level, labor trafficking is increasingly investigated by law enforcement. However, differences between EU Member States in addressing labor trafficking have been observed. This chapter explores the nature of (anti-)trafficking for labor exploitation in Romania. By focusing on the Romanian context, this chapter aims to tackle first what its critics have referred to as the “Eurocentric framing of trafficking”: the research on trafficking as dominated by studies on Western European countries that are immigration countries. Because of the dominant perspective of immigration countries, trafficking has become part of the immigration crime nexus (Lee 2013:128; Goodey 2008). Trafficking has become a security issue for states who aim to combat trafficking by punishing evil traffickers and deport illegal migrant workers (Strange et al. 2017; Aradau 2004). Secondly, this research takes a labor perspective on trafficking (Shamir 2012). A labor perspective explores the underlying socioeconomic factors that connect to labor market vulnerability and the nature of (anti-)trafficking in Romania. The factors that will be considered include (in-work) poverty, unemployment rates, work and labor conditions, the functioning of the informal economy, and the role of labor market regulation through institutions such as the Labor Inspectorate (Inspecția Muncii). The following questions are central to this chapter: What is the nature of (anti-)trafficking for labor exploitation in Romania? To what extent are anti-trafficking efforts connected to socioeconomic conditions in Romania and what are the consequences for the identification of trafficking victims in Romania?

This chapter draws from a larger ethnographic study exploring precarious labor and labor exploitation in migrant businesses in the Netherlands and Romania (Hiah and Staring 2016; Hiah 2019a, b) in which the author was involved as the main researcher; this chapter discusses findings of a particular section of the ethnographic study that includes perspectives of NGOs and governmental agencies active in migration (control) and trafficking in human beings in Romania. In the following, the first part of this chapter will describe the legal context of trafficking, the nature of anti-trafficking, and labor exploitation in Romania. In the second part, a labor perspective on trafficking for labor exploitation in Romania will be explored by reflecting on socioeconomic factors including poverty and poor working conditions in Romania; the extent and functioning of the informal economy in Romania; and finally, the character of emigration in Romania.

(Anti-)trafficking for Labor Exploitation in Romania

Legal Context of Trafficking in Romania

Romania was among the first states to sign the Palermo Protocol and implement EU legislation in the field of combating trafficking in human beings. With Law no. 678/2001 on Preventing and Combating Trafficking in Human Beings (the Anti-Trafficking Law), the Romanian legislator aimed at harmonizing the domestic legislation
with the European and international standards such as defined in the Palermo Protocol, the Directives of the Council of Europe (relevant directives are the Council of Europe’s Warsaw Convention on Action against Human Trafficking adopted in 2005; the 2012 EU Directive on Human Trafficking; Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on preventing and combating trafficking in human beings and protecting its victims. Other relevant EU directives are Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities; Directive 2004/80/EC relating to compensation to crime victims, and Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime), and the ILO (International Labour Organization) (Zaharia 2011). Law no. 678/2001 is currently still the most important law for the prevention of trafficking and helping victims of trafficking. The new Criminal Code of Romania (2009) and Criminal Procedure Code of Romania (2010) entered into force in February 2014. Accordingly, the criminalization of trafficking, which was previously part of the Anti-Trafficking Law, is provided in the new Criminal Code. The Criminal Procedure Code contains provisions regarding serious offences, including trafficking in human beings, which fall under the authority of the Directorate for Investigating Organized Crime and Terrorism. Regarding the exploitation of foreigners in Romania, amendments and supplements have been made to Government Ordinance no. 25/2014 on the Employment of Foreigners in Romania and other acts on the status of foreigners in Romania, which entered into force on 28 November 2014 (GRETA 2016:7).

Trafficking in human beings is defined by the Romanian Criminal Code in article 210 (Article 211 of the Criminal Code regulates the trafficking against minors) wording that is similar to the UN trafficking protocol:

(1) Recruitment, transportation, transfer, harboring or receipt of persons for exploitation purposes: a) by means of coercion, abduction, deception, or abuse of power; b) by taking advantage of the inability of a person to defend him/herself or to express his/her will or of his/her obvious state of vulnerability; c) by giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person, shall be punishable by imprisonment of no less than three and no more than 10 years and a ban on the exercise of certain rights.

(2) Trafficking in persons perpetrated by a public servant while fulfilling his/her professional duties and prerogatives shall be punishable by imprisonment of no less than five and no more than 12 years.

(3) The consent of an individual who is a victim of trafficking does not represent a justifying ground.

Article 182 of the Romanian Criminal Code defines the exploitation of persons as:

forcing a person to carry out work or tasks; enslavement or other similar procedures implying deprivation of freedom; forcing persons into prostitution, pomography, in view of obtaining and distributing pornographic material or any other types of sexual exploitation; forcing into mendicancy and illegal collection of body organs, tissues or other cells.
Slavery and forced labor are separately criminalized in Art. 209 Criminal Code: “Placing and/or keeping a person in slavery and trafficking in slaves are punished by 3 to 10 years of imprisonment and the prohibition of exercising certain rights” and Art. 212 Criminal Code. The possible punishment for slavery is similar to the punishment for human trafficking, while the punishment for forced labor is considerably lower with 1–3 years of imprisonment. Thus, the punishment for human trafficking and slavery involve both minimum and maximum sentences.

Finally, Romania has signed various ILO treaties and committed to the ILO decent work (Decent work is by the ILO defined as summing up “the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men” (ILO 2018)) country program prior to EU membership. The focus of the Romanian decent work country program involves enhancing the capacity of constituents to increase employability of vulnerable groups, improving social protection policies and coverage, and strengthen industrial relations system (ILO 2006:3).

**Anti-trafficking in Romania**

According to international and European monitors, the Romanian government does not rank well in their anti-trafficking efforts. The annual Trafficking in Person (TIP) reports of the US Department of State has ranked Romania a Tier 2 country since 2002. The TIP reports monitor how states have implemented the minimum standards of the US Trafficking Victims Protection Act (2000) and places countries in three different tiers. Being listed as a Tier 2 country means that Romania does not fully meet the minimum standard for the elimination of trafficking but is making significant efforts to do so (US Department of State 2017). General criticism on these macro-level indicators like the TIP reports points out the underlying political motivations and unreliable methodology upon which these macro-level indicators rest (Weitzer 2015:229–230). In case of the TIP reports, when states are assessed as not complacent, the US government applies economic sanctions. Yet, some scholars point out that diplomatic relations between the US government and the respective country play an important role in how a country is ranked in the first place (e.g., Capous Desyllas 2007:67). On a European level, the Group of Experts on Action against Trafficking in Human Beings (GRETA) monitors the implementation of the Council of Europe Convention of Action against Trafficking in Human Beings in all its Member States. GRETA does not use a grading system, like the TIP reports, yet GRETA’s annual reports do reflect on the state of anti-trafficking affairs in all its Member States. In addition, countries are evaluated individually.

The TIP reports and GRETA share similar insights on the nature of anti-trafficking activities of the Romanian government. Firstly, the role of the Romanian state in victim’s support is considered problematic and limited. Victim support is mainly
carried out by NGO’s who receive international or European funding, and occasionally with government monetary or in-kind support. Second, an issue that the TIP reports consider in particular is the part played by corrupt government officials in trafficking crimes. In the 2017 TIP report, these issues have been underlined again. Issues of corruption addressed in the latest 2017 report point out how local officials have obstructed trafficking investigations. Two government officials have been convicted for their involvement in human trafficking crimes. A more current issue in Romania addressed in TIP reports since 2010 and the latest GRETA report of 2017 is the identification of foreign or immigrant victims of trafficking. The findings of the report urge Romania to increase their efforts in identifying potential victims among undocumented migrants and foreign workers who are considered vulnerable to trafficking.

**Nature of Labor Exploitation in Romania**

According to various studies and reports, Romania is primarily a source country of trafficking in human beings (GRETA 2016; European Commission 2015; Psaila et al. 2015:23). Being a source country of trafficking means that Romanian victims are primarily exploited outside of Romania. Accordingly, Romanian citizens rank number one among EU countries for registered trafficking victims in 2013–2014. Romania is followed by Bulgaria, the Netherlands, Hungary, and Poland. These are the same countries as for the years 2010–2012 (European commission 2016b). Also, in a study that reviewed case law of 28 EU Member States between 2009 and 2013, Romania remains at the very top of nationalities of victims in the EU (Psaila et al. 2015). Romania’s governmental statistics confirm that Romanians are often victims of trafficking in the EU. In the Romanian national statistics for the 2011–2015 period, the overwhelming majority of the 4622 victims of human trafficking were Romanian citizens. Only 15 foreign, non-Romanian citizens were found to be victims of trafficking (GRETA 2016:7).

Background information on Romanian victims is scarce. There are some insights provided by the Romanian National Agency against Trafficking in Persons (ANTIP), yet structural information is lacking. GRETA (2016) has urged the Romanian government to develop mechanisms that structurally register the background characteristics of victims. EU countries in which Romanian victims of labor exploitation have been found are diverse, including Belgium, Germany, Italy, the Netherlands, Cyprus, the United Kingdom, Czech Republic (Ibid.), Spain, France, Greece, and Poland (GRETA 2016:7). Romanian trafficking victims have been found in sectors in which most of Romanian labor migrants in the EU are working. Main sectors include the transportation sector, textile industry, domestic work, and farming. Among the victims of trafficking for labor exploitation, Romanian women are with 58% the majority in 2015. That women make up the highest relative number of victims of labor exploitation is in line with the profile of Romanian emigrants who are for a great majority female. The low socioeconomic background of victims is the main source of motivation of victims to go abroad or to travel from their town of
origin to the city, suggesting that trafficking and migration are overlapping social phenomena as argued by others (e.g. Cho 2015; Rao and Presenti 2012).

Although the number of victims that were exploited abroad is much higher than the number of Romanian victims exploited within Romania, the Group of Experts on Action against Trafficking in Human Beings (GRETA 2016) of the Council of Europe reports that internal trafficking has been on the rise. Internally trafficked victims represented 35% of the total of identified victims in 2011–2014. In 2015, the Romanian National Agency against Human Trafficking reported that from the 880 victims that were identified, 492 (56%) were trafficked externally, and 388 (44%) were trafficked internally within Romania (Romanian National Agency Against Human Trafficking 2016). The problem with these statistics is that these numbers include all forms of trafficking. Internally trafficked victims, at least those that have been identified, hold for the greater majority the Romanian citizenship. The study by Hiah (2019b) underlines that among internally trafficked Romanian victims, poverty and social inequality between the abuser and the victims plays a role. Victims are from poor families in rural areas and are often not only uneducated but also illiterate.

Only 15 foreign nationals, non-Romanians have been identified as trafficking victims between 2011 and 2015 in Romania. This low number of foreign victims of trafficking in Romania may be caused by registration effects. GRETA (2012, 2016) has warned that the low number of identified foreign victims of trafficking is caused by the fact that the procedures for identifying foreign victims of trafficking have not been well developed (GRETA 2012, 2016). As GRETA points out, these cases involving the exploitation of foreign nationals are usually the cases that made media headlines. For instance, a case that gained wide public attention concerned Chinese migrant construction workers. In this case, many Chinese migrant construction workers were suddenly laid off by their Romanian employer. The Chinese workers were not paid their (last) salaries. After closer investigation many other violations of Romanian labor legislation took place. Violations included working time violations such as 60-h workweeks, pay violations in which salaries were much lower than as agreed beforehand or sudden salary cuts, and a lack of access to healthcare for workers. Following strikes by the Chinese migrant workers in front of the Chinese Embassy in Bucharest, the Labor Inspectorate and Chinese officials investigated the reported labor violations. While various workers were paid damages, many workers did not receive any restorative funds nor were any of the employers prosecuted. What was worse, a great majority of repatriated workers were treated as villains by the local Chinese governments after their return to China and were accordingly sent to correction offices (Guga and Toader 2013; Chen 2010). A second case that gained wide media attention involved Filipino migrant women who were employed as domestic workers (Digi24 2017; Migrationlab 2014). In Hiah’s (2019b) study, the Filipino domestic workers case was addressed among migration NGO’s. These NGOs did recognize the precarious position of the domestic workers and how certain trafficking indicators applied, yet the notion of trafficking did not come up, and the problems were framed as labor abuses. The difference in framing of trafficking victimhood can thus contribute to the observed limited number of registered migrant victims of trafficking.
Comparative research highlights that Romania focusses its anti-trafficking efforts primarily on its own citizens that have been exploited abroad (PRO-ACT 2015). Romania does address internal trafficking but much less extensively. Yet, in contrast to other countries such as the Netherlands and the UK, the Romanian law enforcement agencies do not focus on foreign victims of trafficking (Ibid.). The study by Hiah (2019b) underlines that trafficking of migrants in Romania is not considered an issue by Romanian NGOs and governmental institutions. That these institutions take this position almost seems to suggest that Romania is even criticizing EU policy and other international indexes on trafficking in which Romania’s anti-trafficking efforts toward labor exploitation of immigrants have been debated. This lack of attention for migrant victims of trafficking resonates with Cho’s (2015) findings on compliance with the EU anti-trafficking framework in different EU Member States. Cho finds that migrant-sending countries have better victims support and on the other hand are less focused on the enforcement of anti-trafficking laws, and consequently few internally trafficked and migrant victims are found.

A Labor Perspective to Trafficking in Romania

While little consensus is reached on what is defined as labor exploitation (e.g., Weitzer 2014:7). For example, it generally refers to work and employment which do not meet specific health and social security standards. E.g. workers should work in a safe environment, get paid at least a certain minimum wage, be independent of the employer – thus free to leave the employment relation and be hired formally (Ibid.). Yet the following will explore how these standards translate difficult to Romania’s labor market.

Poverty and Poor Working Conditions

Romania is among the poorest and most unequal societies in the European Union (European Commission 2017:7). The poverty situation has supposedly improved after 1989, yet the available comparative statistics show that the percentage of those at risk of poverty has slowly increased since 2010 from 21.5% to 25.4% in 2015. Romanians thus have a high chance to live beneath the poverty line (Ibid:54). Romania has the second lowest income per capita after Bulgaria (Hunya 2017:5) and considerate low employment rates compared to the EU average with 67.7% in 2016. While unemployment numbers are falling, this level of inactivity is still one of the highest in the EU. Large socioeconomic inequalities are embedded in the urban/rural divide. Employment opportunities differ greatly between fast-growing urban areas and the poorer less developed rural areas. These observed large socioeconomic inequalities possibly explain how Romanian victims often come from rural areas in Romania. According to economic or demand theories of trafficking, socioeconomic inequalities lie at the heart of trafficking. These theories explain trafficking as similar to any other economic activity with both a demand and supply for cheap, exploitative labor (e.g., Aronowitz 2001; see also
Cyrus 2015). In the case of Romania, this seems to apply as well when considering that in rural and marginalized areas, employment opportunities outside (semi-)subsistence agriculture are limited. Yet 45% of the Romanian population lives in these rural areas that remain far behind (European Commission 2017:20–23).

For those who are able to find employment in Romania, it does not always look better. The number of working people at risk of poverty is 2.2 higher than the European average and 4.8 times higher than in Finland, which has the lowest number of working poor (Bodea and Herman 2014:714). In-work poverty threatens 20% of the Romanian workforce and has increased since 2007 (Eurofound 2017:16). In-work poverty stems from the high share of unremunerated family workers in rural areas (European Commission 2017) and is strongly associated with low or uneducated populations (Eurofound 2017:4).

Working conditions in Romania are poor when compared to the European average (Domnisoru 2012). Firstly, Romanians are considerably more dissatisfied than the average European with pay. This dissatisfaction may stem from how in Romania, the minimum wage is among the lowest in the EU – again, after Bulgaria (Eurofound 2016b). Despite EU membership, average wages are lower than in Serbia, Turkey or Bosnia, and Herzegovina, and the average hourly labor costs in manufacturing were lower in Romania than in Russia, Mexico, and Brazil (Domnisoru 2012:20). Second, Romanian workers have long working hours. In 2010, Romanian workers had the longest workweek in the EU – although more recent findings from Eurofound surveys on working conditions in the EU show that this has improved considerably (Eurofound 2016b, 2017). In 2015, more than half of Romanians reported working at least 40-h and less than 48-h a week compared to the EU28 average of 30–35 h (Eurofound 2016b).

For Romanians, working in their free time to satisfy work demands is twice as likely when compared to the average European (Domnisoru 2012:33–35). Furthermore, many Romanians report unpaid overtime. This unpaid overtime together with long working weeks (and as we will see below, high emigration numbers) is also reflected in the low employment numbers in Romania (Eurofound 2016b). And third, Romanian workers are reported to be more often exposed to a hazardous work environment yet are less likely than the average European to complain about health risks and take medical leave (Domisoru 2012:34). An explanation for these poor conditions of employment may be that Romania’s competitiveness largely rests on low labor costs for exported goods (Domnisoru 2014).

Although above sections seem to suggest that labor rights are lacking, Romania actually does not rank very low concerning labor rights as “law in the books.” Yet labor rights not only depend on written laws but also how these are implemented in practice (Kahn-Nisser 2014). An important aspect of this implementation is social dialogue. Social dialogue entails that workers can exercise their rights to present their views, defend their interests, and negotiate work-related matters with employers and authorities. The Labor Union plays an important role to establish social dialogue (Ghai 2003:113). Yet various studies underline how in post-socialist CEE countries and in Romania in particular Labor Unions have become weaker in their influence (e.g., Varga and Freyberg-Inan 2015). As a consequence, social dialogue has been difficult to establish.
However, social dialogue is essential to boost economic growth, reduce poverty, and enhance development (European Commission 2016a).

The Labor Inspectorate plays an important role in enforcing legislation of the Labor Code and minimum labor standards of income and safety. Furthermore, the study by Hiah (2019b) shows that the Labor Inspectorate considers itself to lack capacity to enforce labor market regulations adequately. Whereas prior to the recession in 2009, Romania was building toward a modern Labor Inspectorate by reorganization and increasing the number of labor inspectors, it was unable to keep this increase steady. The economic recession halted the process due to a lack of funds. In addition, the recession brought a further increase in the number of complaints for violations of labor legislation and work and health safety regulations. However, the total number of inspections did not increase compared to 2008 (Domnisoru 2012). Thus, due to all before mentioned developments, the Romanian Labor Inspectorate lacks sufficient capacity to supervise the Romanian labor market in an adequate manner. Finally, the capacity of the Labor Inspectorate is also impacted by corruption among its street level officers (European commission 2016a; Hiah 2019b). An exemplary case is the horrific incident at nightclub Colectiv in October 2015 where a fire caused the death of 64 young people and more than 200 wounded. The forensic investigation that followed concluded that the club did not fulfill the fire safety conditions. The nightclub had however made it through various inspections of the Labor Inspectorate. The Romanian media spoke about widespread corruption among supervisory agencies and local government (Max Pearl 2015). The study by Hiah (2019a) underlines this: corruption among the Labor Inspectorate has been a consistent problem, although corruption in cases concerning trafficking are scarce.

According to this analysis, the ideas of minimum labor conditions that are crucial to measure human trafficking for labor exploitation translate difficult to the Romanian context as labor conditions for the general population are poor due to economic development issues and lack of enforcement capacity and corruption among the Labor Inspectorate.

**Informal Economy**

The informal economy is still an important part of the transitioning countries in CEE in general and Romania in particular (European Commission 2017). While Schneider (2013) estimates that the informal sector in Romania takes in 29.1% of the GDP in Romania, the European Commission has given an estimate of 15–20% of the Romanian GDP (European Commission 2017:14). Regardless of these differences, these estimates make the informal sector in Romania one of the largest and most persistent of the post-socialist economies of Central and Eastern Europe (Williams and Horodnic 2017:4). The informal economy refers to a process of income generation that is unregulated by institutions in a legal and social environment in which similar activities are regulated (Castells and Portes 1989:12). After the transition from post-socialism, the steep rise of living standards and unemployment plummeted the number of households that lived in (severe) poverty. Households
found other strategies, outside the regular labor market to subsist. Thus, today working informally is still a common livelihood strategy in CEE and Romania in particular (European Commission 2017:13–14; Wallace and Latcheva 2006).

Informal labor can, however, lead to poorer working conditions (Williams and Horodnic 2017) increased vulnerability of poverty and exploitation (Maiti and Sen 2010). Actually, Thörnquist (2015) argues how informal work is the first most common type of work associated with precariousness. First, because informal workers are not paying taxes or social charges, they are not entitled to social security coverage and are not covered by trade union representation. Second, there is a risk of precariousness because informal laborers might be willing to work under market-level conditions. They risk working in low-quality jobs and irregular working patterns. Workers engaged in this type of work are “under the radar” in terms of employment rights in general, including pay levels. Although previous research has shown that labor conditions in the informal economy are not laissez-faire but regulated by informal expectations and norms (e.g., Hiah and Staring 2016; Bloch and McKay 2013), informal workers are more so than regular workers at risk of abuse and exploitation.

Actually, like other Southeast European countries, more informal work in Romania is found to be waged employment and conducted by marginalized population groups out of necessity compared to other EU regions. Thus, informal work in Romania is more of a necessity than a choice compared to informal work in Western European countries (Williams 2010). Besides informal work being a livelihood strategy, motivations for Romanians to engage in informal work also relate to a deeply rooted mistrust of the state and its bodies and staff. The public, employers, and employees view state civil servants as corrupt and abusive as well as self-serving, rather than acting in the general interest of the public and the taxpayer. Consequently, informal work is socially accepted and common (Ibid.). Sectors in which most undeclared work takes place are industrial type of activities, followed by activities concerning warehousing, transportation, commerce, as well as hotels and restaurants (Eurofound 2016a). The percentage of employers found hiring workers without legal documents and sanctioned for it varied between more than 9000 in 2011 and around 3000 in 2015 (Eurofound 2016a:4).

To conclude, in Romania labor exploitation must be considered in the context of a labor market in which a significant share of the local population is working in poor conditions that are not according to minimum local standards. This expresses itself also in the high percentage of working poor in Romania. Furthermore, labor conditions do not only go unsupervised due to a lack of capacity of the Labor Inspectorate, but the great number of people working informally in Romania further exposes Romanians to labor abuses and complicates supervision on labor conditions.

**Romania as Emigration Country?**

These before sketched unfortunate economic prospects in Romania have led to extreme emigration numbers after the collapse of the communist regime in 1989.
Yet during the period 2001–2007 of Romania’s EU accession process, emigration to Western countries of the EU further increased (e.g., Andrén and Roman 2016:248). Romanians emigrated mainly to find better wages and economic prospects in other European Member States. Reliable estimates report that in total more than two million Romanian citizens are staying in other EU Member States, suggesting that 20% of the active Romanian population is working abroad. Despite serious concerns of Northern European countries for high numbers flooding in (Sobis et al. 2016), Romania’s emigrants primarily moved to Southern European countries that currently host the bulk of Romanian immigrants. The most popular destinations being Spain and Italy with, respectively, 675,000 and 625,000 Romanian migrants in 2008 alone (Fic et al. 2016). Seventy percent of the Romanian emigrants are migrant workers (Fic et al. 2016:39) of which the bulk are manual laborers with either low levels of qualifications or no qualifications at all (Careja 2013:78). Romanian migrants working abroad are frequently active in the construction sector, but domestic work, manufacturing, accommodation and foodservice, wholesale and trade, and agriculture are also popular sectors (Fic et al. 2016:39). While EU enlargement gave Romanians a wider liberty to travel abroad, several authors point out how these increased possibilities to migrate also increased the exposure and vulnerability of Romanians to labor exploitation (Petrunov 2014). Studies have shown that Romanians abroad often live and work in poor conditions, and in some severe cases are exploited (Ghinararu and Van der Linden 2004; Palumbo and Sciurba 2015). Interestingly, other literatures have underlined the relationship between labor market abuses and restrictive migration regimes. It is argued that restrictive regimes make it more difficult for labor migrants to find employment via regular channels and migrants are therefore left to working in the unsupervised informal labor market that increase the chances of falling victim to labor abuse (e.g., Lewis et al. 2015). However, the case of Romanian labor migrants challenges this idea. Romanian labor migrants enjoy a liberal migration regime as Romania is member to the EU. Yet still many Romanians fall victim to labor exploitation. Thus, this means that even in liberal migration regimes, abuses will not automatically stop to exist.

Although Romania can be characterized as predominantly an emigration country, various small groups of third-country nationals (TCNs) have made their way to Romania in the post-socialist era. Currently, 0.3% of the Romanian national population is from countries outside the EU. There is limited insight on the migration motives of this 0.3%. There are however some estimates made by the General Inspectorate for Migration. Hiah (2019b) interviewed policymakers of the General Inspectorate for Migration and reports that these policymakers understand the presence of TCNs in Romania primarily related to education, business, and a significantly smaller group, family reunification. These policymakers further underlined that Romania would prefer to have more lax immigration policies contrary to the more restrictive EU migration policies. TCNs could bring more investments to Romania and contribute to more employment (see also Horváth and Gabriel Anghel 2009). Yet migrant workers are not a significant group now. Although there have been reported shortages on the Romanian labor market for workers in construction that migrant workers have satisfied in the past (Domnisoru 2012). At the height of economic growth in 2007, 11,242 foreign workers were
registered. Informal employment is however also prevalent among foreign workers in Romania, so the number is in reality much higher. The Labor Inspectorate is also responsible for supervising the working conditions of migrant workers in Romania. Yet the study by Hiah (2019b) shows that the working conditions of migrant workers are not targeted by the inspection specifically, granting the General Directorate for Migration and the Labor Inspectorate did set up a joint Operational and Cooperation Plan against illegal immigration and work in the past. During this joint operation, the inspection sanctioned 142 employers for irregularities regarding the employment of foreign workers. Yet offences related mostly to the illegal hiring of workers without the correct papers. Offences concerning labor exploitation have been unaddressed in these operations. Furthermore, there have been few (academic) studies or analyses covering working conditions of migrant workers in Romania (Eurofound 2007) (although NGOs have conducted several studies (e.g., Guga and Toader 2013; Chen 2010)).

To sum up, Romania’s stance toward migration and trafficking must be considered from the perspective of an emigration country within the EU. Romanian citizens have left in great numbers to find better economic prospects in other European Member States. This may suggest explaining the great number of Romanian victims of human trafficking in the EU. This great number of victims is where Romania finds its policy priority: assisting their own citizens who have fallen victim to exploitation.

**Conclusion**

This chapter has explored the nature of (anti-)trafficking for labor exploitation in Romania and looked into the socioeconomic conditions underlying the nature of this phenomenon by drawing from a larger ethnographic study that explores vulnerable labor and labor exploitation in migrant businesses in the Netherlands and Romania carried out by the author (Hiah and Staring 2016; Hiah 2019a, b).

This chapter has illustrated that Romania is primarily a source country of migration and trafficking for labor exploitation. Romanians are in the top of victims of trafficking in human beings for labor exploitation in the European Union. Victim support programs for returned Romanian emigrants who have been exploited in other countries in the EU have been well developed. At the same time, Romania has neglected to address internal labor trafficking among migrant workers despite various NGOs and media reports on abuses of migrants on the labor market. This lack of attention for migrant victims of trafficking can be partially explained by socioeconomic conditions underlying trafficking in Romania. Romanian labor practices take place in a context where poverty and in-work poverty are widespread. A significant number of the Romanian local population are working in conditions that are not complying with minimum local standards. For instance, a high number of households are living under the poverty line. Out of these a significant number of people are working poor. This problematizes the notion and application of decent work in Romania. Furthermore, labor and employment practices are embedded in a wide informal economy in Romania. Informal workers are even more so than regular workers at risk of
abuse and exploitation as working “off the radar” makes it challenging for authorities to supervise. Hence, generally, abuses of local workers on the Romanian labor market go undetected, let alone, the abuses of migrant workers.

Due to the economic context in Romania and in part its communist past, Romania has been a country of emigration since 1989. Moreover, after Romania became a member of the EU, the emigration numbers increased further. Many Romanians are working abroad in other European Member States, which in some cases has resulted in abuses and even labor exploitation. Interestingly though, abuses on the labor market of migrants have been related to restrictive migration regimes. The argument is that when migration regimes are restrictive, abuses on the labor market can occur more easily – because migrants are only able to take informal measures to migrate and work and are therefore not on the radar of governments and more exposed to risks of abuse and exploitation. However, the case of Romania actually points out that despite EU membership, which opens various alleys for Romanians to legally work and travel to other EU countries, does not mean abuses will not automatically stop to exist. Actually, in different EU countries a high number of Romanian trafficking victims work in the same sectors where Romanian migrant workers are active. These findings warrant further research into the relationships between different migration regimes and occurrences of labor exploitation victimization.

To conclude, the anti-trafficking fight in Romania takes the perspective of a source country at the moment. However, in the future, as argued by Guga and Toader (2013), the trend in other former socialist countries suggests that Romania may become a country of destination (e.g., Brunarska et al. 2016). This makes it increasingly important to pay the necessary attention to the rights of migrant workers:

We consider the possibility that the number of foreign people [will] increase in the future […] [therefore] we must insist upon guaranteeing decent working and living conditions, parallel to respectfully treating all rights that migrants should enjoy on Romanian territory […] In the same way that we would like these rights to [apply] to Romanians that work abroad. (Guga and Toader 2013:82)

Cross-References

- Criminal Justice System Responses to Human Trafficking
- Human Trafficking in Supply Chains and the Way Forward
- Response for Human Trafficking in Poland in a Nutshell
- Telling Victims from Criminals: Human Trafficking for the Purposes of Criminal Exploitation
- The Failing International Legal Framework on Migrant Smuggling and Human Trafficking
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Abstract
At the global level, human trafficking estimates face a few limitations regarding dark figure. In addressing this type of crime, the Chilean criminal justice system is characterized by a deficient performance both in terms of identification of victims and conviction rates. This concerning situation is largely driven by the operation of several biases and shortcomings that conceal the perpetration of human trafficking acts in Chile. A paradigmatic example of this is the fact that there have been no trafficking cases brought to court in Tarapacá, a trans-border Chilean region with highest proportion of foreign population. Taken together, these facts point to a structural problem associated to processes of globalization and securitization of the border in the context of an institutional culture deeply rooted in a national security doctrine.

In this scenario, drawing on a systematic review of the relevant case law in Chile, this chapter reflects on human trafficking dynamics in the context of a highly securitized border region in Latin America. The focus is on the mechanisms by which these cases are known and processed by the criminal justice
system, with special attention to elements with a high potential for estimating the dark figure through the Multiple System Estimation method and for reducing these multiple biases and limitations. From this analysis, critical recommendations are drawn for both law enforcement and border control agencies to reduce this dark figure of human trafficking cases. This chapter thereby assumes that situated research is essential to overcome these shortcomings, since it leads to consider the influence of local, historical, and structural factors in the study of this largely invisible criminal phenomenon.

**Keywords**
Securitization · Dark figure · Border control · Tarapacá · Invisibilization · Multiple System Estimation

**Introduction**

Human trafficking is a growing problem in Chile and Latin America. Countries within this region are not only a primary source for people trafficked to United States, Western Europe, and Japan, but also serve as transit and destination countries for trafficked victims from Asia (Ribando 2010). In response, legislations in Latin America have incorporated different models of human trafficking offences. This wide range of responses has been described in at least eight countries within the region by Sozzo (2017), who has observed both a broadening of conduct considered as criminal behavior and an increase in the severity of penalties for its perpetrators and accomplices.

Starting in February 2005, Chilean state agencies began to adopt a series of strategies in response to the ratification of the UN Convention against Transnational Organized Crime and its Protocols. To comply with its provisions, these strategies include the modification of the still in force Criminal Code of 1874, as well as the implementation of various public policies regarding trafficking. As a result, the US Government Trafficking in Persons Report (TIPR) has classified Chile as a Tier 1 state since 2014, above many other Latin American countries such as Argentina, Brazil, Uruguay, and Mexico, in spite of showing several limitations regarding the identification of victims and the application of dissuasive, proportionate sentences (US Department of State 2017).

The TIPR highlights the Chilean state’s efforts regarding the increase of judicial cases, the achievement of more convictions, and the implementation of a national victim identification and referral policy. Yet the TIPR strongly recommends increasing the number of criminal convictions for trafficking offenders and strengthening the capacity of public agencies to assist trafficking victims. Thus, even when recognizing some advances in this subject, the TIPR highlights two key problematic issues: the institutional shortcomings on victim identification and the weakness of the criminal justice system in terms of sentencing trafficking offenders.

The Chilean Government Report on Human Trafficking shows that, from 2011 to 2017, only 33 identified trafficking cases were brought to criminal courts (Ministerio
del Interior y Seguridad Pública 2018). Yet, the report also reveals some important differences at the local and subnational levels. For example, whereas 12 cases have been identified within the most populated region the Metropolitan, where the capital Santiago is located, there are other regions with no recorded cases at all. This situation is reflected at the northern region of Tarapacá, which currently exhibits the highest proportion of foreign population within the country (13.7% of the overall population). On the one hand, this trans-border region (Tapia 2012) has historically been important for different migration patterns within the Andean subregion area (Tapia 2013). On the other hand, it is a tax-free zone (González 1992) and plays a key role in the economic trade from the “South American Midwest” (Argentina, Bolivia, Brazil, Chile, Paraguay, and Peru) to the Asian Pacific market (Aranda et al. 2010). All these singularities turn Tarapacá into a paradigmatic case study to analyze the invisibilization of human trafficking as the result of the combined interaction of different institutions related to border control and the criminal justice system in the context of globalization.

This chapter aims to explore the governmental arrangements, narratives, and practices that contribute to the invisibilization of trafficking and its victims within the Chilean context. To these ends, the first section presents some of the singularities of Tarapacá as a special “case study” for exploring the impact of the border securitization process. The second section provides a critical reflection on Chilean penal policy based on both a statute law and case law analysis on human trafficking. The third section discusses the possibility of implementing the Multiple System Estimation method to estimate the dark figure on trafficking. Finally, drawing on the previously identified biases and shortcomings, several recommendations are given for policy makers, but also for researchers conducting studies on a still widely invisible phenomenon in Chile.

**Border Control Policy Impact on Human Trafficking: The Case of Tarapacá**

Border control dynamics observed in Tarapacá can be considered as social and political control efforts to select and securitize flows (Amilhat Szary 1997; Foucault 2008). All the aspects account for a governmental border operation designed as a control apparatus from an economic and securitized lens. Hence, one can assert that the varying levels of visibility of human trafficking cases and victims are managed through the governmental operation of border and migration controls. Such operations have resulted in immigrants being portrayed as enemies rather than potential victims of exploitation, thus further contributing to the invisibility of trafficking and its victims.

This highly intense border control context is possible to observe in different parts of South America, where border areas have been associated with military defense of national territories and with the privileged position they hold in managing commercial relations. Both aspects have involved the implementation of various strategies whose purpose is to control a wide variety of actors and objects within the
framework of “mobility” (Adey 2002; Bigo 2002). To materialize this “art of governing” (Foucault 2008), the state deploys a series of control devices aimed at containing “dangerous” mobilities, while facilitating the mobility of capital (García Pinzón 2015; Ramos and Ovando 2016). Thus, border control strategies have been designed around two central dimensions: the opening of the border to facilitate the movement of capital and its securitization for unwanted immigration flows.

In this sense, contradictory discourses coexist in order to promote a border policy that is “open” for orderly and regular migration, while at the same time remains “closed” for irregular migration, human trafficking, and smuggling (Magliano and Clavijo 2011). Hence, trafficking in persons has been addressed without an adequate conceptual distinction between victim, irregular migrant, and unwanted migration, resulting in a contradictory strategy of border and migration control. This contradiction accounts for the functional rationale of border management, which operates according to the material and symbolic dimension from which mobility is understood (Balibar 2003). Thus, various states in South America have built securitized dispositifs (Foucault 1980) to intensely intervene those “unwanted mobilities” (Vidal 2000). Then, the tightening of border control policy is a response to the lack of distinction between crime and disorderly migration (Campesi 2012).

In the case of Chile, it is also possible to observe this combination of strategies on border control. Under an orthodox neoliberal model that promotes an expansive and aggressive freedom of movement (Harvey 2007), Chile stands out for its virtuous relationship with transnational and multinational organizations. This economic expansion began with the internationalization of its economy during the 1990s because of a Free Trade Agreement with Canada and an Economic Complementation Agreement with Mercosur, the Southern Common Market established in 1991 after the Treaty of Asunción. By 2012, Chile had entered 24 commercial agreements involving 59 countries, covering 62% of the world population, and giving Chile access to a market with more than four billion potential customers. Considering these agreements, Chile’s international trade commitments force it to maintain a highly securitized border policy mainly open for capital flows.

Consequently, Chile has replicated novel global dynamics tending to the securitization of territories (Dammert and Bailey 2005). In general terms, securitization is the process by which a phenomenon is transformed into a security problem, irrespective of its objective nature or the level of its threat (Campesi 2012; Weaver 1995). This is the case of border areas or “hot territories,” where the state projects a securitized ideology (Fuentes 2008). Both the Plan Frontera Norte (Northern Border Plan, 2011–2014) and the Plan Nacional Contra el Narcotráfico (National Plan against Drug Trafficking, 2014–2020) are clear examples of this. The Plano Nacional influenced the design of these strategic plans de Frontera (National Border Plan) in Brazil, the Operativo Escudo Norte (Northern Shield Plan) in Argentina and the Mexican plan, which deployed military forces at the border to mainly tackle drug trafficking. Thus, both the practices and the narratives of these Latin American plans share the common idea of fighting transnational crime by increasing border controls with greater resources and technologies.
These dynamics of opening and closing borders can be particularly observed in the northern region of Tarapacá, where border management is deployed from both an economic and a securitized perspective. Tarapacá is seen as a key area for commercialized goods, especially after it was promoted by the national government as a destination for foreign investment through a series of measures such as the declaration of a Free Trade Zone in 1975. As a result, the application of these “new economic rules” (Amilhat Szary 1997) at the local level facilitated the circulation of capital across Bolivia, Paraguay, and Brazil, while simultaneously limiting human mobility within sectors not connected to these commercial networks.

Indeed, the latest dynamics of border mobility in this area have revealed the existence of an intense migration control apparatus. The decision to implement the Northern Border Plan in the Macrozona Norte, the northern border area including the regions of Arica y Parinacota, Tarapacá and Antofagasta, represents a clear example of the Chilean state’s securitized discourse for Tarapacá (Ovando and Ramos 2016). In October 2011, the first Piñera Administration (2010–2014) announced that this plan was aimed at controlling “unconventional threats” deriving from organized crime, drug trafficking, and illegal migrations within the region. In this context, as shown in Table 1, from 2011 to 2014 the regional government of Tarapacá deported the most migrants nationwide, even more than the other two regions of the Macrozona Norte or the regional government of Metropolitana, where two thirds of the foreign population living in Chile resides (Departamento de Extranjería y Migración 2016).

Moreover, this evidence points to the existence of a wide discretionary power for border control agents. In practice, this results in arbitrary rejections at the border, illegal detentions, and the selective application of legal measures, and in particular deportations. When analyzing the application of immigration law enforcement measures between 2011 and 2014, one can detect some important biases in the application of deportations, which mainly target males from Bolivia, Colombia, Peru, and the Dominican Republic (Quinteros 2016). This approach to enforcing migration and border control policies has negative effects on the symbolic representations of specific immigrant groups. Unwanted migrants are mainly seen as potential enemies, which regarding trafficking becomes highly problematic since it contributes to the invisibilization of foreigners as legal subjects and potential victims. As a result, no cases or victims have been registered in Tarapacá even though the region is one of just two to have national specialized police units in human trafficking since 2012.

Table 1  Number and proportion of expulsions by region (2011–2014)

<table>
<thead>
<tr>
<th>Region</th>
<th>Expulsion</th>
<th>% of total sanctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arica y Parinacota</td>
<td>1207</td>
<td>18%</td>
</tr>
<tr>
<td>Tarapacá</td>
<td>3619</td>
<td>20.3%</td>
</tr>
<tr>
<td>Antofagasta</td>
<td>507</td>
<td>4.4%</td>
</tr>
<tr>
<td>Metropolitana</td>
<td>1010</td>
<td>1.1%</td>
</tr>
</tbody>
</table>

Source: Quinteros (2016)
Criminal Justice System Limitations: Trafficking Definition and Identification

After an extensive parliamentary debate that lasted almost 6 years, Anti-Human Trafficking Act 2011 (Nr. 20,507) came into force in Chile on April 8, 2011. Being the first law to criminalize the trafficking of persons, this regulation tends to reproduce the Palermo Protocols and the UNODC orientations aimed at prevention, protection, and prosecution. It not only punishes those who promote, facilitate, or finance trafficking, but also criminalizes the conspiracy to perpetrate human trafficking crimes. In addition, it reproduces criminal investigation techniques that are typical of drug trafficking regulations, e.g., effective cooperation with law enforcement agencies and the intervention of undercover agents. In terms of penalties, this Act stipulates 5- to 10-year prison sentences, fines ranging between 4000 and 8000 USD, and harsher sentences for recidivists. In fact, as the parliamentary debate revealed, the main goal was to prevent trafficking and to assure an effective criminal prosecution. However, based on a comparative statute and case law review of available convictions, it is possible to observe two main problematic areas: the lack of a conceptual definition of trafficking and the difficulties in identifying victims.

Regarding the first area, although the Palermo Protocols adopted in 2000 by the UN General Assembly provide general definitions of the central elements that constitute this criminal act, the specific interpretation varies widely in time and space (Lerum and Brents 2016; van Dijk and van der Heijden 2016). For example, this can be seen in the difficulties to elaborate an agreed upon, conceptual definition of “exploitation” (Gallagher 2010). According to Villacampa (2011), given the lack of agreement, the Convention only provides a limited catalogue of conduct outlining basic forms of exploitation. Therefore, it leaves the responsibility to articulate legal details to each state in accordance with their own regulations.

In the case of Chile, the Anti-Human Trafficking Act of 2011 is fundamentally based on the victim-centered approach adopted by the Convention and its respective Protocols. Thus, it not only encompasses men and women, but also includes forced labor, servitude, slavery, or similar practices as forms of exploitation. In this scenario, in order to determine if this legislative technique is adequate to effectively prevent trafficking (Vrousalis 2016), a deep discussion about what it means to exploit another individual is required. Yet, the Chilean criminal justice system’s strong inclination towards a “justice of agreements” model (Matus 2018) has neglected discussion on how exploitation should be understood in the local context.

According to available data from criminal convictions, at least seven out of fourteen cases were resolved via a special form of summary trials. Based on plea bargaining agreements between defendants and prosecutors, all of these cases have resulted in noncustodial sentences. Of the cases that have gone to trial, a panel of judges has opted to re-qualify the trafficking in persons charge as facilitation or promotion of the prostitution of others (Article 411 ter of the Chilean Criminal Code 1874), even though there was sufficient evidence to classify these cases as trafficking crimes. Due to this re-qualification of charges, all of these convictions have been also
replaced by noncustodial sentences, with the only exception of one particular case, where the conviction included both trafficking in persons and the conspiracy to perpetrate human trafficking crimes. In sum, discussion of the substantive elements that would constitute trafficking in persons has only been possible in one case, thus leaving public agencies and the entire criminal justice system without a clear definition of exploitation and trafficking.

Concerning the second problematic area, multiple difficulties regarding the identification of subjects aiming to hide from state control can be observed. According to Tyldum and Brunovskis (2005), one of the most problematic factors in relation to human trafficking is precisely the hidden nature of the relevant actors of this criminal phenomenon: prostitutes, traffickers, victims, and irregular migrants. The identification of victims has also been limited by the oldest border control regulation in South America, which reinforces the idea of migration as a threat to national security. Passed under Pinochet’s dictatorship, a nondemocratic military regime that ruled from 1973 to 1990, the Border Control Act of 1975 (Nr. 1094), was designed based on a “national security” doctrine that sees foreigners as potential enemies (Bassa Mercado and Torres Villarrubia 2015). This regulation established a system of sanctions that gives special importance to deportation, together with broad discretionary power to law enforcement agencies. Hence, beyond the prevention, prosecution and protection principles of the Palermo Protocols, potential victims are firstly seen as potential offenders.

A further difficulty is the fact that the identification of trafficking offenders has not been particularly successful so far. The widespread use of plea bargaining procedures, together with the noncustodial sentences considered in the Alternative Sentencing Act of 2012 (Nr. 20,603), has meant that no convicted person has served a prison sentence yet. Moreover, although the Alternative Sentencing Act of 2012 (Nr. 20,603) includes deportation for irregular foreigners, this has not been applicable to trafficking cases. In fact, according to the available data, at least nine of the fourteen cases with a guilty verdict involved regular migrants. Considering their regular status at the time of committing the crime, the convicts were given a series of noncustodial sentences but were not deported.

Based on the two aforementioned problematic areas, it can be argued that the Chilean criminal justice system tends to produce “collateral damages” (Dottridge 2017), thus ignoring trafficking cases. The available data points to the interrelated operation of both the border control apparatus and the criminal justice system, an interrelation which seems to favor trafficking offenders, and subsequently promotes the profitable operation of transnational criminal networks with minimum risks. From here, the criminal justice system bias operates from two different, yet closely connected perspectives. On the one hand, it inhibits the identification of potential victims due to the border control rationale centered on national security. On the other hand, as alternative sanctions are aimed at irregular migrants, the criminal justice system is prevented from enforcing deportation measures for trafficking offenders. Subsequently, the legal/illega dichotomy of border control regulation penetrates the criminal justice system, thus contributing to the invisibilization of trafficking cases.
Limitations for Estimating the “Dark Figure” on Human Trafficking in Chile

Thanks to the seminal work of Kitsuse and Cicourel (1963) on the problems of “appropriateness” and “reliability” of official statistics, the notion of the dark figure has been a long-standing concern in criminology. As pointed by Penney (2014), this concept was first coined by Quetelet and refers to the cases that are not known by the police or the criminal justice system. In the case of Chile, the first study on this issue estimated that the “real amount” of crime was almost twice that of what police recorded, without major differences between type of crime and geographical location (Benavente and Cortés 2006). Yet, a later analysis based on the main Chilean victimization survey (Encuesta Nacional Urbana de Seguridad Ciudadana, ENUSC) showed that this absence of reports varies widely depending on both the type of crime and the victims’ profile (Quinteros 2014). In this regard, as Skogan (1977) clearly stated, the existence of this hidden or dark figure of criminal acts depends not only on victims not reporting, but also on authorities not registering these cases.

Regarding nonreporting, there are several factors that help to understand the scarce number of filed trafficking reports. Two important ones are the complexity of human trafficking and its criminal prosecution, and the vulnerability of trafficking victims, who generally have no incentives to file a report. In response to these challenges, victimization surveys have emerged as the most promising method for estimating the dark figure within criminological research. Yet, as Tyldum (2010) states, there is no clear definition on either the concept of trafficking or the target population from which subsamples can be drawn for questionnaire interviews. In addition, even when overcoming these issues by focusing on former victims of convicted cases, one still faces the difficulty of interviewing victims that generally do not want to be identified as such. Therefore, victimization surveys within the trafficking field have not yet adequately solved problems of coverage and identification, rendering them both unreliable for conducting research in this area and even less so for providing strong estimates on the dark figure (Tyldum 2010; van Dijk and van der Heijden 2016).

Alternatively, in response to these structural limitations, the failure to register cases by control agencies has been addressed by the Chilean state in two senses. On the one hand, the Chilean Board on Human Trafficking has been in operation since 2008, coordinating more than 20 public and civil society institutions around various strategies for the prevention, prosecution, and conviction of trafficking cases. On the other hand, in October 2012 the Policía de Investigaciones (National Civil Police), one of the two national police corps in Chile, created a special unit for preventing and investigating human trafficking criminal networks. Since international borders are considered as a vulnerable issue for national security, this special unit not only operates in the Metropolitana region, but also since 2014 in Tarapacá, due to its high number of clandestine border crossings. Consequently, the combination of a restrictive regulatory framework, a negotiated functioning of the criminal justice system, and the impact of border policy in controlling human mobility seem to have shaped a
set of practices and narratives that facilitate and promote both victims not reporting and authorities not registering crimes.

There is, however, a promising alternative method which has recently become available to estimate the dark figure on human trafficking – the Multiple System Estimation (MSE). This method is based on the capture-recapture concept, which combines two existing lists of detected victims produced by different authorities or NGOs to estimate the number of non-detected victims. As pointed by Van Dijk and Van der Heijden (2016, p. 2), “the ‘dark figure’ of victims that are not included on any list is estimated by analyzing the overlaps between [emphasis added] the lists.” With three or more lists, a loglinear modeling allows to assess how much being in a particular list affects the chances of being in another, thus providing a strong estimate of the number of individuals not appearing in any list (Cruyff et al. 2017).

However, as pointed out by these authors, apart from the required temporal and spatial operational definition for “closing the system,” MSE depends on three additional problematic assumptions. To begin with, MSE needs to correctly identify the overlap of uniquely defined individuals between different available lists of victims. Secondly, it also requires an homogeneity of inclusion probabilities within the lists, i.e., the individuals have the same inclusion probability in at least one of the lists (van der Heijden et al. 2015). Finally, this method is built on the existence of independent lists, where “the probability of inclusion in one list does not affect probability of inclusion in the other” (van Dijk and van der Heijden 2016, p. 15).

In order to overcome these limitations, different methodological strategies suggested by van Dijk and van der Heijden can be introduced. Yet, in practice, its application within the Chilean context still needs to overcome several limitations. For example, the operation of the criminal justice system towards a “justice of agreements” model not only moves away from the prevention, prosecution, and protection principles of the Palermo Protocols, but also from the UN Sustainable Development Goals regarding access to justice. Thus, achieving such solutions within the local context requires the modification of very well-established organizational structures and processes among control agencies.

Firstly, regarding the identification of overlaps between lists, even though the Chilean Board on Human Trafficking assumed the specific goal of generating registration systems for potential victims, strategies deployed so far have not been adequately implemented. As stated, Chile exhibits serious deficiencies in terms of victim identification, which translates into the absence of available data for perfect matching of unique individuals between lists. This has been confirmed by the Chilean Government Report on Human Trafficking, which clearly states that all its data is not available at the individual level (Ministerio del Interior y Seguridad Pública 2018). For instance, even when the Public Prosecution Service provides information regarding administrative aspects of cases brought to criminal courts, and both national police corps, Carabineros de Chile (National Military Police) and the National Civil Police, disclose detailed information on the victim (e.g., nationality, sex, and age), this information still cannot be matched. Thus, this particular limitation inhibits the ability to correctly identify overlaps between different catches or lists in order to perfectly match “uniquely defined individuals.”
Secondly, as van Dijk and van der Heijden (2016) state, the “homogeneous inclusion probabilities assumption” can be met through the methodological stratification by relevant covariates. By using a loglinear model, these covariates can be included into the model by making separate calculations for more and less visible victims and then adding the estimated numbers (van der Heijden et al. 2015). Yet, despite efforts by the Chilean Board on Human Trafficking to create the Protocol for Victims, homogeneous inclusion probabilities are not easily achievable due to two limitations. For one, the Protocol has been scarcely applied due to the low number of cases. Second, it tends to merge lists that should be separately maintained. Therefore, since MSE requires at least two or more lists, one of which exhibits equal probability of selection, it cannot be implemented in the current scenario, mainly due to an inadequate inter-agency coordination.

Finally, to overcome “the most problematic condition” of independence between lists, a third or multiple registers should be included for conducting multiple way contingency tables on which the Multiple System Estimation method operates. Yet, the multiple difficulties in identifying victims or potential victims, together with the inclination towards consolidating lists instead of separating them, severely limit the possibility of having several both lists and cases that could then be combined. Undoubtedly, all the above should not only be a key dimension during the assessment of the Chilean Board on Human Trafficking Action Plan 2015–2018, but also a central concern of future strategies against trafficking.

Conclusion: Challenges for the Identification of Victims and for Reducing the Dark Figure on Human Trafficking

The scenario described so far accounts for the multiple organizational and structural limitations for detecting victims and thus reducing the dark figure on human trafficking in Chile. Beyond formal efforts to identify, prevent, and protect trafficking victims through legal modifications and the recent implementation of a targeted range of public initiatives, there is still much to be done. The structural biases regarding migration and border control intertwines with a penal process that will rarely discuss the specific forms of exploitation, resulting in the current inability to produce a valid estimate on trafficking victims. In fact, as the Chilean Report describes, only 35 victims have been identified during the last 4 years, far below the minimum standard of 75 per year proposed by van Dijk and van der Heijden (2016). Thus, to reduce the dark figure in Chile, the focus should be first on the implementation and strengthening of strategies aimed at detecting and assisting victims.

At the policy level, efforts should be aimed at improving the organizational processes behind the production of statistics. In the case of Chile, the National Civil Police is responsible for both the prevention and investigation of trafficking cases and for the enforcement of the border control policy. This internal contradiction facilitates the failure to register cases, since the national security ideology underpinning the operation of the border prioritizes categorizing foreigners as
potential threats rather than potential victims. This is clearly represented by the mechanism of repatriation, which discursively aims to protect victims, but in practice operates as a type of built-in deportation response to their threatening irregular status (Lobasz 2009; Nieuwenhuys and Pécoud 2007). In addition, a lack of inter-agency cooperation has limited the implementation of the Protocol for Victims by the Chilean Board on Human Trafficking. In the case of data production, this lack of collaboration limits not only the availability of quality lists of victims, but also the possibility to correctly match individuals registered by different institutions and organizations.

As Brandariz (2014) states, the rationality of risk contributes to the transformation of punitive control, focusing mainly on specific groups with characteristics of mobility. This can be clearly seen in the case of Tarapacá, where the process of securitization of the border has focused primarily on controlling irregular, unwanted migrants rather than providing protection for potential victims. As a result, this region presents a major internal paradox. On the one hand, despite the presence of one of the two specialized police units on human trafficking, there is still a complete absence of identified victims of human trafficking. On the other hand, during the last decade, Tarapacá has been the region with the highest amount of deportations in the country. In sum, the shortcomings of the Chilean criminal justice system at the national level intertwine with the biases of border and migration policy at the regional level, leading to a major hindrance in estimating the dark figure at the local level: the lack of identified victims turns into the lack of available lists, thus making it impossible to apply MSE or any other reliable estimation technique.

Finally, scholarly driven knowledge production on human trafficking has also been considerably limited at both the local and the Latin American level. A review of the literature on trafficking research within the region produces no more than 50 references, mostly essays without much scientific or systematic production of data. Thus, the scenario discussed here poses a series of challenges not only for public agencies or NGOs, but also for academic and criminological research. Firstly, at the epistemological level, it is necessary to deepen understanding on the impact of structural processes, such as securitization, in the construction of the symbolic and material representations of particular criminal activities such as trafficking. From here, researchers should not consider the absence of cases in any given context as a social fact, i.e., more as the result of the constructed invisibility of trafficking dynamics rather than the simple lack of criminal conducts. Secondly, at the methodological level, conceptual and operational definitions are needed in order to understand the specific forms of trafficking and of the operation of criminal networks. For this, situated research potential to produce contextualized knowledge becomes essential to grasp the singularities and complexities of different forms of exploitation. Thirdly, at the technical level, qualitatively situated studies should critically assess the processes around data production in response to the difficulties in conducting quantitative analysis. Moreover, qualitative studies are not only better adaptable to each specific context, but they are also better suited for assessing, refining, and transforming the production of knowledge regarding human trafficking.
Cross-References

- A Complex Systems Stratagem to Combating Human Trafficking
- Breaking Bondages: Control Methods, “Juju,” and Human Trafficking
- Criminal Justice System Responses to Human Trafficking
- Ethical Considerations for Studying Human Trafficking
- It’s Your Business: The Role of the Private Sector in Human Trafficking
- Measuring the Nature and Prevalence of Human Trafficking
- Multisector Collaboration Against Human Trafficking

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The Application of the Non-punishment Principle to Victims of Human Trafficking in the United States

Yuliya Zabyelina

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Abstract

Victims of human trafficking are often arrested, charged, and convicted of criminal offenses they committed in the course of the trafficking situation. Criminal records considerably limit their opportunities for employment, housing, medical care, immigration authorization, among other vital services and opportunities, often alienating them and casting a social stigma. This chapter discusses the existing literature on the non-criminalization principle recommended by international organizations and human rights advocates as a way to protect victims of human trafficking from prosecution for offenses they committed under duress. More specifically, the chapter examines the variability between US state laws with the focus on safe harbor, affirmative defense, and vacatur laws. The analysis aims to contribute to the literature on prosecution of human trafficking.

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trafficking and victim assistance, shedding light on important elements of how victims can recover from the trafficking experience and transition back to normal life. In conclusion, the chapter highlights the progress achieved and challenges that remain in the US responses to human trafficking, reflecting on the evolution of services for victims of human trafficking and potential future developments in victim assistance programs.

**Keywords**

Non-punishment principle · Duress-based model · Causation-based model · Vacatur law · Safe harbor law · Human trafficking court

**Introduction**

Victims who are exploited for sexual purposes or are forced to labor against their will constitute a vulnerable group. They often suffer physical and psychological abuse at the hands of traffickers, resulting in severe health problems, physical injury, and even mental illness (OSCE 2013). Additionally, victims of trafficking in persons (TIP) often have little choice but engage in criminal conduct as there are subjected to psychological manipulation, violence, and other forms of coercion and duress (Working Group 2009). In order to secure the basic rights of TIP victims and encourage them to cooperate with law enforcement in the investigation of their traffickers, international governmental organizations and human rights NGOs recommend the non-punishment principle.

This chapter examines the background and rationale of the non-liability of victims of human trafficking and the application of the non-punishment principle. It analyzes the existing international legal framework and evaluates legal developments in the United States since the late 2000s. More specifically, the chapter focuses on the analysis of the variation between US state laws. It also discusses the discrepancy between how these laws apply to minors versus adults. Overall, the chapter serves as a case study example of the US response to human trafficking, contributing to the understanding of victims’ rights and the essential components of victim assistance programs.

**The Non-punishment Principle in International Law**

Victim protection is one of the key objectives of international legal efforts against TIP (OSCE 2013). Existing legal instruments contain a range of mechanisms to protect the rights of victims of trafficking, providing them with material assistance and counseling, shielding them from coercion, threats, and harms from their traffickers, and reintegrating them back into society and normal life.

TIP is prohibited in international law and criminalized across national legislations nearly universally. The Protocol to Prevent, Suppress and Punish Trafficking in
Persons, Especially Women and Children, supplementing the 2003 United Nations Convention against Transnational Organized Crime (UNTOC), has been ratified by 173 out of 193 UN member states. Together, the UNTOC and the Trafficking Protocol provide a platform for the most advanced forms of international cooperation and assistance in combating criminal activities of international concern, including TIP. Despite imposing no legally binding obligation to decriminalize victims of human trafficking, Article 2 (b) of the Trafficking Protocol clearly provides that States Parties have an obligation to “protect and assist the victims of such trafficking, with full respect for their human rights.” In addition, there is a series of non-binding recommendations from various UN bodies. The recommendations strongly suggest the application of the principles of decriminalization and non-punishment of TIP victims. The key “soft law” documents on this matter are the General Assembly Resolution 55/67 (UNGA 2001) and the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR 2002).

In reaffirming the principles set forth in the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenants on Human Rights, the Convention against Torture and Other Cruel, among other international legal instruments, UNGA Resolution 55/67 stresses “the need for governments to provide standard humanitarian treatment to trafficked persons consistent with human rights standards” and invites them to “consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation” (UNGA 2001, pp. 3–5). In a similar vein, Principle 7 of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking states: “trafficked persons shall not be detained, charged, or prosecuted for the illegality of their entry into or residence in the countries of transit and destination or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons” (OHCHR 2002, p. 1). Its Guideline 1 additionally calls for the promotion and protection of human rights placed “at the centre of any measures taken to prevent and end trafficking,” further suggesting that “[a]nti-trafﬁcking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers” (ibid., p. 3).

Children are widely recognized as the most vulnerable group to abuse and exploitation. By virtue of their age, special protections should be provided to child victims of TIP. Whereas Guideline 8.2 recommends that there must be procedures in place for the rapid identiﬁcation of child victims, Guideline 8.3 reiterates the importance of child victims of TIP being exempted from “criminal procedures or sanctions for offences related to their situation as trafficked persons.”

During its ﬁrst meeting in Vienna in 2009, the Working Group on Trafficking in Persons, which advises the Conference of the Parties to UNTOC, recommended that the States Parties to the Convention consider, “in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them
as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts” (Working Group 2009). A year later, during the 2010 meeting, the Working Group endorsed “[e]stablishing the principle of non-liability of the illegal acts committed by victims of trafficking” through one of the following models:

(a) A duress (compulsion)-based provision, whereby a trafficked person is compelled to commit the offence; and
(b) A causation-based provision, whereby the offence committed by the trafficked person is directly connected or related to the trafficking (ibid.).

The duress-based model is grounded on the reasoning that a trafficked person should not be held criminally liable for committing an offense induced by fear of physical harm, coercion, or fraud. Threats of immediate death or serious personal injury can be interpreted to undermine or otherwise weaken the trafficked person’s freedom of choice beyond the control of the accused (OSCE 2013; Schloenhardt and Markey-Towler 2016; Jovanovic 2017).

Meanwhile, the causation-based model is premised on the idea that trafficked persons are not to be held criminally liable for offenses that are directly connected or related to the trafficking situation. “This model extends non-criminalisation, non-prosecution or non-punishment to offences committed ‘as a direct consequence’ of being a victim of trafficking” (Schloenhardt and Markey-Towler 2016, p. 35). Unlike the duress model, this model does not require the “nexus to any force, coercion or duress exercised by the traffickers and thus provides a potentially greater scope of application” (ibid.).

An example of the duress-based model is Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (CoE 2005). It stipulates that “[e]ach Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so” (ibid., n.p.) The United States’ Victims of Trafficking and Violence Protection Act (TVPA) of 2000 (Section 112) can be used as an example of the “causation model,” whereby “[p]enalties for the crime of unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor do ‘not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, […] if that conduct is caused by, or incident to, that trafficking.’”

Article 10 of the United Nations Office on Drugs and Crime (UNODC) Model Law against Trafficking in Persons (UNODC 2009) developed to assist states parties in implementing the provisions contained in the Trafficking Protocol suggests the following optional provision to implement the non-punishment principle:

1. A victim of trafficking in persons shall not be held criminally or administratively liable [punished] [inappropriately incarcerated, fined or otherwise penalized] for offences [unlawful acts] committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.
2. A victim of trafficking in persons shall not be held criminally or administratively liable for immigration offences established under national law.
3. The provisions of this article shall be without prejudice to general defenses available at law to the victim.
4. The provisions of this article shall not apply where the crime is of a particularly serious nature as defined under national law (UNODC 2009, p. 34).

This provision implies that a victim of TIP shall not be held criminally or administratively liable for the person’s illegal entry into, exit out of, or stay in a particular state. Neither should a victim of TIP be punished for procurement or possession of any fraudulent travel or identity documents that they obtained, or with which they were supplied, for the purpose of entering or leaving the country in connection with TIP. The Model Law also commends the practice of non-detainment of TIP victims, regardless of their willingness to cooperate with investigators or other state representatives.

**Trafficking-Related Offenses**

Although there is no all-inclusive list of offenses committed by victims of human trafficking, three general categories can be identified (Table 1). First is the “status offenses” category, which refers to violations of immigration law, fraud, and use of false information to obtain travel documents or work permits. It may also include offenses related to the illegal crossing of national borders or visa overstaying (Schloenhardt and Markey-Towler 2016).

The second category comprises “consequential offenses.” They are considered to derive from the victim’s exploitation in trafficking. The crimes of this category are directly related to the sex services or work for which the trafficker had exploited the victim. These are typically prostitution-related crimes, such as loitering with the intent to commit prostitution, provision of illicit sex services (e.g., prostitution with no authorization in jurisdictions where prostitution is decriminalized/legalized), and other similar offenses. In addition, consequential offenses may also include theft or petty crimes “committed under the control and to the benefit of the trafficker” (ibid., p. 14). Additionally, TIP victims may be forced to commit various drug-related

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<th>Status offenses</th>
<th>Consequence offenses</th>
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<td>Prostitution-related offenses</td>
<td>Use of force/threats/direct violence against trafficker(s)</td>
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<td>Illegal border crossing</td>
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<td>Drug cultivation (e.g., cannabis)</td>
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<td>Money laundering</td>
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Source: Author’s own elaboration

*Table 1* Trafficking-related offenses
offenses, ranging from illicit production of drugs (e.g., cultivation of marijuana) to smuggling drugs to more serious drug-related offenses (OSCE 2013).

The third category is “liberation offenses.” They are offenses that are directed against the trafficker and committed with the objective of the victim’s liberation from exploitation. These can be offenses committed to acquire firearms or false documents. They can also be the so-called “cycle of abuse” offenses, whereby victims of human trafficking, left with no other choice, decide to collaborate with their trafficker(s), directly or indirectly becoming involved in the exploitation of other persons or assisting trafficker(s) in other crimes (OSCE 2013).

According to the human-rights approach to TIP, which has become one of the internationally recognized standards in the fight against human trafficking (see, e.g., Schloenhardt and Markey-Towler 2016; Jovanovic 2017), in situations where a victim of trafficking committed an offense as a direct cause or consequence of being trafficked, criminal justice institutions should carefully consider the extent to which the offense was caused or conditioned by the trafficking situation. The non-punishment principle does not guarantee universal immunity to TIP victims. Rather, it is expected to help criminal justice institutions strike a reasonable balance between the victimization of trafficking survivors and their offending. “The non-punishment provision will, if applied correctly, equally and fairly, enable States to improve their prosecution rates whilst ensuring critical respect for the dignity and safety of all victims of trafficking who, but for their trafficked status, would not have committed the offence at all” (OSCE 2013, p. 30).

The Non-punishment Principle in US Law

Contrary to what one might expect, the United States does not have one comprehensive law against human trafficking. Instead, it relies on several different pieces of legislation, both on the federal and state levels. Whereas this section provides a brief overview of the US federal legislation covering human trafficking, the sections that follow examine the application of the non-punishment principle and post-conviction relief across US states.


(a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (§ 7102).
Additionally, the TVPA provides restitution for victims of human trafficking and promotes the protection of victims and survivors of human trafficking by granting them the T visa, which allows victims of human trafficking and their families to become temporary US residents.

Chapter 77 of US Code 18 on Peonage, Slavery, and Trafficking in Persons can be invoked to prosecute perpetrators of trafficking or trafficking-related offenses on the federal level (see Table 2). It proscribes over a dozen distinct criminal violations, and none of them refers to a specific statutory violation of “human trafficking.” Cumulatively, provisions of the chapter denote more broadly the category of human trafficking-relevant conduct criminalized in the United States, the essence of which is compelling or coercing another person to perform labor or sex services.

Despite the fact that the original Chapter 77 statutes (§§ 1581–1588) criminalize involuntary servitude and slavery (e.g., slave trade, sale into involuntary servitude, service on vessels in slave trade, etc.), pursuant to the Thirteenth Amendment, the statutes are applicable to human trafficking cases only in a narrow sense as they only cover situations where physical force or threatened force tantamount to incarceration is used. In passing the TVPA (§§ 1589–1587), the Congress aimed to bring justice in cases where victims of exploitation were held in a condition of servitude also through nonviolent coercion (Axam and Toritto Leonardo 2017). The TVPA expressly set out to criminalize these “invisible—yet powerful—chains of psychological coercion that bear little resemblance to the vivid depictions of captivity and

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<th>Table 2</th>
<th>Title 18, Chapter 77: Peonage, Slavery and Trafficking in Persons sections</th>
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<td>§ 1597 – Unlawful conduct with respect to immigration documents</td>
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Source: Author’s own elaboration
restraint often associated with popular misconceptions of modern-day slavery” (ibid., p. 6).

While the US Code is enacted at the federal level, US states have traditionally been responsible for crime control at the state level and have developed their own penal codes. The federal government thus exercises only those powers that are granted to it by the constitution. Federal law does not preclude US states from additionally exercising authority and criminalizing human trafficking or adopting relevant statutes at the state level. State criminal legislation, however, is not intended to substitute federal laws or the federal response to human trafficking. Its general aim is to compliment it.

By 2012, all US states with the exception of Wyoming (WY) criminalized human trafficking through the creation of a stand-alone human trafficking statute or by integrating human trafficking into existing criminal offenses (see Fig. 1). And in 2013, under severe pressure from human rights groups, Wyoming became the 50th and last US state to outlaw human trafficking after signing Bill 133 into law on February 28th.

Despite universal criminalization of human trafficking in the United States, there are major differences in the definition of trafficking acts, means of trafficking, and penalties for human traffickers across US states. Provision of services to victims of human trafficking also differs from one US state to another. More specifically, state positions vary as it comes to (a) immunity and diversion, (b) affirmative defense, and (c) vacating of criminal records discussed in the sections that follow below.

**Immunity and Diversion**

In the early 2000s, some consensus emerged among policymakers that trafficked minors could not be viewed as delinquents and should be treated as survivors of a heinous crime. Immunity and diversion statutes became recognized as one of the means to protect child victims of human trafficking.
In 2010, in Re BW, 313 S.W.3d 818 (Tex. 2010), the Supreme Court of Texas (SCOTX) set a national precedent by ruling that a child under the legal age of consent could not be found guilty of prostitution. According to the court proceedings, B.W. waved over an undercover police officer who was driving by in an unmarked car. She offered oral sex with him for 20 dollars. The officer “agreed,” and as B.W. got into the officer’s car, she was arrested for prostitution and charged with a criminal offense. However, when a background check revealed that B.W. was only 13, the case was refiled to a juvenile court. B.W. admitted that she had engaged in delinquent conduct, and the court placed her on probation for 18 months. In a motion for a new trial, she argued that she could not do criminal conduct – precisely the offence of prostitution – because a child cannot legally consent to have sex with an adult. While the appellate court affirmed the delinquency finding, the SCOTX granted B.W.’s petition for review and, in a six-to-three verdict, reversed the decision of the previous court. It found that children under the age of 14 could not be prosecuted for prostitution since they lack the capacity to consent to sexual activity under Texas law. This decision emphasized some important society’s responsibilities to protect child victims of human trafficking, highlighting the indispensable role welfare agencies play in developing a more effective response to the problem (Dysart 2014).

Since 2010, the so-called safe harbor laws were specifically adopted by some US states to tailor their criminal justice responses in the way that guarantees that victims of human trafficking, particularly child victims, induced into performing commercial sex acts, or other crimes, are treated fairly.

Most safe harbor laws across the United States incorporate two main components: (a) legal protection/decriminalization and (b) provision of services. The legal protection component provides immunity from prosecution to certain types of offenses, given that the victim was induced or compelled to commit an illicit act (e.g., prostitution). Sometimes, diversion requires the admission of guilt or entering a conditional plea. The services component usually allows for charges to be dismissed if the victims-defendant completes a court-ordered rehabilitation program (Geist 2012). Among the most common services provided to human trafficking survivors are medical and psychological treatment programs, emergency and long-term housing, education and job assistance, and language training.

Geist (2012) suggests that all safe harbor laws should also incorporate increased penalties for traffickers. Effective training of the police, social workers, and lawyers on the needs and traumas of survivors of human trafficking is also key to the successful implementation of safe harbor laws. Additionally, sufficient funds need to be made available to support survivors of human trafficking, particularly in the provision of social services, such as housing, education, drug treatment, counseling, and other services.

By early 2010, the state of New York (NY) began treating alleged child prostitutes as victims rather than criminals and sought to redirect them to social services. Its first in the nation safe harbor law, the Safe Harbor for Exploited Children Act, was enacted in 2008 (effective only in 2010). According to this statute, minors arrested for prostitution are presumed to be victims of sexual exploitation rather than
offenders. They are thus given some level of legal protection and access to social services, except in the cases of recidivist offenders or those who have failed to comply with previous court orders.

By the end of 2016, 20 US states and the District of Columbia (DC) legislated prosecutorial immunity for trafficked minors, establishing that children cannot be charged with certain statutorily specified offenses (see Fig. 2). Laws differ in that some US states provide criminal immunity to every person under 18, while other US states require an official proof of the trafficking status. Eighteen US states have not only decriminalized prostitution (and/or related crimes) for child victims of human trafficking but also practice a diversion of victims to social services. For instance, the state of Minnesota (MN) offers both decriminalization and mandatory diversion to social services for the first offense of prostitution or prostitution-related charges. Importantly, effective as of July 2016, the previous eligibility age for Minnesota safe harbor services was expanded from 18 to 24 (Schauben et al. 2017).

Special Human Trafficking Intervention Courts were another innovation first created in New York in 2013. These courts are generally considered more suitable in working with victim-defendants of human trafficking. Special human trafficking task forces are assigned to liaise with these courts in their jurisdiction to ensure that victims of human trafficking are not prosecuted as criminals but are provided with remedies to alleviate the harms caused to them. Once cases are flagged by prosecutors or law enforcement, research-based and gender-responsive screening instruments are applied to identify victims, understand their needs, and determine the most appropriate solution aligned with the victim-centered approach (OVCTTAC n.y.). Special human trafficking courts can link victim-defendants to services and provide for trauma-informed courtroom protocols, whereby judges and courtroom staff are allowed to accommodate the specific needs of victim-defendants. These may include

![Image](88x124 to 508x352)

Fig. 2 Immunity and diversion laws in the United States. (Source: Modified version of data from NCSL (2017))
particular courtroom practices, such as pausing the trial more frequently than usual, providing counseling as needed, and arranging videoconferencing that makes it possible for victims to avoid contact with their traffickers in courtroom. It can also apply to the design of courtroom facilities that create a sense of empathy and safety. These may be such mundane steps as adjusting the lightening in the room or judge stepping down to talk to the victim while leaving his robe behind (Center for Court Innovation n.d.). The emergence of special human trafficking courts is indicative of the larger attempt in the United States toward decarceration and procedural justice (Gruber et al. 2016).

Since the year of implementation of safe harbor laws, there have hardly been any systematically conducted studies on the effectiveness of safe harbor laws to deal with the sexually exploited youth. Despite the lack of national data on the effectiveness of safe harbor laws, Minnesota (MN) has made several attempts to evaluate their legislation on the issue. The Minnesota Department of Health and Human Services has conducted two comprehensive reviews of Minnesota’s Safe Harbor Program, “No Wrong Door” (Atella at el. 2015; Schauben et al. 2017). The evaluators provided a number of recommendations to improve the implementation of the program. One of them was to expand the eligibility age for safe harbor services from 18 to 24 – the recommendation that was adopted in 2016 (see above). The reviewers emphasized the need for the expansion of the list of available services, such as 24-h triage, outreach programs, and transportation services. They also recommended to provide safe harbor services to males, LGBTQ youth, and specific racial and cultural groups (ibid.).

**Affirmative Defense**

The majority of US states enable victims of trafficking to raise an affirmative defense to criminal charges they face because of the acts they were forced to commit by their traffickers. An affirmative defense is a defense in which the defendant introduces evidence that, if found credible, negates criminal liability even if it is proved that the defendant in fact committed the offense. US state laws differ concerning the affirmative defense in cases of human trafficking. For instance, there are differences in the offenses that allow for an affirmative defense. Some US states only consider prostitution and prostitution-related acts (e.g., loitering and solicitation of prostitution) eligible for affirmative defense, whereas other US states have enacted affirmative defense statutes that excuse other crimes committed by human trafficking victims, which are usually non-serious and nonviolent offenses (Zornosa 2016).

The reasoning behind the application of an affirmative defense to victims of human trafficking is grounded on the idea that trafficking victims who commit crimes lack personal culpability and should be excused from prosecution even if they did not directly face death or imminent physical harm. Zornosa (2016) eloquently explains:
When a sex trafficking victim prostitutes herself at the direction of her pimp, she is acting under her pimp’s orders, subject to her pimp’s physical and/or psychological torment, and for her pimp’s financial gain. Even if the sex trafficking victim in this scenario does not qualify for a duress defense—say, because she did not face an imminent threat of physical injury—she seems just as deserving of an excuse for her criminal act as someone who does qualify for a duress defense. From a sheer culpability standpoint, society should allocate all of the blame to the trafficker and none to the victim. (p. 190)

The majority of US states allow trafficking victims to raise an affirmative defense. The victims’ ability to do so, however, is often limited to charges for prostitution and prostitution-related offenses. For instance, Chapter 636 of California Penal Code (PEN § 236.23) allows a criminal defendant to assert a coercion defense if he or she was a victim of human trafficking. This defense, however, does not apply to a serious felony or a violent felony. Additionally, § 236.23 stipulates that the defendant asserting the affirmative defense in conjunction with his or her human trafficking victimization has the burden of establishing the affirmative defense (proving the victim status) by a preponderance of the evidence (as opposed to beyond reasonable doubt as practiced in criminal court).

Blizard (2017) discusses one example that demonstrates the limits of application of an affirmative defense. She argues that dual victimization of the so-called bottom girls remains a serious issue of concern for legislators. Bottom girls are women who are promoted to manage prostitutes and answer to the trafficker. Yet, despite the fact that they are victims of sex exploitation, they are often used by traffickers as “buffers” to avoid prosecution. “In this sense. . .,” writes Blizard (ibid.: 639), “[b]ottom girls may actually be the most victimized out of all of the prostitutes working for a particular trafficker—they are in the position of bottom girl because they are the most submissive, and the traffickers maintain control over them by delegating power.” Chapter 636 affords an affirmative defense for crimes committed because of being coerced but excludes the offense of human trafficking.

**Vacating Criminal Convictions**

Vacatur laws (Latin term meaning “to set aside a judgment”) provide a form of relief to victims of human trafficking. In theory, they effectively undo a conviction or, in other words, pardon it. This is done with the objective to help victims rebuild their lives. A criminal record often creates a barrier for those victims who are seeking jobs, education, housing, loans, among other vital opportunities. Additionally, the stigma of having a criminal history may hinder the ability of victims of human trafficking to reintegrate into their communities and start a new life (see, e.g., IWHRC 2014). Once vacated, all records of the conviction are deleted or voided, making the conviction no longer exists as a matter of law. For instance, a vacated criminal record will not appear in a background check.

Where the vacating of criminal records for victims of human trafficking is not practiced, sealing may be used as an alternative. A sealed conviction is not voided and remains on the record. Yet, it cannot be accessed without an order from the court.
Consequently, it will not show up in a criminal background check either. Although not readily available, a sealed record may be accessed by government agencies (e.g., immigration agencies) and criminal justice institutions (ABA 2015).

In 2010, New York State became the first US state to enact vacatur laws that permit adult and minor victims of human trafficking to apply for the annulment of criminal conviction(s) for offenses related to prostitution or other nonviolent crimes they committed during their exploitation by traffickers (New York Criminal Procedure Law § 440.10(1)(i)). If official documentation of the defendant’s status as a victim of trafficking is provided, the court may satisfy the motion to vacate the judgment, dismissing the accusatory instrument. Importantly, this law does not require the survivor to prove that they have left the sex industry or have been “rehabilitated.” New York’s vacatur statute has become a model for legislation across the United States (Emerson and Aminzadeh 2016).

Speaking about the variations across the United States, most vacatur statutes enacted since New York’s innovation vary in the specific convictions to which vacatur statutes apply (see Fig. 3). Most US states allow vacating convictions only for prostitution-related offenses. Some US states adopted an expanded list of convictions eligible for vacating. Pennsylvania Criminal Code (PA 18 § 3019) allows motions to vacate a conviction for criminal trespass, disorderly conduct, obstructing highways and other public passages, and simple possession of a controlled substance in addition to prostitution offenses. Montana (MT, § 46-18-608), Kentucky (KY, § 529.160), and California (CA, § 236.14), for instance, offer relief from convictions broadly, excluding capital offenses and felonies (ABA 2015).

Additionally, in most US states, an attorney has to demonstrate that their client meets the statutory definition of a trafficking victim in order to merit post-conviction relief as defined in the federal Trafficking Victims Protection Act (TVPA). Concerning

![Fig. 3 Vacatur laws in the United States. (Source: Modified version of data from ABA (n.y.))](image-url)
the burden of proof, some US states explicitly place it on the petitioner seeking to vacate a prior conviction (e.g., Hawaii). In contrast, most US states with vacatur laws (e.g., New York, Pennsylvania, New Jersey, Mississippi) shift the burden of proof to the government, adopting the languages similar to New York’s trafficking-specific vacatur statute: “official documentation of the defendant’s status as a victim of trafficking, compelling prostitution or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant’s participation in the offense was a result of having been a victim of sex trafficking, compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph” (NY N.Y. CPL 440.10).

Brodu (2012) recommends that the law must allow for victims to make a motion based on other evidence, such as a sworn affidavit; letters from service providers, friends, or employers; or police reports, and not just based on official documentation (e.g., the Department of Health and Human Services letter and T visa). New Jersey legislators practice this approach. NJ §§ 2C:44-1.1 stipulates that “the court may additionally consider other evidence it deems appropriate in determining whether the person was a victim of human trafficking, including, but not limited to: (i) certified records of federal or State court proceedings (. . .); (ii) certified records of approval notices or law enforcement certifications generated from a federal immigration proceeding available to victims of human trafficking (. . .); (iii) testimony or a sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy or a health care or other professional from whom the person has sought assistance in addressing the trauma associated with being a victim of human trafficking.”

Finally, in many US states, survivors of human trafficking are allowed to file motions to vacate a conviction “at any time” (e.g., Colorado, Illinois), setting no time restriction. Other US states only have a vague restriction, formulated as “under due diligence,” such as in New York, where the vacatur statute is retroactive and inclusive of older convictions. In contrast to these rather flexible approaches, some US states require that the petitioner files a motion to vacate a conviction within a specific period of time, such as 6 years after ceasing to be a victim of trafficking in Hawaii (§712-1209.6).

Conclusion

Criminalization and punishment of victims of human trafficking is condemned under international law. Victims of human trafficking should not be prosecuted or punished for trafficking-related offenses, such as prostitution, holding false passports, or working without authorization, even if they consented to such conduct. These protections are necessary for victims to be able to find work and reduce their economic vulnerability, minimize the risk of being re-trafficked, and integrate in their former or new community.

There is also a growing consensus across US states too that victims of human trafficking should not be charged with the crimes they were forced to commit by their traffickers. The non-punishment principle, if applied correctly, equally, and fairly, can
enable US criminal justice institutions to exercise essential respect for the dignity of victims of human trafficking and guarantee justice to survivors of this heinous crime.

Although the US states have universally criminalized human trafficking and enacted laws providing for non-criminalization of victims and some post-conviction relief, these laws have been applied inconsistently across the country. Given the diversity of US state laws on the issue, the implementation of the non-punishment principle on the state level leads to different practices and reveals a number of inconsistencies. For example, provision of immunity and diversion is only available to minors. The burdensome proof of trafficking often slows down the criminal justice process and discourages victims of human trafficking from reporting their victimization. Moreover, some US states fall short of providing full remedies to trafficked persons, by sealing criminal records rather than vacating convictions. This imperfection of the law has a particularly negative impact on those seeking permanent residency and employment in the United States.

The challenges discussed above and the very transition from seeing trafficking victims through the human rights prism are common in other countries. In Europe, Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA 2018) acknowledges that the legislation among participating states concerning the non-punishment principles is very diverse. While some countries fully comply with Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings dealing with the non-punishment principle, other states adopted very few specific non-liability provisions for victims of human trafficking (ibid.).

Similarly to other countries, the United States – albeit only on a state level – demonstrates some level of commitment to the application of the non-punishment principle, seeking to protect the rights of victims of trafficking, including the right not to be punished for offenses committed under the strain of the trafficking situation. These steps, including the non-punishment principle, draw from and contribute to the 4 Ps approach – namely, preventing trafficking in persons, protecting the trafficked persons, prosecuting the perpetrators, and partnerships building – developed by the UNODC and other international organizations that are mandated, directly or indirectly, to respond to trafficking in persons (e.g., IOM, UNICEF, etc.). The non-punishment principle is an integral part of the human rights-oriented and victim-centered approach to human trafficking. Its application across the US states is an important indicator of a certain level of political willingness to deliver justice to the victims of human trafficking. It also indicates a positive and much needed paradigmatic shift in the antihuman trafficking policy, moving away from the criminalization of human trafficking to provision of direct, timely, and capable assistance to the victims.

Cross-References

- Criminal Justice System Responses to Human Trafficking
- European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking
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“I believe the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing... The fate of these most vulnerable people in our world is an affront to human dignity and a challenge to every State, every people and every community. I, therefore, urge the Member States to ratify not only the United Nations Convention against Transnational Organized Crime but also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which can make a real difference in the struggle to eliminate this reprehensible trade in human beings.” Kofi Annan – Foreword to UNTOC

“And so our message today, to them, is to the millions around the world – we see you. We hear you. We insist on your dignity. Our fight against human trafficking is one of the great human rights causes of our time, and the United States will continue to lead it.” Barack Obama (2012)

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Abstract

Trafficking human beings has drawn a great deal of attention and responses at levels from the local to the global. While the massive human rights abuses involved doubtlessly justify the proliferation of well-meant activity as a step toward achieving global justice, a critical look at the structures and methods for delivery reveals other objectives being pursued. When one compares the aspirational statements attached to anti-trafficking activity with the results achieved, skepticism as to the kind of justice being attained or the power channels created can arise. Seen cynically, these examples demonstrate on the one hand a selfish utilization of victims with no genuine interest in their well-being and the establishment of postcolonial power structures by powerful nations on the other.

This exploration does not seek to diminish the very considerable efforts being made to assist THB victims or their importance; instead, it seeks to highlight how efforts on national levels may be falling short of achieving justice for victims even when this is the declared goal of international agreements signed up for. Furthermore, anti-trafficking measures and activities are examined with reference to the notion of justice at the global level; pursuing the question of whether justice of some kind is indeed being pursued. The danger of postcolonial “governing through crime” by more powerful nations as they extend their criminal justice reach into weaker nations – even under this banner – is also explored.

Keywords

Trafficking human beings · Legislation · The international community · Victims’ human rights · Global justice · Governing through crime

Introduction

Human trafficking is beyond doubt a major concern of the international community. This interest may be connected to long-standing concerns with early legislation under international law focused upon (put in current terminology) the forced transportation of persons to facilitate their exploitation such as the 1926 Slavery Convention and the UN Convention for the Suppression of the Trafﬁck in Persons and of the Exploitation of the Prostitution of Others of 1949. Since the late 1990s, a robust resurgent interest was, however, triggered by the political recognition that slavery is far from abolished and a particular focus on women and children vulnerable to horrific exploitation.

More recent legislation can undoubtedly be described as driven by concern for victims. It is not entirely surprising that political declarations concerning combating
human trafficking focus strongly on the plight of victims to highlight the impetus for intervention. The quotes beginning this piece are but a tiny selection of the emotive and emotional statements on the topic stemming from high-level policy-makers and politicians.


The framing of trafficking human beings offenses as massive human rights violations also ensures activity by the international community is associated with common, established legal vocabulary. Lawyers have become accustomed to the utilization of criminal justice as a response to human rights abuses within the framework of international criminal law. This also provides a constitutional justification for the handling of these crimes at such governance levels.

The aim of this paper is to examine how far this rhetoric is matched by reality. It entails an examination of legislation – focusing on the UN and European human rights-related contexts because it is for these material is readily available – and what we know of practice, to examine in how far action by the international community in this field matches its proclamations and indeed serves the interests of victims.

The Legislation in Force

The United Nations Framework is decisively focused around the so-called Palermo Protocol to the Convention of 2000. This contribution can deal only with mechanisms associated with criminal justice, the international community is, however,
also active within the context of the International Labour Organisation (for a useful summary of this activity, see Fouladvand (2017)). The intention of the Palermo Protocol is framed in Article 2, which reads:

**Statement of Purpose**

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children
(b) To protect and assist the victims of such trafficking, with full respect for their human rights
(c) To promote cooperation among States Parties in order to meet those objectives

The interests of victims are thus placed front and center of the Protocol. As a piece of legislation (and as implemented by the significant UN machinery supporting it), this Protocol is, however, generally recognized as associating the needs of victims with the goal of achieving criminal justice and deterrence through its enforcement. Article 5 of the Protocol thus sets out the standards for criminalization according to which trafficking offenses are to be punishable, and the Protocol is attentive to creating a basis for cooperation between criminal justice agencies across borders. It has 173 signatory states.

Where the Protocol does address victims directly, it first does so in relation to criminal trials and then suggests signatory states “consider” providing assistance and services to allow victims to recover and ensure a possibility of compensation (Article 6), consider making residency provisions for victims (Article 7), make provision for the victims’ repatriation (Article 8), and require that preventive activity shall extend to protecting, particularly women and children, from revictimization (Article 9).

The Council of Europe framework is acknowledged to be the most victim-oriented among international legal orders. Again, the critical legislation places victims at the heart of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 which reads:

**Article 1 – Purposes of the Convention**

1. The purposes of this Convention are:
   (a) to prevent and combat trafficking in human beings while guaranteeing gender equality
   (b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
   (c) to promote international cooperation on action against trafficking in human beings.
2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.
In many respects, it does not read so differently from the UN Protocol though it is noticeable that the statement of purpose already provides more specific detail on victim support and assistance, expressly beyond the scope of investigation and prosecution. The Convention continues in this vein, addressing victimological issues in a dedicated chapter, before setting out demands on criminal justice frameworks. The level of detail provided surpasses that of the Protocol and is casued in stronger language (“each Party shall”) to ensure structures and measures exist to provide for the identification of victims (Article 10), the restoration and protection of victims’ private life (Article 11), specified assistance to victims (Article 12), a recovery and reflection period of at least 30 days (Article 13), a residency permit where the victims circumstances and/or a criminal investigation means this is necessitated (Article 14), compensation and a supported legal path to instigate compensation claims against perpetrators (Article 15), as well as supported repatriation or return giving regard to the victim’s circumstances there upon (Article 16). Articles 18–34 are concerned with criminal justice and cooperation-related provision. Forty-six member states and Belarus have ratified the Convention.

The European Union (EU) first legislated in this area via the Council Framework Decision of 19 July 2002 but more recently updated and replaced this with the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA. Given that all EU member states are also members of the Council of Europe and signatories to that Convention, the EU Framework is often regarded as a reinforcing, supplementary forum. Correspondingly the Directive purpose is outlined as follows in Article 1:

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

The legislative initiative for this Directive arose out of frustration that “the number of criminal proceedings and victims assisted were not high enough compared to the estimated scale and gravity of the crime” (Europa Press Release 2009) This is very much reflected in its contents, which for the most part make detailed provision (substantive, procedural, and structural) for cross border investigation and prosecution (Articles 2–10, 19, and 20). Specific reference to victims generally (in Articles 11 and 12) mostly refers to Framework Decision 2001/220/JHA which provides for rights of victims and witnesses in criminal proceedings. Some specific instructions to provide support, assistance and protection are included, but they are all contingent upon criminal justice activity. More specific provisions are made for child victims (Articles 13–16) with one article (15) making specific reference to criminal proceedings. A broad right to compensation is framed (in Article 17), and steps for preventive action via law enforcement training and public education are outlined (in Article 18).
The EU context thus, very much like the consensus achieved at the UN level, conceptualizes victims’ interests as tied to criminal justice and functions usually associated with it, particularly prevention and deterrence. Only the Council of Europe broadly legislates for victims. Given the level of harm caused by human trafficking, this focus of international legislation fits naturally into broader international law thinking. To regard the interests of victims as served by justice achieved for them via criminal justice systems would appear inherently reasonable. Indeed, the international community would doubtless be criticized if these phenomena were not met with transnational provision for criminalization and prosecution.

Victimological perspectives questioning the wisdom of this, however, abound within our national systems. For the international fora, concerns have been eloquently raised as to whether criminal justice is the appropriate response to massive human rights violations (see, e.g., Drumbl 2007). The absence of criminal justice (i.e., impunity for such acts) would, however, also clearly run counter to the stated priorities of the international community. Coordinated criminalization and criminal justice activity is the standard solution to achieving justice for victims. It is facilitated by these and other pieces of international legislation. Their demonstrated attention to access to justice and compensation for victims demonstrates that this is conceptualized also with individualized victims in mind.

Provision for prevention within these frameworks demonstrates that the international community wishes to see decisive action to preempt victimization. As indicated by Preamble 12 to the UN Convention states, however, it is regarded as a side effect of criminal justice. Again an assumption academic voices might well view critically (see, e.g., Gottfredson (2018) citing i.a. National Research Council (2014)).

The legislative landscape fundamentally embraces the sentiment contained in the Declaration accompanying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which begins “Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”

Evaluation of Effects

Ultimately, however, it is not the letter of the law which can evidence the international community’s commitment to alleviating the suffering of victims. Whether the outrage expressed in statements such as the above has translated into improvement for victims on the ground must be the central yardstick applied.

A wealth of literature exists to facilitate such evaluation of the trafficking in human beings context though, perhaps unsurprisingly the real development of any more specific yardstick by which to judge success or failure is cautioned as fraught with difficulty (see Gallagher and Surtees 2012). Fundamental criticism is also
leveled at legislation such as that outlined above for its failure to ensure clear evaluation criteria were provided (e.g., Milivojevic and Segrave 2012).

Given the apparent logic of legislative provision (as explored above), however, a significant thrust of criticism pertains to the lack of investigative and particularly prosecutorial activity ensuring perpetrators of these heinous crimes are being brought to justice. The EU, for instance, establishes prosecutions and convictions as the measures by which success is to be measured (European Commission 2016). Even within this well-established and comparatively well-resourced context, this “baseline” activity is found to be at a developmental stage. The evaluation report available states that better data is required (European Commission 2016a). It further underlines repeatedly that more significant efforts to combat trafficking, e.g., for sexual exploitation, are needed as victimization numbers have not decreased following the legislative provisions made. The report goes on to stress that adequate recognition even of labor exploitation depends upon further effort. Statements that investigative tools and resources should be used properly and that prosecutions must increase belie a frustration at a lack of progress being made.

The Council of Europe Convention is evaluated by a specialist body: GRETA. It is engaged in its second evaluation round at the time of writing (see Council of Europe 2018). The first round of feedback (in as far as it was publically available) tended to focus on the need to ensure comprehension of the “importance that the measures go beyond the “criminal law” understanding of prevention of THB” (Planitzer 2012). The evaluation of its work and description of follow-on activities to GRETA’s first evaluation reveals a raft of legislative work indicating that in most countries, criminalization activities had to be prioritized. In other words, preliminary steps and awareness-raising were necessary among the signatory states (Council of Europe 2017). Some comments are also indicative that action was needed to ensure trafficking cases are not lost among immigration concerns. Put more starkly, even the framework recognized as that most closely oriented around victims of any international community is in the very early stages of delivering any improvement for them.

Evaluation of the UN setting points to a core of activities aimed at awareness-building. Although there are activities aimed at victim support documented, the action so far appears firmly focused on trafficking as a crime (UNODC 2011). In 2014, the UNODC recognized that the mechanisms developed are not working particularly well thus far but has reemphasized the necessity of a robust criminal justice approach (UNODC 2016).

Analyses carried out by the bodies tasked with supporting anti-trafficking work within the frameworks providing legislation for the international community thus far seem to indicate we are quite some way from achieving an improvement for significant numbers of victims on the ground, even via criminal justice. Academic commentary echoes this finding.

As will be shown, broader commentary on the results of the legislation described above often expresses concern with the criminal justice approach being taken. Overwhelmingly, the feeling among specialists seems to be that far too significant a proportion of the money available to anti-trafficking measures is spent on a criminal justice response (Dotteridge 2014, 12). Even when accepting this measure
as a potential yardstick for success, commentators bemoan the limitation of evaluation – even within wealthy, developed countries – as restricted to whether countries have become signatories and the number of criminal justice processes initiated (see, e.g., Milivojevic and Segrave 2012, 243–251, noting also that in the in ASEAN context, for instance, evaluation overall is described as weak) rather than focused upon what they regard as genuine impact for victims.

This focus, it must be noted, also reflects the approach taken by the United States of America (US) Department of Justice in its TIP (Trafficking in Persons) program. The factual importance of that specific mechanism serves as a reminder that the international community is not made up only of the sum of its parts but also strongly influenced by more powerful – and perhaps decisive – players. Since the USA has adopted a practical approach to tracking progress on the trafficking human beings front; via criminal justice process-related data, this resonates. Consequently, the so-called TIP methodology has proved strongly influential. It involves countries being evaluated according to their criminal justice responses to and capacities to deal with trafficking and then categorized in tiers. Lower-level tier countries are excluded from non-urgent, non-trade-related US aid. Unlike mechanisms of the international community, countries do not have to agree to the TIP process. It is a system no one can opt out of, intending to exert diplomatic pressure and threaten coercion (Milivojevic and Segrave 2012, 241). The validity of its methodological basis is, however, contested, and the positioning of such a powerful state to force its policy priorities onto others – no matter how morally justified they may appear to those implementing such measures – is controversial.

Chuang (2006), for instance, highlights the dangers of the USA asserting influence based upon its definition of human trafficking and thereby undermining efforts of the international community. Others highlight the US system’s strong focus upon sex trafficking (though it should be noted that more recent measures, such as President Obama’s Executive Order of 2012, expanded upon this) as different from Palermo and significantly changing what is viewed as an anti-trafficking activity. The factual power of the USA has meant this emphasis spread (Shoaps 2013, 960, 964). In this way, what is intended as an activity to support victims’ human rights or even anti-crime activity is subject to what Dunne (2012) describes as a “trickle-down effect on countries worldwide” of a single country’s definition and priorities within the area. The danger is, of course, that the legitimate priorities of other countries – who perhaps know the challenges their vulnerable citizens face better – are ignored and those countries seek only to fulfill TIP criteria, not actually to tackle the problems their citizens face effectively. Given the contested validity of the TIP methodology, this cannot but be viewed as deeply problematic (ibid., 252, 253).

Looking to the impact of this system, while some note the effectiveness of TIP’s shaming method (Dunne 2012, 420 – noting that Tier 3 countries have moved upward in ranking), other commentators cite the disappointingly low number of victims identified and the corresponding sluggish level of prosecutions (despite the high level of criminalization), as evidence that this prosecution/deterrence-oriented approach by the UN and TIP has failed (Fouladvand 2017, 130, 133).
Perhaps even more discouragingly for those seeking signs of improvement of the victim’s lot, the EU evaluation also indicates concern that the criminal process (and indeed even preparation of such) places too high a burden on victims; who are poorly treated and subject to secondary victimization by it. That evaluation flatly concluded that victims are insufficiently supported. So while it drew grounds for optimism from its finding that member states’ criminal justice cooperation mechanisms and joint investigation teams were resulting in improved criminal justice efforts, an independent commentary would seem justified in its skepticism as to whether criminal justice approaches assist victims in any way.

It is not only this fundamental choice of a path which is thrown into question, however. The critical evaluation also extends to the content of legal provision, even at the international level.

One frequently noted concern is that even where provision is made for states to provide victims with services during a recovery period – as the Council of Europe Convention, for example, does, the limitation of this to 30 days means its benefit is limited. The argument advanced is that this is too short a period to be meaningful. Specific provisions within international legislation only lay out minimal obligations toward victims, meaning it remains at signatories’ discretion to provide stronger victim services. Reflections on national practice indicate, however, that limitations identified in international texts resonate in national practice.

The freedom outlined in international legislation to make benefits and assistance offered to those identified as victims contingent upon their willingness and ability to assist criminal proceedings is a further point of significant criticism. Nevertheless, this is a nexus routinely made within the national provision. The support international measures foresee as necessary to assist victims in repatriation proceedings – also to secure their return and prevent revictimization – meets its match in the lack of resources many countries face trying to make adequate provision domestically, let alone in arranging for anything within the source country victims are repatriated to. Criticism thus also asserts that the vision of international instruments is rendered unfeasible by reality (see, e.g., Bruckmueller and Schumann 2012).

Particularly the tying of assistance for victims to criminal justice aims is taken to demonstrate the fallacious nature of the international community’s actual dedication to victims (e.g., Raffaelli 2009; Wade 2012). Commentators highlight the urgent need to break this nexus if any real chance of protecting human rights is to be gained. This fits with broader criticism of the criminal justice approach. Issue is frequently taken, also with evaluative efforts, because they focus on whether or not law (and possibly structures) has changed but not on what is regarded as more meaningful indicators such as cultural factors (the priority lent to the protection of women, for instance, is often viewed as crucial) – which will be decisive for enforcement and actual effect (see, e.g., Wooditch 2012, 686–687). The concern is expressed, for example, because countries slow to ratify legislation are also significant source countries (Shoaps 2013 and note also Milivojevic and Segrave 2012, 243 concerning the weakness of evaluation in the ASEAN setting).

Nevertheless, some commentators do note that international legislation does provide an impetus for change in national policy (Parkes 2015). So this last criticism...
can be taken as a basis to argue, more optimistically, that grudging ratification may at least represent the beginning of a dialogue. A tangible benefit to victims may be far off, but a step in the right direction is surely better than none at all?

A key point remains, however, that international legal provision remains dependent upon enforcement via national legislatures and criminal justice systems. Unfortunately, the documentation of success of any kind at this level is not as strong as one might hope.

Among others, the TIP country reports feature a discussion of criminal justice process numbers improvement. UN organs report progress in legislative development and particularly Council of Europe and EU reports to highlight structural and cooperative progress. Unless one denies any value in improved cross border criminal justice activity, this is something positive.

Significant problems do abound, however. Centrally, the recognition of victims as such by law enforcement and other state agents is evidenced as an enormous challenge facing anyone seeking to improve trafficking victims’ lot. Study after study finds victims more likely to be in contact with state agents as perpetrators of criminal offenses, not victims of trafficking (e.g., Bruckmueller and Schumann 2012). No matter what approach is advocated toward ensuring the improvement of the human rights situation of trafficking victims, this stands as a significant impediment to social work or crime control approaches alike.

The lack of identification is linked to the interests of trafficking victims coming into conflict with a priority held more dearly by states: illegal immigration. In the words of one commentary: “the argument that global anti-trafficking efforts are constrained and undermined by the adherence to rigid immigration enforcement has become a staple feature of the debate about the policing of international borders” (Hadjimatheou and Lynch 2016, 946). Here we are forced to recognize the stark reality that anti-trafficking legislation, and action, does not operate in a vacuum.

Reports from individual countries demonstrate the priorities set favoring immigration-related priorities (for example, for Denmark – see West 2018 and the UK – Roberts 2018, where even identified victims are acknowledged to receive inadequate support (UK Parliament 2017); for Austria see Bruckmueller and Schumann (2012), while van der Leun and van Schijndel (2016) demonstrate that whether someone is treated as an illegal immigrant or trafficking victim depends upon how an individual “enters the system” as migration and THB processes run separately in the Netherlands). Detailed studies in the UK reveal immigration concerns to be even more dominant and that trafficking victims are not the primary concern of officials (e.g., at ports of entry (Schönhöfer 2017 – based on TIP and GRETA reports, 168; GRETA’s 2016 report on the UK highlights very clearly concerned that victims are not being supported and caught up in anti-immigration action (GRETA 2016, 80) highlighting the pervasive nature of this problem). Hales (2017) shocking study of immigration centers highlighted women and child victims being held in immigration detention centers and only in a minority of cases any attempt to treat them as victims being made. For the USA, the failure to identify victims as such is identified as the significant challenge to anti-trafficking efforts (e.g., Ferrell (2012)). Finn et al. (2015) provide further demonstration of victimhood often not being recognized.
even in the prostitution context, where one might expect greater sensitivity to it on the part of authorities. Overall information is drawn from the EU Fundamental Rights Agency (2009) and TIP reports demonstrating that despite broad criminalization, considerable gaps in enforcement remain, causing Jones and Winterdyk (2018, 4) to declare “We are failing our children.”

A key driver of this failure appears to stem from police and migration authorities as driven primarily by their own, other, goals. This, of course, is the rationale for criticism of criminal justice processes as the vehicle for achieving human rights protection. The latter is not what they are designed to do. Such underlying rationale is also reinforced by the priority lent to identifying and deporting illegal immigrants. If this is regarded as the primary goal of police and immigration officials, one can hardly be surprised that they pursue it to the detriment of others which do not marry easily to it. Farrell (2012), for example, highlights higher organizational priorities as trumping anti-trafficking efforts. She also points to police views of victims as influential. Thus where agents perceive them as complicit in their suffering, the willingness to adopt a victimological approach to finding them may be lacking. Constantinou (2017) highlights that the exploitation of victims can sometimes even feature as part of the policing strategy more broadly.

Evaluating the Council of Europe results, GRETA is reported as recognizing that “a significant number of countries fail to comply fully with their obligation in relation to this principle [of non-prosecution of victims], either because of a lack of awareness, or a failure to appreciate the rationale for, and scope of, the principle, or because of failure to identify people as victims of trafficking in the first place” (Pietrowicz and Sorrentino 2016). The EU evaluation also reflects an apparent lack of victim identification with meager numbers reported (European Commission 2016). Its strong calls requiring that victims be recognized and not penalized (European Commission 2016a) must be seen to highlight a problem fundamentally undermining efforts to improve trafficking victims’ situations.

A conclusion other than that substantial assistance and support for victims remains distant is inescapable. The apparent failure to entrust the task of trafficking victims’ identification and protection to non-criminal justice agencies or to create greater incentives to agents to identify such victims (as opposed to illegal immigrants) further provides grounds to question to the strength of states’ commitments to these victims beyond the symbolic realm of international legislation. Hadjimatheou and Lynch’s (2016) findings demonstrate that border agents can be trained and incentivized to work quite differently. Schönhöfer’s (2017) finding that more effective victim protection is currently to be found where Parliament featured a stronger concern for criminal as opposed to social justice (171) provides convincing insight into how these victims and their rights are usually seen, explaining such findings as the above as logical in settings “more driven by [a] law and order agenda” than that signed up to in anti-trafficking legislation.

Even where individuals are recognized as victims, the mismatch between what is available and what is needed is reported as very significant indeed (see, e.g., Jones 2018). In the words of the European Commission evaluating EU efforts: “A victim-centred approach is at the heart of the EU anti-trafficking legislation and policy. . . .
Providing unconditional access to assistance, support and protection to victims remains a challenge for most Member States” (European Commission 2016a, 11).

Just as efforts to assist trafficking victims are doomed if they are not identified as such, so too clear comprehension of the phenomenon would appear a precondition to tackling it. A number of commentators note that problems recognizing the phenomenon itself are to be found at the legislative level all the way down to frontline responders (note, e.g., the different definitions found within various settings; thus, e.g., the EU provides for broader scope of the phenomenon - see Recital 11 and Article 2(3) - than, e.g., the UN). There is no escaping the fact that trafficking human beings encompasses complex and diverse phenomena. More recent studies highlight all too well what we do not know in relation, e.g., to child labor exploitation and the trafficking of girls for sexual exploitation by their own families (Puente Aba 2017; Sarson and MacDonald 2017). The evidence is also mounting that action in this emotive area is undermined by the pervasive presence of myths and ideas such as the “ideal victim” (Shoaps 2013; Moore and Goldberg 2015) or even the “ideal offender” (O’Brien 2016). Trafficking has caught the popular imagination due to an abhorrence at ideas of entirely unknowing, innocent victims massively abused by perpetrators enacting horrific acts of violence. The reality, however, is usually far less clear-cut.

Nevertheless, massive human rights violations are involved and require combating. Efforts to genuinely raise awareness, let alone solve problems, are not aided by such phenomena. Timoshkina (2014) demonstrates more broadly how stereotypical attitudes to this phenomenon can undermine or indeed be fatal to efforts once actors are confronted with the murkier realities of trafficking.

Critics of the criminal prosecution-centered approach may take heart at other pockets of activity. The EU evaluation, for instance, calls for greater budget allocation for prevention and the reduction of demand (European Commission 2016a). The EU itself has further recently funded significant research into demand-side matters (see, e.g., Cyrus and Vogel 2017 and DemandAT more broadly). Again this may be taken as a sign of dialogue with civil society in the international provision for anti-trafficking activity. Reducing demand – at least for sex trafficking – is an active feature of feminist literature. This priority is reflected in the 2011 EU Directive (Article 18) though transposition remains in the hands of member states (Constantinou 2017).

Perhaps some hope can be placed in the international community however. Jones and Winterdyk (2018a) highlight this legislative level as bearing potential for a remedy. They provide specific guidance on how the EU Directive could be made more effectively victim-focused and demonstrate that much could be done. This includes a need not be coerced into assisting law enforcement in order to access assistance. Those unconvinced by the argument to take this stance on humanitarian/human rights grounds might be encouraged to look at the Italian experience (reported by Raffaelli 2009). This was that the blanket granting of residence permits covering adequate recovery periods raised the number of victims willing and able to act as witnesses and consequently the number of prosecutions of traffickers.
Human Trafficking and Global Justice

This is not an appropriate framework in which to undertake deep consideration of the global justice concept or surrounding debates. However, it would appear uncontroversial to assert that the justification for action by the international community to initiate, facilitate, and support the combatting of human trafficking is couched in the language and thinking of global justice. The strong emphasis that intervention across borders is necessary to secure the fundamental human rights of vulnerable individuals is familiar to that context. While we are not discussing the more traditional form, military intervention, the main thrust of anti-trafficking legislation—as we have seen—is toward criminal justice. This is to be also achieved via cross border investigations, extradition of nationals to criminal justice processes, etc. The very locus of anti-trafficking law, within the transnational criminal law context, asserts that a core aim is to overcome the barriers that traditionally impede criminal justice.

The advent of international criminal law and institutions (both the ad hoc tribunals and the International Criminal Court) are very particular assertions that the defense of universal human values, via criminal justice where massive human rights violations take place, is a strongly supported aspect of global justice (see, e.g., deGuzman 2016).

Programs such as that found within the USA, tying aid to progress recognized as made in the anti-trafficking area, demonstrates not only the priority lent to this context by the USA but the force of the will to ensure a moral position is replicated across borders, by another sovereign state. The language of anti-trafficking demonstrates that parallels are seen to massive human rights abuses, justifying military intervention. Criminal justice intervention thus appears more than legitimate. It is, however, essential to recognize that the language of human rights protection is being used to overcome significant boundaries (for detail on this, see Dandurand 2012), ones cast into law to protect the sovereignty of states and individual liberties of their citizens.

Global justice doubtlessly demands that where there is evidence of systematic trafficking, the international community responds. The underlying logic of any global justice demands that we owe duties to all human beings and their human rights. Our duties to fellow nationals are higher than those we owe to others (Miller 1995) but, in the words of Brock (2009, 265), “we all have to support the basic framework and [global justice] does not include (for instance) favouring the non-basic interests of co-nationals above more needy non-nationals.” As Mandle (2006, 92) asserts “… clearly, in some cases assistance from outsiders represents the only hope for victims. Although a long-term goal must be the creation of a legal, political structure, often a more immediate objective is to put a stop to the ongoing abuse.”

The creation of anti-trafficking legislation, including the demand that we treat foreigners found on our territory (often after illegal entry) as victims, is the practical implementation of such theory. Moreover, explanations of the need for legislation providing for this, as well as the pursuit of perpetrators, is couched by
politicians, policy-makers and international institutions alike in the language of achieving global justice. The reality of enforcement, however, as we have seen, does not follow this imperative.

Criminal justice allows us to “do something.” It is the go-to option of the international community for some massive human rights violations. It is also, however, a language often chosen in western democracies to influence policy and drive influence, where it would otherwise be unacceptable. The fact is, through transnational law, economically more powerful states drive the reality of law in weaker states; indeed also the reality of law enforcement, its structures, the surrender of citizens, and even the terms surrounding the provision of aid (as seen above; more broadly see, e.g., Derenčinović 2009), all in the name of global justice.

This paper is not attempting to assert that there is no genuine, benevolent will within the international community to alleviate the very real plight of trafficking victims. Given, however, how short the concrete implementation of that will falls when we encounter such individuals within the domestic setting, the intention here is to provoke thought about what we may be doing. Without denying or wishing to undermine the hard work and dedication of many individuals operating within these frameworks, genuinely motivated by a desire to stop severe crimes and assist victims, it is suggested that the framework of Jonathon Simon’s seminal text, Governing through Crime (2007), offers provocative pause for thought.

Governing Through Crime

Simon’s text was written as an analytical framework with which to consider the effect of the war on crime upon US democracy. It is not suggested here that it forms an ideal tool with which to analyze the activity of the international community (if such a thing exists). Nevertheless, a few aspects are offered here in the belief that they are instructive to a better understanding of why the claims made and the realities achieved by anti-trafficking efforts diverge so much. They should by no means be considered the only reasons, but arguments raised by commentators highlight their potential usefulness.

It is important to note a crucial need to differentiate highlighted by Simon (2007), namely, that “governing crime” “can be distinguished from governing through crime to the extent that solutions adopted when doing the former are proximate and proportionate to the crime threat experienced” (pp. 4–5). Adapting this logic for this essay requires us to analyze whether the solutions adopted – both legislative and factual – are proximate and proportionate to the aim identified by the international community in undertaking its anti-trafficking activity. Given the highlighted dedication to victims’ human rights, the legislation adopted and practice based upon it as analyzed above seem very far removed from such criteria. This remains true, even taking into consideration the remoteness between legislature and enforcer within the trafficking context.

Simon provides us with a different framework within which to consider the international community’s (or perhaps its principal actors) mobilization of victims
in the trafficking context. He asserts, for example, that “The emergence of crime victims also threatens American democracy as a dominant model of the citizen as representative of the common person whose needs and capacities define the mission of representative government” (7). The question to consider here is what the emergence of the victim as such a dominant force in activity by the international community means for the development of its operative framework. Simon further associates governing through crime with “A more authoritarian executive, a more passive legislature and a more defensive judiciary” (6). This should give us pause for thought as the international community expands its remit; it is, after all, a forum entirely run by executives. Within domestic settings, this power is traditionally subject to checks and balances, and not only Simon expresses concerns about such dominance. We must surely consider what this means if structures associated with the development of greater, interventionary power by the international community, develop free (even of the thinking) of these other traditional organs of liberal states. The core of “governing through crime” action Simon analyses as the casting of crime as the “most urgent problem” (95), which facilitates politicians turning “to crime as a vehicle for constructing a new political order” (25).

Transferred to the international stage, this argument is perhaps less forceful at present. One might even hesitate to accuse actors of a conscious intention of the kind indicated. Nevertheless, one might plausibly identify an instinctive use of crime as a tool of powerful nations to govern following traditional patterns, retaining superiority or the upper hand in the development of international law and the framing of problems. That does constitute a new political order of sorts.

Simon demonstrates that governing through crime provides “narratives that could be enacted without fundamental changes in the status quo of wealth and power” (pp. 25–26) and that “crime offered the least political or real resistance to government action” (31) with the benefit that the dialogue of crime control enjoys “immunity from the political collapse of support for both the liberal social welfare state and the conservative message of global military dominance” (72). Within the trafficking context, commentators note the uncontroversial nature of protecting “ideal victims” as appealing to this but also, as discussed above, the real world negative consequences of this (Shoaps 2013, 937; Bruch 2004 and findings such as those by Finn et al. 2015 - the latter demonstrating victimhood will usually not be recognized where women are arrested. Prostitutes’ status as offenders trumps it and – seemingly – any instinct to even look for it).

Furthermore, given the sensitivity of former colonial powers (or contemporarily dominant nations) wishing to extend the territorial reach of agencies protecting their security interests, such activity associated with the benevolent face of victims’ human rights provide far more palatable cover. For the human trafficking context, Hathaway’s (2008) analysis indicates why more powerful states may find this useful. He states “the border control emphasis inherent in the Trafficking Protocol and its companion Smuggling Protocol has provided states with a reason – or at least a rationalization - for the intensification of broadly based efforts to prevent the arrival or entry of unauthorized noncitizens.” He views this as one of several issues meaning anti-trafficking raises major human
rights issues (6) and indeed causing “real collateral damage to human rights concerns” (13).

This analysis is not the sole evidence of long-standing fear that anti-trafficking measures can not only fail to improve the human rights of those they are intended to help but indeed cause collateral damage (see, e.g., Global Alliance Against Traffic in Women 2007). Even where specific recognition of victimhood is achieved, negative consequences can ensue. Thus, e.g., women in shelters are described as living in “prisonlike conditions” in Serbia (Milivojevic and Seagrave 2012, 255). Bruch’s (2004) observation that trafficking has acted as an impetus to, e.g., restricting female citizens’ travel, chimes with Timoshkina’s (2014, 25) finding that anti-trafficking policies can mask anti-migration ones or – as Hathaway asserts – this movement provides a “pretext for the globalization of border control.”

A discussion of governing through crime naturally raises a question as to who is governing. It is important to recognize that we are not discussing the context of any one particular actor. Powerful nations and actors can assert themselves and their interests and priorities, of course, but it would be wrong to suggest that other groups and organizations do not also drive the anti-trafficking movement (and indeed governance structures) genuinely motivated by a desire to alleviate the plight of victims (and that powerful nations and actors may not share such traits). The problem remains, however, that when the results are evaluated, their efforts seemed to have enabled the achievement of other goals, whether intended or not. Part of the problem is, as asserted by Milivojevic and Seagrave (2012) that anti-trafficking measures continue to operate by untested mechanisms, assumed to be effective at the start of this century. If one considers the diversity of groups identified as critical players in this field (see, e.g., Hathaway 2008, 42 et seq. and Dunne 2012, 413 et seq.) and their goals, one cannot really be surprised that the measures they reached consensus over can be viewed as nothing more than a preliminary step. Fundamentally, however, it is widely recognized that anti-trafficking frameworks, as they currently stand, ignore the root causes of these massive human rights violations. Confronting these is recognized as significantly more painful for powerful nations (see Hathaway 2008 and Dunne 2012, who, e.g., tracks the USA as shifting from fighting root causes to “an all-out war on prostitution”).

Recognizing the priorities of powerful nations and correlating these to the result of anti-trafficking activity certainly does not discredit the governing through crime analogy. The nexus of victim support to cooperation in criminal proceedings (i.e., a security benefit for the destination state) highlighted above supports it. The USA, strongly linked to a highly moral motivation to undertake anti-trafficking activity, still ties the availability of funding for victims narrowly to cooperation with law enforcement (Shoaps 2013). It is interesting to note that this connection was introduced in the EU context (see Raffaelli 2009) against the explicit advice of the expert group preparing the Directive, starkly highlighting the interest of states in enacting it. The language of victimology is utilized, but the strategic desires of the powerful mark even legislation triggered by empathy.

Simon further highlights that a focus on specific victims means a system is created to “systematically favor vengeance and ritualized rage over crime
prevention” (106). Drumbl’s criticism (as mentioned above) of the use of criminal justice as a response to massive human rights violations results also because – complex as it is – it is taken as the simplest path available. The international community feels something must be done, and this is the option chosen. It is important to fully recognize, however, that this frames a very particular approach. In Simon’s words a “distinctive legislative rationality…imagining the needs of the citizenry as framed by the problem of crime” (75).

On the international stage; this forces a particular mindset upon other sovereign states; a logic which has also met resistance. South Africa famously turned away from criminal justice as the appropriate response to Apartheid with the AZAPO case (1996) highlighting that: “education, housing and primary health care” were given preference over retrospective justice for massive human rights violations.

The overcoming of states’ sovereignty in setting the priorities for legislative and structural development of their security agenda is a distinct achievement. The irresistibly neutral demand that this is done not only in the name of crime prevention but for the protection of that state’s own vulnerable citizens has obvious appeal. This is not to assert that there are no genuinely benevolent motivations in seeking to influence other countries, let alone that there is no need to do so. There is no denying that there may be structural disincentives to pursue trafficking, e.g., where a GDP is hugely dependent upon money stemming from “women working abroad.” There is no denying that states can be complicit in massive human rights abuses targeting their citizens. It is, however, essential to recognize the other goals powerful nations may pursue and to truly measure them by the results they achieve.

Simon highlights the divergence between the victim portrayed to justify action in political rhetoric and the crimes targeted by ensuing action (76). The above provides sufficient grounds to call for attention to the same in the trafficking context. He warns that America’s habit of governing through crime has brought about “a cluster of ways of knowing and acting towards crime that has profoundly influenced and deformed American democracy” (78). As the international community extends its reach toward any achievement of global justice via criminal justice mechanisms, we would surely be wise to heed his warning.

Hathaway (2008) posits that focus on human trafficking allows governments to focus only on a tiny proportion of slavery in modern times “without addressing its predominant manifestations.” As he puts it: “This partial vision allows governments to avoid the thorny issue of culturally ingrained, endemic slavery that persists in many parts of the world today and that is often convenient for (if not essential to) the project of globalized investment and trade. In short, the decision to take action against “human trafficking,” rather than against slavery in all of its contemporary forms, has given comfort to those who prefer not to tackle the claims of the majority of enslaved persons” (5).

The undeniable need is, however, that this context be a matter of human rights protection because the abuse entailed affects those most requiring protection. Traffickers deliberately target those whose lives have been hit by catastrophe (see, e.g., Burke 2015). The latter are particularly vulnerable. We recognize the need to feed them through emergency aid. We – as an international community – must also genuinely protect their human rights from massive abuses.
Conclusion

This contribution highlights the difference between the good intentions expressed toward trafficking human being victims; the international community’s stated intent to alleviate the human rights abuses, and the reality achieved. It demonstrates for the UN and European context that dedication to this goal wanes already in the legislative texts agreed and all the more massively in the practical implementation of measures in member states. The failure to prioritize the identification of victims, ensure they are treated as anything but illegal immigrants or criminals, let alone be provided with adequate time and services are demonstrated as widespread and fundamental. Although in theory anti-trafficking activity could well be encompassed under the umbrella of seeking to attain global justice, reality reveals we are closer to this being a tool for more powerful nations and actors to “govern [others] through crime.”

Cross-References

▶ European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking
▶ The Failing International Legal Framework on Migrant Smuggling and Human Trafficking
▶ The Investigation and Prosecution of Traffickers: Challenges and Opportunities
▶ UN Palermo Trafficking Protocol Eighteen Years On: A Critique

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Combatting Human Trafficking in Lebanon: Prosecution, Protection, and Prevention

Janane El Khoury

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Abstract

This chapter highlights the many divergent and complex factors that have made Lebanon a source of human trafficking. Despite the presence of trafficking within the country, Lebanese society is generally unaware of the crime and its consequences: due to the presence of poverty in the country and a general lack of awareness about human trafficking, the remote and marginalized areas in Lebanon are more vulnerable to this criminality.

This chapter first addresses the recent Lebanese Law No. 164/2011, “Punishment for the Crime of Trafficking in Persons,” from a legal perspective and follows with an overview of practical strategies to combat the trend by stakeholders including security agencies, civil society organizations (CSOs), and nongovernmental organizations (NGOs).

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From a preventive perspective, this chapter further reinforces the urgent need to set up some preventive policies and procedures, which must be implemented and enforced by the Lebanese laws to ensure that the issue of human trafficking is properly dealt with at all levels; such levels include economic, social, and cultural. Additionally, the chapter introduces the idea of a Lebanese national strategy to combat trafficking, taking into consideration legal incrimination, efficient penalty, proper law enforcement, victim protection and prevention, and both individual and social equipment to bring awareness to such crimes and their consequences. Finally, this chapter seeks to identify these efforts by the Lebanese government system and analyze their effectiveness in eliminating human trafficking.

**Keywords**
Lebanon · Human trafficking · Trafficking victims · Sexual exploitation · Forced labor · Punishment

**Introduction**

Undertaking an academic study on the current situation of human trafficking in Lebanon is a very difficult task for many reasons, ranging from objective and procedural to operational and conceptual.

Humanity is witnessing a new criminal phenomenon that has a transnational dimension, especially in relation to transnational organized crime and human trafficking. Like many other countries facing human trafficking, Lebanon serves as a destination country for victims of forced labor, with many victims coming from Sri Lanka, the Philippines, Ethiopia, Kenya, Bangladesh, Nepal, and Madagascar, and for victims of sex trafficking, with victims from Eastern European countries, Morocco, Syria, and Tunisia. It also serves as a transit point for traffickers due to its geographical position on the Mediterranean, which is at the crossroads between Asia and Europe: many migrants have been caught trying to take boats to go to Europe illegally. In addition to serving as a transit point and a destination country, Lebanon also serves as a country of origin for trafficking victims due to causal factors including poverty and a general lack of awareness of the issue of human trafficking among the general public.

These factors combine to pose considerable challenges to the Lebanese authorities in their anti-trafficking response.

**Overview of the Situation of Human Trafficking in Lebanon Before 2011**

Prior to the introduction of Law No. 164/2011, the main obstacles in the fight against human trafficking in Lebanon came in the absence of internal legislation against human trafficking and in the lack of equipment for not only legal proceedings and
investigations but for preventative measures. From a legal perspective, the most important step in Lebanon’s fight against human trafficking occurred in 2011 with the promulgation and publication of Law No. 164/2011, “Punishment for the Crime of Trafficking in Persons.” Given this observation, it is thus worth noting that the expression “human trafficking” was still new not only to the general Lebanese population but to those in the legal field as well. In fact, the phenomenon of human trafficking had no real significance in Lebanon before June 2005, when the US State Department criticized Lebanon in its annual “Trafficking in Persons” report for not complying with the minimum standards related to the abolition of human trafficking based on field statistics and using real cases from Lebanon as exemplars. The report, which covered the period between March 2004 and April 2005, divided Lebanese trafficking victims into two categories: Asian and African domestic workers classified as “forced domestic service” and victims classified as “dancers working in night clubs.” Women belonging to both categories were most often subjected to sexual exploitation and physical abuse and were denied the rights related to labor and migrant workers. The State Department report, which was initially referred to the Lebanese Ministry of Foreign Affairs, contained a recommendation for Lebanese authorities to make all the best efforts to fight this phenomenon; the Ministry of Foreign Affairs later circulated the document to the Ministries of Interior, Labor, and Justice for their comments on the recommendation.

In September 2005, the UN Commission on Human Rights dispatched a Special Rapporteur on human trafficking to evaluate personally the situation in Lebanon. After collaborating with senior government and judicial officials, diplomats, and representatives of NGOs and civil society organizations (CSOs) and after consulting statistical surveys and visiting the largest detention centers to see firsthand the situations of those involved in trafficking, the Rapporteur, Huda Sigma, issued a report on the situation in Lebanon. In this report, the UN Commission identified trafficking in human beings as a prevailing crime in Lebanon, estimating a total of around a thousand migrant women trafficking victims. The report urged the embassies of countries of origin for migrants – most notably the Philippines, Sri Lanka, Ethiopia, Kenya, Bangladesh, Nepal, and Madagascar – to work on regulating the rights of their nationals and advised the Lebanese government to warn young women to be cautious when leaving the country to accept work as “artists,” in order to prevent them being forced into work in the sex industry upon arrival. In 2006, another report on human rights, this one issued by UNICEF, identified Lebanon as a transit country for migrant labor, sex tourism, sexual exploitation of foreign women, and trafficking in children. The report, titled “Trafficking in Persons: Global Patterns,” identified the existence of trafficking in human beings in 127 countries of origin and exploitation in 137 countries. In this report, the United Nations Office on Drugs and Crime (UNODC) established a classification system based on the size of human trafficking in the region, classifying instances of trafficking as “very high,” “high,” “medium,” “low,” and “very low”; in this report, UNODC identified Lebanon’s position as an origin country as “low,” as a transit country “very low,” and as a destination country “medium.”
Despite these organizations classifying Lebanon as a country to watch in terms of human trafficking, the majority of the population still remains completely unaware of the issue. This lack of awareness is due in part to a lack of accurate statistics and data about the issue of trafficking, as well as myriad reasons including the perception that victims of human trafficking are considered to be people of a lower-level social class; the exclusion of domestic workers from the protection of the labor law of 1964; the imprisonment, exploitation, and confiscation of female domestic workers in private houses; and the cultural and social taboos that prevent the discussion of issues related to trafficking among the Lebanese public. There are strong social and cultural taboos related to sexuality that are held by a majority of Lebanese people, and a fear of ostracism prevents victims and witnesses from reporting cases of sexual abuse and exploitation, particularly if they occur within the family. Taboo, shame, embarrassment, desire, stigma, and intimacy are intertwined with sexuality, coexisting, competing, and defining sexuality for the individual and society; therefore, victims of trafficking – especially women – are seen as criminals and victims of their personal decisions. In order to break this stigma, the Lebanese media should address the social, cultural, and religious taboos that prevent the public discussion of problems related to sexuality and take a strong stand against all forms of discrimination on the basis of gender, race, color, ethnicity, or social status.

Though public awareness of trafficking is low, the factors that cause trafficking in human beings both to and from Lebanon are numerous and include the rapid, widespread dissemination of new commerce and markets that lack precise legal organization; new technologies that facilitate perpetrator access to vulnerable persons and trafficking victims; the possibility of better living standards through relocation in the absence of local job opportunities; and the poor treatment of victims, who sometimes face vilification for not carrying real immigration papers. Trafficking victims may face social decadence, political instability, substitute detention traditions, and racism; foreign workers may experience further partiality against them, and women and children may face instances of violence. Perhaps the strangest fact relating to trafficking in human beings is that victims are very often bought and sold many times; most times, they are initially sold by one of the members of their own family for the sole purpose of material profit.

While the phenomenon of trafficking in human beings is not widely known to the Lebanese public, the issue of child labor in Lebanon is apparent day after day on the streets, especially concerning Syrian refugees. Children may remain victims of this type of trafficking unless a precise definition for child labor is established. Under Article 22 of Lebanese labor law No 536, passed on 24 July 1996, the employment of children for harmful and dangerous tasks is criminalized; under Article 23, the maximum number of working hours is set at 6 h per day for all workers under the age of 18. This advance in Lebanese Minors’ Law and Justice represents a major improvement in the Lebanese criminal justice system, as well as the most important political legislative and penal achievement in terms of modern aspects of criminal, human, and social sciences. However, this law does not refer to the status of minor or child trafficking victims, so these young victims may be treated as delinquents, beggars, or displaced and not as victims of trafficking.
In 2005, a “project against human trafficking” was launched by the Ministry of Justice in order to support local legislative capacities and penal law mechanisms in terms of fighting human trafficking, with the intent of bringing Lebanon into compliance with the UN Protocol. The project was launched on 31 October 2005 through a collaboration between the Lebanese Ministry of Justice, the UN Coordinator, UNICEF, the United Nations High Commissioner for Refugees (UNHCR), and the United Nations Office on Drugs and Crime (UNODC), after Lebanon had signed it in June 2005. This program was technically sponsored by the UNODC and was financed by the governments of Switzerland, Sweden, and Norway.

In order to follow up the execution of this project, a national committee was constituted, composed of a judge as a chairperson and representatives of the Directorate General of the Internal Security Forces (ISF), the Directorate General of the General Security, and several NGOs as members. The formation of this committee represented a fundamental step toward developing adequate responses to human trafficking at the legislative and institutional levels.

**Current Lebanese Law on the Punishment for Human Trafficking**


In August 2005, the Lebanese Parliament supplemented the United Nations Convention against Transnational Organized Crime with the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the “Palermo Protocol”) by virtue of Law No. 682/2005. Under this protocol, Lebanon is obliged to criminalize all acts of human trafficking, as well as to adopt appropriate measures to punish and prevent trafficking, and to widen the scope of protection and assistance. In order to implement this law, it was necessary to pass a number of laws, procedures, and local policies to bring Lebanon in line with a level of international criteria and standards. In this sense, the Lebanese government has recently acknowledged the problem of human trafficking in its ministerial declarations.

At the legal level, the Lebanese Criminal Code criminalizes many acts that are covered by the abovementioned UN Protocol, most notably abduction, coercion with violence, threat for the purpose of accomplishing indecent acts, prostitution, abandonment of a minor, and the accomplishment of fraudulent acts (Articles 503 to 534). Also criminalized is money laundering, which was criminalized under Law No.318/2001 amended by Law No. 44/015 of fighting money laundering, dated 24 November 2015 (AML/CFT Law). The amendment serves as an effort to combat the financing of terrorism and prevent money laundering, as published in the Official Gazette No. 48 dated 26 November 2015.

Still, and as mentioned in the introduction, the most important step in Lebanon’s fight against human trafficking occurred in 2011 with the introduction of law
No. 164/2011, which amended the Lebanese penal code and criminal procedural law; this law clearly defines human trafficking and its victims, sets penalties for traffickers, and prohibits all forms of human trafficking.

**Definition of Human Trafficking in Lebanon**

The first article of Lebanon’s current anti-trafficking legislation, passed in 2011, defines human trafficking as attracting, transporting, receiving, detaining, or finding shelter for a person, by means of threat or use of force, abduction, deception, the abuse of power or of a position of vulnerability, the giving or receiving sums of money or benefits, or the use of these means on a person having authority over another person, for the purpose of exploiting them or facilitating their exploitation by others. It is worth mentioning that any consent provided by a victim shall be deemed insignificant if any of the abovementioned means are used to obtain this consent.

The same article (586–1) defines the victim of trafficking as any human being, regardless of their gender, nationality, or age. Additionally, mere attraction, transfer, receipt, detention, or sheltering of child victims for the purpose of exploitation constitutes trafficking in persons, even if it is not accompanied by any of the means enumerated in the Law (such as the threat of force, abduction, deception, etc.). Moreover, the law does not punish victims who prove that they were compelled to commit acts that are punishable by law or that they were compelled to violate the terms of their residency or work permit.

Concerning the definition of “exploitation” and according to the provisions of this law (Article 586–1), compelling a person to participate in any of the following shall be considered exploitation:

- Acts that are punishable by law
- Prostitution or exploitation of the prostitution of others
- Sexual exploitation
- Begging
- Slavery or practices that resemble slavery
- Forcible or compulsory work, which includes the forcible or mandatory recruitment of children for use in armed conflicts
- Forcible involvement in terrorist acts
- Selling organs or tissue from the victim’s body

**Prosecution and Investigations**

In the years since the adoption of Law No. 164/2011, there have been efforts in Lebanon to prosecute and punish trafficking offenders. However, human trafficking remains a hidden crime in Lebanon, and it is often difficult to detect trafficking cases. Article 586.11 of the abovementioned law regulates the jurisdiction of Lebanese courts in the event that any of the acts that constitute this crime are committed on
Lebanese territory, and persons who are aware of cases of human trafficking are directed to notify the Lebanese authorities who have experience in dealing with cases of trafficking, most notably the Internal Security Forces (ISF) Anti-Trafficking Bureau and the General Security (GS). These security organizations continue to conduct anti-trafficking investigations and are able to arrest, detain, deport, and – in some cases – prosecute trafficking victims among vulnerable groups, such as illegal foreign migrants, children, and women in prostitution, for crimes committed as a direct result of being subjected to trafficking. Moreover, they identify potential victims of sexual exploitation and refer most of them to NGO protection services; in turn, the Ministry of Social Affairs (MOSA) coordinates with international organizations to assist the victims.

When dealing with foreign victims, it is up to either the investigating judge or the judge in the case to grant temporary residency to victims to allow them to remain in Lebanon throughout the investigation process (Article 586–8). Prior to the passing of this law, there was no legal ground to grant a temporary residence permit to trafficking victims.

Regarding the provision of assistance and protection to victims of trafficking and in accordance with the “Practical Guide on combating the crime of trafficking in persons in Lebanon,” issued in 2014 by the Beirut Bar Association, trafficking victims are offered help and protection from specialized institutions and organizations to which they are referred by virtue of a judicial decision. Psychological support is one of the most important services provided in Lebanon. Most female victims lack self-esteem and any sense of self-worth; therefore, these institutions work with them on strengthening their sense of self-worth and developing healthy and fulfilling personal lives.

Under the Implementation Decree for Lebanon’s Anti-Trafficking Law, Number 12, issued in July 2012 in order to support the implementation of the law Number 164/2011, it is the responsibility of the Minister of Justice to enter into agreements with specialized institutions, organizations, or safe houses to which the victim is referred by virtue of a judicial decision, during periods of investigation and/or prosecution, so that they may offer them protection, psychological or social assistance, and legal counselling (Art. 586–9). It is worth mentioning that the provision of assistance and protection should not be made conditional on the victim’s willingness to cooperate in the criminal investigation.

However, there are several limitations with this law. First, the burden of proof is on the victim to demonstrate their victimhood, which is very difficult to do since most victims are vulnerable refugees, children, workers, or women holding artist visas. Moreover, while the law offers protection mechanisms for witnesses to trafficking, these protective measures do not apply to victims of trafficking: victims can be arrested until their traffickers are sentenced, with proceedings potentially lasting months or years. Furthermore, there are no specific provisions to protect vulnerable children, despite the fact that a large number of Lebanese and Syrian children are victims of forced labor through street begging and sex trafficking facilitated by male pimps, husbands, parents, and boyfriends and are often entered into pre-arranged marriage at a very young age.
Regarding criminal procedures, Article 5 of Law Number 164/2011 added to the Lebanese Criminal Procedure Law a new section titled “Protection Procedures in the Crime of Human Trafficking.” This section contains provisions regarding the protection of the identity of a person who is in possession of information and acting as a witness. These provisions include:

- An investigating judge may decide to hear and record the testimony in a special report that shall not be added to the case file.
- The defendant is given the right to request the disclosure of the identity of the person giving the testimony if they consider such a measure to be fundamental to the rights of their defense.
- A defendant may request that they face the witness. The judge may decide to disclose the identity of the witness (if the witness agrees) or may allow the defendant to confront the person who bore witness; the judge may also seek the assistance of technologies that would make the witness’s voice unidentifiable.

In an attempt to curb instances of human trafficking in Lebanon, the Ministry of Labor has taken some administrative measures. Such measures include the closing of many employment institutions for having committed fraud and the mistreatment of foreign workers, the maintenance of a blacklist of recruitment agencies for committing fraudulent recruitment practices, and the launch of anti-trafficking public awareness campaigns focused on forced labor and exploitation of migrant workers.

For its part, the Ministry of Interior is also undertaking administrative measures to fight the mistreatment of foreign workers and to prevent their exploitation. The General Security at Beirut International Airport returns passports directly to migrant domestic workers upon their arrival, has created a complaints office, and operates hotlines that allow migrants to report complaints, abuse, exploitation, mistreatment, and trafficking crimes. The Beirut Bar Association has also contributed to a general strategy to combat human trafficking, which includes prevention, pursuit, investigation procedures, and punishment, as well as victim assistance and protection. The association continues to monitor and follow up on these strategies to ensure their efficacy.

The Lebanese government does not directly provide protection services to trafficking victims and continues to rely on an NGO-run safe house to provide some services to female trafficking victims. It is worth mentioning the major role that is played by local and international NGOs in the social protection, rehabilitation, reintegration, prosecution, and prevention of human trafficking in Lebanon; such NGOs include KAFA (enough) Violence and Exploitation, ALEF – Act for Human Rights, Caritas Migrant Center, Heartland Alliance for Human Needs and Human Rights, and World Vision. KAFA offers a listening and counselling center that provides psychological assessment, socio-legal counselling, and shelter referrals, while Caritas has conducted several information campaigns and has produced pamphlets, brochures, and newsletters to raise awareness about migrant worker exploitation, as well as on migrant rights and the services available to them. Caritas is also able to provide data on the number of court cases of human trafficking in Lebanon. Some NGOs have trained police officers on the identification of potential trafficking cases.
In addition to the aid provided by the NGOs, foreign embassies also provide monitoring and assistance to their nationals once they are identified as victims of abuse or exploitation. Most foreign victims prefer to return to their countries of origin at the earliest time possible instead of appearing in court.

In summary, Lebanon has demonstrated progress in its fight against human trafficking through its law enforcement efforts, the General Security-conducted awareness raising sessions on human trafficking for its staff, and the inclusion of a trafficking component in the human rights training for ISF officers provided by both the ISF and the General Security.

### Punishment for Perpetrators of Human Trafficking in Lebanon

The Law No. 164/2011 stipulates high penalties for human trafficking offenses, especially when its victims are vulnerable persons. Under Article 586–5 of this law, human trafficking is a crime for which punishment is detention for a term of between 5 and 15 years and payment of a fine ranging from 100 to 600 times the official minimum wage. The penalty for trafficking shall be increased in any of the following cases:

- If the perpetrator, the accomplice, the accessory, or the instigator of the crime is a public servant, a person in charge of a public service, the director of or an employee in a recruiting office, or one of the victim’s ancestors
- If the crime was committed by a group of two or more persons that are committing criminal acts in Lebanon or in more than one country
- If the crime involves more than one victim
- If the crime implies serious harm to the victim or leads to the exposure of the victim to a life-threatening disease or to death, including suicide
- If the crime involves a child, a vulnerable person such as a pregnant woman, or a person who is physically or mentally disabled

In accordance with Articles 586.6 and 586.7, these penalties can be imposed on anyone who may also benefit from mitigating circumstances clauses within both articles that promise waived or lessened penalties if these crimes are reported and subsequently prevented or the perpetrators arrested. It is worth noting that these penalties are sufficiently stringent and commensurate with those prescribed for other serious crimes in Lebanon, such as rape. Finally, under Article 586.10, any funds derived from human trafficking are confiscated from perpetrators and deposited in a special account at the Ministry of Social Affairs to help the victims (Art. 586–10).

### Preventive Measures

At the local level, the Lebanese people often complain about the fact that the issue of “crime and development” is not being tackled and that the country’s economic situation is not considered as a cause of criminal behavior. However, the relationship
between human trafficking and poverty is clear. Both individual and societal economic situations play important roles in the constitution of criminal motives within the person who may be more likely to engage in criminal behavior; this is especially true in the absence of a national strategy for economic development that raises the socioeconomic level of the individual and presents job opportunities as a means for preventing crimes.

Analysis has shown a relationship between the quality of criminality and its prevalence on one hand and the development of criminality on the other. Remote marginalized areas in Lebanon are more commonly exposed to different kinds of crimes, especially those of human trafficking, drug use and dealing, the smuggling of migrants, and gang recruitment. Child labor in Lebanon is caused by poverty, a lack of education, early school dropout, and the many wars that have deteriorated the country. The 2006 UN survey found that most victimized Lebanese girls experienced extreme poverty, early marriage, and sexual abuse prior to becoming involved in prostitution. Poverty is not a mere absence of income in those areas; it is also an absence of education, of the possibility of political participation, decent work, and security as well as the lack of sufficient resources and inequality in development. Therefore, this criminality does not only pose a threat to Lebanese people as individuals but also poses a threat to the State as a whole and to internationally recognized human rights.

In order to prevent the ongoing occurrence of crimes or to reduce the chances of their occurrence, there is a need to care for the Lebanese citizen as a human being. Attention must be paid to their education and liberation, and promotion required of their real humanity while they cease committing non-permitted or illegal acts. This can be accomplished through the strategies described below.

**Conclusion**

Important steps have been taken to strengthen anti-trafficking strategies in Lebanon, the major achievement being the creation of specialized Law Number 164/2011, which created a basis for strengthening the legislative anti-trafficking framework in Lebanon. Both Lebanese authorities and nongovernmental organizations have increased activities that aim to raise awareness and prevent practices and measures that can lead to trafficking, in addition to help various vulnerable groups, and these groups have considerably improved their efforts to protect the victims of these practices.

Despite challenges, Lebanon is making significant efforts to meet the minimum standards needed to eliminate trafficking by investigating and prosecuting trafficking offenders. Authorities recently dismantled an extensive sex trafficking ring that exploited women and girls, which led to the subsequent conviction of numerous traffickers. The country continues to identify trafficking victims and partner with NGOs and international organizations to provide the appropriate protection services for victims.
Nevertheless, despite Lebanon’s significant progress, there remains an urgent need to follow additional preventive strategies in parallel with the application of Law No. 164/2011. Lebanon must eliminate the bases for such crimes by:

- Improving the quality of life and promoting better living standards for the Lebanese people
- Reducing the risks of victimization and vulnerability in daily life
- Eradicating unemployment through effective and balanced development and crime prevention policies
- Ensuring youth engagement in education and cultural and social activities to prevent vulnerability and victimization
- Stressing the importance of public knowledge and awareness in order to prevent human trafficking and other crimes
- Promoting activities that discourage marginalization and exclusion

Since Lebanon’s security establishment is considered the primary link between individuals and the judiciary, the best defense against human trafficking lies in guaranteeing the timely access to adequate information for security institutions, sometimes even without having physical borders as a hindrance to the transmission of this information. In order to ensure the efficiency of this information transfer, several steps should be taken at the international, regional, and local levels including:

- The consolidation of border controls and the closing of roads to all transnational crime
- The promotion of both regional and international joint communication with the personnel of Prosecutors’ offices in foreign countries, as well as with police officers, customs officers, and all preliminary and primary investigation units
- Most importantly, the demonstration of political will to apply the laws and bring criminals to justice

There is a need to replace the old criminal system with one that is based on modern objectives and procedural punitive rules for the criminalization, prosecution, investigation, and punishment of human trafficking, including:

- The implementation of efficient and effective international agreements, especially the three protocols of the Palermo convention and the Merida convention.
- The promotion of “community policing” and the improvement of police performance in order to improve the chances that trafficking victims will aid in the development of knowledge about traffickers and in the apprehension of perpetrators and in order to strengthen the public’s cooperation with law enforcement agencies.
- The protection of witnesses, victims, and repentant criminals, as their participation assists in the identification, investigation, and apprehension of criminals.
- The collection of accurate statistics and proper data management to better inform policy making and help counter the many factors of human trafficking.
• The involvement of civil society and the greater participation of female law enforcement officers in investigating and prosecuting agencies, especially those related to security. The addition of a “feminine element” in trafficking investigations may make more efficient the disclosure of human trafficking as related to reputations of victims or accused women by putting female victims at ease.

• The promotion of ethics among security agents, with an emphasis placed on openness, professionalism, honesty, and integrity, in order to entice them to take advantage of training opportunities that add to their personal and professional development and help in combatting trafficking.

• The increase of awareness and the dissemination of knowledge on the concept of human trafficking.

• The development of a sense of responsibility toward combatting human trafficking for each individual in Lebanese society.

Despite a number of recommendations, it is likely that Lebanese legislators will not demonstrate resistance in continuing the development of its anti-trafficking policies. Lebanese legislators have always taken steps to advance Lebanese anti-trafficking policy and align the country with the most modern criminal legislations in the world.

Cross-References

▶ How to Effectively Approach and Calculate Restitution for a Victim of Human Trafficking
▶ The Investigation and Prosecution of Traffickers: Challenges and Opportunities
▶ The NGO Response to Human Trafficking: Challenges, Opportunities, and Constraints
▶ UN Palermo Trafficking Protocol Eighteen Years On: A Critique

Further Reading

Fighting money laundering Law no. 44 dated 24 November 2015 (AML/CFT Law) concerning efforts to combat financing of terrorism and prevent money laundering published in the Official Gazette No 48 dated 26 November 2015.

Implementation Decree for Lebanon’s Anti-Trafficking Law – Number 12 issued in July 2012 for the purpose of supporting the implementation of the law Number 164/2011

Integration of the Human Rights of Women and A Gender Perspective Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda


Lebanese NGO’S Website

www.kafa.org.lb
www.worldvision.org.lb
www.alefliban.org
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www.heartlandalliance.org/international
Strategies to Restore Justice for Sex Trafficked Native Women

Christine Stark

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Abstract

This chapter historicizes the sex trafficking of Indigenous women in Central and North America beginning with Christopher Columbus, extending through the contemporary prostitution, and trafficking of Native and First Nation women. After analyzing prostitution and sex trafficking as central to colonization historically and contemporaneously, a strategy is outlined using civil litigation legal remedies in conjunction with developing a support system for the victims.

Keywords

Columbus · Indigenous · Colonization · Sex trafficking · Civil litigation · Gynemutilation

Introduction

This chapter examines the history of European sex trafficking of Indigenous women beginning with Columbus in the Caribbean through the colonial era in North America to the contemporary prostitution and trafficking of Native American and First Nation women. A focus on waterways and their connections with prostitution and trafficking via Red-Light Districts provides historical context for the institutionalized prostitution and trafficking in ports and surrounding areas, using the Duluth, Minnesota and Thunder Bay, Ontario ports as examples. The disparities Indigenous women in North America experience due to the ongoing effects of colonization and how they inform the disproportionate involvement of Indigenous women in prostitution and trafficking are outlined. Finally, using civil litigation along with providing culturally appropriate support to the victims is examined as a comprehensive strategy to restore justice to prostituted and sex trafficked Indigenous women in North America.

Using definitions and guidelines from the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol) and United Nations Declaration on the Rights of Indigenous Peoples (UNIDRP) provide context for the prostitution and trafficking of Indigenous women and supports their rights in North America, especially those in the Duluth and Thunder Bay ports and surrounding area. This chapter identifies a legal strategy best suited to restore justice to Indigenous prostituted and trafficked women and therefore to Indigenous peoples by connecting civil litigation attorneys, abolitionists, and Indigenous advocates. Engaging with historical and contemporary prostitution and trafficking of Indigenous women will bring forward the first women sex trafficked in Central and North America as part of the colonization of Native peoples. This is a crucial step toward ensuring that all are included in the work to diminish, prevent, and eventually cease the global injustices of prostitution and sex trafficking.
History of Sex Trafficking of Indigenous Women in North America

Columbus and Slavery

Increasing resistance from Indigenous people regarding the veracity of Christopher Columbus’s expedition has revealed the brutality unleashed on the American continent and its people by Columbus and the European countries that arrived after his initial voyage (see Dunbar-Ortiz 2014). “Columbus’s very first business venture in the New World consisted of sending four caravels loaded to capacity with 550 Natives back to Europe to be auctioned off in the markets of the Mediterranean” (Resendez 2013, pp. 3–4). Columbus made three expeditions sanctioned by the Doctrine of Discovery, an international law that declared war on all non-Christians and approved the conquest of non-Christian people and their territories (Vera 2011, p. 455). In 1493, “following the ‘discoveries’ made by Columbus in the Americas, Pope Alexander VI issued the bull Inter Caetera, which indicated more explicitly that only Christian rulers could legitimately claim land ownership” (Vera 2011, p. 455). The bull Inter Caetera further condoned centuries of the attempted genocide of Indigenous people, including the enslavement of 2.5–5 million Indigenous people (Resendez 2013), death from disease (Silverman 2013), murder and dismemberment, land theft, destruction of animals and natural resources, starvation, removal, forced religious conversion, and unjust treaties ultimately resulting in a 90% decrease of the Indigenous population (Resendez 2013; Dunbar-Ortiz 2014).

What is lesser known is that Columbus and his men also raped, abducted, traded, and sold Indigenous women and girls for sexual exploitation (see Colon 1992). In 1500 Columbus wrote “A hundred Castellanos are as easily obtained for a woman as for a farm, and it is very general and there are plenty of dealers who go about looking for girls; those from nine to ten are now in demand” (Columbus 2003). Most Indian slaves were women and children, with Indian women being more valued than men due to sexual exploitation and reproductive capabilities (Resendez 2013, p. 6). European enslavement of Indians “constitutes an obvious antecedent to the sex traffic that occurs today” (Resendez 2013, p. 3). Columbus and his men were the first known sex traffickers of the Americas, making the sex trafficking of Indigenous girls and women a central component of the colonization of the Americas.

Colonial Era and American Revolution

The social, political, and cultural instability during the colonial era and American Revolution involved ongoing warfare, shifting allegiances among Indigenous and European nations, enslavement, and relocation of Indigenous people. Indigenous women and girls were particularly at-risk “...as females during wartime, colonial expansion, and slavery... [are] especially vulnerable to the sexual violence that so often accompanied conquest...” (Miles 2008, p. 63). Prostituted women traveled with military regiments and brothels were prevalent in the first 13 colonies.
(Gill 2001; Burrows and Wallace 1999). During the American Revolution, military leader George Washington ordered, “Lay waste all the [native] settlements around...that the country may not be merely overrun but destroyed” (“From George Washington” 2002). “Washington’s troops put to death all the women and children, excepting some of the young women, whom they carried away for the use of their soldiers and were afterwards put to death in a more shameful manner” (Sjursen 2018). In 1778, white men murdered a Cherokee woman and enslaved her young daughter who lived her entire life as a slave although enslavement of Native people had been illegal the year before she was captured (Miles 2008).

**Colonial Expansion and Christianity**

As colonization expanded, taking Native land and the sexual exploitation of Native women were justified by Christian leaders who pronounced the untamed land and Native people living on it were part of Satan’s kingdom (Pierce 2015, p. 65). Native women were often equated with being “whores” (see Bird 1999; Merskin 2010). Some argue “squat” was derived from slang for vagina which came to mean “prostitute” (Monmonier 2006, pp. 3, 52), rendering Native women as a group to the status of whores.

In Canada during colonial times, the treatment of First Nation women was described as worse than Britain’s worst brothels; First Nation women were enslaved and traded at fur trade posts; and First Nation women were taken as payment for a male relative’s debt (see Pierce 2015). Canadian men took Anishinaabe women by force and made “great profit, the Masters in the Traffic of Females for the men’s uses” (Bourgeault 1989, pp. 100–101). During colonial expansion, Christianity, the military-states of Great Britain and then Canada, and commerce were powerful forces for the sexual abuse of Indigenous women. Canada’s historical treatment of Indigenous women was a by-product of colonialism that has perpetuated modern-day sex trafficking of First Nation women.

**“Gynemutilation”**

The European view of Native women as whorish and “fallen” contrasted to the matrilineal cultures of many Native tribes (Riel-Johns 2016, p. 36). In many tribes, Native men who abused women could be banished or killed. Therefore, the colonizers’ racist misogyny would have been unimaginable to Native people. Indeed, European men’s violence directed at Native women can be called “gynemutilation,” a term created by the author indicating the extreme sexual mutilation particularly exhibited against Indigenous women, other women-of-color, and prostituted and trafficked women. For example, in 1864 at Sand Creek, soldiers killed, scalped, and mutilated a group of primarily Cheyenne women and children. The soldiers cut out the Cheyenne women’s private parts and wore them over their saddle horns and on their hats (Pierce 2015, p. 70). In 1871, citizens attacked “Apaches camped at Fort
Grant---... ‘two of the best-looking of the squaws were lying in such a position, and from the appearance of the genital organs and of their wounds, there can be no doubt that they were first ravished and then shot dead...’" (Pierce 2015, p. 70). Settlers and soldiers committed violence against Native women, fusing their view of Indian women as whores with westward expansion.

**Boarding Schools**

The US and Canadian governments created boarding schools to assimilate Indigenous children and tribes (see Booth, 2009). “[O]fficials and agents recruited, forced, or coerced children into government schools” (Booth 2009, p. 1). Sometimes police kidnapped children from their homes. Children were isolated and did not see their families for years (Booth 2009, p. 2). Schools were unsanitary, overcrowded, lacked qualified teachers, and forced Christianity on the children. Children were severely punished, ran away, used as child labor, malnourished, and died of disease (Booth 2009, p. 8). The Indian boarding schools use of Indian children for domestic and farm laborers qualifies as child labor trafficking under US Federal Law 18 U.S.C 1589.

The boarding schools instituted dynamics similar to those used by perpetrators of domestic violence, rape, and incest. The schools committed institutionalized abuse of Indigenous children, including sexual and physical violence; murder; starvation; strangulation; medical experimentation; electroshock; other kinds of torture; and pedophile and sex trafficking rings run by clergy, government officials, businessmen, and police (Farley and Lynne 2004, p. 108; Truth Commission Report 2015). The boarding school era groomed generations of Indigenous people for sexual exploitation, including prostitution and trafficking.

**Ports and Waterways**

After the arrival of Europeans, ports and waterways became sites of prostitution and trafficking. Red-Light districts flourished along rivers and seaports. Although the size, visibility, and location of the sex industry varied due to factors such as economic depressions and the industrial revolution, brothels and Red-Light districts were commonly located in working class areas to contain prostitution and the other components often associated such as saloons and gambling (Burrows and Wallace 1999, pp. 483–484). Another connection between ports and prostitution is the slang term “hooker,” often used for “prostitute.” (“Hooker” is thought to have developed from “Corlear’s Hook, adjacent to the shipyards, coal dumps and ironworks” in New York City where “dvores of streetwalkers brazenly solicited industrial workers, sailors, and Brooklyn ferry commuters” (Burrows and Wallace 1999, pp. 483–484).) The historical interconnectedness of prostitution and trafficking on waterways and in ports with land-based prostitution and trafficking is unexamined.

During the Progressive Era (1890–1920), public awareness increased concerning the prostitution and trafficking of European American women. A Chicago judge
wrote the “white slave trafficking is both interstate and international. Not one, but many shipments...come from Paris and other European cities to New York; and from New York to Chicago and other western points.” He describes a national network transporting women and girls throughout the United States (Bell 2018, p. 228). While “white slave trafficking” awareness was racist, steeped in Christian theology, and concerned with saving “fallen” white women (see Donovan 2006), it is a historical glimpse into the structure of prostitution and trafficking that affected Indigenous women and girls, leaving a legacy of abuse.

**Duluth Port: A Case Study**

Duluth, Minnesota, is a revealing case study of the connections among waterways, ports, commerce, and the historical and contemporary prostitution and trafficking of Native American and First Nation women. Eight Anishinabe reservations in Minnesota and Wisconsin are within 129 miles of Duluth. Duluth is also a political and social center for Canadian Anishinaabeg. Superior, Wisconsin is 6 miles south of Duluth and has an international port. The Thunder Bay, Ontario port, is 184 miles northeast of Duluth. The Duluth-Superior ports have been the “backbone of the region’s economy for well over a century” (“Duluth Seaway” n.d.). Minnesota’s economic history involves fur trading, fishing, mineral extraction, grain, and lumber. The Iron Range, west of Duluth, was (and is) responsible for supplying most of steel to the US Natural resources surrounding Duluth and the railroad industries created significant commerce for the port, city, and state. Currently, “the cargo handled at the Port of Duluth-Superior generate[s] $545.7 million...in the Great Lakes regional economy”; in addition, “[a] total of $156.3 million in state and federal taxes were generated by cargo and vessel activity at the Port of Duluth-Superior” (Martin 2011, p. 12). Tourism in Duluth generates an estimated $400 million annually (“Minnesota Sea” 2016). Due to the wealth created from the resources and location of reservations and ports, Duluth is a prime example of geography informing where, how, and to whom prostitution and trafficking occur. The Duluth port and surrounding area were and continue to be the locus for the prostitution and trafficking of Indigenous women and girls within hundreds of miles.

**Historical Evidence of Prostitution and Trafficking Around Duluth**

Although it is often believed that systems of prostitution and trafficking developed recently, or only occur in urban areas, historical evidence suggests otherwise. For instance, in 1903 on the edge of the Red Lake Reservation, a “squaw-house-of-ill-fame” existed 190 miles northwest of Duluth in rural, northern Minnesota. “Squaw-house-of-ill-fame” suggests that this brothel provided Indian women for sex. Police records from 1899 to 1911 in Beltrami County (part of the Red Lake Reservation is in Beltrami County) reveal arrests of madams for running houses-of-ill-fame,
along with arrests and fines of other women for “disorderly conduct,” a common charge for women in prostitution. In 1916, a man was arrested for transporting a girl from rural Minnesota to Superior for prostitution (Held under Mann Act 1916). Early residents of Iron Range towns “stated that prostitutes walked the streets by day...” (MAG 2014). It is likely that Native women were the first to be sold, traded, and bought in the Duluth area as they were elsewhere in Central and North America.

**Red-Light Districts in Duluth, Superior, and Thunder Bay**

From the 1830s to the 1930s, the Canal Park area of Duluth was a Red-Light District (Dierckens 2012–2017). Brothels, saloons, and gambling dens lined the streets of Canal Park. In 1906, a chorus girl named Emma Moon disappeared from a brothel. The press reported, “she’d been kidnapped by ‘three lake captains,’ who took her ‘on a trip down the lake.’ Miss Moon’s fate is unclear” (Bakk-Hanson 2012–2017). Duluth police records from the era concerning “sporting people,” a term for prostituted women, pimps, and johns, indicate extensive interactions among police and “sporting people.” Police ledgers list the race of some arrested women as “Indian” and their occupation as “Whore” (Duluth Police 1887–1902).

Superior also had a Red-Light District. In 1901 the Superior Mayor said a city council member operated a brothel and wanted to open another near his saloon that he and another Council member financially benefited from (“June 19, 1901” 2018). O’Kash, a former Superior police officer, states prostitution in the port was common knowledge among officers and many citizens (1994), indicating historical institutional awareness and involvement of authorities in prostitution. He discusses a police officer who “visited” prostitutes along with widespread speculation that a Superior Police Chief’s wealth was due to payments from brothels.

Similarly, Thunder Bay “has a long-standing history of brothels and prostitution” (Wesley 2015). When a Thunder Bay mayor was a cop in the 1970s, he was told the “brothels were tolerated as part of the community” and “had always been there...” (Wesley 2015). Records document nearly 200 years of prostitution and trafficking in the Duluth/Superior area with police involvement in and complicity. Therefore, the police have been actively involved in furthering colonization against Native people.

**Contemporary Disparities in North American Indigenous Women’s Lives**

**Disparities in Native American Women’s Lives in US**

Centuries of colonization and historical trauma have resulted in numerous disparities for contemporary Native women, positioning them differently from other groups in the US. These disparities are evident in income, violence, PTSD,
housing, child removal, and incarceration. Native women earn 57% of what white men earn. The more education Native women obtain, the less they make in contrast to comparatively educated white men (“National Women’s” 2015). Native women suffer higher rates of violence in the US than any other group, including Black males. Sixty-one percent of Native American women have been assaulted and 34% will be raped in their lifetime (Tjaden and Thoennes 2000), and they have the highest rate of domestic violence at 39% (Center for Disease 2008). Evocative of historical “gynemutilation,” when physically assaulted Native women are more likely to be injured than other women are and more of these injuries need medical care (Bachman et al. 2008). On some US reservations, Native women are murdered at higher than ten times the national rate (Perrelli 2011). Despite that most perpetrators of violence against women are intra-racial, for Native women, most perpetrators are interracial. Sixty-seven percent are white men (Bachman et al. 2008). Native women have high rates of Post-Traumatic Stress Disorder (Bassett et al. 2014, p. 417). Indian children are removed from their families at higher rates than any other race and often placed in non-Native families, despite federal legislation stating Indian children should be placed in Native homes. Native women are incarcerated six times more than white women (Flanagin 2015). In Minneapolis, Native women “were stopped, searched and arrested at higher rates than any other demographic group, including black men…” for being “suspicious persons” in an area with high rates of sex trafficking, indicating a connection between the view of Native women as prostitutes and police behavior (Jany 2018).

Disparities in First Nation Women’s Lives in Canada

First Nation women in Canada have similar disparities. Aboriginal families’ median income is 30% less than other Canadian families. Approximately 25% of First Nation women have a high school degree or equivalent and slightly more than 25% of First Nation women do not have a high school diploma or equivalent (Wilson and Macdonald 2010, p. 16). “Aboriginal people...are ten times more likely than non-Aboriginal people to become homeless” (McCallum and Isaac 2011, p. 9). First Nation “women are seven times more likely to die of violence than other Canadian women” (Kubik and Bourassa 2016, p. 23). Up to 4000 First Nation women are missing and murdered (Kassam 2017). More First Nation children are removed from their families now than during the boarding school era (“First Nations” 2011). Aboriginal women are one in three of all federally sentenced women, despite being less than 3% of the population (Vallee 2018). Furthermore, Human Rights Watch states police are perpetrators of violence against Indigenous women (Kubik and Bourassa 2016, p. 22). These disparities are the context out of which Indigenous women and girls are disproportionately prostituted and trafficked.
Contemporary Prostitution and Trafficking of Indigenous Women in North America

Prostituted and Trafficked Native Women in the US

The disparities experienced by Native American and First Nation women make them more vulnerable to prostitution and trafficking. These disparities are further compounded by the violence and dehumanization of prostitution and trafficking. Indigenous women are disproportionately in prostitution and trafficking. “Across four sites surveyed in the US and Canada, an average of 40% of the women involved in sex trafficking identified as” Indigenous (Sweet 2015). In “Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota” roughly half of the women met the US federal definition of prostitution, pointing to roughly half of the respondents’ involvement in “survival sex” in lieu of livable wages (Farley et al. 2011). In “Garden of Truth,” 92% of the women wanted to leave prostitution, reinforcing the notion that women are in prostitution due to a lack of viable choices. Ninety-eight percent were currently or previously homeless, pointing to the vulnerability to sexual exploitation that homelessness creates and to the homelessness sometimes created by prostitution and trafficking. More than 2/3 of the women had family members who had been in boarding schools. Involvement with child welfare was commonplace as nearly half of the women had been in foster care, and almost half were abused in foster care. As children, the women were placed in Native foster homes just over 1/3 of the time. The women also experience extremely high rates of sexual violence. Nearly 80% of the women in “Garden of Truth” had been sexually abused as children by an average of four perpetrators. Ninety-two percent reported being raped; 84% experienced physical violence; and 72% suffered traumatic brain injuries in prostitution. Fifty-two percent of the women experienced PTSD, a rate comparable to combat war veterans. Similar to other kinds of sexual violence committed against Native women, white men had bought 78% of the women. Articulating 500 years of colonization, one of the johns said: “I thought we killed all of you” (Farley et al. 2011).

Prostituted and Trafficked First Nation Women in Canada

In a 2005 Canadian study on prostitution and trafficking 52% of the women were First Nation. Statistics reveal ninety-six percent of those women were sexually abused in childhood; 81% experienced childhood physical abuse; 88% were physically assaulted in prostitution; 92% were raped in prostitution; and 83% were homeless” (“Sexual Exploitation” 2014). A Government of Canada website states “of the approximately 400 children and youth exploited in Winnipeg every year, a high of 70–80% were of Aboriginal descent. . .” (“Sexual Exploitation” 2014). An example of “gynemutilation” is the Pickton pig farm in Vancouver, Canada. Over 30 women’s remains were found on
the farm; 1/3 of the women found on the farm were First Nation (Gerald 2014). Robert Pickton, a john, killed the women and fed their bodies to the pigs (Parry 2006). Many of the women had attended sex parties on the farm along with the Vancouver mayor, other politicians, police, and Hell’s Angels, indicating collusion among powerful men and a crime syndicate (Parry 2006).

**Contemporary Prostitution and Trafficking of Native Women in Duluth**

The contemporary prostitution and trafficking of Native women and youth is institutionalized in Duluth, its port, and surrounding area. Native women and youth from Duluth and surrounding towns and reservations have been recruited for prostitution and trafficking in Duluth for decades. Although it is generally agreed upon that access to the ships has decreased since the early 2000s, multiple sources state that Native women, teenage girls and boys, and babies have been bought and sold on the ships after 2000. “In 2002 Duluth police found evidence that three traffickers had trafficked up to ten women and girls on foreign ships in the port” (Farley et al. 2011, p. 26). In 2011, a Native woman stated that Native women, girls, and boys have been transported from northern Minnesota towns and reservations to the ships in the Duluth port and then sent overseas. In 2012 Duluth police officer Scott Drewlo said:

> What we have found with the Native girls from the reservations is there is quite a bit of recruitment, enticement, and I look at it as kidnaping from pimps. A girl, who was sixteen at the time, was literally sold to the crew of a boat [in Duluth port] and she was held captive on board this vessel as it made its way up and down the Great Lakes. They are [pimps] identifying the disenfranchised segment of a population and in this area, they choose to focus on the reservations. (g3nerations 2012)

In research conducted by the author as part of her graduate course work at the University of Minnesota at Duluth and with Mending the Sacred Hoop, another Native woman said she and other Native women had been sold to sailors on the ships at least into 2013 by professional and street-level male traffickers (Stark 2013). Native women and youth have reportedly been trafficked out of the Duluth port to other cities from Toledo down to New Orleans and Thunder Bay and Toronto. Indigenous women also report being trafficked into Duluth from Canada (Stark 2013). This constitutes international trafficking under the Palermo Protocol in Anex II, Articles 3 and 4 (United Nations Office on Drugs and Crime 2004, pp. 42–43). The past and current prostitution and trafficking in the Duluth port is a system of sexual exploitation involving the complicity, perpetration, and collaboration of traffickers and third party facilitators (Third party facilitators are those who under 18 U.S.C. 1591(a)(2) “(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1).”) including ship captains, sailors, taxi cab drivers, hotels, bars, foster care providers, brothels, street pimps, dockworkers, dock security
workers, organized crime, gangs, professionals in the criminal justice system, and others in Duluth/Superior area. This network recruited, lied to, and coerced Native women, girls, and boys onto the ships for what was often euphemistically referred to as “the parties on the boats” (Stark 2013). However, after getting the women drunk, crewmembers would “run a train,” a euphemism for gang rape, thus grooming the women for future exploitation.

Some Native women and teens were abducted and sold through gang activity. “According to Drewlo, organized crime in the form of gangs has played a large role in trafficking girls in and around Duluth for years” (Pember 2012). Drewlo explained one girl “was locked in a cabin on the boat for days while the crew raped her repeatedly. She managed to escape when the ship was in port in Cleveland and made her way back to Duluth, where she contacted police. In the end, however, she was too frightened to testify and disappeared” (Pember 2012). One woman woke on a moving ship to three men discussing whom they were going to sell her to in Thunder Bay. Five of her friends disappeared on the ships (Stark 2013) – strikingly similar to the 1906 disappearance of Moon. Anishinaabe journalist Annette Pember says, “We all knew about women who disappeared to ‘work the boats’... The story of the boat whore... visits destruction on the powerless yet holds them responsible” (2012). One Anishinaabe man who had female and male relatives used on the ships recounted the trauma his relatives experienced from being sold on the ships along with the trauma he experienced from witnessing the harm caused to his family. He spoke powerfully to the intra- and intergenerational harm to families. One time he went onto a ship to look for his teenage cousin who had been on the ship for months. He found her in a small room that “smelled of sex,” where she had been held. He said they performed an abortion on her while on the water (Stark 2013).

**Contemporary Prostitution and Trafficking of First Nation Women in Thunder Bay**

The US State Department recognizes Canada “as a source, transit corridor and destination country for sex trafficking, and calls women from aboriginal communities ‘especially vulnerable’” (Grant 2016). First Nation women and girls are also reportedly sold in and out of the Thunder Bay port. One high-ranking Ontario Provincial Police officer stated, “it wouldn’t be a surprise women were in the sex trade business,” on the ships (“Ojibway woman” 2013). In Thunder Bay in the mid-1970s, Bridget Perrier was sexually abused at eight and placed in foster care. At 12, she was sold for “sex parties on cargo vessels out of the Port of Thunder Bay to Duluth, Minn.” The “men were very violent” (Mitchell 2015). On occasion, the captain who sold Perrier took her from Thunder Bay to Duluth. Perrier returned home eventually, but others did not. Sometimes sailors took Thunder Bay girls onto the ships (“Former child” 2013). A sailor told Perrier they could throw girls overboard and they would never be found. According to Perrier, there were “many girls. This is Thunder Bay’s little secret” (Parry 2006). Unknown is how many Indigenous women disappeared on the ships – into the waters or on land far from their homes.
Using Civil Litigation with Support Systems to Deliver Justice to Prostituted and Trafficked Indigenous Women in North America

Legal Strategies

Obtaining justice for Indigenous women in prostitution and trafficking through the US and Canadian legal systems is inseparable from the historical trauma, sovereignty of Indigenous nations, socioeconomic disparities of Indigenous women, violence against Indigenous women, and issues specific to prostitution and trafficking. (While many view the demand for reparations as part of an anti-colonial strategy, some argue that rather than use colonial courts, it is “more appropriate to use bodies that adjudicate disputes between nations, such as the United Nations.” However, such strategies cannot work in the US as the US does not agree to such measures (Smith 2004).) Therefore, legal strategies to end the prostitution and sex trafficking of Indigenous women must address their unique legal and political positions in North America. Given that the US and Canadian criminal justice systems are rooted in the colonization of Indigenous people and continue to fail and foster distrust in Indigenous communities, other means of obtaining justice should be explored alongside the reform of the criminal justice system currently being sought by some Indigenous advocates (see Deer 2015). One potentially effective legal strategy for Indigenous prostituted and trafficked women in North America consists of using civil litigation in conjunction with culturally appropriate support systems for the victims.

In the US and Canada, the focus of using the court system to pursue legal remedies for sex trafficking victims has primarily been in the context of criminal prosecutions. Pursuing criminal charges poses significant obstacles for Indigenous prostituted and trafficked women. First, all 50 US states criminalize those who prostitute or who cannot prove the US federal definition of trafficking of “force, fraud, or coercion” (U.S. Department of State 2013). Unlike the US, Canada’s Bill C36 acknowledges prostitution as a site of extreme violence against women. Canada’s Bill C36 is similar to the Nordic Model in that it criminalizes buying and selling people for sex and does not distinguish between “prostitution” and “sex trafficking.” However, unlike the Nordic Model in other countries, Canada’s C36 has a communication provision that continues to criminalize the prostituted woman if the act occurs in a public area where there might be children (“For the Record” 2014), thus making that aspect of the bill like the US’s criminalization of prostitution. Although decriminalizing prostitute people is contentious, and prostitution is sometimes viewed as a “choice,” separating prostitution from trafficking is unjust as it criminalizes poor, homeless, addicted, previously trafficked women many of whom were first bought and sold as youth, who must choose between prostitution and survival (Native Women’s 2014). This division is particularly egregious for Indigenous women due to the historical and contemporary impact of colonization that has resulted in disproportionate involvement of Indigenous women and youth in prostitution. The Native Women’s Association of Canada states “Aboriginal women have the right to protection and safety of the law regardless of the views of others that they
are choosing prostitution” (Native Women’s 2014, p. 34). In “Garden of Truth,” about half of the women could be charged as criminals despite the disparities leading to their involvement in prostitution (Farley et al. 2011). That 92–95% of Indigenous women want to leave prostitution and trafficking is an indication that the women are restrained and controlled by a variety of factors detailed earlier in this chapter; however, these factors do not all meet the legal definitions of trafficking in the USA and Canada. This leaves many women to be viewed as engaging in prostitution through “choice” rather than due to systemic discrimination and therefore lack of choice (“Native Women’s” 2014, p. 26). Pursuing justice for Indigenous women using the criminal courts creates a legal barrier for prostituted Indigenous women. First Nation prostituted women say the focus is “on persecuting the women, but not on pursuing the traffickers, johns or pimps . . . ” Others “remarked that women would be unlikely to go to the police because police were potential johns” (“Native Women’s” 2014, p. 53).

Second, the US government has repeatedly undermined the sovereign status of Indian nations. “Manifest Destiny naturally grew out of the principles and elements of the Doctrine . . . it was specifically anticipated and intended that Manifest Destiny would be a disaster for the Indian nations . . . ” (Miller 2011, p. 336). In 1823, the Supreme Court ruled in Johnson v. M’Intosh that the Piankeshaw could only sell their land to the US government. This undercut the sovereignty of Indian nations by arguing that the USA, via inheriting Great Britain’s claim of ownership of land in the USA, owned the land preemptively. Native people were simply occupants, not owners (JUSTIA n.d.). The Supreme Court rooted its decision in Johnson v. M’Intosh in the Papal Bulls and the Doctrine of Discovery (Vera 2011, pp. 467–468). Reliance upon the US and Canadian criminal justice systems by Indigenous victims and nations rests upon a biased historical precedence that affects contemporary criminal justice system responses toward Indigenous victims and nations. United Nations says “ . . . aboriginal women continue to suffer high levels of violence with insufficient criminal liability and without having adequate access to justice” (Mitchell 2015).

Additionally, Native women encounter complicated jurisdictional issues that other women do not, diminishing Native agency. Unlike other US citizens, US Attorneys decide whether to prosecute on behalf of Native victims. US Attorneys decline “to prosecute 67% of sexual abuse . . . ” cases (U.S. Government Accountability 2010, p. 9). Given the multiple barriers, Indigenous prostituted and trafficked women face, successfully prosecuting a criminal case on behalf of Native prostituted and trafficked women seems improbable.

**Pursuing Civil Litigation**

Pursuing civil litigation for the harm caused to Native prostituted and trafficked women can be an effective legal strategy. Both the US (18 US Code 1595 in TVPRA 2003) and Canada (Bill C-49) have specific provisions for using civil litigation for trafficking survivors. Although civil litigation is still based in a European judicial
system (Common Law n.d.) and cultural barriers exist between Indigenous communities and European-based courts (Harpe and Rupertsland 1999), in civil court charges are not instigated by a police investigation so the women are not required to engage with or be dependent upon the police; rather civil litigants are plaintiffs in the legal action they pursue. Private investigators gather evidence for plaintiffs’ attorneys. Therefore, a source outside the criminal justice system, working with the plaintiffs’ attorneys rather than the state, conducts the investigation and is less apt to be controlled by or feel loyalty to peers, co-workers, or the “blue wall.” (The UN addresses the difficulties prostituted and trafficked women experience with law enforcement, stating that “one of this Protocol’s primary goals is to maintain a careful balance between law enforcement and victim protection” (Barnett 2006).)

Second, civil litigation could potentially bring justice to a larger number of exploited Indigenous women as it might be possible to use civil litigation for women who meet the definition of prostitution using the 1984 Minneapolis Civil Ordinance as a model (Appendix: The Dworkin/MacKinnon… 1985). The Minneapolis Civil Ordinance hinges on the harm caused during the making of the pornography, stating that anyone “coerced, intimidated, or fraudulently induced… into performing for pornography shall have a cause of action….” The Ordinance also specifically allows someone who “knew that the purpose of the acts or events in question was to make pornography…” to file a civil lawsuit (Appendix:… 1985). Although the Ordinance twice passed Minneapolis City Council, the mayor vetoed it both times (MacKinnon and Dworkin 1997). Since then, however, victims harmed in the making of pornography have successfully used civil litigation seeking “restitution under VAWA, as authorized by the Crime Victims’ Rights Act, for harm…” (Laird 2012). Therefore, it is plausible to challenge the preclusion of prostitution in the US and Canadian federal definitions by using civil litigation based upon the harm committed against the “prostitute person” regardless of whether there was “force, fraud or coercion” in her or his entry into the act. Nowhere in the trigger for civil legislation does it state that “force, fraud or coercion” must be proven for a cause of action to be brought, so why do the US and Canada apply this requirement for someone harmed in prostitution? The federal definitions are based on antiquated and sexist ideas about women and not in an understanding of the interconnectedness among sexual exploitation, colonization, racism, sexism, homophobia, transphobia, ableism, homelessness, and poverty evident in prostitution. Historically, at the core of these outdated ideas about choice and prostitution are Indigenous prostituted women, who continue to pay with their lives for the ideas, actions, and institutions imposed on them by Europeans.

Next, civil litigation grants increased agency and sovereignty of the individual(s) because a civil lawsuit is filed with the victim as the plaintiff rather than through the state. In criminal court, prosecutors represent the state or government rather than the victim, and for Native and First Nation prostituted and trafficked women, this distinction is important. While there are ethical and brave US and Canadian Attorneys, they are beholden to the system in ways that civil attorneys are not. Even for those willing to challenge the system, others in the criminal justice system can influence or outright prevent them from prosecuting (see “Robert Pickton case” 2015). Given the institutional power and outright corruption those in the criminal
justice system would have to challenge, how many have the political will and ability to do so, and will risk their careers for Native prostituted women? In addition, the state – from public perception and tourism to financial ties between political powerbrokers and businesses – is often connected with and benefits from systems of prostitution and trafficking. This is particularly apparent when considering the considerable amount of money derived from tourism, employment, and taxes paid by businesses benefitting directly and indirectly from prostitution and trafficking. Tremendous political pressure would be put upon a US Attorney and others to not proceed with a case representing Indigenous women as prostitution and trafficking are industries generating billions of dollars globally. Cases with international connections also involve international diplomatic nation-state and trade relationships. Since prostitution and trafficking are part of the GNP and may involve international politics, nongovernmental entities are more likely to pursue justice for Native prostituted and trafficked women. One possible limitation of using civil legislation is that a payment “suggests that the US simply needs to pay a lump sum to cover its past and ongoing injustices and then absolve itself of the responsibility to transform institutionalized structures of white supremacy” (Smith 2004). While this is an important point, benefits could still occur from an individual civil case won by an Indigenous victim such as monetary assistance, public awareness, and deterrence. However, in consideration of the concern, a Native nation could file a class action suit for the harm caused to the victims, their families, and the nation itself. The harm is particularly profound for Native communities given the historical and intergenerational impact of the prostitution and trafficking of Native women. A class action suit would be similar to the one against Canada regarding the boarding school history, the largest class-action settlement in the history of the country (“Final Report” 2015); the 14 Caribbean countries suing three European countries for the legacy of slavery (Mullins 2013); the civil lawsuit by Washington tribes leveling “racketeering, negligence, conspiracy, unjust enrichment, fraud and other charges against...companies [that] made billions of dollars off the opioid epidemic” (Pilling 2018). Filing a class action lawsuit is akin to the communal traditions of Indigenous cultures and would highlight the need for justice for individual victims along with the community-wide harm caused by those who buy and sell Native people for sex. The tribes could set aside monies won in a civil lawsuit to assist those directly harmed and establish a fund for prevention and other activities the tribe felt would help its citizens similar to the California Trafficking Victims Protections Act (Werner and Kim 2015). Victims would hold perpetrators accountable and obtain practical assistance for themselves and their families, and the tribe could facilitate healing and prevention.

Support for Prostituted and Sex Trafficked Indigenous Women

While it is crucial to have laws in place for prostitution and trafficking victims, without supportive efforts the laws will remain unutilized. To make it feasible for Indigenous prostituted and trafficked women to use civil legislation, other support
should be implemented. First, awareness needs to be raised among survivors, Indigenous communities, and non-Indigenous allies, including allies in the criminal justice system and social services. Second, trainings should inform tribal lawyers and civil lawyers about using civil legislation for prostituted and trafficked Indigenous women. Ideally, given the interconnected relationships between Canadian, US, and Central American Indigenous people along with the cross-border nature of the prostitution and trafficking of Indigenous women, representatives from all three countries should collaborate, including immigration advocates. The right to collaborate with Indigenous nations separated due to national boundaries is outlined in Article 36A of United Nations Indigenous Declaration on the Rights of Indigenous Peoples. The resulting structure must center the sovereignty of Indigenous prostituted and trafficked women, their families, and tribes (United Nations 2008).

Safety for Prostituted and Sex Trafficked Indigenous Women

Another need while pursuing a civil lawsuit is the women’s safety. Indigenous advocates and survivor/advocates are best suited to devise safe houses and other options to support the women and their children to ensure for culturally appropriate and effective services (Wilson and MacDonald 2010, p. 4). These needs will vary based upon the tribes, geography, individual’s circumstances, and other factors. Although nonexistent in Canada, in the US Protection and Advocacy System (P&A) can be utilized to support the women. “P&A is a nationwide network of congressionally mandated, legally based disability rights agencies. P&A agencies have the authority to provide legal representation and other advocacy services, under federal laws, to all people with disabilities.” P&A’s can advocate on behalf of victims of prostitution and trafficking as many of the women would qualify for their services due to psychological and physical disabilities from being hurt in prostitution and trafficking. P&A services also have a specific section for traumatic brain injuries, which are common among prostituted and trafficked women. In addition, to increase safety, P&A services can provide representatives to present testimony in court on behalf of the victims (National Disability 2017).

Duluth as a Case Study

The prostitution and trafficking of Native women in Duluth best fits the 2000 UN Trafficking Protocol. “This definition is intended to include a wide range of cases where individuals are exploited by organized criminal groups, or where there is an element of duress with a transnational aspect. The Protocol specifically provides that the consent of a person to exploitation is irrelevant if there has been any coercion or deception involved, or any benefit granted by the trafficker” (Barnett 2006). This definition provides context and validation to the long-standing harm caused to Indigenous women and communities through systematic prostitution and trafficking. What the UN defined in 2000 has been committed against Indigenous communities
for centuries as part of colonization. Duluth provides an opportunity to envision how using civil litigation could occur in an area with a historically institutionalized system of domestic and international prostitution and trafficking. First, the plaintiff could be an individual victim, a group of victims, a tribe, or a band such as the Fond du Lac Band of Ojibwa. According to the TVPRA of 2003, the plaintiffs would have to have been trafficked within the past 10 years. The tribal government could sue as a sovereign nation, using civil legislation against an individual, group of defendants, corporation, or governmental entity for perpetration, negligence, racketeering, kidnapping, sexual and physical abuse, trafficking, complicity, and lack of protection of its citizens. (Civil legislation could be used by tribes on their reservations against sex traffickers and/or drug traffickers, especially regarding mining camps.) Alternatively, victims could sue individually or as a group for harm on land, in the port, or on the ships. Possible defendants for those used in the port and ships include the Port Authority, ship owners, Coast Guard, security companies monitoring the docks, Homeland Security, and corporate dock owners. The cases that involve transportation on the ships would trigger jurisdictional issues. While there are multiple factors involved in establishing jurisdiction, the Great Lakes are considered inland waters and thus under US jurisdiction (United States Coast Guard n.d.) and US citizens have legal protections from being trafficked in the port and on waterways (Legal Information Institute n.d.). In Duluth, it is imperative to bring in outside forces given the institutionalization of the prostitution and trafficking of Native women; the size and geographical isolation of the city which makes it easier to control the criminal justice system and social services; the enormous amount of money from employment, tourism, taxes related to the port; and the influence of city, county, state, national, and international politics and trade relations. The “Duluth System” maintains and profits off the sale of Native women and youth and cannot be relied on to provide justice.

**Conclusion**

When considering how to impact over 500 years of sex trafficking and prostitution of Indigenous women in North America, developing a strategy utilizing civil litigation in conjunction with supportive services for the plaintiffs has the potential to be more effective than pursuing justice through the criminal courts. This is particularly true in areas such as the Duluth port with its historical and contemporary confluence of Native populations, foreign and domestic influx of men, corporations, industries, natural resources, and institutionalized prostitution and trafficking. While work toward improving the criminal justice system for Indigenous prostituted and trafficked women should continue, collaboration should begin so that Indigenous prostituted and trafficked women can access civil litigation should they choose to do so. This would not only benefit them, their families, and Indigenous communities, civil litigation may be the only feasible way to impact the institutionalization of the prostitution and trafficking of Indigenous women in North America, particularly when corporations, governmental institutions, and organized crime are involved.
Given the historical and contemporary transnational aspect of the sex trafficking and prostitution of Indigenous women, comprehending what Indigenous women have been experiencing for hundreds of years will lead the way toward a future in which no one is bought or sold.

Cross-References

- Family-Based Non-state Torturers Who Traffic Their Daughters: Praxis Principles and Healing Epiphanies
- Human Trafficking in Canada as a Historical Continuation of the 1980s and 1990s Panics over Youth in Sex Trade
- Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications
- The Investigation and Prosecution of Traffickers: Challenges and Opportunities
- The Praxis of Protection: Working with – and Against – Human Trafficking Discourse
- UN Palermo Trafficking Protocol Eighteen Years On: A Critique

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Abstract

Identified as a source, transit, and destination country for human trafficking, issues of human trafficking in China range from forced marriage to forced labor, forced sex work, sale and profitable adoption of babies, and human smuggling. Internationally, the illegal, undocumented migrant status of North Korean defectors has made them easy targets for kidnap and abduction, forced sex work, forced marriage, and forced labor in factories and agriculture. Although forced labor, forced marriages, and forced sex work are significant human trafficking issues in China, the current Chinese laws and campaigns have failed to emphasize these issues. The government should replace the top-down crackdown strategy with a partnership with grassroots organizations and women’s groups to help prevent forced labor and identify trafficked victims, while at the same time providing legal redress to the victims of forced labor, forced marriages, forced sex work, and the sale of children for the abuse they have endured.

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This chapter explores issues associated with human trafficking in China, including forced marriages, forced labor, forced sex work, sale of babies, and human smuggling. This chapter will first historicize human trafficking in China. It will then investigate the scope of human trafficking issues in China. It will subsequently explore the policies and strategies of the state to combat human trafficking issues. The chapter ends with policy recommendations.

History

Prior to the establishment of the People’s Republic of China in 1949, China had “one of the largest and most comprehensive markets for the exchange of human beings in the world” (Watson 1980: 223). During this time, families at all levels of society relied upon sold people to meet their domestic needs such as disposing of unwanted children, procuring servants, and acquiring sexual, reproductive, child-rearing services, leading to an omnipresent market in servants, wives, slaves, concubines, child brides, adopted children, and apprentices (Watson 1976, 1980, 1991; Meijer 1980, Dennerline 1986; Mann 1991; Jaschok 1988; Li 2007; Edgerton-Tarpley 2008; Hsieh 2015; Sommer 2015; Ransmeier 2017). Indeed, the sale of people was by no means a last resort to counteract the effects of natural disasters and human wars. Instead, it was routinely tolerated, facilitated, and actively partaken by family members and community networks as a legitimate solution to family issues (ibid.).

Traffickers were often family members, friends, neighbors, and lovers, situated in a social milieu that accepted the notion that people could be bought and sold as monetary properties. Household heads, who were the patriarchal decision markers, possessed the authoritarian power to buy and sell their children, concubines, servants, wives, and slaves as properties, hence perpetuating the trafficking practice (ibid.).

The market of the sale of people was a response to a shortage of domestic help and reproductive labor. Infanticide and abandonment of females who were perceived as outsiders and nonmembers of the lineage resulted in a lopsided gender ratio that precipitated the sale of women as concubines, slave girls, servants, infant daughters-in-law, wives, or prostitutes to meet the needs of a surplus of single men. Some women were purchased from market intermediaries, whereas major wives were transferred from one household to another through an exchange of marriage payments called bride price. Males were also bought as either adopted heirs in infancy or hereditary slaves by owners (ibid.).

For a thousand years, the sale of a child was legalized by a signed receipt that specified the rights of both buyer and seller in the most minute detail (Watson 1980). Though the statutes of the Qing code (1644–1912) illegalized various forms of sale
of people, it did include provisions that permitted this practice. Families and traffickers regularly appropriated these provisions to argue that impending starvation had forced them to sell their children and that their motivations were charitable, in which cases, they were acquitted by magistrates (ibid.).

During the Republican era (1912–1949), this customary practice became a new crime in the new legal reform, though legal restrictions were counteracted by traffickers’ innovative strategies to continue the practice. Despite legal reforms during this time, brokers, matchmakers, and other local intermediaries continued supplying families with domestic, reproductive, and sexual services through buying and selling people, and many local courts advocated leniency (ibid.).

The Maoist era in the People’s Republic of China drastically curtailed the trade through the strictly enforced household registration system, the 1950 Marriage Law, closure of brothels, eradication of prostitution, and class struggles. The household registration system established in 1958 outlawed mobility and migration through the management of resource distribution. The 1950 Marriage Law outlawed arranged marriages, concubinage, and marriage through money or gifts, offering women freedom of marriage and divorce and the right to underage children and inheritance of property. Mobility restriction and resource allocation upon the number of people in a family drastically curtailed trafficking and reduced the need to sell unwanted children. Women’s newfound freedom to divorce also exponentially diminished their susceptibility to brokers. Closing brothels, marrying out prostitutes to integrate them into families, and waging class struggles between servants and elite families significantly stymied the trafficking practice (ibid, also see Zheng 2009a).

The post-Mao era, however, reignited incentives for traffickers with the one-child policy that resulted in a skewed sex ratio and a shortage of women. The demand for domestic, reproductive, and sexual services was conducive to the rise of trafficking. Confiscated and unregistered babies who were born outside of the one-child policy were often sold by family planning officials or traffickers for profits or adoption.

Scope of Human Trafficking

Identified as a source, transit, and destination country for human trafficking, issues of human trafficking in China range from forced marriage to forced labor, forced sex work, sale and profitable adoption of babies, and human smuggling (Hendrix 2010; Emerton et al. 2007). The US Department of State most recently downgraded China from the Tier 2 Watch List to Tier 3 in the 2017 Trafficking in Persons Report (U.S. Department of State 2017).

Internationally, as a result of the dire economic condition in the Democratic People’s Republic of Korea, many North Koreans have voluntarily crossed the border to illegally migrate to China searching for a better life (Zheng 2015). Their illegal, undocumented migrant status has made them easy targets for kidnap and abduction, forced sex work, forced marriage, and forced labor in factories and agriculture (Lagon 2008; Zheng 2015; Wire 2003; U.S. Department of State 2017). The Chinese government continued forcibly repatriating North Koreans to
North Korea where they were subject to severe punishment such as forced labor and execution (U.S. Department of State 2017).

**Forced Marriages**

Chinese women and women from other countries such as Myanmar, Vietnam, Laos, Mongolia, North Korea, as well as countries in Africa and the Americas are at the risk of being sold into forced marriages (US Department of State 2017; Fetterly 2014). It is reported that from 2006 to 2010, forced marriage accounted for 69.7% of 641 trafficking cases in Myanmar and 80% of these cases took place in China (Fetterly 2014).

As shown, selling and buying women for marriage has been a widespread cultural practice in Chinese history. Media coverage between 2007 and 2008 indicated that the source provinces are mainly southwestern regions such as Yunnan and Guizhou, and the destination provinces are mainly eastern and central regions such as Fujian, Guangdong, Henan, and Shandong where gender ratio is more lopsided (Feng 2008). It was reported that within 4 months in 2004, 85 women and children were rescued from abduction in Yunnan.

Despite the reduced cases of kidnap and sale of women and children (Lu et al. 2006), according to the Ministry of Public Security, in recent years, each year around 10,000 women and children are sold, mainly in the southwestern regions. (The rate has dropped from 2.29 per 100,000 in 1991 to 0.44 per 100,000 in 2002. It was reported that from 2001 to 2005, 1,794 women and children were sold in a Southwestern province (Xinhuanet 2005).) These are not only Chinese women but are also foreign women from the Southeastern, African, and American countries such as Vietnam, Laos, and Myanmar (Gates 1996; Lillie 2014). Some migrated to China in search of a better life, only to find themselves deceived and promised with well-paid jobs and subsequently sold into forced marriages. It was reported that in 2017, 114 women from Myanmar were rescued from forced marriages (Yangon 2017).

The damages resulted from the kidnap, abduction, and sale into forced marriage are not only physical but also emotional, psychological, mental, and cultural (Gates 1996). Physical traumas include but are not limited to violence, physical abuse, sexual abuse, and rape. Emotional, psychological, and mental damages can be also severe, deleterious, and enduring. Apart from the physical and emotional harm, cultural stigma and shame associated with these women’s experiences of sexual violence and forced marriage often lead to their parents’ outright rejection of their reintegration into the family after their rescue (Gates 1996).

As indicated in the previous section, the demand of women sold into forced marriages is attributed to cultural and economic factors including cultural devalue of women, preference of boys, one-child policy, shortage of women, economic poverty, and the high bride price and wedding expense (Hendrix 2010; Lagon 2008; Zhao 2003; Chu 2011). The long-term problem of the imbalanced sex ratio has reached 117 males for 100 females in 2017, an improvement of 119.45 to 100 in 2009 (U.S. Department of State 2017). This lopsided sex ratio has resulted in many unmarried
poor men in China’s rural areas who are not able to find a wife or are not capable of paying for the bride price or a wedding ceremony. It is reported that in many regions, the bride price is exceeded by the high cost of a wedding ceremony and the gifts for the bride and her natal family (Biddulph 1999). According to the traditional Chinese cultural values, a daughter is considered an outsider who, after marriage, transfers her allegiance, dedication, and labor into her in-law’s family. Hence the natal parents demand a sufficient amount of financial payment from the bridegroom’s family to compensate them for raising the daughter. Unless the man’s family pays the desired amount of the bride price and gifts, the parents would not allow their daughter to marry the groom. Poor men who are incapable of making this payment find themselves not able to secure an endorsement from the women’s parents, and hence often left single without a wife.

To resolve the issue and ensure that their lineages be continued through marriage and reproduction of male heirs, many poor men’s family members pool their money to purchase women from the outside into forced marriages (Zhao 2003). In many rural areas, it is believed that marriage is essential for producing male heirs and perpetuating male lineage. For single men who are not able to achieve that goal, their purchase of women into forced marriage is often accepted by villagers as morally correct. As a result, often times when the police comes to the village and investigates on the issue of forced marriages, villagers would collectively protect the buyers from being detected or discovered (Jaschok and Miers 1994).

Oftentimes, it is the young women from poor, remote regions such as Southwest China with a low education background who are the target for deception into forced marriages. They are either promised and lured by a high-paying job in a big city or are sold by their own parents to whoever offers the highest amount of money for marriage to their daughter.

Apart from these cultural and economic reasons, the market economy, population mobility, and the neoliberal ideology that glorifies being wealthy since the 1980s have also contributed to the issue of forced marriage. Population mobility allows women to be sold into forced marriages in remote regions. To the villagers, the market economy and the ideology that all means are justified as long as it reaches the end legitimize the sale of women as it is a lucrative business that not only helps boost the local economy but also resolve the marriage problem and ensure social order (Zhao 2003; Zhuang 1999).

**Forced Labor**

Although Chinese laws prohibit forced labor, only women and children can be legally recognized as trafficking victims, and the Chinese government perpetuates forced labor in state-sponsored drug rehabilitation facilities or administrative detention centers (U.S. Department of State 2017). Government officials in Xinjiang also coerced ethnic Uighur men and women to engage in forced farm labor in and outside the province (ibid.). Even though the law prohibits employers from withholding property from an employee as a security deposit, it is reported that such practice
continued, making certain workers vulnerable to forced labor. It is also reported that people with developmental disabilities and an estimated over 60 million children whose parents had migrated to cities were targeted for forced labor and forced begging (ibid.)

Internationally, many Chinese men were deceived into forced labor in countries such as Mexico, Japan, Australia, the Netherlands, Argentina, Europe, Thailand, and Malaysia (Kwong 1994; Lillie 2014). Internally, many men, particularly children, were kidnapped or abducted into enslaved forced labor in brick kilns, coal mines, and factories. For instance, the police uncovered that over 1,000 men were kidnapped or abducted, and then forced to make bricks without any payment in hundreds of brick kilns in Shanxi Province (French 2007). It was reported that hundreds of these forced laborers were teenagers and children who were abducted and then compelled to work in inhumane conditions (French 2007).

It was reported that local officials were complicit in selling the children into forced labor and child labor through working with these illegal factories (French 2007). It is the collusion of these local officials with the illegal abductors and kidnappers that have impeded the progress of helping the children’s parents locate the lost children and track down these illegal, remote facilities that engaged in forced labor. The physical, emotional, and psychological harm inflicted upon these children were so severe that many of the children, upon rescue, were not able to express any emotions.

Forced Sex Work

The existing trafficking literature and Chinese anti-trafficking law label all women in prostitution as trafficked victims due to the definition of prostitution as sexual exploitation (Liu 2010; Hendrix 2010; Lagon 2008; Zhao 2003). Thus there is no record of women who are sold or abducted into sex work, as the law fails to separate voluntary from involuntary sex workers. The existing trafficking literature and Chinese anti-trafficking law lump all sex workers as “trafficked,” despite of the fact that there was little or no evidence that they have entered sex work through force.

Internationally, it was reported that women from North Korea, Vietnam, Burma, Mongolia, Malaysia, the Philippines, and Thailand have migrated to China for prostitution (US Department of State 2017; Chu 2011). It was also reported that Chinese women have traveled abroad such as Taiwan, Hong Kong, and countries in Southeast Asia, for prostitution (Emerton et al. 2007). Extensive research of Chinese sex workers in ten cities in Asia and the USA shows that there is no overarching national or international organized crime group that is involved in the transnational sex trade, and that most of the sex workers were not recruited but voluntarily pursued the process of going overseas to work as sex workers (Chin and Finckenauer 2012). Internally, the relaxation of the household registration system has allowed rural women to migrate to the city for prostitution (Zheng 2009a, b). However, as I showed elsewhere, the state’s policy and strategies to combat sex trafficking deny
women’s agency and choices to work as sex workers, deprive voluntary sex workers of work, and create the potential for exploitation and violence in their working environment (Zheng 2009a, b).

**Sale of Babies**

It is estimated that 200,000 children are sold to couples abroad through adoption (Lillie 2014). Decades of one-child policy and the preference for male children resulted in not only forced marriages to meet the needs of a surplus of single men but also the sale of out-of-plan babies to avoid law enforcement. Not only some families with out-of-plan children sell the children for unofficial adoption, but also some family planning officials have been accused of selling confiscated babies. Orphanages have been caught buying babies and reinventing their origins. Across China children born out of quota are vulnerable to sale for profitable adoption (Ransmeier 2017).

**Human Smuggling**

Research has shown that undocumented, illegal Chinese migrants abroad had sought out traffickers or “snakeheads” as their helpful facilitators to help them migrate out of China for a better living and a new livelihood (Zhang 2008; Zheng 2009a). These snakeheads are not mafia figures but friends of friends, neighbors, or even family members (Zhang 2008). Research has shown that sponsors, who are the relatives and friends of the migrants, will pay off their debts as soon as the migrants arrive in the destination country, or within a few months (Kung 2000; Chin 1999). Some local officials also contract with snakeheads to smuggle their own family members out of China for a discounted price (ibid.).

The stringent criteria for legitimate immigration can only be met by the educated, the skilled, the wealthy, and the ones who have already had family members abroad. The poor people who do not have foreign ties have no means to fulfill these demands of the family reunification program, points system, the business and entrepreneur recruitment programs, and refugee determination system. For these people, the only way to overcome these legal hurdles against their international migration to work overseas is to seek traffickers who can help them achieve their goal. In their view, it is the immigration laws and immigration officials who deport them are the most severe threat to their mobility and pursuit of a new life. Traffickers are the facilitators who can help them surmount the restrictions of their mobility and transform their illegal status.

My interviews with smugglers reveal that in recent years, smugglers travel through Mexico and Central America into the USA. Upon entry into the USA, Chinese migrants claim, as instructed by their smugglers, that they are fleeing persecution due to China’s one-child policy or religious repression, and escape
immediate deportation by seeking asylum. Lawyers hired by snakeheads represent them in court and help them obtain asylum and, in turn, permanent residency.

Response Mechanisms: Policies and Strategies

There is no shortage of laws against human trafficking and human smuggling in China. These laws include the first criminal Law in 1979, the 1984 Criminal Law, the 1987 Regulations, the 1991 Decision on Strictly Forbidding the Selling and Buying of Sex, the 1991 Decision on Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women and Children, the 1992 Law on Protecting the Rights and Interests of Women (Women’s Law), the Revised Criminal Law of 1997, and the 1999 Entertainment Regulations.

The laws stipulate severe penalties for traffickers and smugglers. Article 240 of the Fifth Session of the Eighth National People’s Congress specifies that “those abducting and trafficking women or children are to be sentenced to 5 to 10 years in prison plus fine” (Fifth Session of the Eighth 1992: 2). In December 2009, the Chinese government ratified the UN Trafficking in Persons Protocol, bringing the domestic laws on par with international standards within 24 months.

In November 2013, the Chinese government modified the one-child policy to allow single-child parents to have a second child. As we have seen in the previous sections, the demand for forced marriage, forced sex work, forced labor, and sale and profitable adoption of babies is inexorably linked to the one-child policy and the shortage of women. This policy change can potentially mitigate issues of forced marriage, forced sex work, forced labor, and sale and profitable adoption of babies.

Despite the comprehensive and strict laws against trafficking and smuggling, implementation of the law has been severely undermined by corruption of government officials. As noted above and elsewhere, in many cases, government officials, including the police, have colluded with smugglers and traffickers and impeded the successful implementation of laws and regulations (Cho 2012; Kapstein 2006; Kung 2000).

China’s anti-trafficking laws equate trafficking with prostitution and ignore other forms of trafficking such as forced labor and forced marriages. The laws deem prostitution a form of violence against women, and hence, a form of trafficking. Over past decades, China has published a number of laws to ban prostitution and the third party’s involvement in prostitution (Jeffreys 2004). Rooted in this policy is the conviction that no free women would voluntarily choose prostitution which not only commodifies and humiliates women but also robs women of their human rights (Zheng 2010).

According to these laws, a person’s consent to sex work is irrelevant, and anyone’s facilitation of a person’s entry into sex work is penalized as committing the trafficking crime. The law subjects organizers or facilitators to severe criminal punishment and punishes the entertainment industry and hotels for failing to prohibit prostitution (Zhang 2006). While the law criminalizes third party involvement in prostitution, it prescribes mandatory educational detention to rescue and educate
those who sell sex. As Gil et al. (1994: 331) state, the minister in Shenzhen admitted, “a large number of prostitutes, once completing their compulsory education at reformatories [sic], go straight ‘back on the game,’” and “Although many are repatriated [sic], more are coming [into the city].”

Because the Chinese state conflate trafficking with prostitution and perceive migrants for prostitution as trafficked victims, in combating trafficking, the state has mainly targeted prostitution and disregarded other forms of trafficking such as forced labor and forced marriages. Such a campaign to address trafficking for the purpose of prostitution and illegal migration embodies the state’s anti-prostitution stance and border control goals.

Since 1989, the Chinese government has launched series of crackdowns called anti-vice campaigns on a number of “vices,” including trafficking of women, prostitution, pornography, gambling, and drugs (Zheng 2009a). Crackdowns continue to be employed today to enforce policies against prostitution. However, the illegalization of prostitution, the reeducation detention, and deportation of sex workers have failed to thwart the sex industry or forced sex work.

As researchers have argued elsewhere (Zheng 2009a; Zhao 2003), many police and local government officials appropriate the crackdown campaigns as a means to extort handsome briberies from “offenders” such as the proprietors of entertainment industries. “Offenders” who regularly submit a large sum of bribery to the local police or government officials are informed of the time, date, and place of these crackdowns ahead of time so that they can be prepared for it. They either take refuge in the countryside or go underground during the crackdown period to escape the arrest and the harsh penalty during the crackdowns. They will not resume their activities until the crackdown period ends. Hence these crackdowns exert little impact on the trafficking in women (Zhao 2003).

In many ways, it is the mobility control that is behind the fight of trafficking of women. Since 2010, the government has worked with Southeast Asian governments such as Thailand and Vietnam to enforce border control and deport smuggled Southeast Asian women back to their countries (Qian 2014).

North Korean migrant women, upon discovery by Chinese authorities, are identified as trafficked victims and deported back to North Korea (Wire 2003; Zheng 2015). It is never taken into consideration whether they have voluntarily migrated into China, or have already established a family in China. It is reported that in Jilin Province, even though some North Korean women have already married to Chinese men with children, neither the women nor their children are protected by the Chinese government, and their children are stripped of legal rights or formal education in China (Wire 2003). In these situations, the Chinese government forcefully repatriates and deports the women back to North Korea, where the women are faced with torture, harsh penalty, or even death for having deflected from North Korea. Calling these North Korean women “trafficked victims in need of rescue” and deporting them back to North Korea evinces the state’s concern of border control under the mask of concern for trafficking of women.

As such, the state’s specific concerns about prostitution and border control have led the anti-trafficking campaigns to exclusively focus on prostitution as “the sexual
exploitation of women,” failing to address the issues of forced labor, forced marriages, and forced sex work (Emerton et al. 2007; Hendrix 2010). People who have been sold into forced labor, forced marriages, and forced sex work receive little or no assistance.

Deportation of women back to North Korea or detention centers fails to offer them any protection, but only subject them to further marginalization and possible abuse. While North Korean women, after deportation, are confronted with severe punishment and even death for their escape, rural migrant women who work as voluntary sex workers would likely suffer physical abuse and mistreatment in the detention center. The policy has not only failed to protect victims but also enhanced their vulnerability to physical abuse in detention centers.

Policy Recommendations

The Chinese laws and campaigns should distinguish the difference between trafficking and prostitution and establish systematic procedures to identify victims of forced labor, forced marriages, and forced sex work and provide comprehensive victim protection services and social support to both internal and foreign victims throughout the country.

Forced labor, forced marriages, and forced sex work are significant human trafficking issues in China, yet the current Chinese laws and campaigns have failed to emphasize these issues. Rather, they have devoted almost all the energy to police raids of the entertainment establishments, punishment of all sex workers, and border and movement control (Zheng 2009a, 2010). As a result of police raids of the entertainment places and punishment of all sex workers, women are either forced to the detention centers where they can fall prey to sexual assaults by the police or are forced to go underground and work in a more dangerous environment.

The government should replace the top-down crackdown strategy with a partnership with grassroots organizations and women’s groups to help prevent forced labor and identify trafficked victims. Crackdown campaigns in entertainment places have fueled corruption and removed voluntary sex workers who can potentially assist the law enforcements in identifying true victims of trafficking (Zheng 2009a, 2010). In excluding the communities that they purport to assist, the campaigns fail to create alliances with grassroots communities and organizations to access their expertise and forge successful interventions to tackle the trafficking issues.

For foreign victims from countries such as North Korea, the government should cease deporting and repatriating them back to their source countries where they would be faced with severe persecution, punishment, or even death. Instead, the government should provide legal alternatives such as temporary or permanent residence permits to the victims of foreign trafficking.

The government should provide legal redress to the victims of forced labor, forced marriages, forced sex work, and the sale of children for the abuse they have endured. Research has demonstrated that victims often experience physical diseases and psychological distress and trauma (Perkins 2005; Flowers 2001; Zimmerman,
Legal proceedings should be in process to ensure that the perpetrators are prosecuted and penalized for their crimes. To protect the victims from the perpetrators’ future threats or revenge, the government should provide a wide range of protection services including job training, shelter, social welfare, education, and medical, mental, and legal services to ensure the victims’ successful reintegration into their families, communities, and society.

The Chinese government reported that only 18 of 2,300 government shelters were dedicated to Chinese and foreign victims of trafficking (US Department of State 2017), and much social service are currently provided by nongovernment agencies, which is neither consistent nor reliable (Xie 2014).

Last but not the least, the government should terminate institutionalized forced labor in state-sponsored drug rehabilitation facilities and administrative detention centers (US Department of State 2017).

References


Part VI
Organizational Profiles
Explaining Human Trafficking: Modern Day-Slavery

John Winterdyk

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Abstract

The trafficking of persons is a diverse and complex concept that not only lacks a universal definition but which is conflated by a wide range of competing theories or models of explanation. This chapter provides an overview of some of the main theories and explanatory models and perspectives. They range from macro- to micro-level explanations, and the chapter concludes with a suggestion and recommendation for how researchers and theorists might work towards creating an integrated theoretical model.

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Introduction

Human trafficking or modern-day slavery, as it is still sometimes referred to, has evolved considerably since ancient times and according to most sources is a growing worldwide problem. In an effort to understand its growth, complexity, and diversity, the United Nations has identified several types of human trafficking (see below 3). Meanwhile, the American-based NGO Polaris has itemized some 25 distinct types of human trafficking (The Typology of Modern Slavery 2018). In addition to the exact meaning, nature, and extent of human trafficking having been subject to debate, the explanation for human trafficking spans a comprehensive range of disciplines, from the social sciences to economics, legal studies, and geopolitics. While all anti-trafficking initiatives share the goal of combating human trafficking, the focus and approach can vary. Yet, each perspective contributes a unique piece to the understanding of the crime, and a confluence of factors flows across disciplines and national borders.

This chapter will provide an overview of some of the leading theories and explanations used to explain and describe the nature and extent of human trafficking (HT). While various authors have attempted to categorize the theories, this chapter will adopt a broader approach. Mishra (2015: 32–47), for example, based his critical perspectives on a “spatial focus” (i.e., drawing on the spatial phases of human trafficking – origin, transit, and destination) and a “person focus” (i.e., either offenders/traffickers or their victims). Meanwhile, Lutya and Lanier (2012) presented five theories before calling on “theoretical integration” to demonstrate and explain involuntary prostitution as – the “outcome of a combination of multiple factors” (p. 563). Aronowitz (2017: 23–55), on the other hand, uses a pragmatic approach, identifying the practical factors that drive trafficking (e.g., economics, social, cultural, poverty, globalization, etc.) and discussing them in the context of “contributing” factors. Finally, Kakar (2017), similarly, conceptualizes and integrates theories of process (i.e., victimization lifestyle, deviant place, rational choice, anomie theory, conflict, general strain, and trauma) and globalization (i.e., migration, capitalism, push and pull factors, and economic theory of value).

Causes and Contributing Factors of Human Trafficking

To be able to describe, understand, explain, and ultimately predict a crime and human rights violation such as human trafficking, being able to accurately define it is key (i.e., construct validity). As discussed in section 2 and as repeatedly commented on in the extent literature, the meaning of human trafficking remains somewhat conflated because of the different interpretive lenses brought to bear on the crime (see e.g., Farrell and Fahy 2009; Goody 2012). Lee (2011) suggests that the definition should be determined by the type of theoretical model or orientation that one applies in their methodology or line of inquiry to the topic. To determine which definition to use, Lee (2011) offers six different conceptual models for looking at human trafficking and each of them lend themselves to different
theoretical paradigms. Kakar (2017: 98) cautions that: “there has not been any (one) recognized conceptual framework for understanding human trafficking.” Furthermore, as is the case with most, if not all, transnational crimes, the explanations used to define human trafficking can, and do, vary depending on the context in which it is being examined as well as where it is geographically occurring. However, as is the case with most crimes, human trafficking is a crime of opportunity. That is, trafficking is influenced by such macro factors as culture, economics, politics, transnationalism, migration patterns, and social dynamics (Aronowitz 2017). Yet, a host of other considerations also help explain human trafficking. These include, among others, globalization, corruption, organized crime, legal loopholes, and technology.

Despite a limited conceptual framework, it is acknowledged among human trafficking scholars that TIP is a sophisticated multidimensional crime that, despite being illegal in most countries, occurs in virtually every country and on every continent (Aronowitz 2017; Kakar 2017; Lederer 2011). The balance of this chapter will present a closer examination of most of the main contributing factors to human trafficking.

**Push and Pull Factors**

Since trafficking in persons is widely recognized as being a high-profit, low-risk crime driven by the economic principles of supply and demand, the “push and pull” factors are among the most commonly used for explaining how and why human trafficking (HT) occurs. Drawing on the three elements (i.e., means, acts, and purpose) of HT, most persons officially known to be trafficked are women and children. In most of the cases, the mitigating or risk factors have been classified as push and pull factors (see, e.g., Bales 2016). Its “etiology is perhaps most accurately represented through a model of cumulative risk, in which accumulated risk factors incrementally increase someone’s susceptibility to being trafficked” (Kerr 2014).

The literature has identified that some of the vital push factors – poverty, lack of education, political instability, civil conflict, globalization, economic crises, political instability, ethnic cleanings, social inequality, and the broader processes of transformation – create an environment where opportunity for a better quality of life is lacking and any positive change unlikely. For example, in his research, Kara (2017: 29) found that approximately 94% of the trafficked slaves he studied had “lived in chronic poverty” and almost 90% belonged to minority ethnic groups. These factors have become more expressive since the beginning of the new millennium and increasing globalization (Angelina and Blagojce 2012). Being aware of such push factors, perpetrators of human trafficking can exploit such situations to deceive, coerce, or otherwise recruit prospective victims. These latter are referred to as “pull” factors. The perceived opportunity for something better combined with a lack of awareness, naivety, etc., puts prospective victims at risk of being recruited into any range of human trafficking. For example, in her study of women being trafficked out of Nepal, Dhungel (2017)
observed that poverty, lack of education, and social inequality were some of the major push factors that accounted for why women in the southwestern region were more commonly targeted. In addition, the deception of something “better” was described as the pull factor. Moreover, consistent with Kerr’s (2014) observation above, Dhungel found that a number of risk factors incremented women’s vulnerability to being trafficked.

**Capitalism Theory and Trafficking in Persons**

Tracing its origin to the ideas of Karl Marx (1818–1883), the transition from feudalism to capitalism led to the conceptualization of law and the criminal justice system as we know it today. With the shift from feudalism to capitalism, the means of production and distribution of wealth convened in private ownership and became the key instruments of power and control. As Armaline et al. (2015) commented, not only does economic greed trump human rights, but also wealth under capitalism is unevenly distributed. The theory thus posits that production or labor is necessary for relative economic success. Because human trafficking is also referred to as a transnational crime (see Shelley 2010; Kaye and Winterdyk 2012), trafficking in persons can be explained within the current global economic context whereby the world is embracing a profit-oriented agenda (i.e., free-market economy; see also van Duyne and Spencer 2011).

Following the capitalism theory, the social structure of capitalist societies fuels the trafficking in persons as a mechanism to meet the needs of the individual or competitive economic environment. To maximize profit, organizations and businesses (be they industrial, agricultural, or social service) try to secure low-cost factors of production, be they material or human. Forced labor is thus one of the most common forms of human trafficking (see below 3). Furthermore, within a capitalist context, a globalized market characterized by a competitive economic system offers a fertile environment for greed and makes money and social/political power crucial indicators of success and social status. As a result, and following the theory, a capitalist-oriented system leads some people to exploit those who are in more vulnerable positions (Kakar 2017). Therefore, from this theoretical perspective, countries with the highest ratio of trafficking in persons (i.e., China, India, Uzbekistan, Iran, & North Korea) are shown to typically be characterized by harsh economic conditions and poor human rights conditions, making their populations prime candidates for exploitation for the purposes of labor, sex, organ trafficking, etc. (see Aronowitz 2017).

In her study on human trafficking, Raigrudski (2016) uses the term “creative capitalism” to explain how this theoretical perspective efficiently explains the relative benefit consumers, businesses, and economies gain from the work of forced and trafficked labor. Raigrudski further argues that creative capitalism makes policy efforts – designed to encourage businesses or entrepreneurs to adopt socially responsible practices – tend to fail. As a result, forced and trafficked labor continues to flourish (see below 3).
Globalization

Related to the capitalism theory and one of Lee’s (2011) conceptual categories (i.e., archetype of globalization of crime) is the theory of globalization. Globalization, “market liberalization” (Aronowitz 2017: 28), is defined as the “worldwide movement toward economic, financial, trade, and communications integration.” Globalization and crime has been described by UN Secretary-General Ban Ki-moon as follows: globalization of crime is a threat to all nations and “states have no choice but to work together” (The globalization... 2010).

In recent years, there has been considerable discourse around the impact and implication of globalization on crime. This is particularly true in relation to “transnational” crimes, which are crimes that have actual or potential effect across national borders (e.g., counterfeiting, drug trafficking, and human trafficking). According to Global Transparency International, transnational crime has an average annual retail value of $1.6 US trillion to $2.2 US trillion (May 2017).

Because human trafficking can be both domestic and international in scope (see below 4), and its victims are sometimes moved considerable distances to be exploited, HT is commonly associated with transnational crime. Within an economic and business framework (i.e., market), the trafficking of persons is another form of “commodity” trading carried out with the objective of maximizing potential profits. With human trafficking, of course, the essential services being exploited include a wide range of labor, sex, and even the removal of body parts (see below 3). In response to the market forces and demands, these illegal commodities can be traded nationally and internationally in exchange for some type of compensation – usually financial but also for the purpose(s) of corruption, political influence, or other forms of favoritism.

As an explanatory model, another consequence of globalization has been rapidly increasing access and ease of communication virtually anywhere in the world, be it through social media, the internet, or even travel. Aside from availing an endless array of geographic locations from which to commit crimes or to recruit prospective victims, globalization has been used to explain why some regions are source countries for victims while others are transit countries – with a third category being characterized as destination countries (see belows 3 & 5) (see Brewer 2009).

For globalization to work efficiently, numerous pundits argue that the creation of a free market, where international regulations and trade barriers are limited (e.g., NAFTA, Australian Free Trade Agreement (FTA), European Union FTA, etc.) to facilitate global business/trade, also risks facilitating illegal movement and trafficking of humans and other resource commodities (Kara 2017). Because of globalization, migrant workers are increasing rapidly (see below). While migrant workers can provide a valuable labor force in the receiving countries, relaxed regulations put in place to facilitate legal entry can also be exploited for the purposes of human trafficking (see Rahman 2011).

In understanding and explaining human trafficking within this context, the United Nations notes that an effective response to human trafficking within a globalization context needs to focus on disrupting the markets rather than simply focusing on...
targeting the criminal offenders and their organizations. For example, in their survey of 150 countries on the effects of globalization and its impact on equality efforts for women, Cho et al. (2013: 683) found that the women in countries classified as marginalized (e.g., poverty, social, lack of education, etc.) were “not the beneficiaries of ‘female-friendly’ globalization effects.”

**Migration**

By its very definition, human trafficking involves the movement or transportation of people. Victims can be trafficked either domestically (i.e., nationally) or internationally. In an era where capitalism and globalization are omnipresent, migration is seen as natural and people are willing and more readily able to move (considerable distances at times) to seek out a better life – be it economic, social, political, freedom of expression, etc. According to the 2017 International Migration Report, it is estimated that some 258 million live in a country other than their birth. This represents a 49% increase since 2000 (The International Migration Report 2017).

Although such risk factors as wars, political instability, poverty, family reunification, and overpopulation are just a few reasons why people might choose to legally immigrate, they are also used as bait by human traffickers to recruit and traffic vulnerable people ready to escape “at all cost.” Countries like Canada, the United States, Germany, and the United Kingdom are among the most sought-after countries of destination by victims. However, apart from countries like Ecuador, Argentina, or Brazil, which all have relaxed immigration policies, most destination countries have fortified their immigration policies (e.g., using a points system based on specific skill sets, etc.) and more rigorous border controls, making it more difficult for people to enter. As Miller and Baumeister (2013), among others, have observed, such restrictive measures can make migrants extremely vulnerable and susceptible to exploitation. Kara (2017) reports that nearly 44% of the trafficked victims he studied were foreign migrants. The number does not include domestic migrants who have been moved within the country to be exploited and trafficked.

In her various works, Aronowitz (2009, 2017) notes that migration is closely linked to globalization and gender inequality. Hence, this factor can explain why women, who are generally less well paid than their male counterparts are, typically work in areas where anonymity prevails (e.g., domestic workers, prostitution, service industry, textile factories, etc.). In addition, trafficked women (and girls) can be found in many jobs that often require fewer skills and less education.

**Demand and Supply Theory**

Since the mid-to-late 1800s, scientific breakthroughs and technological innovations (e.g., the phone, the internet, etc.) have radically changed the human experience. Beginning with the Industrial Revolution (1780–1840) and bolstered by the
Scientific-Technical Revolution (1940–1970) and the Information and Telecommunication Revolution (mid-1970s), the world today is inundated with material goods. According to various reports prepared by the OECD (Organisation for Economic Co-operation and Development) and the Global Index Project, more people are enjoying a higher standard of living than ever before, but the economic gap is nonetheless widening (Hoegen 2009). The combination of capitalism, globalization, increased life expectancy, and ease of travel and communication has made us the biggest consumers in the history of life on Earth. We have an insatiable appetite and can be characterized as a “consumer culture” (see Mathur 2014).

Mishra (2015), among others, has pointed out that human trafficking in any form involves the understanding that for a demand to exist there must be a supply available. Kara (2017: 31) also uses supply-side economics to suggest that extreme poverty and other factors provide a vast supply of vulnerable victims and that “the most helpful way to frame these forces [explaining human trafficking] is in terms of supply and demand.” According to research conducted by the International Labor Organization (ILO), sex trafficking is the most important supply factor contributing to trafficking in persons (Danailova-Trainor and Belser 2006). Hughes (2005) further points out that the demand for sex can be organized into three categories: users or purchasers of sex, profiteers from selling sex, and socio-cultural attitudes towards sex. In all three categories, there is an intricate and complex relationship between demand and supply as they are all associated with the situation context of the crime being committed.

Although every case of human trafficking is unique, they all share certain characteristics. As Bales (2016) observes, countries of origin can have an endless supply of prospective victims who can be recruited and exploited. Meanwhile, the destination countries have a demand for a range of goods and services that can be provided by those victims trafficked, and typically organized crime networks. Bales (2016) further notes that both small and larger organized crime groups have taken control of this “demand and supply” situation to traffic and exploit trafficked persons from countries or regions of origin and then transporting the victims to the “market” (i.e., demand). In so doing, the traffickers can generate enormous profits for themselves. In addition to creating awareness about human trafficking, one of the key approaches that Bales (2007) advocates for reducing the demand is to increase the availability of legal options for people to emigrate legally to work. Such legal opportunities would mean that potential trafficking victims might be less likely to rely on traffickers who provide false documents, arrange travel, and find them foreign jobs.

Economics

The business of slavery is thriving. The ILO estimates that human trafficking generates profits of more than $150 billion annually. In 2014, the ILO estimated the profits at:
$99 billion from commercial sexual exploitation
$34 billion in construction, manufacturing, mining, and utilities
$9 billion in agriculture, including forestry and fishing
$8 billion dollars saved annually by private households that employ domestic workers under conditions of forced labor

As an explanatory model, Kara (2017: 35) observes, “the drive to capitalize on the unregulated labor markets that feed the business of modern slavery remains more powerful than efforts to rid the world of slavery.” As a result, many forms of trafficking are rooted in the global economy, and considerable research draws direct parallels between socio-economic factors and risk for trafficking. Furthermore, the relatively low risk of prosecution, combined with immense profitability (i.e., capitalist drive), explain both the enduring and pervasive nature of human exploitation. Therefore, according to economic theory, trafficking in persons “emerges as an integral part of globalization and economics” (Kakar 2017: 102). Furthermore, within an economic framework, trafficking is normative and a “consequence” of globalization. As Kakar further comments “it facilitates and stimulates its [trafficking in persons] inception, existence, perpetuation, and proliferation” (p. 102). In their study, Wheaton et al. (2010) conclude that in accordance with the theory, the driving force behind human trafficking is profit, and profits are based on supply and demand. Therefore, as Bales (2016) observed in his work, a high demand for cheap labor in developing or emerging countries (e.g., India, Nigeria, Cambodia, etc.), as well as multinational corporations which set-up businesses in such countries, inevitably translates into recruiting, trafficking (and smuggling), and exploitation of people looking to escape their hardship and desperate conditions.

Human Rights-Based Explanation

Savelsberg (2010: 1) points out that the emergence of human rights law and the criminalization of atrocities is one of the most important developments in recent criminological and penal law. Until recently, human trafficking has been largely viewed and explained from a political, legal, or social context, as opposed to a major violation of human rights (Kaye and Winterdyk 2012). Using a rights-based approach to explain human trafficking, the method focuses on the needs and experience of human trafficking victims (see Human Rights and Human Trafficking 2014). In the report, the United Nations observes that “violations of human rights are both a cause and a consequence of trafficking in persons” (p. vi).

A human rights-oriented explanation is premised on several fundamental rights-based principles which are not enforced because of political, social, or cultural reasons. For example, some countries (e.g., Turkey, Thailand, etc.) do not have any rights-based legislation concerning human trafficking (Kaye and Winterdyk 2012). Meanwhile, the human rights principles of the United Nations calls for the prohibition of “discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status”
(Human Rights and Human Trafficking 2014: 4). However, only the Convention on the Elimination of All Forms of Discrimination against Women (art. 6) and the Convention on the Rights of the Child (art. 35) – contain substantive reference to trafficking. Yet, since 2000, an increasing number of countries have acknowledged that human trafficking is a human rights violation (ibid). But, as Kaye and Winterdyk (2012) caution, that a major challenge of a human rights-based explanation is “trying to reconcile the issue of cultural relativism” (p. 71). Therefore, as an explanation, the high rights perspective should not “be viewed in isolation of the broader social complexity that underlies” human trafficking.

**Victim-Oriented Framework and Theories**

Perhaps the most repulsive form of victimization is trafficking in persons. Even though countries like Britain abolished the transatlantic slave trade in 1883, France in 1848, and the United States in 1865, we are still contending with the issue in the twenty-first century. And depending on which source one refers to, it is estimated that more people are enslaved or trafficked than ever before (Bales 2016; Kara 2017). The oft-cited International Labour Organization estimates that as many as 27 million women, men, and children are victims of trafficking at any given time. There remains a common myth that victims of trafficking, in some way, invited the offence themselves; however, we know that no child would choose to enter into prostitution or forced labor. The victim-oriented explanatory perspective is more complex.

Explaining victim-offender interaction involves concepts that fall within the victimology paradigm. They focus on an array of potential risk or relational factors that have been used to explain the nature of victimization of human trafficking. Van Den Hoven and Maree (2005) identify three categories of prospective victims that could be prone to victimization. First, there are *innocent* victims who are victimized because they interact unknowingly with a trafficker or engage in risky behavior (going into a dubious bar, hanging out at the food court in a mall) that could *precipitate* their victimization. The third category is the *provocation* victim who through their own intentional actions or behavior can trigger their victimization (e.g., talking and/or dressing provocatively). Together these three categories have been incorporated into different theories to explain the trafficking in persons from a victimological framework.

In terms of potential *precipitating* factors, the life-course theory is premised on the assertion that the impact of any experience, including victimization in the form of being trafficked, is influenced by the person’s life stage. The theory is derived from the theories of social control and ecology and the early work of Glueck and Glueck (1950), and then – using their own original data, Sampson and Laud (1990, 2003) developed the life-course theory as a modern development theory.

Using the *life-course theory*, Reid (2012) found that indicators of harmful informal social control processes during one’s formative childhood and adolescence are common indicators, creating a desire for acceptance and affection. For human
traffickers, these risk factors become indicators, or markers, for initial recruitment, entrapment, and then exploitation. Furthermore, the life-course concept of “cumulative impact” or multiple stresses can also be used to explain risk of possible victimization. If a person experiences regular stresses (e.g., social, economic, mental health, familial, etc.), it can result in the erosion of resiliency (i.e., waning of protective factors) and negatively affect the victim’s resolve and knowing/unknowing willingness to take risks (see, e.g., Lesser and Koniak-Griffin 2013; Lopez and Minassians 2017).

The social learning theory is another theory that has been used to explain the victimization of trafficked persons. Although being able to trace its influence to the esteemed American sociologist, Edwin Sutherland’s differential association theory, when applied to victimization, this social learning theory (see Akers 1998) assumes that risk of victimization is learned through interactions with other persons in the process of communication (i.e., orally and/or socially). Hence, individuals who come in contact, or association, with other (prospective) victims may develop behaviors and attitudes that place them at greater risk of being recruited. In her study of trafficked victims in Nepal, Dhungel (2017) found that many of the victims came from the same region and when they spoke or learned of those who had been trafficked they rationalized that even though challenging, that the life of a trafficked person was a viable option to the life they were currently leading.

Given the parallels between domestic violence and women trafficked for sexual exploitation, several theorists have used theories of domestic violence to also explain sexual exploitation of trafficked women and girls. Just as victims of domestic violence are often fearful of leaving an abusive (even life-threatening) situation, victims of trafficking may be afraid to change their situation due to threats of violence, threats to harming their loved ones should they try to leave, etc. (Hoyle et al. 2011). This explanation is also clearly depicted in the real-life accounting of a victim, Natasha, in Victor Malarek’s (2011) book of the same name.

In terms of proneness, the repeat victimization framework notes that the risk factors of some victims make them more disposed to being revictimized. Risk factors can include, among others, the victim’s psychological distress and/or trauma after having been initially trafficked, their physical weakness because of the abuse endured while being trafficked, and/or their limited financial solvency, and perhaps social isolation – a general sense of helplessness and constant fear (Adams 2011). Left unresolved, the victim may be involuntarily victimized, or they might experience a perverse form of the Stockholm syndrome where because of their trauma they find some comfort in remaining a victim of their trafficker (see Julich 2013). Examining reasons behind how a victim of trafficking could experience the Stockholm syndrome, Hardy et al. (2013) suggest that traffickers recognize and use their victim’s desire for attention, affection, and protection and use it as a source of manipulation and for gaining (a false sense of) trust and loyalty. Although there is no concrete evidence on the extent to which victims of trafficking might experience this syndrome, it can be used to explain why some victims can be revictimized.

Finally, in terms of the provocation category, the lifestyle risk model focuses on three elements that are part of the routine activities theory (RAT). The question of
risk is central to the theoretical perspective. The RAT developed by Cohen and Felson in 1979 to better understand why predatory crime (e.g., rape, robbery, assault, burglary, larceny, and auto theft, etc.) was increasing post-WWII. As a macro-level theory, it is founded on the prediction of how changes in economic and social conditions can influence overall crime and victimization. As Cohen and Felson (1979: 588) describe it, when the prospective offender and victim encounter each other there is a “convergence in time and space of motivated offenders, suitable targets, and absence of guardians.” From this perspective, victims of human trafficking are not the result of random or unimportant occurrences. Rather, “it is the routine activities people partake in over the course of their days and nights that make some individuals more susceptible to being viewed as suitable targets by a rationally calculating offender” (Felson and Cohen 1980: 390). As Morrissey (2006: 59) describes it, traffickers typically search for “victims the way lions look for a herd...they look for the easy target.” Based on their research of sex trafficking in the Americas, Guinn and Steglich (2005) found that the main risk factors for an “easy target” included poverty, lack of economic alternatives, lack of education, a history of physical and sexual abuse, gang membership, etc. More recently, in her study of victims of sex trafficking and sex workers in Belize, Mano (2018) used the RAT to show and explain how several of the key lifestyle factors (e.g., the social role they played in society, their position in the social structure, and the victims’ “rational” decisions) contributed to the sexual exploitation of women. Kenyon and Schanz (2014) also found that the RAT explained trafficking for the purpose of sexual exploitation in their qualitative study conducted in the United States. The theory is part of the structural functionalism perspective as it asserts that the more socially unstable a community or region, the greater the risk of persons being targeted for human trafficking. In addition, because the victims come from marginalized communities, the trafficker can readily pay them a nominal wage in such areas as agriculture, domestic service, construction work, and factories. The lifestyle risk model can explain why certain countries like India and China can allow foreign industry to offer low manufacturing costs that will return higher margins of profit for the proprietors.

Rational choice theory (RCT) is an individual-level theory that was initially designed by Clarke (1980) to assist in thinking about situational crime prevention. Drawing from the Classical School of Criminology, it is based on the “expected utility” principle in economic theory. The principle states that people will make rational decisions (i.e., free-will within the confines of available and accessible products) based on the extent to which they anticipate the choice to maximize their profits (i.e., hedonism) or benefits and minimizes their costs or losses. As Cornish and Clarke (1986) later explained, offenders inform their decision(s) based on such factors as available time, their cognitive ability, available information, etc. Similarly, Brown et al. (2014: 213) observe that rational decision-making pertaining to crime also involves the choice of the victims determined by the type of crime, modus operandi, where and when to commit it, and what to do afterward. In other words, in relation to human trafficking, the offender(s) engage in some assessment of such factors as the accessibility to potential victims, the location from where the
victims will be recruited, when the prospective victims might be most vulnerable (e.g., time, geographic location, living environment, etc.), to inform the level of risk of detection and apprehension. Therefore, decisions, although rationale, are limited rather than normative. Hence, there is no absolute right or wrong decision, and depending on personal circumstances, not everyone will respond to the same opportunity in the same way. In this context, prospective offenders are variable in their motives.

Like the routine activities theory (see above), the RCT advances that just as offender behavior is not random neither is victimization. Hence, in accordance with the theory, traffickers target their prospective victims based on perceived (rationalized) risk factors (e.g., poverty-stricken areas, dysfunctional family history, homeless, naivety, desperate for a more positive opportunity, etc.). Therefore, human trafficking is not a product of rational choice, but it is influenced by the desire to satisfy essential needs and quality of life at the expense of others. As Kakar (2017: 115) observes, the traffickers “cash in on potential victims with such mental, social, and economic situations and conditions.” The theory belongs to the interactionist perspective in that trafficking is a product of rational choice and a symbolic interaction with the victim.

Conversely, the victims of trafficking also evaluate their situation and make decisions based on their perceived risks and benefits. However, as the RCT acknowledges, “informed” decisions are sometimes, if not often, limited by factors that are not considered. Simmons and Lloyd (2010) employed the RCT to explain how transnational crimes, including human trafficking, can be explained and understood through the RCT theory. For example, they found that there appears to be a clear link (i.e., rational choice) between “media attention to the trafficking issue and the willingness of countries to criminalize” (p. 41) (also, see Lutya and Lanier 2012).

Sykes and Matza created neutralization theory in 1957, and it has/can also be used to explain human trafficking. The tenets of the theory assert that even though offenders may be aware of the rules and norms of society, they nevertheless go on breaking the rules and become traffickers. The theory is comprised of several techniques of neutralization that can be used to explain and understand how otherwise law-abiding individuals are able to engage in criminal activities (e.g., human trafficking). Within this theoretical context, traffickers use neutralization techniques (i.e., denial of responsibility, denial of injury to the victim; denial of the victim – that the victim deserved to be trafficked; condemnation of the condemners – rationalizing that those who condemn traffickers are doing so out of spite) to rationalize and justify their behavior and actions. For example, a trafficker might condemn the condemner or appeal to a higher loyalty to rationalize that they are rendering a service to the individuals being trafficked because they are providing them with better opportunities in their new life in comparison with their life in their country of origin. Based on a series of interviews conducted, an exploratory with traffickers and victims of trafficking in Greece, Antonopoulos and Winterdyk (2005) used the theory to explain the trafficking of women in that country. Except for appealing to a higher loyalty, they found support for the other four neutralization techniques. Similarly, in her study of trafficked and sexually exploited women in Belize, Mano (2018) also found evidence that the traffickers used several of the neutralization
techniques to justify their actions. Hence, in order to understand and explain human trafficking from the neutralization perspective and within an economic or business context, it is also beneficial to explain the enterprise of human trafficking using the routine activities theory (see above).

The constitutive theory borrows from conflict-based theory in criminology. Constitutive criminology is premised on the assumption that differential access to power and equality form the basis upon which social differences are constructed and through which harm and deprivation are imposed on the individual or group considered to be subservient to the offender. The theory asserts that the type of crime committed (e.g., human trafficking) must be viewed within broader cultural and structural contexts, which are likely to be expressed differently depending on geographic communities (e.g., push and pull factors). According to Lanier and Henry (2004: 323), constitutive criminologists “perceive criminals as excessive investors in crime who use any means necessary to achieve the desired outcomes whereas a victim is often the disabled party who” is the one subjected to exploitation and abuse. Furthermore, in their theoretical overview of explaining human trafficking among young women and girls for the purposes of sexual exploitation, Lutya and Lanier (2012) suggest that the constitutive theory is an effective theory whose approach can be used to help deconstruct and explain the global phenomenon of human trafficking.

One of the more enduring and influential criminological theories that has been used to explain human trafficking is anomie theory. The theory was created in the late 1800s by the esteemed French sociology Emile Durkheim but was later refined and popularized by the American sociologist Robert Merton in the 1930s. The term “anomie” is used to refer to a state of normlessness or lack of social regulation in society. When such conditions prevail, the theory asserts that they promote acts of deviance and or suicide.

The theory is premised on two key factors. First, as individuals, we all have “goals” and in most parts of the world, this translates into monetary success. The second factor is the institutional “means” by which we can achieve these goals. However, when there is an imbalance between the goals and means, anomie ensues. Merton proposed five modes of adaption to a state of anomie: conformity, innovation, ritualism, retreatism, and rebellion. Except for conformity, all the rest are deviant. As Parmentier (2010: 99) commented, the rapid changes of globalization coupled with the dramatic economic and social changes create a fertile ground for prospective offenders to capitalize on the state of anomie and use any one or more of the adaptive means to engage in trafficking to attain the larger goals of society. Kakar (2017) points out the limited opportunities to make “good” money, combined with the perceived need for profit creates “an enormous amount of strain” (p. 115). When viewed in the context of the “American Dream” – achievement, individualism, universalism, and materialism, some people will use any means (i.e., trafficking) to attain their goal.

Although generally limited to explaining the sexual exploitation of trafficked women and girls, the feminist perspective offers another lens by which to understand and contextualize certain forms of human trafficking. The perspective is considered
relevant because of the overrepresentation of women and girls among victims of trafficking (Kaye and Winterydk 2012). Lobasz (2009: 1556) points out that human trafficking is increasingly seen to be a security threat that translates into an “emphasis [on] border security, migration controls, and international law enforcement cooperation.” As an explanatory perspective, feminist theory shifts the focus from security-related matters to a human rights perspective with attention given to the social construction of human trafficking. Specifically, the feminist theories attempt to explain the harmful role that sexist stereotypes play in constructing the category of trafficking victims (Lobasz 2009). Butler (2015) was one of the first studies to use critical race feminism theory to explain prostitution and human trafficking. The theory looks at how race and gender intersect with other social and cultural systems to help explain how women and girls can and are exploited for sexual reasons. Also using a feminist lens in part of their article, Marinova and James (2012) note that in countries which have legalized prostitution (e.g., the Netherlands and Germany) human trafficking has increased.

Human behavior is complex, and a good theory is based on several key criteria: parsimony, testability, logical soundness, and practical application (see Williams and McShane 2018). However, whatever form of expression human trafficking takes on, it is the result of a combination of factors (e.g., push and pull, demand and supply, migration, globalization, etc.). As Williams and McShane (2018) observed, disciplinary perspectives – mostly sociologically oriented theory, have dominated criminological theories of crime (including human trafficking). However, they contend that we consider taking stock because as reflected in the theories presented, many of them use the same variables but with perhaps a slight variation on its meaning and operationalization. Arguably, there are enough theories to explain human trafficking, but as Mishra (2015) cautions, the conventional definitions and traditional theories used to explain human trafficking “encourage... oversimplification of the issue” (p. 20). What may be needed, as Lutya and Lanier (2012) and Williams and McShane (2018) suggest, is to determine just how and where existing theories and different disciplines match to explain “the occurrence of human trafficking” (Lutya and Lanier 2012: 567). This is referred to as theory integration. Lutya and Lanier (2012) refer to the growing area of Epidemiological Criminology and how it might be used to “devise strategies to respond effectively to human trafficking” as it “emphasizes the need to provide public health, justice, victim support and investigation to victims of human trafficking” (p. 567). Moreover, while a theory integration approach is not without its limitations (see Williams and McShane 2018); it shows promise in being able to articulate a comprehensive view of the process that explains the complexity of human trafficking.

**Conclusion**

As evidenced by the range of theoretical models presented, there is no one theory that best explains human trafficking, let alone any specific form of human trafficking. However, several issues have been directly/indirectly identified which may
serve to further advance our ability to explain human trafficking and better inform our responses. This can involve protection of victims, prosecution of perpetrators, prevention of trafficking, partnership of agencies/organizations in combatting human trafficking, or the active participation of vested parties in combatting human trafficking (i.e., the five pillars of the UNODC; also see belows 4 & 6). Although different classification models are used to categorize the range of theories, they are generally divided into macro-or micro-level theories. This chapter addressed a wide range of the more common theories used to explain human trafficking and concluded with the suggestion that theoretical integration may represent a new line of explanation that might better capture the complexity and diversity of human trafficking.

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Human Trafficking: An International Response

Nadine Blom

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Abstract

This chapter analyzes the current international legal framework with regard to trafficking in persons. Existing international legal instruments are explored as well as legal remedies available to victims. Enforcement challenges are discussed and possible solutions are offered.

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Introduction

Human rights violations take place daily and globally. The simple existence of treaties, declarations, and other instruments has not ended human rights abuses. As indicated by Shelton (2005: 13), violations can be linked to variables such as political, economic, and social challenges which are often irreparable by law alone and may require extensive efforts by states in order to educate, alleviate poverty, fight corruption, and make a collective effort to protect human rights, not only within their own jurisdiction but also globally.

Human rights instruments such as legally binding treaties can be categorized as “hard law,” whereas resolutions, declarations, the general comments of treaty bodies, and other texts adopted by the United Nations Human Rights Council can be referred to as “soft law.” They may also include reports issued by working groups and special rapporteurs.

International treaties and customary law form the backbone of international human rights law, whereas other instruments such as declarations, guidelines, and principles adopted at the international level contribute to its understanding, implementation, and development. By ratifying international human rights instruments, states incur certain responsibilities and obligations. The ratification of a treaty or convention places an international obligation upon the ratifying state to give effect to the rights reflected in these international treaties through national legislation, policies, and programs. If a state fails to comply with these obligations, it is compelled to make reparations through the implementation of effective legal remedies via legal bodies in order to adequately address human rights violations (Blom 2016).

The international community’s fundamental human rights commitments are mainly reflected in the Universal Declaration of Human Rights (1948) (UDHR), the International Covenant on Civil and Political Rights (1976) (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (1976) (ICESCR). Reflecting the core values of the Universal Declaration of Human Rights, the ICCPR and ICESCR were adopted in order to give legal force and effect to the human rights commitments as set out in the UN Charter and the UDHR. The UDHR, together with the ICCPR, its two Optional Protocols and the ICESCR, are collectively referred to as the International Bill of Human Rights. This chapter provides an overview of the applicability of general human rights instruments. The rights and obligations flowing from these instruments are discussed as well as the relevant state duties, compliance, due diligence, and remedies available to victims.

Prohibitions on Trafficking of Humans

General Human Rights Instruments

Article 4 of the UDHR prohibits any form of slavery and servitude, whereas Article 8 of the ICCPR states that:
1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3(a) No one shall be required to perform forced or compulsory labour.

Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW) specifically addresses trafficking and states that “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

Specific Instruments

The Slavery Convention was adopted by the United Nations in 1927 as a preventative measure and in order to prevent forced labor becoming analogous with slavery. The Convention currently holds 99 ratifications and defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Article 2 furthermore includes a variety of acts under the definition of slave trade and defines slavery as:

All acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery was adopted in 1956 and makes provision for the inclusion of slave-related practices such as debt bondage and other practices that are based on gender discrimination against women (Art. 1(a) and (c)). It is common cause that debt bondage is used by traffickers to coerce their victims into working off their “debt” after being smuggled into a country by traffickers (Shelley 2010: 69; Belser 2005: 7, 12).

According to the Trafficking in Persons Report 2015, millions of victims are working in forced labor situations to “work off” the debt of their ancestors (US Department of State 2015). Trafficking in persons was identified by the League of Nations as a global phenomenon on the rise, and as a result, to combat trafficking, regulations were designed and incorporated into the League of Nations human rights framework in the 1933 International Convention for the Suppression of the Traffic in Women of Full Age. This convention specifically addressed the trafficking and the vulnerability of women and formed the bedrock for later trafficking provisions, as drafted and implemented by the United Nations, identifying trafficking as a form of gender-based violence. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1951) then followed, being the first international, legally binding instrument that was drafted by the United Nations to combat human trafficking. The Convention was, however, only ratified by 82 member states and had 1 crucial shortcoming: it lacked a definition of trafficking and
failed to identify the elements of trafficking (Heintze and Lulf 2016: 152). The Convention came into effect in 1951 and was a legal turning point in the fight against trafficking. It created the platform for the more recent and far more comprehensive trafficking-specific framework in the form of the UN Convention Against Transnational Organized Crime and the Protocols Thereto (2000) (UNCTOC 2000).

According to the UNCTOC, a crime is transnational if it is committed in more than one state. An organized crime group is defined as:

a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Articles 8 and 9 of the UNCTOC deal with corruption, indicating that trafficking cannot take place without the assistance of corrupt officials. The Convention calls upon states to adopt measures in order to prevent, deter, and prosecute corruption, putting a short leash on all corrupt officials. Articles 12 and 14 deal with the seizure and confiscation of proceeds derived from criminal activities, stating that such assets may be identified and seized for the purpose of eventual confiscation. Article 14 specifically addresses the disposal of confiscated proceeds of crime or property, stating that if so permitted by the state’s domestic law, the confiscated property may be disposed of. Such a state may also, if allowed by its domestic legislation, “give priority to consideration to returning the confiscated proceeds of crime or property to the requesting state party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.” Most importantly, Article 14(3)(a) makes provision for the sale of crime proceeds to assist intergovernmental bodies in their fight against transnational organized crime.

The UN Convention Against Transnational Organized Crime was furthermore supplemented by three protocols. Of specific relevance to the human trafficking subject are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), also referred to as the Palermo Protocol, and the Protocol Against the Smuggling of Migrants by Land, Sea and Air (2000).

The United Nations adopted the Palermo Protocol in November 2000. The purposes of the Protocol are set out in the preamble as follows:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children.
(b) To protect and assist the victims of such trafficking, with full respect for their human rights.
(c) To promote cooperation among State Parties in order to meet those objectives.

The Palermo Protocol sets the international standard with regard to human trafficking, placing it high on the international agenda and providing a threefold definition for trafficking by stipulating what needs to be done, how it is to be done, and why it is done. Article 3 of the Palermo Protocol declares that:
Trafficking in persons shall mean 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 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.

Article 4 sets out the scope of application, stating that “the Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.” This is also referred to as the “3P” paradigm – prevention, protection, and prosecution – a structural framework used by international governments around the world in combating human trafficking. The prevention of trafficking should include preventative measures such as addressing labor demands, alleviating poverty, educating individuals who live in isolated rural areas, and adopting and implementing educational measures in the national curriculum of primary schools and high schools with regard to trafficking recruitment methods.

Article 5 of the Palermo Protocol places an obligation on states to put in place legislative and or other measures in order to criminalize human trafficking. Article 6 deals with the assistance and protection of trafficking victims, placing an obligation on states to protect the privacy and identity of victims by making legal proceedings which relate to trafficking confidential.

Article 6(2) states that state parties must ensure that their domestic, legal, or administrative systems contain measures that provide information to victims regarding court and administrative proceedings as well as assistance to enable their views and concerns with regard to criminal proceedings to be aired.

A further obligation is placed on state parties by Article 6(3), which addresses the issue of remedies that are to be made available to victims. Paragraph 3 states that:

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of the victims of trafficking in persons, including in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society and in particular, the provision of appropriate housing, counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand medical, psychological and material assistance and employment, educational and training opportunities.

Article 6(4) then goes further by stating that state parties shall, when applying the provisions of Article 6, take into consideration age, gender, and special needs of trafficking victims, in particular the special needs of children, including appropriate housing, education, and care, while Article 6(5) places an obligation upon state parties to provide for the physical safety of victims while they are within a party’s territory. Article 6(6) deals with the subject of domestic application, stating that each
state party shall ensure that its domestic legal system contains measures that provide victims with the possibility of obtaining compensation for damage suffered.

In terms of Article 7, “each state party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently in appropriate cases.” This should be done taking into consideration “humanitarian and compassionate factors.” Victims should be treated as victims, not criminals. When child victims are dealt with, this should also take place with the utmost care, taking into account their vulnerability and special needs.

Article 8 deals with the repatriation of victims, stating that the safety of such a victim should form a priority where repatriation is concerned and that proper and careful assessment should be done before a victim is repatriated. Victims should be returned to their states only if this is a safe option, and legal alternatives should be provided if their home environment is not adequately safe.

Article 9 places the focus on prevention, and states are obligated in terms of the article to adopt comprehensive measures to prevent and combat trafficking by means of programs; policies; research; mass media campaigns; multilateral and bilateral cooperation; social, educational, and cultural measures; and any other measures deemed necessary to combat trafficking. Article 10 states that all law enforcement institutions, immigration facilities, and other relevant authorities of states shall cooperate with each other by means of the exchange of information, in accordance with the national policies. Information with regard to the recruitment methods, means of transporting victims, and routes and links between individuals and groups must be shared in order to more effectively detect these criminals. Other aspects raised by Article 10 include training programs for law enforcement officers and immigration authorities in order to equip them in not only prevention but also victim identification. These authorities should also be fully informed with regard to gender- and child-sensitive issues, and they must be encouraged to cooperate with other relevant organizations and elements of civil society.

Article 11 very importantly emphasizes the importance of effective border control, stating that parties must adopt legislative and other necessary measures to prevent means of transport such as carriers to be used in the commission of offences. Article 12 deals with security and the control of documents, placing an obligation on states to ensure that all travel and identity documents issued by them are of such quality that they “cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued.”

International organized criminal group activities have become a serious international challenge. Operating across borders, these sophisticated rings have developed crime strategies that enable them to function in a sophisticated yet very harmful manner, and the types of transnational crime are continuously changing. Products, instruments, and victims are located and pass through various jurisdictions, and the cross-border mobility of people makes the intricate structure of these crime rings problematic to deal with. The vast profits that are derived from transnational crime and the inadequate penalties criminals face when they are caught make it worth their while to operate with impunity.
A UNODC report entitled *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010b) creates an international context in defining transnational organized crime. It explains that the “unprecedented openness in trade, finance, travel and communication” gave way to economic growth and well-being, setting the stage for criminals identifying opportunities that come with globalization. Illicit goods are manufactured in one continent, trafficked across various continents, and then sold in another continent. The UNODC refers to mafias as a transnational problem, indicating that these crime rings have become a real threat to national security, especially in vulnerable, poor countries. Crime and corruption often fuel each other, hindering economic development and prosperity and, far worse, empowering criminals to outsmart the law. According to this report, transnational organized crime, as defined by the UNCTOC, is “any serious transnational offence undertaken by three or more people with the aim of material gain.” The endless list of transnational organized crimes includes human trafficking, migrant smuggling, cybercrime, counterfeit goods trafficking, maritime piracy, firearms trafficking, cocaine trafficking, heroin trafficking, and environmental resources trafficking.

The UNODC advises in its report that a synchronized approach should be followed in the implementation of effective enforcement mechanisms. The United Nations Convention Against Transnational Organized Crime (2000) is the response of the international community to the need for a truly global approach. Its purpose is to promote cooperation, both for the prevention of and the effective fight against transnational organized crime.

The link between human trafficking, drug trafficking, trafficking of artifacts, the illicit flow of funds, and terrorism is evident. Human trafficking has been used increasingly to fund the illegal activities of transnational organized crime groups such as Al-Qaeda, more significantly so after the United States started to close in on terror groups, disabling their traditional source of funds (Kloer 2009; Gonzalez 2013: 1). The recently released *United Nations University Report* indicates that ISIL has enslaved an estimated 5000 people from a Yazidi community. ISIL then utilized social media platforms such as Telegram and encrypted application to auction off these trafficked women and girls. Yazidi captives from Iran are also recruited via online magazines and YouTube videos to join ISIL (Bhattacharya 2016).

According to Human Rights Watch, more than 2000 women and children have been taken hostage since the beginning of 2014. These victims also included boys taken hostage to act as child soldiers (Abubukahr 2015). During 2014, Boko Haram insurgents entered the town of Chibok in Nigeria and abducted more than 200 schoolgirls for the purpose of sexual slavery (Abubukahr 2015). Acting under Chapter 7 of the Charter of the United Nations, the Security Council, in Resolution 1261, condemns, among other atrocities, the recruitment and use of children, rape and other forms of sexual violence, forced displacement of members of minority groups, killing and maiming of children, arbitrary detention, and attacks on schools and hospitals (UN Security Council Resolution S/RES/1261 (1999) at para 2). In Resolution 1261, the Security Council reaffirms that one of the biggest threats to international peace and security remains terrorism in all its various forms, adding that terrorism is unjustifiable, irrespective of whether these acts are religiously
motivated or not (UN Security Council Resolution S/RES/1261 (1999) Preamble). The Security Council goes further by expressing its concern with regard to the resources obtained by terrorist groups such as Islamic State (IS) and other organizations as well as entities associated with Al-Qaeda and calls upon member states to prevent terrorists from kidnappings and hostage-taking (UN Security Council Resolution S/RES/1261 (1999) Preamble).

The Security Council underlines the primary responsibility of member states to protect the civilian population on their territories from terrorism in accordance with their obligations under international law with specific reference to women and children affected by the violent and sexual acts of these terrorist groups (UN Security Council Resolution S/RES/1261 (1999) Preamble). These groups make use of advanced communication technologies, the Internet, and new information for recruitment purposes, and states should adopt all possible measures to prevent these criminal groups from exploiting technology and other resources to support their terrorist acts. A teenager was recently recruited by IS via social platforms to join IS and was rescued from a British Airways flight on her way to join the Islamic State. An investigation is currently being conducted to establish how she was recruited (Wicks 2018).

Resolution 2170, adopted by the Security Council on 15 August 2014, places a positive obligation on states to ensure that all measures taken to combat terrorism must comply with their obligations under international law and:

in particular international human rights, refugee and international humanitarian law, and underscoring that effective counter terrorism measures and respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing and are an essential part of a successful counter-terrorism effort. (Preamble S/RES/2170 (2014))

**Affected Rights**

The link between human rights and the fight against trafficking is evident since the human rights of trafficking victims are affected at different points in the human trafficking cycle (Factsheet 36: 5). Articles 1(3) and 13 (b) of the Charter of the United Nations and Article 2 of the Universal Declaration of Human Rights confirm that the human rights reflected in these instruments are universal, meaning that all trafficking victims are entitled to the protection of the full range of such rights (Factsheet 36: 6). As indicated by Alston and Goodman, “[t]he UDHR goes little behind the bare declaration of rights to provide (art. 8) that everyone has the ‘right to an effective remedy by the competent national tribunals’ for violations of fundamental rights” (2013: 159). The ICCPR reaches wider than the UDHR by stating that “states parties agree to ensure to all persons within their territory the rights recognized by the Covenant, and to adopt such legislative or other measures as may be necessary to achieve that goal” (2013: 159). In terms of Article 2 of the UDHR, state parties also agree to take all necessary steps to ensure that all persons whose human
rights have been violated have an effective remedy and that such remedies, when granted, will be enforced by the competent authorities (2013: 159). The human rights affected during the trafficking cycle are discussed in the next section.

**The Right to Life**

The Universal Declaration of Human Rights (UDHR) was drafted as a common standard for all people and all nations by the General Assembly, signaling the deepening of a more progressive global human rights regime. The Declaration states that “human rights should be protected by the rule of law” (UN General Assembly art.1). This human rights yardstick became authoritative in states which became parties to one or both of the later to follow Covenants. Article 3 of the UDHR states that all persons have the right to life. Article 6 of the ICCPR declares that everyone shall have the right to life and that such right shall be protected by law and that no one can be arbitrarily deprived of their life. In General Comment No. 6 para 1, the UN Human Rights Committee (HRC) categorizes the right to life as “the supreme right” (UN Human Rights Committee art.1). According to Joseph and Castan (2013: 167), “[a]rticle 6 has both a negative component, as in a right no to be arbitrarily or unlawfully deprived of life by the State or its agents, and a positive component, in that the State must adopt measures that are conducive to allowing one to live.” According to Joseph and Castan (2013: 43), Article 6(1) has a horizontal effect and requires states to ensure that individuals are protected against homicide and intrusions into privacy by nongovernment entities. The HRC makes mention of the right to life in paragraph 10 of General Comment 28 and places an obligation on states to report on preventative measures protecting women from practices that violate their right to life such as female infanticide, dowry killings, and the burning of widows (CCPR/C/21/Rev.1/Add.10 at para 10) (2000). The Committee also requests information on the “particular impact” of poverty and deprivation on women which “poses a threat to their lives.”

Article 2 of the European Convention of Human Rights (ECHR) declares that every person’s right to life “shall be protected by law,” placing both a positive and negative duty on the state to protect the individual’s right to life. This positive obligation requires states to take affirmative measures to protect the right to life, whereas the negative duty implies that states are prohibited from committing any acts that may deprive individuals of this right. Article 13 of the ECHR stipulates that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

**The Right to Liberty and Security of the Person**

Article 1 of the UDHR declares that “[a]ll human beings are born free and equal in dignity and rights” and furthermore states that all persons are born as such with
“reason and conscience and should act towards one another in a spirit of brotherhood.” Article 2 of the UDHR states that all persons are entitled to all the rights and freedoms as set out in the UDHR, and Article 3 states that everyone has the right to life, liberty, and security of person. Article 8 of the ICCPR in turn states in relevant part:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3(a) No one shall be required to perform forced or compulsory labour.

Article 9 of the ICCPR deals with the right to liberty and states that all persons have the right to liberty and security of their persons. In General Comment No.35, the Human Rights Committee highlights that the right to personal security as set out in Article 9 places an obligation on state parties to “take appropriate measures to protect individuals whether detained or non-detained, from known threats to life or bodily integrity proceeding from either governmental or private sources” (CCPR/C/GC/35 (2014)). In General Comment 28, the HRC draws the attention of states to their obligations in terms of Article 8 of the ICCPR and states that parties are to inform the Committee of all measures taken in order to eliminate trafficking of women and children and forced prostitution, not only across borders but also within their territories (CCPR/C/21/Rev.1/Add.10).

Article 11 of the ICCPR declares that no person shall be imprisoned “merely on the ground of inability to fulfil a contractual obligation,” and Article 12 states that everyone shall be free to leave any country including their own country. Traffickers confiscate the passports of their victims in order to gain control over them. This makes it impossible for the victims to leave the country to which they were trafficked, leaving them trapped, vulnerable, and without protection. As they are often foreign nationals, they cannot speak or understand the language of the host state, which leaves them particularly at risk.

The Right to Privacy

Article 12 of the UDHR states that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour or reputation. Everyone has the right to protection of the law against such interference or attacks.” Article 17 of the ICCPR prohibits the arbitrary or unlawful interference with a person’s privacy, family, home, or correspondence as well as unlawful attacks on their honor and reputation. It also states that every person has the right to protection against such interference or attacks. In order to protect trafficking victims and their families from further harm, it is paramount that the privacy of victims be protected. The Recommended Principles and Guidelines in guideline 6 stipulate that “[t]here should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible,
while taking into account the right of any accused person to a fair trial” (E/2002/68/Add.1). Article 11 of the European Trafficking Convention also reiterates that the state parties must “protect the private life and identity of victims.” Failure to protect the victim’s privacy can cause retaliation by traffickers and increase the possibility of intimidation (Factsheet 36).

Right to Physical Integrity

Article 10(1) of the ICCPR states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” According to the Human Rights Committee, Articles 10 and 9 are “closely related” (CCPR/C/GC/35 (2014)). The Human Rights Committee in General Comment No.21 refers to Article 10 of the ICCPR and highlights the positive obligation it poses on states “towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the ICCPR” (HRC General Comment No.21 HRI/GEN/1/Rev.1 at 33 (1992b)). The humane treatment of all persons who have been deprived of their liberty is a “universally applicable rule” (HRC General Comment No.21 HRI/GEN/1/Rev.1 at 33 (1992b)) which must be “applied without any distinction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status” (HRC General Comment No.21 HRI/GEN/1/Rev.1 at 33 (1992b)).

The Right Not to Be Subjected to Inhumane or Degrading Treatment or Torture

Trafficking victims are often kept in bondage by means of physical torture and ill treatment. Often, when such victims break free, they have been physically and emotionally traumatized and are afraid of retaliation by their traffickers (Factsheet 36: 2014). Article 5 of the UDHR prohibits any form of torture, inhumane and degrading treatment, or punishment. Article 7 of the ICCPR states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” and by doing so, it places an obligation on states to protect also women and children against cruel and inhumane behavior. In General Comment 20, the HRC discusses the aim of Article 7 of the ICCPR and emphasizes that states have a duty to protect the physical and mental integrity of the individual. It furthermore highlights the duty placed on states to afford “everyone protection through legislative and other measures as may be necessary outside their official capacity or in a private capacity” (HRC General Comment 20 HRI/GEN/1/Rev1 at 30 (1992a)). The Committee furthermore reiterates that the prohibitions included in Article 7 are not limited to acts causing physical pain to victims but also extend to acts which cause mental suffering. The Committee also reiterates the fact that Article 7 of the ICCPR allows
for no limitation and that no derogation must be allowed with regard to the provisions of Article 7 even in cases of public emergency (HRC General Comment 20 HRI/GEN/1/Rev1 at 30 (1992a)). In a further observation, the Committee notes that no justification or “extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority” (HRC General Comment 20 HRI/GEN/1/Rev1 at 30 (1992a)).

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987) (CAT) entered into force in 1987 and has, up to date, been ratified by 158 state members. The definition of torture in the Convention reads as follows:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2 states that all parties have an obligation to effectively prevent acts of torture in any territory under their jurisdiction and should take all legislative, administrative, and judicial measures deemed necessary to do so. It also stipulates that no exceptional circumstances, whether threat of war or public emergency, may be invoked as a justification for torture. No order from a public authority or public officer may also be invoked as a justification for an act of torture.

In cases of repatriation, no state shall extradite a person to another state if there are substantial grounds for believing that such a person will be subject to torture or dangerous circumstances. Article 4 obliges all state parties to incorporate all acts of torture as offences into their criminal legislation and that the penalties for atrocious torture crimes will be as grave as the nature of the offences committed.

Article 13 deals with victim assistance and protection, and Article 14 places an obligation on state parties to ensure that all victims of torture have an enforceable right to “fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.” General Comment No. 3 of the Committee Against Torture explains the nature of the obligations placed upon states in terms of Article 14 of CAT and that all state parties are required to ensure that victims obtain redress and compensation (CAT/G/GC/3/1 (2012)). General Comment No. 3 highlights that, according to Article 14 of CAT, the right to compensation and redress is “applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment without discrimination of any kind (CAT/G/GC/3/1 (2012)), in line with the Committee’s General Comment No.2.” The Committee furthermore examines “redress” as a term and states that Article 14 “encompasses the concepts of effective remedy and reparation. The comprehensive reparative
concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention” (CAT/G/GC/3/1 (2012)). Paragraph 6 of Comment No. 3 highlights that reparations must be tailor made to each victim’s needs and must be proportionate “in relation to the gravity of the violations committed.”

Monetary compensation may also not be a sufficient form of redress, and the Committee indicates that monetary compensation alone “is inadequate for a state party to comply with its obligations under Article 14” (CAT/G/GC/3/1 (2012)). Redress must be “prompt, adequate and fair” and may include pecuniary and nonpecuniary damage resulting from the torture, reimbursement of medical expenses, provision for future medical or rehabilitative expenses, loss of earnings and potential loss due to disabilities caused by the torture, as well as “lost opportunities such as employment and education” (CAT/G/GC/3/1 (2012)). Provision must also be made for legal and specialized assistance and any other costs that may be necessary in a redress claim (CAT/G/GC/3/1 (2012)).

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2006) (OPCAT) aims to “establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” It furthermore establishes a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee Against Torture (Subcommittee on Prevention) which shall be responsible for carrying out the functions set out in the Protocol (A/RES/57/199).

The Rome Statute entered into force in July 2002. Although it does not make provision for trafficking offences per se, references can be found to certain elements of trafficking, for instance, enslavement and the forcible transfer of children (Rome Statute: art 7(1) (c)).

Article 7 of the Rome Statute prohibits “crimes against humanity” and any of the following acts if such acts are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack,” imprisonment or other severe deprivation of physical liberty “in violation of the fundamental rules of international law,” enslavement, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and/or “any other form of sexual violence of comparable gravity” (Rome Statute: art 7(1) (c)). Article 7 (k) also makes provision for “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” The Rome Statute does, however, set an additional requirement by stating that such a crime must be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” in order to qualify as a crime against humanity.

Article 7 furthermore consists of six elements essential to constitute a crime against humanity. It firstly sets as a requirement that it has to be established whether either one of the following crimes has been committed:
[M]urder; extermination; enslavement; deportation or forcible transfer of population; imprison-ment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 7 secondly provides that the act must be an attack directed against any civilian population. Thirdly, the acts must be widespread or systematic in nature, and the attack must be pursuant to, or in furtherance of, a state or organizational policy to commit such attacks. The fifth requirement is that the acts must be committed as part of the attack, indicating that there must be a nexus between the acts and the attack, and, lastly, Article 7 sets as a requirement the awareness by the perpetrators of the fact that the conduct was part of or intended to be part of such an attack.

Article 2(a) of the Rome Statute defines “enslavement” as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

Torture is defined by Article 2(e) of the Rome Statute as follows:

“the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions”.

If, however, a crime does not comply with all the requirements as set out in terms of Article 7, it will not be deemed a crime against humanity in terms of the Rome Statute.

Article 8 (xxii) deals with war crimes and prohibits “[c]ommitting rape, sexual slavery, enforced prostitution, forced pregnancy as defined in article 7 paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.” Article 8 also prohibits the enlistment and conscription of children under 15 years of age with the purpose of using them in hostilities or employ them as a member of armed forces. Terrorist acts and acts by groups such as ISIS may fall under Article 8 of the Rome Statute if such acts involve widespread attacks or are committed in the context of armed conflict. However, the fact that Iraq and Syria are not members of the International Criminal Court remains a barrier (Islam 2006). This issue falls outside the scope of the dissertation.

Article 75 of the Rome Statute makes provision for remedies for victims, stating that “[t]he Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.” Provision for asset forfeiture is also made in Articles 75 and 109, placing a positive obligation on state parties to give effect to all fines and
forfeiture orders in accordance with such a state’s national law. Article 109 states that if a state party is unable to give effect to an order for forfeiture, it “shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.”

The Right to Physical and Mental Health

Article 12 of the International Covenant on Economic, Social and Cultural Rights states that state parties “to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Many trafficking victims are exposed to psychological trauma, forced abortions, AIDS, and sexually transmitted diseases. They are also often tortured and mentally and physically abused by their traffickers in order to keep them in submission (Belser 2005: 12).

The Right to Be Free from All Forms of Discrimination

Article 2 of the ICESCR declares that state parties must guarantee that the rights set out in the Covenant will be “exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 3 deals with the equal rights of men and women, whereas Article 5 prohibits the infringement of any of the rights set out in the ICESCR and declares that no restriction upon any of the fundamental human rights set out shall be recognized, whether it is restricted by any form of law, regulation, convention, or custom.

The Right to Equality

Article 26 of the ICCPR states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 15 of CEDAW deals with the equality of all genders before the law stating that “they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.” Women shall also be given the right to freedom of choice with regard to domicile and residence. Article 4 of the Palermo Protocol places an obligation on state parties to “take or strengthen measures, including through bilateral or
multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”

The Right to Marriage

Article 16 of the UDHR states that “[m]arriage shall be entered into only with the free and full consent of the intending spouses.” Article 23 of the ICCPR declares that all marriages shall be concluded out of free and full consent of both spouses. According to the Ministry of Home Affairs in India, it is estimated that 90% of India’s sex trafficking is internal trafficking and mainly for the purposes of sexual exploitation and forced marriages (US Department of State 2007). A nexus can be found between potential trafficking due to such circumstances as generations of families sell their daughters as brides in order to provide for their financial needs (Masika and Williams 2002).

The Right to Work

Article 23 of the Universal Declaration of Human Rights states that all persons shall have the right to work in just and favorable working conditions and the right to free choice of employment. Article 23(3) deals with the right to just and favorable remuneration ensuring “an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Article 21 of the International Labour Organisation’s Forced Labour Convention (1930) defines forced labor as “all work of service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Forced labor brings about the restriction of human freedom and deprives victims of favorable working conditions and the right to movement. It also exposes victims to economic exploitation which infringes upon the dignity and integrity of the victim (Belser 2005: 2). Article 1 states that all members of the ILO undertake to “suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”

The International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work was adopted by the International Labour Conference in June 1998. Article 2 (a)–2 (d) states that:

all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely—
a) freedom of association and the effective recognition of the right to collective bargaining;
b) the elimination of all forms of forced or compulsory labour;
c) the effective abolition of child labour; and
d) the elimination of discrimination in respect of employment and occupation.
State Obligations

According to Alston and Goodman, the various general human rights instruments set out different state duties, and different rights point to different types of duties (2013: 181). A distinction can be made between positive and negative state duties, and the authors highlight that human rights are not static (2013: 182).

Five categories of state duties can be derived from the existing instruments (2013: 183): the duty to respect the rights of others, the duty to create institutional machinery to realize the rights as set out in human rights instruments, the duty to protect rights and prevent violations against rights (2013: 183), the duty to provide goods and services to satisfy rights, and lastly the duty to promote rights by means of creating awareness and education and to effect a cultural change in certain instances (2013: 185). The various state duties often overlap and are therefore interrelated (2013: 185). It is important for states to track the expansion of rights and to develop strategies of change to adapt to the ever-expanding and changing nature of the duties that international human rights treaties placed upon states.

Remedies

Article 8 of the UDHR makes provision for the redress of human rights violations in declaring that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” The right to a remedy for victims of human rights violations is also guaranteed and is a “key component” of the ICCPR. “While a finding of violation of one of the substantive rights in Part III (of the ICCPR) is an important measure of vindication for a victim, article 2(3) obliges states parties to ‘fix’ the situation to the extent possible by providing the victim, or the victim’s survivors, with a remedy” (Joseph and Castan 2013: 867).

Article 2 of the ICCPR reaches further than the UDHR in providing not only to victims the right to a remedy in cases of violations but also setting out a remedial structure (Alston and Goodman 2013: 159).

Joseph and Castan (2013: 9) indicate that Article 2(1) of the ICCPR places an immediate obligation on states to respect and ensure the rights as set out in this section of the ICCPR, whereas Article 2(2) “provides the overarching framework within which the rights specified in the Covenant are to be promoted and protected” (2013: 9). It is also averred that “[a]rticle 2(1) is fundamental; it is the ‘obligation’ provision that directs States immediately to implement the substantive ICCPR guarantees at the municipal level” (Joseph and Castan 2013: 9).

According to Alston and Goodman, states must ensure that the rights set out in Article 2 are protected by state and non-state actors and that remedies are enforced by means of institutional mechanisms which include normative systems and institutions in order to prosecute violations effectively and impose sanctions on perpetrators (2013: 183). The duty to investigate human rights violations forms a part of the state duty to provide for a right to remedy (Joseph and Castan 2013: 870).
Article 2 (3) (a) of the ICCPR places an obligation on state parties to take all necessary steps to ensure that the provisions of the Covenant and the rights set out in the Covenant are reflected in their domestic legislation in accordance with their constitutional processes in order to give effect to such rights. Article 2 also declares that each person “whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” and furthermore reiterates that states shall ensure “effective remedies for victims whose rights have been violated.” This article also indicates that each person claiming a remedy shall have the right to a remedy to be determined by competent judicial, administrative, or legislative authorities and that such authorities shall ensure the enforcement of the remedies when granted.

In General Comment No. 31, the Human Rights Committee discusses this issue and states that victims should have accessible and effective remedies to vindicate their rights. The Committee notes that “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy” (CCPR/C/21/Rev.1/Add.13).

Prevention of the recurrence of a violation of the Covenant forms an integral part of the obligation that rests on states to implement the Covenant. Measures should be adopted under the Optional Protocol to move “beyond a victim-specific remedy” and avoid the recurrence of violations. Such measures may entail changes in a state party’s laws or legal practices (CCPR/C/21/Rev.1/Add.13).

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) was adopted by the General Assembly in November 1985 in Resolution 40/34. In its preamble, the General Assembly acknowledges that:

the victims of crime and the victims of abuse of power and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders.

The Declaration was designed to “assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power” (A/RES/40/34 (1985)).

The development of the Recommended Principles and Guidelines on Human Rights and Human Trafficking (the Guidelines) was headed by the United Nations High Commissioner for Human Rights, Mary Robinson in lieu of the fact that human trafficking had “moved from the margins to the mainstream of international concern” (E/2002/68/Add.1) and in order to “provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking” (E/2002/68/Add.1). The Guidelines were transmitted to the UN Economic and Social Council in 2002 and have been integrated into various legal policies and texts and also serve as annexes to regional and international treaties which include the Palermo Protocol (E/2002/68/Add.1). The Guidelines aim to “promote and facilitate the integration of human rights perspectives into national, regional and international anti-trafficking...
laws, policies and interventions.” The Guidelines consist of 11 guidelines, supplementing the existing gaps in the Organized Crime Convention and the Palermo Protocol, making them an important source for domestic policymaking. The Guidelines establish a framework for corporate responsibility with regard to human rights and suggest human rights due diligence as an optional mechanism for businesses to respect human rights. Guideline 2 very importantly states that the failure to effectively identify a trafficking victim is “likely to result in a further denial of that person’s rights” and that states are obliged to ensure effective victim identification (E/2002/68/Add.1). As trafficking victims are often isolated from the outside world, they are unaware of available remedies and need to be informed of the “availability of obtaining remedies, including compensation, for trafficking and related exploitation” (E/2002/68/Add.1). States and intergovernmental and non-governmental organizations should inform victims of their enforceable right to “fair and adequate remedies” of a criminal, civil, and administrative nature (E/2002/68/Add.1). The relevant organizations should also provide information to victims on the procedures to be followed in order to obtain remedies (E/2002/68/Add.1).

The ratification of international trafficking-specific conventions by states necessitates compliance with international obligations incurred by such conventions. The effective implementation and enforcement of legal measures should be a priority in the fight against transnational organized crimes. Governments should aim to design, adopt, and implement all-inclusive national legal frameworks, ensuring that measures are put into place to effectively combat human trafficking and prosecute traffickers and to prosecute corrupt officials that are involved in facilitating trafficking.

**Enforcement Challenges and Possible Solutions**

According to the United Nations Office on Drugs and Crime (UNODC), human trafficking is the third most profitable international crime, generating close to USD 32 billion worth of profit in 2011 (UNODC 2012). It is also the fastest-growing crime in the world. Vulnerabilities are caused by push factors such as poverty, globalization, cultural beliefs, migration fueled by employment shortages, and marginalized people, which creates opportunities for traffickers to operate with impunity. Governments are struggling globally to design and implement measures and instruments at a sufficiently rapid pace as the crime of trafficking in persons constantly evolves and sophisticated transnational crime rings adapt their recruitment methods. Poverty, a lack of education, unbalanced distribution of wealth, unemployment, armed conflicts, poor law enforcement systems, degraded environment, poor governance, societies under stress, corruption, lack of education and discrimination, increased demand for sex trade, and sex tourism are some of the root causes of trafficking in persons. This international crisis is also furthered by extremely well-organized international crime structures and networks managing to elude prosecution for
various reasons, ranging from ill-governed states, porous borders, bribes and corrupt officials, transnational deal making, black market transactions, and victims too traumatized to testify against their perpetrators.

The absence of effective border control and law enforcement agencies facilitates the easy transport of victims across the borders of regions and states. Corruption remains one of the biggest challenges when it comes to the effective implementation of anti-trafficking legislation globally. According to a study carried out in South-eastern Europe, human trafficking cannot take place without the involvement of corrupt officials (Programme Against Corruption and Organised Crime in South Eastern Europe (PACO) *Trafficking in Human Beings and Corruption* 2002: 9). Corruption also places an impediment on the political will of states to combat trafficking, and corrupt practices interfere with government policies on several instances.

In order to effectively combat transnational organized crime and, more specifically, the trafficking in persons globally, it is imperative that a comprehensive strategy be followed by all role players. The United Nations Sustainable Development Goal 16.2 calls for an end to human trafficking and all violence against children. Other targets incorporated in the Sustainable Development Goals include implementing effective measures against trafficking in persons (Goal 8.7) and the elimination of violence against women and girls. Direct action by states to give effect to these targets also underpins the Sustainable Development Goals.

Joint cooperation as an additional form of prevention should include mutual cooperation not only between states on an international and regional level but also cooperation between the public sector, private sector, civil societies, and communities. Increasing global awareness efforts to advance mutual cooperation was recently illustrated by the United Nations, the European Union, and the International Organization for Migration under a joint initiative called *The Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants* (GLO.ACT) (UNODC 2016).

Data collection and the collection and exchange of data and intelligence between states should also be a priority as this crime often commences within the jurisdiction of one state and continues in the jurisdiction of another state or states. Knowledge of the extent of the crime in each specific state is essential in determining the optimal means to combat it in such a state as human trafficking is a fluid and transnational crime, continuously changing in a globalized world. Crime intelligence and the analyzing thereof are of utmost importance in the fight against trafficking. According to the UNODC Manual for Analysts, the mere collection of data is not sufficient. It is imperative that the information which was collected be properly evaluated before it is acted upon (UNODC 2016). As indicated earlier, the simple existence of instruments and good practices does not ensure the implementation of such instruments and practices by state parties. The effective implementation of state obligations is pivotal in the fight against trafficking. Existing codes and good practices can only be effective in an obligatory context, and it is paramount that these practices be implemented as obligations placed upon states in order to be effective. It is crucial
for states to develop and implement specific trafficking measures within their own jurisdictions and for these measures to be tailor made to address the various forms of trafficking that take place within their national context. The importance of preventative measures, educating vulnerable groups and creating awareness with regard to recruitment methods and the risks that accompany illegal migration, is crucial. The Palermo Protocol calls for states to follow a victim-centered approach at all times when dealing with trafficking in persons cases. The immense trauma victims incur during the trafficking cycle and the need for immediate care cannot be stressed enough. Victims should be made aware of their rights not only with regard to the prosecution process but also when it comes to providing for their basic and emotional needs.

**Conclusion**

Human Trafficking as a form of transnational organized crime has become a global challenge. Vulnerabilities are caused by push factors such as poverty, globalization, cultural beliefs, migration fueled by unemployment, and marginalized people, which creates opportunities for traffickers to operate with impunity. Governments are struggling globally to design and implement measures and legal instruments at a sufficiently rapid pace due to sophisticated crime structures and their modes operandi. Technology, the speed at which it advances, and the unregulated worldwide web remains another great challenge in the pursuit against trafficking. Various international responses were developed in the global pursuit against trafficking in persons. The Palermo Protocol is the Protocol that sets the international standard with regard to trafficking in persons and places an obligation on states parties to criminalize human trafficking by means of legislative measures. The Protocol also advises parties to design and implement measures that will provide efficient remedies for trafficking victims. The mere ratification of trafficking specific conventions by states is however an insufficient response to this global challenge and it remains crucial for states to develop and implement trafficking specific measures within their own jurisdictions and that such measures will be adapted to address human trafficking in national context. Effective implementation of existing legal instruments, the investigation of trafficking crimes by skilled law enforcement agencies, and effective prosecution of perpetrators are essential in this regard. The Palermo Protocol furthermore calls for states to follow a victims-centered approach when dealing with trafficking in persons cases. The immense trauma victims suffer during the trafficking cycle and the need for immediate psychological care is key when assisting victims. Victims should also be made aware of their rights, not only with regards to legal remedies but also regarding provision by the governing state for a victim’s basic and emotional needs. The aim of this chapter was to briefly examine the essentials of the international legal framework with regard to human trafficking, and the various existing applicable international treaties, resolutions, convention’s and remedies available to victims were also briefly discussed.
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EU Anti-trafficking Coordinator: Trajectory of a Unique Mandate

Zoi Sakelliadou

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Abstract

This article examines the development of the mandate and function of the Office of the EU Anti-Trafficking Coordinator based in the European Commission. The analysis is situated in the broader EU legal and policy framework on trafficking in human beings, as part of the development of the area of freedom, security, and justice (“AFSJ”). The chapter examines the institutional dynamics of the AFSJ and their expression in the context of the EU anti-trafficking action and in particular how the Stockholm Programme and the legislative negotiations toward the adoption of Directive 2011/36/EU influenced the creation of the mandate of the EU Anti-Trafficking Coordinator. What was the trajectory to the establishment of this mandate? What were the institutional, political, and legal dynamics fuelling the process? The article is based largely on primary sources and publicly...
available transcripts of negotiations and parliamentary sessions, as literature on this subject is rather limited. Finally, the article briefly examines the main elements of the mandate in practice.

**Keywords**
Coordinator · AFSJ

**Developing the EU Area of Freedom, Security, and Justice**

This chapter examines the evolution of the mandate of the EU Anti-Trafficking Coordinator through the development of the EU area of freedom, security, and justice ("AFSJ"). An analysis of the process toward the full communitarization of the AFSJ will provide for a contextual understanding of the processes and institutional dynamics in place during the evolution of this mandate. The European Union’s anti-trafficking law and policy are framed in the context of the AFSJ as laid out in Article 3(2) of the Treaty on the European Union (TEU). It has developed from an area of intergovernmental cooperation to an area fully communitarized. The AFSJ itself is a relatively recent domain comprising diverse areas involving core aspects of state sovereignty, such as the abolition of internal borders; asylum; migration; visas; organized crime, including trafficking in human beings; cooperation in civil and criminal matter; police cooperation; and protection of fundamental rights. Because of this proximity to national sovereignty, the process toward communitarization has been gradual (Lenaerts 2010: 258).

The development of an anti-trafficking legal and policy framework is, thus, intrinsically linked to the development of the AFSJ in the foundational treaties of the EU from the Maastricht Treaty (1992) up to the Lisbon Treaty which was signed in 2007 and entered into force in December 2009. The trajectory is fascinating and complex, from a legal, institutional, and political point of view. The Maastricht Treaty was characterized by a strong intergovernmental approach, and it introduced the pillar structure. The Treaty of Amsterdam subjected the AFSJ to double treatment (Lenaerts 2010), due to the coexistence of a first pillar under the community method and of a third pillar on police and judicial cooperation in criminal matters, including trafficking in human beings, under an intergovernmental approach.

The development of justice and home affairs cooperation has developed in two main tracks: first, a legislative or harmonization approach and, second, a policy programming approach (Carrera and Guild 2015: 10). This is also applicable in the case of action to address trafficking in human beings. Following the Amsterdam Treaty, we witness the adoption of multiannual programs [Tampere (1999), Hague (2004), Stockholm (2009)] adopted by the European Council and the European Commission adopting subsequent action plans for their implementation. It is in these programs where reference is made to the mandate of the EU Anti-Trafficking Coordinator. With the Treaty of Lisbon, the pillar structure was abolished, as the
TFEU introduced a new Title V on the “Area of Freedom, Security and Justice” subject to traditional “Community instruments” (Lenaerts 2010). This change has led to the current institutional, legal, and policy architecture around the EU anti-trafficking action.

The Policy Impetus

The late 1990 and early 2000 saw an increasing engagement with the issue of trafficking in human beings at global and European level, where already generic reference to the need for further coordination and coherence can be found. As mentioned above, one of the tracks of developing cooperation in the field of justice and home affairs was via a policy programming approach (Carrera and Guild 2015), especially in the absence of competence to adopt measures toward a legislative or harmonization approach. The arsenal to address trafficking in human beings in the context of the Maastricht Treaty included intergovernmental cooperation that could at best lead to joint positions, joint actions, or international conventions (Lenaerts 2010). The Treaty of Amsterdam maintained the intergovernmental method, which created the context for a more policy programming approach, especially given the international context. Despite the intergovernmental approach, the Member States were active on the matter.

According to Gallagher (2006), European countries and their institutions were among the first to recognize the threat that traffickers represented to both individual rights and to the wider public order. Elsewhere she notes that already from the mid-1990s, the EU became actively involved, referring to the Joint Action of 1997 (Gallagher 2010) (Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children, OJ L 063/2) as well as to the 2002 Framework Decision on combating trafficking in human beings (OJ L 203/1) and a Joint Action on short-term residency permits for victims of trafficking.

In December 2000, the Commission proposed a draft Framework Decision in accordance with the Tampere Action Plan (COM (2000) 854, Communication from the Commission to the Council and the European Parliament – Combating trafficking in human beings and combating the sexual exploitation of children and child pornography). It was the period leading to the signature of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The link between the two instruments was from the outset strong, and it was not expected that there would be any competition between the two (Gallagher 2010). It should be noted that at the time of the proposal, the Commission had just signed the Palermo Protocol at the Palermo High-level Conference for the UN Convention against Transnational Organised crime.

The Framework Decision, now repealed by the Directive 2011/36/EU, was adopted in 2002 and prepared the ground for further action at EU level. It is important to note that the overarching legal framework set at the time by Articles 29, 31(e), and 34(2)(b) of the Treaty on European Union was quite limited: anti-trafficking policies remained subject to intergovernmental cooperation, with the
European Parliament “by and large, marginalised in the legislative process, something which led the literature to underline the ‘democratic deficit’ affecting EU JHA policies” (Carrera et al. 2013). Thus, the Council was only required “to consult” the European Parliament before adopting any measure referred to in Article 34(2)(b, c, and d) TEU. In addition, the Maastricht Treaty (Article K.6 TEU) stipulated that the Presidency and Commission should regularly inform the European Parliament of discussions held on justice and home affairs areas and stated that the Presidency shall consult the European Parliament on the principal aspects of related activities and “ensure that the views of the European Parliament are duly taken into consideration” (Carrera et al. 2013).

During the negotiations of the Framework Decision in the Council, the contentious areas regarded the level of penal sanctions for trafficking-related offenses (2350th JHA Meeting, 28–29 May 2001 and 2370th Council meeting, 27–28 September 2001) – an issue later addressed by the Directive but only following a treaty reform – and especially the lower threshold for the maximum penalties to be imposed on persons found guilty of trafficking in human beings (8 years where there are aggravating circumstances). The adopted Framework Decision in 2002 provided among others for sanctions against perpetrators, liability of legal persons, and definitional aspects (see Obokata 2003).

While not a deliverable of the Tampere Programme as such, the “Brussels Declaration” was adopted in 2002, resulting from the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenges for the Twenty-first Century, of September 2002. The Brussels Declaration aimed at further developing European and international cooperation, concrete measures, standards, best practices, and mechanisms to prevent and combat trafficking in human beings. It was expected that the Commission’s work in the years following would be guided by this declaration, which was to form the basis of further initiatives at EU level (COM (2003) 323, “Communication in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents”). The Hague Programme succeeded the Tampere Programme. Already, the former in 2004 foresaw the “Review and, where appropriate, further development of the present legislation on trafficking in human beings,” as well as a Communication on trafficking in human beings (European Commission 2005).

In the following year, the Commission adopted a Communication on “Fighting trafficking in human beings- an integrated approach and proposals for an action plan,” which served also as inspiration for the EU Action Plan on best practices, standards, and procedures for combating and preventing trafficking in human beings (Commission of the European Communities 2006: 5–6). Cooperation and coordination at EU level was touched upon in both documents but in a very general manner, insofar as the EU Action Plan tasked the Commission to present proposals on coordination and cooperation mechanisms at EU level. The EU Action Plan covered a wide range of issues, such as measures to improve the understanding of the crime and its dimensions, to prevent trafficking, and to reduce demand, measures aimed at more efficient investigation and prosecution, measures to protect and
support the victims of trafficking, returns and reintegration, and finally issues linked to enhancing anti-trafficking actions in relations with third countries.

Further to its adoption, the Commission adopted a working document entitled “Evaluation and monitoring of the implementation of the EU Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings” which was adopted on the occasion of the second EU Anti-Trafficking Day (COM (2008) 657). The document, which was based on 24 replies to a questionnaire circulated in December 2007, highlighted serious gaps between the legislation in force at the time and actual implementation. It was in this framework that the Commission noted that it was considering revising the Framework Decision on trafficking. It was in this framework that the path to the Stockholm Programme containing explicit references to the mandate of the EU Anti-Trafficking Coordinator was paved.

**Stockholm Programme and the Post-Lisbon Reality**

The Stockholm Programme contains the first explicit reference to the need for the establishment of the mandate of the EU Anti-Trafficking Coordinator. This part analyzes the processes toward its adoption and the treaty context around it.

After adoption and entry into force of the Lisbon Treaty (1 December 2009), action addressing trafficking in human beings forms an integral part of the AFSJ under TITLE V of the Treaty on the Functioning of the European Union (hereafter “TFEU”). In the context of Article 79 TFEU (Chapter 1, Policies on Border Checks, Asylum, and Immigration), competence is established for measures on combatting trafficking in persons in view of developing an EU common immigration policy aimed at inter alia enhancing measures to combat trafficking in human beings. Article 83 TFEU sets forth competence to legislate establishing minimum rules concerning the definition of criminal offenses and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offenses or from a special need to combat them on a common basis (so-called Eurocrimes). Trafficking in human beings is included in these areas of crime, and, in addition, it is expressively prohibited in Article 5 (3) of the Charter of Fundamental Rights of the EU, under Title I “Dignity.” These provisions form the core foundations of any legislative measure to be taken at EU level toward the eradication of trafficking in human beings.

Carrera and Guild (2012) highlight that following the entry into force of the Lisbon Treaty has “mutated” the “classical” setting of the justice and home affairs institutional framework and decision-making, creating more institutional pluralism. This is due not least to the so-called Community method of cooperation or the ordinary legislative procedure, which resulted in the formal recognition of the European Parliament as co-legislator, the expansion of the jurisdiction of the CJEU to review and interpret AFSJ law and actions, as well as to a reinforced agency of the European Commission in legislative programming and an enlarged ownership and autonomy of the European Parliament in policymaking and planning.
It should be underlined that those were the institutional dynamics in which the Stockholm Programme was developed and adopted, wherein we find the first reference to the mandate of the Office of the EU Anti-Trafficking Coordinator. The paragraphs to follow provide an analysis of the process.

As the Stockholm Programme was adopted in a period of flux, it was not spared from controversy (Carrera and Guild 2012). The Stockholm Programme (Document 17024/09), adopted by the European Council on 2 December 2009, defined the strategic guidelines for legislative and operational planning within the area of freedom, security, and justice in accordance with Article 68 TFEU (Article 68 TFEU “The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”) for the period 2010–2014. With it, the European Council reaffirmed the priority it attached to the development of an area of freedom, security, and justice and built on the achievements of its predecessors, the Tampere and Hague Programmes. This instrument embodied the highest political and strategic orientation given by the European Council, which brings together EU leaders.

The Stockholm Programme not only included trafficking in human beings as one of the key priorities in the context of developing core minimum rules of criminal law, but it was also the first instrument envisaging the establishment of an EU Anti-Trafficking Coordinator. The choice of instrument is a crucial one, since the European Council, which adopted the Stockholm Programme, represents the highest level of political cooperation between EU countries. In accordance with Article 15 of the Treaty on European Union (TEU), “The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof [...].” Thus, the provision for the establishment of an EU ATC reflects the overall political priority attached to the need to address trafficking in human beings at the EU level.

The European Council stressed the necessity for the EU to develop a consolidated EU policy against trafficking, which is comprehensive and multidisciplinary. It further recognized in this context the need for a “coordinated and coherent policy response which goes beyond the area of freedom, security and justice and, while taking account of new forms of exploitation, includes external relations, development cooperation, social affairs and employment, education and health, gender equality and non-discrimination.” It also stressed the importance of benefiting from dialogue between different stakeholders, including the civil society. The necessity of building up and strengthening partnerships with third countries, improving coordination and cooperation within the Union and with the mechanisms of the EU external dimension as an integral part of such an EU policy, was acknowledged.

It was against this backdrop that the European Council expressly invited the Council to “consider establishing an EU Anti-Trafficking Coordinator (ATC) and, if it so decides, to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated EU policy against trafficking.” In light of this policy direction at the highest political level, the Commission, following also concerted requests by the European Parliament, decided to establish this function and mandate
in 2010. It should be noted that the draft Stockholm Programme was presented by the Swedish Presidency on 16 October 2009. Coreper, which is responsible for preparing the work of the Council and consists of Member States’ Ambassadors to the European Union, held a first exchange of views on the Programme during its meetings on 21 and 22 October 2009. Following that, the Justice and Home Affairs Counsellors in different configurations examined the entire text in three meetings on 30 October and 6 and 13 November. Coreper also examined the text on 4, 11, 20, and 23 November. Many issues were brought forward and the text was edit and redrafted. At its meeting of 30 November and 1 December 2009, the Justice and Home Affairs Council held a wide-ranging exchange of views on the Programme, which was met with a broad consensus.

It is interesting to note that already in June 2009, prior to the adoption of the Stockholm Programme, the Commission had adopted a communication entitled “An area of freedom, security and justice serving the citizen” (COM (2009) 262, 10 June 2009), but with no explicit reference to the mandate of the EU Anti-Trafficking Coordinator. The Communication aimed at providing a basis for the adoption of the Stockholm Programme. It was only after the adoption of the Stockholm Programme that the Commission included reference to the EU Anti-Trafficking Coordinator in its policy instruments. Prior to that, already on 25 March 2009, the Commission had adopted and presented a Proposal for a Council Framework Decision on preventing and combatting trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, which did not include any reference either (COM (2009) 136).

Examining the development of different versions of the draft of the Stockholm Programme, we can see how the negotiation on the vision of the mandate advanced. In a draft version of the Stockholm Programme dated 6 October 2009, extensive reference to the mandate and role of the EU ATC can already be found. More specifically, the draft includes that

[... “the European Council decides that the Council should establish an EU Anti Trafficking Coordinator, the ATC. Without prejudice to the role of the European Commission, the ATC should contribute to the development of a consolidated EU-policy against trafficking aiming at further strengthening the commitment and efforts by the EU, and the Member States to prevent and fight trafficking committed for the purpose of all forms of exploitation and including sustainable preventive action, the protection, support and rehabilitation of its victims, in particular children, and the strengthening of the international law enforcement and judicial response to trafficking. Building and strengthening partnerships with third countries and with mechanisms of the EU external dimension is an integral part of such a policy. The ATC should monitor progress made and regularly report to COSI[...] The European Council therefore invites the Council to establish an EU Anti-Trafficking Coordinator (ATC) and to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated EU policy against trafficking”.

A later draft (all drafts available at http://www.statewatch.org/stockholm-programme.htm (accessed August 2018)) surfaced dated 16 October 2010 (14449/09) with softer language from the European Council to the Council and the Commission. That version set forth that
The European Council invites the Council to establish an EU Anti-Trafficking Coordinator (ATC). Without prejudice to the role of the Commission, and inspired by the role and function of the CTC (Counter Terrorism Coordinator), the ATC should contribute to the development of a consolidated EU policy against trafficking aiming at further strengthening the commitment of and efforts made by the EU and the Member States to prevent and combat trafficking in human beings. This includes building up and strengthening partnerships with third countries and with the mechanisms of the EU external dimension as an integral part of such a policy. The ATC should monitor progress made and report regularly to COSI. The fight against human trafficking must mobilise all means of action, bringing together prevention, law enforcement, and victim protection, and be tailored to combating trafficking in human beings into, within and out of the EU.

We can, thus, observe that in this version the European Council “invites” the Council to establish the EU ATC, rather than “deciding” that the Council should establish it. It is also of interest to note that the new versions include an explicit disclaimer on the proposal applying “without prejudice to the role of the Commission.” This possibly reflects the inter-institutional dynamics and pluralism noted above by Carrera and Guild (2012). As highlighted by the authors “while the new Art. 68 of the Treaty on the Functioning of the European Union (TFEU) confers power on the European Council to ‘define the strategic guidelines for legislative and operational planning’ in the AFSJ, substantial discord has nonetheless emerged as regards the actual scope and mandatory nature of this provision.” In addition, this version includes a reference to the mandate of the Counter Terrorism Coordinator (based in the Council, and not in the Commission, which also reflects an interesting inter-institutional dynamic), as a source of inspiration. Other than these two observations, the core of the mandate remains unaltered.

The version of 23 November 2009 (16484/09), which surfaced almost a month after the previous one, included a drastically altered and shorter version stipulating that “The European Council invites the Council to establish an EU Anti-Trafficking Coordinator (ATC) and to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated EU policy against trafficking.” The version of 25 November 2009 (16484/1/09 REV 1) included an almost identical version with limited editorial modifications: “The European Council therefore invites the Council to establish an EU Anti-Trafficking Coordinator (ATC) and to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated EU policy against trafficking.” A clearly more laconic version retains the softer language toward the Council and contains no reference to the Commission and its role.

The trajectory of the negotiation was presented above. It becomes evident that the original provision was drastically changed to include a more concise version, which nevertheless remains forward-looking and revolutionary in the historical context.

The final adopted version of 2 December 2009 invited the Council to “consider establishing an EU Anti-Trafficking Coordinator (ATC) and, if it so decides, to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well-coordinated and consolidated EU policy against trafficking.”
The Role of the European Parliament

While the Stockholm Programme was negotiated, the European Parliament was also scrutinizing the matter. Interestingly, the European Parliament resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – an area of freedom, security, and justice serving the citizen – Stockholm Programme (P7_TA-PROV(2009)0090), which took also into consideration the October Drafts of the Stockholm Programme did not make any reference to the EU Anti-Trafficking Coordinator, despite its strong stance later on, during the negotiation of the Directive.

One day after the adoption of the Stockholm Programme, on 3 December 2009, two Members of the European Parliament (“MEP”) Anna Hedh (Sweden, S&D Group) and Edit Bauer (Slovakia, EPP Group), on behalf of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality, tabled two oral questions with debate (O-0148/2009 – B7-0341/2009 and O-0149/2009 – B7-0342/2009) to the Council and the Commission on preventing trafficking in human beings. The questions among others highlighted the anticipation of the new proposal by the Commission following the entry into force of the Lisbon Treaty, repealing the Framework Decision of 2002 tabled before the entry into force of the Lisbon Treaty. The questions further enquired whether the Council and the Commission agreed on the need for a human rights-based and victim-centered approach and called for dissuasive penalties, action to discourage demand and focus on users of the services of trafficked people, jurisdiction, and more coordination among the JHA agencies and data collection. A debate in the Plenary on 19 January 2010 followed these questions, where references were made to the mandate of the EU Anti-Trafficking Coordinator, despite the lack of explicit reference in the text of the parliamentary questions.

The timing of the Plenary debate of this question in the European Parliament coincided interestingly with the hearing, on the same day in Strasbourg, of the then Commissioner Designate Cecilia Malmström before the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament. During the hearing the appointment of the EU Anti-Trafficking Coordinator was raised as an issue. The Committee on Women’s Rights and Gender Equality Measures questioned the Commissioner Designate on her priorities to prevent trafficking and protect its victims in the context of specific legislative and nonlegislative initiatives the Commissioner Designate intended to put forward (Documents NT/769965 and 769966). In the ensuing hearing (pp. 18–19 of verbatim report, available at: http://www.event.europarl.europa.eu/hearings/static/commissioners/cre/malmstrom.pdf, accessed August 2018), MEP Edit Bauer enquired whether Commissioner Designate would support establishing a mandate of an EU Anti-Trafficking Coordinator. To this question, Cecilia Malmström reverted in a clear manner that not only did she support the creation of such a mandate, but that she hoped that the function would be placed under her auspices in the then JLS Directorate. In this context, the mandate was seen more like a function coordinating national bodies.
The very same day, before the Plenary of the European Parliament, a debate on the parliamentary questions previously tabled took place – with a vote for a Resolution deferred in February. It was in this debate that the issue of the creation of the mandate of the EU ATC started to develop further. The debate was lively, and many MEPs took the floor, as well as Mr. Diego López Garrido (President-in-Office of the Council) and Mr. Jacques Barrot (Vice-President of the Commission). Both authors of the questions, MEPs Hedh and Bauer, stressed in their introductory words the need for more policy coordination, a position that was echoed by many MEPs, as well as the Presidency. Furthermore, many MEPs highlighted the need for the creation of a mandate of an EU Anti-Trafficking Coordinator and made reference to the commitment expressed earlier that same day by the then Commissioner Designate Cecilia Malmström. From the archives of the debate, a clear cross-party support to the creation of this mandate arises. This was also reflected in the voting that followed the debate in February, which resulted in the adoption of the European Parliament of 10 February 2010 on preventing trafficking in human beings (P7_TA (2010)0018) which explicitly called for establishing a mandate of an EU Anti-Trafficking Coordinator: [The European Parliament calls on the Council and the Commission] “to establish, under the supervision of the Commissioner for Justice, Fundamental Rights and Citizenship, an EU anti-trafficking coordinator to coordinate EU action and policies in this field – including the activities of the network of national rapporteurs – and reporting to both the EP and the Standing Committee on Operational Cooperation on Internal Security (COSI);”

In line with relevant procedures, the Commission adopted a follow-up position to the Resolution on 20 April 2010 (http://www.europarl.europa.eu/oeil/spdoc.do?i=17963&j=0&l=en), in which it explicitly confirms that the “EU anti-trafficking coordinator would be appointed in the near future and that the Commission’s plans regarding the exact organisation and tasks of the coordinator are currently being finalised.” The Commissioner reassured that the “coordinator is likely to function as a permanent coordination platform of the type called for in the resolution.”

The timing and institutional dynamics are again of importance, as they coincided with the adoption of the Commission Communication “Delivering an area of freedom, security and justice for Europe’s citizens: Action Plan Implementing the Stockholm Programme” (COM (2010) 171). This Commission document, the Stockholm Action Plan, made reference for the first time to establishing a function and mandate of the EU Anti-Trafficking Coordinator. Thus, in view of implementing the Stockholm Programme, the Commission announced that the setting up of EU Anti-Trafficking Coordinator (ATC) within the Commission was due in the course of 2010.

However, the adoption of this Action Plan was followed by certain inter-institutional animosity (Carrera and Guild 2012). Unlike previous Action Plans on the Tampere and the Hague Programmes, the Stockholm Plan was “qualified by several Council representatives as an act of provocation and even as a shameful practice. It was seen to go far beyond the wording and set of policy priorities envisaged by the Council’s Stockholm Programme.” This was further illustrated as the authors highlight in the JHA Council Conclusions (9935/10) reminding the Commission to use the
Stockholm Programme as “the only guide frame of reference” for the political and operational legislative agenda of the EU’s AFSJ. In this set of Council Conclusions, the European Commission submitted a declaration stating that the Stockholm Action Plan as adopted by the Commission is in line with the objectives and the spirit set out in the Stockholm Programme and with the Resolution of the European Parliament of 25 November 2009 and reaffirmed its readiness to table proposals as it sees necessary or appropriate, taking into account the concerns of the European Parliament and the Council.

**Toward a Legislative Proposal**

It should be recalled that, already in 2009, the Commission had presented a proposal for repealing the 2002 Framework Decision on trafficking in human beings, but because of the entry into force of the Treaty of Lisbon on 1 December 2009, it was not possible to adopt this text and the Commission had to present a new proposal under the new treaty in force (this time a proposal for a Directive). Peers (2011) notes that the Council had largely agreed to this proposal before its entry into force but had ran out of time to adopt it. Notwithstanding the texts adopted by the European Council, Council, European Parliament and the Commission, explicitly announcing the establishment of the mandate, the Commission’s proposal for a Directive adopted on 29 March 2010 (COM(2010)95) does not contain any reference to the mandate or function of the EU Anti-Trafficking Coordinator.

However, on the same day of the adoption of the proposal by the European Commission and in the same press release announcing the adoption, the Commission also announced that it was soon to take steps for appointing an EU Anti-Trafficking Coordinator. More specifically the press release noted that “The Commission will also soon take steps to appoint an EU Anti-Trafficking Co-ordinator to make the EU anti-trafficking policy more efficient, visible and coherent, including in relation to addressing root causes and working with third countries” (IP/10/380, Brussels, 29 March 2010). This legislative proposal kick-started the so-called ordinary legislative procedure under the Lisbon Treaty, and therefore the negotiation of the text was now in the hands of the co-legislators, i.e., the Council and the European Parliament. This is the context in which this chapter examines the trajectory of the mandate and how it reached its final form in the text of the adopted legal instrument.

The negotiations between the co-legislators lasted between September and November 2010, a record short period. The Justice and Home Affairs Council on 4 June 2010 had agreed on a general approach on a directive on combating trafficking of human beings (Document 10630/1/10 REV, 13018th Council meeting). After this the EP adopted a set of draft amendments during an orientation vote held on 2 September 2010 and the Presidency, at the time Belgium, acting on behalf of the Council, entered into negotiations with representatives of the European Parliament and of the Commission with a view to reaching an agreement on the text in first reading. Peers (2011) notes that such first reading agreement is reached
following wholly informal contacts between the European Parliament and the Council, which in practice were not at all transparent. Three so-called trilogues - informal tripartite meetings on legislative proposals between representatives of the Parliament, the Council and the Commission, aiming to reach a provisional agreement (on trilogues and transparency of procedures, see: Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues) took place on 14 September, 5 October, and 27 October, respectively. Each trilogue was prepared at Council level by the Working Party on Substantive Criminal Law (DROIPEN) based on a table submitted by the Presidency comparing the positions of the institutions and submitting compromise proposals. A fourth trilogue took place on 11 November. The position of the Council was prepared by JHA Counsellors and discussed in Coreper on 3 November 2010. In the meantime the European Parliament had already adopted a report on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (A7-0348/2010).

From documents and archives publicly available, there appears to exist no reference to the mandate of the EU ATC in the general approach adopted by the Council (10845/10 and 8802/10). Reference is made in the Document 16156/10 of 15 November 2010, following the fourth trilogue, titled “Finalisation of the draft text with a view to reaching a first reading agreement.” There it becomes evident that the European Parliament insisted strongly among others from the start on the inclusion of reference to the EU Anti-Trafficking Coordinator. Reference is made to the Stockholm Programme and the steps taken by the Commission toward the appointment of such a coordinator. However, the Council notes that this is not considered adequate by the European Parliament, which was seeking a permanent basis for the mandate and thus insisted on creating a legal basis for the EU Anti-Trafficking Coordinator through a specific Article in this Directive.

The European Parliament rejected the Presidency’s attempts to limit references to the EU Anti-Trafficking Coordinator to the recitals, as it is documented. The European Parliament discussed in Committee the proposal for the Directive on 27 April 2010, 13 July 2010, 25 November 2010, and 29 November 2010. Already in the Report dated 2 November 2010, on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (A7-0348/2010), a series of amendments on the role of the EU ATC are proposed, including a new article on the function of the EU ATC. It was clearly stated in the Explanatory Statement accompanying the Report, which set forth a proposal for a Resolution on the Parliament’s position at first reading, that the “Anti-Trafficking Coordinator should be set through a clear legislative framework.”

The negotiation with European Parliament led the Council to alter and adjust its general position, as becomes evident in Document 6156/10 with subtitle “Approval of the final compromise text with a view to a first reading agreement.” Peers (2011) notes that “[...] the Council was determined to resist four particular demands from the EP: a raising of the maximum sentences for the relevant crimes; wider
extraterritorial jurisdiction (i.e. for residents); the criminalization of the use of trafficking victims; and a specific reference to an EU Anti-Trafficking Coordinator. To this end, the Council was willing to give in to the EP’s other demands, and ultimately to meet the EP halfway as regards references to the EU anti-trafficking coordinator. It was able to resist the EP’s demands on the other three key issues.”

In order, thus, to find a compromise and a tit-for-tat especially in view of the other three areas where disagreement had persisted, the Presidency suggested more flexibility on the issue of the EU ATC. The Council document concluded that it had become very clear that the only way to reach an agreement on this Directive, especially without having to change the Council position on the three issues mentioned above, would be to move in the direction of the Parliament, to some extent, on this key issue of the EU ATC.

The document further states that both the Council and the Commission insisted on the fact that the Directive is directed to Member States and that it is therefore not an appropriate instrument to regulate issues relating to the EU Anti-Trafficking Coordinator. At this stage a red line was already formed for the Council, but this being said, the document reads that the Presidency was also of the opinion that this still leaves some room for maneuver for a compromise ensuring sufficient visibility for the EU Anti-Trafficking Coordinator in the operative part of the instrument without making this Directive a legal basis for the EU ATC.

The document then went on to propose an insertion of a new article in line with the report dated 2 November in the Parliament:

Article 16a

Coordination of the EU approach on trafficking in human beings

In order to contribute to a coordinated and consolidated approach of the European Union against trafficking in human beings, Member States shall facilitate the tasks of the Anti-Trafficking Coordinator (ATC). In particular Member States shall transmit to the ATC relevant information, including information referred to in Article 16, in order to enable the ATC to report [every two years] [on a regular basis] on the progress made in the fight against trafficking in human beings.

The Belgian Presidency considered that the addition was of minor importance compared to the issues mentioned above and that it should acknowledge the flexibility demonstrated by the European Parliament on the main substantive criminal law issues with a view to reaching a first reading agreement (Document 10845/10). As noted above by Peers (2011), disagreement on the level penalties, the criminalisation of use of services exacted from victims of trafficking, and wider extraterritorial jeopardized finding an agreement at first reading. Hence, the European Parliament succeeded in having explicit reference not just on the EU Anti-Trafficking Coordinator, but recognition of the tasks and the mandate toward a coordinate and consolidated Union strategy against trafficking in human beings, under an article entitled very lucidly “Coordination of the Union strategy against trafficking in human beings.”

Following the fourth trilogue, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality went
on to adopt on 29 November 2010, under Rule 51 on Joint Committee meetings, the report drawn up by MEPs Bauer and Hedh on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (A7-0348/2010). It recommended that the European Parliament’s position at first reading under the ordinary legislative procedure should be to amend the Commission proposal, in line with the result of a compromise agreement between Parliament and Council. Among other amendments, the issue of coordination of the Union strategy on trafficking in human beings took a prominent role, as expected. In light of this approach, the EP proposed a series of amendments for adoption containing explicit reference to the role of the EU Anti-Trafficking Coordinator, which were to be agreed to by the Council following the negotiations in the trilogues. This is a demonstrative example of the post-Lisbon role and institutional dynamic of the European Parliament, which according to Carrera and Guild (2012) has reaffirmed its ownership and autonomy in policymaking and planning. In fact, this was the official first as the new directive constituted the first agreement between the Council and the European Parliament in the area of substantive criminal law after the entry into force of the Lisbon Treaty.

Following this, the 3051st Justice and Home Affairs Council meeting on 2–3 December 2010 (Document 16918/10) announced that the Council had reached an agreement with the European Parliament on the legislative proposal, constituting a major step in paving the way for EU-wide minimum rules concerning the definition of criminal offenses and the level of sanctions in this area. The text was unanimously agreed upon that day at Member State level and had been previously negotiated with the European Parliament. Following this, the Parliament confirmed its agreement on the text as it stood at its December 2010 plenary session, with the Council swiftly giving its green light to the text on 21 March 2011, resulting in a first reading agreement with reference to the mandate of the EU Anti-Trafficking Coordinator.

On 14 December 2010, the Plenary of the European Parliament adopted the legislative resolution on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, along with the position of the European Parliament adopted at first reading with a view to the adoption of Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Directive 2011/36/EU. In the debate that preceded, the role of the EU ATC was commended by many MEPs and received cross-party support. Among others, MEPs expressed hope that the mandate of the EU Anti-Trafficking Coordinator could make a significant contribution to achieving the objectives of contributing to a more comprehensive, more coherent, and more coordinated anti-trafficking policy at national and European level.

However, 14 December 2010 was not only the day when the European Parliament adopted the resolution on the agreement, but it was also the day that the European
Commission announced the appointment of the EU Anti-Trafficking Coordinator. Therefore, in the debate before the Plenary, the then Commissioner for Home Affairs, Cecilia Malmström, announced the appointment noting that the EU ATC was to take office a month later (ibid). She stressed that the EU ATC would improve coordination and coherence between the EU institutions and agencies and the Member States, would help ensure that best practices are shared in the different Member States, would develop existing and forthcoming policies, and would be a contact for third countries. She went on to stress that “By bringing together prevention, law enforcement and victim prevention, this person can ensure that appropriate methods to combat trafficking are used and mobilised appropriately.” She finally stressed that she “will ask the Anti-Trafficking Coordinator to liaison closely with the European Parliament and to keep [you] informed on these developments.”

In a subsequent press release, the European Commission announced the same day the decision to appoint Dr. Myria Vassiliadou, as the EU Anti-Trafficking Coordinator. In this press release, Commissioner Malmström had stated that “The political agreement today [on the new Directive] in the European Parliament is most welcome. This shows a broad ambition within the EU that we want to step up our efforts to build a comprehensive European anti-trafficking policy. One important step towards that target is today’s appointment of Myria Vassiliadou as European Anti-Trafficking Coordinator. She will have a central role in coordinating all aspects of our policies against this horrific crime. I am very glad that Ms. Vassiliadou has accepted to take up the job and I look forward to working with her.” The press release went further on to state that “The Anti-Trafficking Coordinator will improve coordination and coherence between EU institutions, EU agencies, Member States, third countries and international actors. She will help elaborate existing and new EU policies relevant to the fight against trafficking and provide overall strategic policy orientation for the EU’s external policy in this field. An effective EU policy on the fight against trafficking will need to draw from many different policy fields, such as police and judicial cooperation, protection of human rights, external relations, migration policies and social and labour law. It will be the task of the anti-trafficking coordinator to ensure coherence between all these policy fields.”

The Mandate in Function

This chapter examines the set into motion of the mandate of the EU Anti-Trafficking Coordinator and its contributions to a more coherence EU action toward the eradication of trafficking in human beings. It was against the background analyzed above that the EU Anti-Trafficking Coordinator assumed office in March 2011. This is an innovative mandate entrusted with a central role in coordinating and elaborating diverse policy fields toward the eradication of trafficking in human beings. As stated in recital 29 of the Directive 2011/36/EU, “In the light of the Stockholm Programme and with a view to developing a consolidated Union strategy against trafficking in human beings aimed at further strengthening the commitment of, and efforts made, by the Union and the Member States to prevent and combat such trafficking,
Member States should facilitate the tasks of an anti-trafficking coordinator, which may include for example improving coordination and coherence, avoiding duplication of effort, between Union institutions and agencies as well as between Member States and international actors, contributing to the development of existing or new Union policies and strategies relevant to the fight against trafficking in human beings or reporting to the Union institutions.”

In addition, Article 20 Directive 2011/36/EU entitled “Coordination of the Union strategy against trafficking in human beings” sets forth that “In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the Commission every 2 years on the progress made in the fight against trafficking in human beings.”

In addition to the explicit reference of the Directive 2011/36/EU, this function forms intrinsic part of the Strategic Plan 2016–2020 of the Directorate-General Migration and Home Affairs, according to which the EU Anti-Trafficking Coordinator based in this Directorate-General coordinates the work on trafficking in human beings at Commission level. In this capacity, the EU Anti-Trafficking Coordinator is responsible for providing strategic overall policy orientation, improving coordination and coherence among EU institutions, EU agencies, Member States, and international actors, and for developing existing and new EU policies to address trafficking in human beings.

With the mandate in its nascent stage, the EU Anti-Trafficking Coordinator has fostered coordination and cooperation with other EU institutions, such as the European Parliament, the Council, the Committee of the Regions, and the European Economic and Social Committee. The mandate has been established and acknowledged by institutional partners, including also the Member States who have been providing input for the report of Art. 20 and also in the framework of the informal EU Network of National Rapporteurs and/or Equivalent Mechanisms. At the level of EU institutions, the European Parliament has expressively commended the good work delivered by the EU Anti-Trafficking Coordinator and has called for extension of the mandate (see inter alia: European Parliament resolution of 12 May 2016 on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI)).

The first task after assuming of office and setting the new function into motion was the drafting and adoption of the key policy instrument on trafficking in human beings, i.e., the EU Strategy toward the Eradication of Trafficking in Human Beings (COM (2012) 286). As stated therein “The political commitment at EU level to address the problem of trafficking in human beings is reflected in the large number of initiatives, measures and funding programmes established in the area both within the EU and third countries as early as in the 1990s.” The EU anti-trafficking action spanned across many policies, sectors, agencies, and institutions.
Thus, expressed objective of the Strategy was to provide a coherent framework for existing and planned initiatives, to set priorities, to fill gaps, and therefore to complement the recently adopted Directive. In this respect, the Strategy noted that the EU ATC was to oversee its implementation. The Strategy was a result of targeted consultations with governmental authorities, the civil society, and international organization. It was anchored on 5 priorities and includes approximately 40 actions: (a) identifying, protecting, and assisting victims of trafficking, (b) stepping up the prevention of trafficking in human beings, (c) increased prosecution of traffickers, (d) enhanced coordination and cooperation among key actors and policy coherence, and (e) increased knowledge of an effective response to emerging concerns related to all forms of trafficking in human beings.

The Strategy constitutes the main policy instrument that provides strategic policy orientation and delivered numerous tangible results. Under Priority A, the actions ranged from strengthening identification of victims by developing appropriate guidelines; establishing national referral mechanisms; and better developing protection of child victims of trafficking through, inter alia, child protection systems and a best practice model on the role of guardians. Under Priority B, actions included funding research on reducing the demand for and supply of services and goods by victims and launching EU-wide awareness raising activities. Under Priority C, the Commission together with Member States aimed to, inter alia, ensure proactive financial investigation on trafficking cases and increase cooperation beyond borders. Under Priority D, the Commission aimed, among other elements, to enhance coordination and cooperation by strengthening the EU Network of National Rapporteurs, promoting the establishment of Civil Society and Private Sector Platforms, and reviewing all EU-funded projects. Under Priority E, the Commission aimed at developing an EU-wide system of data collection and to increase knowledge on the gender dimension of trafficking, the role of online recruitment, and trafficking or labor exploitation.

With the EU Strategy providing an overall strategic orientation, the mandate of the EU Anti-Trafficking Coordinator further worked inside the European Commission and with other EU institutions and services to promote coherence and coordination. On vehicle for promoting this work is the Inter-Service Group on Trafficking in Human Beings managed by the Office of the EU Anti-Trafficking Coordinator, which brings together 16 European Commission Services, the European External Action Service, the European Statistical Office in order to ensure EU policy on THB draws on the entire range of relevant policy fields. In addition, part of the mandate is also to provide policy coherence also in contexts linked with more operational aspects of the anti-trafficking action, such working with EU agencies and the European Multidisciplinary Platform Against Criminal Threats (EMPACT) Group on Trafficking in Human Beings (under the EU Policy Cycle on Serious and Organised Crime).

Furthermore, the EU Anti-Trafficking Coordinator works toward fostering more coherence and coordination by maintaining the EU Network of National Rapporteurs or Equivalent Mechanisms and the EU Civil Society Platform Against Trafficking in Human Beings. Member States are required by EU law to establish
National Rapporteurs or Equivalent Mechanisms (NREMs), who are responsible for monitoring the implementation of anti-trafficking policy at the national level. An EU Network of NREMs was established in 2009, and the Commission hosts biannual meetings, co-chaired with respective Presidencies of the Council of EU, which are instrumental in promoting further cooperation and coordination at EU level. Input from the NREMs was crucial to deliver the first EU report assessing the efforts to address THB as per Article 20 of the Directive. To facilitate cooperation between National Rapporteurs and the civil society, the Commission organizes joint meetings with both the network of NREMs and the EU Civil Society Platform.

As civil society is an equal partner in these efforts, the Commission set up in May 2013 the EU Civil Society Platform against THB. The Platform currently meets every 2 years, bringing together over 100 civil society organizations working in the field of THB in the Member States and in neighboring priority countries as relevant. An e-Platform including the above and other actors is operational, providing a collaborative space for further exchange.

The Commission works also toward ensuring coordination at the level of EU agencies. To this effect, the EU Anti-Trafficking Coordinator facilitated the signing of two Joint Statements for Cooperation toward eradicating trafficking in human beings among EU agencies, such as the European Asylum Support Office (EASO), European Police Office (Europol), European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), EU Judicial Cooperation Unit (Eurojust), European Institute for Gender Equality (EIGE), European Border and Coast Guard Agency (Frontex), EU Agency for Fundamental Rights (FRA), EU Agency for Law Enforcement Training (CEPOL), and the European Foundation for the Improvement of Living and Working Conditions (Eurofound).

In addition to the mandate as stipulated above, the EU Anti-Trafficking Coordinator is responsible for reporting as per Art. 20 of Directive 2011/36/EU. In accordance with this article, the Coordinator is entrusted with biennial reporting on the progress made in the fight against trafficking in human beings. In this context, the EU Anti-Trafficking Coordinator has delivered in this respect the Report on the progress made in the fight against trafficking in human beings (2016) (COM (2016) 267). This is the first report of its kind and presented trends and challenges in addressing trafficking in human beings, examined progress made, and highlighted key issues that the EU and its Member States need to address as a priority. Among others, the reports suggest more focus to be placed on tackling all forms of exploitation; increasing the number and effectiveness of investigations and prosecutions; improving data collection; focusing on the early identification of all victims, their protection, and assistance; taking a gender-specific and child-sensitive approach; preventing THB by addressing the demand; allocating adequate resources; and cooperating meaningfully with civil society.

Based on the work already delivered in the context of the 2012–2016 Strategy on 4 December 2017, the Commission adopted a Communication on “Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings
and identifying further concrete action.” This Communication builds upon existing policy and legislation and proposes further action to step up prevention. It focuses on disrupting the business model that trafficking in human beings depends on, improving victims’ access to rights, and ensuring that EU internal and external actions provide a coordinated and consistent response. Widening the knowledge base, raising awareness, and improving the understanding of this complex crime as well as providing appropriate funding remain crosscutting priorities.

Conclusion

As demonstrated above, the trajectory toward the development of the mandate of the EU Anti-Trafficking Coordinator passed through periods of treaty reforms and is attached to the overall development of the AFSJ. It represents an interesting example of the inter-institutional dynamics in a post-Lisbon era. The period of the Stockholm Programme represented the most productive era in the history of EU integration on setting up strong foundations for an EU anti-trafficking framework that is comprehensive and forward-looking. To demonstrate the importance of addressing trafficking in human beings attached by the highest political echelons, the Stockholm Programme called for the creation of the mandate of the EU Anti-Trafficking Coordinator. With an explicit reference in the Directive and a relevant policy background, the mandate of the EU ATC is now called to further develop the overall strategic policy orientation of the EU in a different context. The EU anti-trafficking framework has now solid legal and policy foundations, coupled with more coherence and coordinated efforts at national and European level. Member States, EU institutions, agencies, and the civil society acknowledge the function and have cooperated. However, the crime develops, and new issues arise related to countering impunity of perpetrators but also responding to the needs of the victims. Undoubtedly, the mandate does not exist in a vacuum. The broader social, economic, and political environment has changed. Political priorities differ trying to correspond to contemporary needs. Will the framework continue to provide appropriate foundations? Will the mandate continue to be exercised in the same manner? The future is certainly full of possibilities.

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National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, the Netherlands

Alexis A. Aronowitz and Suze E. Hageman

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Abstract

This chapter introduces the genesis and development of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, explaining its tasks and position within the government. Some of the most important and varied research of the Dutch National Rapporteur will be introduced followed by a discussion on the reports and recommendations of the Bureau. A small empirical research was conducted examining the priorities and recommendations highlighted in the reports on trafficking in human beings. The chapter continues with an assessment of the effectiveness of the Bureau’s work based on some of the most prominent policy and legislative changes following the National Rapporteur’s recommendations. The reader gains a comprehensive understanding of the role of the Dutch National Rapporteur, its working relationship and positioning with other governmental and nongovernmental bodies, and how this function has guided and influenced human trafficking legislation, policy, and practice in the Netherlands over the past two decades.

Statistics hold a mirror up to organizations, revealing the human trafficking that is visible and the measures being taken to combat it, and guiding the strategy for tackling human trafficking. (The National Rapporteur 2014; 4)

Historical Development and Expansion of the Office of the National Rapporteur

Following a ministerial conference on trafficking in women organized by the EU and with the adoption of The Hague Declaration in 1997, the European Union recommended the appointment of National Rapporteurs to report on the scale and nature of trafficking in human beings in European countries. The establishment of National Rapporteurs or equivalent mechanisms was encouraged to exchange ideas and promote mutual cooperation. Emphasis was placed on the need for reliable and comparable data on human trafficking in the EU. In the Netherlands and abroad, awareness of the pressing and serious nature of – at the time – trafficking in women was growing. And despite increasing (inter)national attention to the issue, little was known about the occurrence of the crime in terms of scope and nature of trafficking in the Netherlands. This development occurred around the same time that the general ban on brothels was also lifted and replaced with a licensing system, with the aim of regulating voluntary prostitution, while preventing involuntary prostitution and abuses in the sex industry.

Following this Declaration, the Netherlands was the first country in the European Union to appoint an independent rapporteur on human trafficking. The office of the Dutch National Rapporteur on Trafficking in Human Beings was established, and Anna G. Korvinus was appointed as the first National Rapporteur in 2000. Six years later, in 2006, juvenile court Judge Corinne Dettmeijer-Vermeulen succeeded Korvinus in the role of National Rapporteur. In November 2017, she was succeeded.
Legal Embodiment of the Bureau of the National Rapporteur

By a decision of the Ministry of Justice in 2009, the mandate of the Dutch National Rapporteur was expanded to include assessing and reporting on child pornography. The Dutch National Rapporteur recommended in the first published report on child pornography in 2011 that the government expands the mandate of the Dutch National Rapporteur to include monitoring and reporting on sexual violence against children as a whole. In 2012, the government implemented this recommendation and widened the mandate, changing the official name of the office to: “National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children.”

In 2013, the position of the Dutch National Rapporteur was established by law (Article 6) preserving the independence of the office (The Second Chamber, Parliamentary year 2012–2013, 33 309, nr. 7). In effect, this ensures that the National Rapporteur can carry out the mandate of the office at her or his own discretion without influence of or control by the Ministry of Justice and Security (to whom the National Rapporteur reports).

The “Law on the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children” was adopted by Parliament with broad support. Article 5 of the Act Establishing the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children requires the Rapporteur

a) to conduct research into developments in the scale and nature of trafficking in human beings and sexual violence against children, as well as the effects of policy measures taken to tackle trafficking in human beings and sexual violence against children;

b) to provide advice to the government on policies to prevent and suppress trafficking in human beings and sexual violence against children;

c) to report periodically to the government by sending reports relating to trafficking in human beings and to sexual violence against children to the Minister of Justice and Security (Bureau of the National Rapporteur, Act establishing the National Rapporteur n.d.).

Organization and Financing of the National Rapporteur

As of 2016, 14 persons and the Dutch National Rapporteur were employed at the Bureau. Since its creation, it has continuously grown as a result of the expanded jurisdiction and responsibility of the National Rapporteur to report on human trafficking and then on sexual violence against children.

The Bureau is financed by a number of ministries in the Netherlands. It was originally financed by the Ministry of Justice (now Justice and Security) and the Ministry of the Interior and Kingdom Relations. Other ministries, the Ministry of
Health, Welfare and Sport and the Ministry of Social Affairs and Employment, also contribute to the funding of the Bureau of the National Rapporteur (Pro Facto 2017).

The foremost mission of the Dutch National Rapporteur is to gather and disseminate knowledge. In practice, this means assessing the nature and extent of human trafficking and sexual violence against children in the Netherlands, determining the state of affairs and raising awareness of the problem, and assessing the limitations and effects of government policies pursued. In order to accomplish this, the National Rapporteur carries out empirical research in the Netherlands, meets regularly with partners in the field, and examines development in other countries in order to produce recommendations to better guide government policy and influence legislation. For its empirical research, the Bureau of the National Rapporteur employs around ten researchers and policy officers that conduct their own research. Though the Bureau regularly uses external datasets in conducting research and studies, the analyses are always performed by employees of the Bureau itself.

The independent position of the Rapporteur entails that the office has no executive or coordinating duties. Those tasks are performed by public officials or consortia of the relevant organizations. The registration and coordination for the placement of victims is carried out by the NGO CoMensha, which operates nationwide. The activities are partly financed by the Ministry of Justice and Security. Police activities involving the collection and analysis of strategic and operational information are coordinated through the Centre of Expertise for Human Trafficking and Migrant Smuggling (Expertisecentrum Mensenhandel Mensensmokkel, EMM), while the police and public prosecution service have formed a number of consultative bodies to coordinate activities and share operational information (Bureau of the National Rapporteur 2010b).

The Bureau of the Dutch Rapporteur maintains contact with and gathers information from governmental and nongovernmental organizations, which are involved in the prevention, detection, prosecution, and the registration and protection of victims of human trafficking and sexual violence against children. Since CoMensha registers all possible victims of human trafficking on behalf of the National Rapporteur, the Bureau receives this dataset annually but also stands in close contact with CoMensha regarding victim assistance and care. In addition, the Bureau of the National Rapporteur has access to all files held by the police, prosecution services, and judicial authorities – though they still need to be officially requested. Other bodies and organizations are not required to share data and information, but according to the explanatory memorandum accompanying the law on the National Rapporteur, if requested, organizations and institutions “must cooperate fully in providing or obtaining necessary data.” The National Rapporteur has a good and symbiotic working relationship with many partner organizations and stakeholders when it comes to exchanging information and requesting data, e.g., the Immigration and Naturalization Service, Statistics Netherlands (CBS), and municipalities. Because there is an international element to cases of human trafficking and sexual violence against children, the Bureau also has many international contacts. Due to their expertise in sexual violence against children, the Dutch National Rapporteur was asked to provide an amicus curiae brief to the lawyer of a victim appearing
before the US Supreme Court involving a case of restitution for victims of child pornography (see Paroline vs. United States). An amicus curiae brief “educates the court on points of law that are in doubt, gathers or organizes information or raises awareness about some aspect of the cast that the court might otherwise miss. The person is usually, but not necessarily, an attorney, and is usually not paid for her or his expertise. An amicus curiae must not be a party to the case, nor an attorney in the case but must have some knowledge or perspective that makes her or his views valuable to the court” (Legal Dictionary n.d.).

Reports of the National Rapporteur

Research by the Dutch National Rapporteur is predominantly focused on disseminating knowledge, be it in the form of a single tweet or thorough research reports. The Bureau of the National Rapporteur releases annual reports in Dutch to the government. Since the appointment of the National Rapporteur and the establishment of the Bureau in 2000 until, and including, the year 2017, the Dutch National Rapporteur has published a total of 25 reports on trafficking in human beings. Fourteen of these are in the English language, and many others provide an English summary. All are available on the website of the Rapporteur. An evaluation by an independent research company reports that 18 reports on human trafficking and seven reports on sexual violence against children were published between 2012 and 2016 (Pro Facto 2017). The reports alternate between comprehensive reports with quantitative and qualitative information and shorter statistical updates (which generally lack specific recommendations). The reports contain information on relevant regulations and legislation, as well as information on prevention, criminal investigations (regarding human trafficking, child pornography, and sexual violence against children), prosecution of perpetrators, and victim support. Reports contain information on the demographics of victims and offenders as well as government and NGO responses. They also contain policy recommendations aimed at preventing and improving the fight against human trafficking. In more recent years, however, reports from the National Dutch Rapporteur have shifted toward including fewer but more focused recommendations directed at a specific office or institution, such as the Ministry of Justice and Security, the Ministry of Health, Welfare and Sport, the judiciary, the Public Prosecution Service, or municipalities.

In order to provide a comprehensive report, the Bureau collects data from stakeholders such as the police, prosecution service, courts, and NGOs providing victim support and has access to criminal files held by police and judicial authorities. Reports are submitted to the Dutch government which then responds to the report to Parliament. The reports of the National Rapporteur, the most detailed produced by any country in the world, can be downloaded from the website (https://www.dutchrapporteur.nl/Publications/).

The Bureau of the National Rapporteur has placed the problem of human trafficking high on the political agenda in the Netherlands. It has increased awareness among police, prosecutors, and judges and has driven home the need for a
victim-centered approach in investigations and trials and the need to tailor victim care to the specific needs of the victim. The National Rapporteur has made more than 200 recommendations to the Dutch Government since the establishment of the bureau in 2000. According to the National Rapporteur (2006–2017), Ms. Dettmeijer-Vermeulen, “I have made many recommendations within the last 11 years, about 80% have been adopted, and I’m proud of that” (Translated from the Dutch “Ik heb in de afgelopen elf jaar vele aanbevelingen gedaan, zo’n 80% is opgevolgd en daar ben ik trots op” (Bureau of the National Rapporteur 2017b; 12)). Out of 11 recommendations made in reports published in the years 2015–2016 on trafficking in human beings by the Dutch National Rapporteur, seven have already been adopted or are in the process of being implemented.

**Research by the Bureau of the National Rapporteur**

Because of its independence and unique position at the intersection of the (academic) research community, policy makers, and civil society, research reports by the Dutch National Rapporteur have a high potential to impact policy and practices in the Netherlands. The independence of the office of a National Rapporteur is integral to the integrity, validity, and reliability of the work being done. Consequently, it solidifies the position of National Rapporteur as an authority and trustworthy institution. This, in part, also depends on the quality and extent of the research conducted. The following sections will further elaborate on the different types of research that the office of the Dutch National Rapporteur has conducted over the years.

**Key Quantitative Figures**

On an annual basis, the Dutch National Rapporteur reports on the key figures surrounding trafficking in human beings in the Netherlands: the detected victims, offenders, and their respective characteristics. Figures refer to presumed victims of trafficking. Police, border control, and labor inspectorates are mandated by law to register victims at the NGO CoMensha at the slightest indication of human trafficking. All other organizations and individuals are encouraged to do so. The NGO CoMensha registers presumed victims of human trafficking on behalf of the Dutch National Rapporteur, and in line with the mandate of the office, the Rapporteur is entitled to receive and review data and information on trafficking in persons from most government and government-related agencies, like the police, the Public Prosecution Service, the judiciary, and the Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*, IND) (For the most recent analyses of these figures, see Dutch National Rapporteur 2017a, 2016a). In the past, the Dutch Rapporteur has also published reports on financial compensation for trafficking victims based on data from the Violent Offences Compensation Fund (*Schadefonds Geweldsmisdrijven*, SGM) and from the Central Judicial Collection Agency.
Thematic Research into New Areas

In addition to reporting on the scale of detected instances of trafficking in the Netherlands, the Dutch National Rapporteur also aims to provide insight in trends and (newly emerging) forms of trafficking in human beings affecting the Netherlands. For instance, in 2012, the Dutch National Rapporteur published a research report on human trafficking for the purpose of organ removal and forced commercial surrogacy (Bureau of the National Rapporteur, 2012a). In that research, the linkages between commercial organ donation, organ trafficking, and human trafficking, as well as between commercial surrogacy and human trafficking, were discussed. Additionally, the report examines known occurrences of trafficking for the purpose of organ removal and forced surrogacy in the Netherlands, involving or perpetrated by Dutch citizens abroad.

In 2016, the Dutch National Rapporteur responded to the broadening of our general understanding of what human trafficking entails and shed light on the emergence of specific vulnerable groups of children in society, such as Syrian child brides and Roma children. The Bureau published research into seven groups of minors of Dutch and non-Dutch nationality, their vulnerability and the extent to which they were being targeted by traffickers (Bureau of the National Rapporteur, 2016d). The report specifically pinpointed those groups that are most in need of concrete action in order to protect them from exploitation and underlined the importance of viewing some societal issues and phenomena that are related to trafficking in human beings to be investigated also from a human trafficking perspective.

Collaborative Research in Estimating the Number of Victims in the Netherlands

Similar to the study of other criminal activities, understanding the scale of the problem is important for policy in the case of trafficking in human beings. The National Rapporteur has continuously warned that the number of identified victims
is not an adequate representation of the problem and that there is a need for a reliable estimate in order to have a clear picture of the issue in order to properly inform policy. The ability to produce reliable estimates of the magnitude of human trafficking in the Netherlands required knowledge from a wide-reaching network, both national and international.

In a recent report jointly published with United Nations Office on Drugs and Crime (UNODC), the bureau of the Dutch National Rapporteur worked together with statistical experts from the University of Utrecht and UNODC to produce a substantiated estimation of the number of human trafficking victims in the Netherlands, using a statistical method called multiple systems estimation (MSE). Based on the overlap between multiple registrations of presumed human trafficking in the Netherlands, such as victims registered by the police, an NGO, or a shelter, MSE was used to calculate the “dark figure” of trafficking victims. In the most recent quantitative monitor on victims of human trafficking, the Rapporteur further analyzed the results from the estimation report, contrasting the number of estimated victims with the number or registered victims for each of four different types of trafficking in the Netherlands (based on the type of exploitation – sexual and nonsexual – and whether the trafficking is domestic or cross-border) (Kragten-Heerdink et al. 2017). Consequently, it could be shown that while on average, one in five victims of trafficking in the Netherlands is detected and registered as a victim, for victims of domestic sexual exploitation, this detection rate is one in six to seven, and for minor victims of domestic sexual exploitation, only one out of nine is ever registered as a victim. These findings provide concrete evidence useful for the direction and focus of policy on trafficking in human beings.

For a research report such as this, (external) collaboration is vital. It requires the incorporation of several types of expertise: state-of-the-art statistical knowledge, as well as the drive, resources, and connectivity of an international organization, and the in-depth knowledge of a national context that will ensure correct collection and use of the data necessary for building the statistical model as well as proper interpretation of the results.

**Research Influencing Policy**

The legal mandate of the Dutch National Rapporteur stipulates not only that the Rapporteur should research developments concerning the scope and characteristics of trafficking in human beings but also monitor the effects of policy measures taken with regard to trafficking in human beings. Moreover, the Rapporteur is legally mandated to report to the Ministry of Justice and Security and to advise the government on the prevention and eradication of trafficking in human beings. In that vein, it is the task of the Dutch National Rapporteur to make recommendations regarding existing policy or the drafting of additional policy deemed necessary. Research and recommendations made by the Dutch National Rapporteur have been known to have, directly or indirectly, shaped policy.
In November 2017, the Dutch National Rapporteur published the Tenth Report on Trafficking in Human Beings. The following section discusses the recommendations made by the National Rapporteur in the numerous reports that the Bureau of the Dutch National Rapporteur has published since its inception in 2000. This section is followed by a discussion on the recommendations and the impact these have had on shaping human trafficking policy in the Netherlands.

**Recommendations of the National Rapporteur**

Prior to 2012, reports (One, Three, Five, and Seven) of the Dutch National Rapporteur contained a large number of recommendations (see Table 1 below). The effectivity of such a large number of recommendations (some of which were repeated in subsequent reports) proved questionable, and later reports drastically reduced the number of recommendations which in more recent reports are now directed at specific organizations (Pro Facto 2017). To determine the focus (and later impact) of the recommendations made by the Dutch National Rapporteur in their regular reports to the Dutch Government, a small-scale study was conducted in the fall of 2017 to examine these recommendations, the foci of the recommendations, and the impact these recommendations have had upon victims, agencies, or municipalities. This section provides the finding of that study and examines some of the most important recommendations made and adopted by the Dutch government.

In total, 255 recommendations were made in 25 different English and Dutch reports, 205 of which were made in only four reports (the First, Third, Fifth, and Seventh Reports). The First Report of the National Rapporteur contains 29 conclusions and recommendations, some of which apply to foreign governments (e.g., within the scope of the draft framework decision on trafficking in human beings of the Council of the European Union) and over which the Dutch National Rapporteur has no influence. The recommendations are furthermore made in random order. No separate recommendations were made in the Second Report, and from the Third Report onward, recommendations (when included in the reports) are divided into specific categories. Table 1 below provides a list of reports and the presence (and number) or absence of recommendations.

These recommendations can be divided into the following categories: legislation and regulations, B8 regulation (under Chapter B8 of the Aliens Act Implementation Guidelines known as the B8 regulation), (presumed) victims of trafficking are offered a reflection period of 3 months, to recover from their trauma and decide whether or not to cooperate in criminal proceedings; during this time, they have access to services such as shelter, judicial aid, welfare, and health insurance), victims of trafficking in human beings, victim support and representation of interests, research and registration, law enforcement – general – police and investigation, public prosecution service and prosecution, central government policy, prevention, public awareness and identifying (possible) trafficking in human beings, trial/sentencing, aliens policy, training and education, improving quality of crime reporting, human rights approach, other
<table>
<thead>
<tr>
<th>Report</th>
<th>Number of recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Report</td>
<td>29</td>
</tr>
<tr>
<td>Second Report</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Third Report</td>
<td>63; (57 new recommendations + 6 recommendations reiterated from the first report)</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Fifth Report</td>
<td>66</td>
</tr>
<tr>
<td>Sixth Report</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Seventh Report</td>
<td>47</td>
</tr>
<tr>
<td>Eighth Report</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Human trafficking. Quantitative data on (prosecution and trial of) suspects and convicts in human trafficking cases in the period 2006–2010</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Detection of human trafficking and the B9 regulation: alien law and criminal aspects of dismissed human trafficking cases</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Trafficking in human beings with the aim of organ removal and forced commercial surrogacy</td>
<td>2</td>
</tr>
<tr>
<td>Case law on trafficking in human beings 2009–2012</td>
<td>3</td>
</tr>
<tr>
<td>Human trafficking. Effective approaches at the local level: Best practices</td>
<td>5</td>
</tr>
<tr>
<td>Ninth Report</td>
<td>6&lt;sup&gt;a&lt;/sup&gt;</td>
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<tr>
<td>Trafficking in human beings: visible and invisible I (2007–2011)</td>
<td>7</td>
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<tr>
<td>Trafficking in human beings: visible and invisible II (2008–2012)</td>
<td>6</td>
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<tr>
<td>Trafficking in human beings: visible and invisible. Updates data 2009–2013</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Trafficking in human beings: visible and invisible. Updates data 2010–2014</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Human trafficking. Toward a child-oriented protection system for unaccompanied minor foreigners</td>
<td>5</td>
</tr>
<tr>
<td>Vulnerability up close. An exploratory study into the vulnerability of children to human trafficking</td>
<td>No recommendations formulated</td>
</tr>
<tr>
<td>Human trafficking monitor. Data on possible human trafficking victims 2011–2015&lt;sup&gt;b&lt;/sup&gt;</td>
<td>3</td>
</tr>
<tr>
<td>Human trafficking monitor. Data on prosecution and trial 2011–2015</td>
<td>1</td>
</tr>
<tr>
<td>Prostitution and human trafficking</td>
<td>2</td>
</tr>
<tr>
<td>Victim monitor 2012–2016</td>
<td>3</td>
</tr>
<tr>
<td>Tenth Report</td>
<td>7</td>
</tr>
<tr>
<td>Total recommendations: 255</td>
<td></td>
</tr>
</tbody>
</table>

<sup>a</sup>In both this and the following report, some recommendations are split into multiple parts with separate recommendations listed under one number. In Table 1, the actual number of recommendations was recorded. In Table 2, the individual parts of a single recommendation were listed under the topic which was the focus of the recommendation; therefore, the total number of recommendations in Table 2 is larger than in Table 1.

recommendations, and recommendations made in previous reports. These categories are not always mutually exclusive. Recommendations concerning the B8 regulation are, at the same time, aimed at improving support for victims and their interests.

This information can be found in Table 2 below. The 29 recommendations made in the first report were distributed over these categories by a single researcher (The authors would like to thank Helary Abdelfady Yakub for her work in analyzing the recommendations in the English language reports of the Dutch National Rapporteur). Some of these categories appear infrequently and in later reports (human rights approach appears as a recommendation only twice in the Seventh report). It is clear from the list below that certain areas, such as legislation and regulations, research and registration, police and investigation, and victim support and representation of interests, have received more attention than others.

The National Rapporteur has met the requirement of periodic reporting to the Ministry of Justice and Security and has provided extensive data, descriptions, and trends regarding victims and offenders, police investigations, prosecution, and victim support services. The question remains: To what degree has the Bureau of the National Rapporteur positively influenced the situation in the Netherlands? To answer this question, it is necessary to examine some of the changes that have occurred in the country over the last 17 years.

**Accomplishments: Research Influencing Policy**

One of the ways to measure the success of the work of the Bureau of the National Rapporteur is to examine the changes in policy or legislation that were made as a result of the recommendation of that National Rapporteur. In a number of reports, the National Rapporteur refers to these changes. Some of the most important and substantial are highlighted below.

**National Legislation**

National legislation has been drafted to expand the definition of human trafficking previously embodied in paragraph 250 of the Dutch penal code which recognized only forms of sexual exploitation to be covered in the legislation. Since July 1, 2009, paragraph 273 of the Dutch penal code defines human trafficking in line with the United Nations Protocol to include forms of sexual and labor exploitation or forcing someone to make his/her organs available. This change emphasized the criminalization of human trafficking as a violation of an individual’s personal liberty.

Penalty enhancements have been introduced several times over the past years; in 2011 this occurred, in part, due to the advice of the National Rapporteur. Human trafficking in the Netherlands now carries a maximum prison sentence of 12 years. Under aggravating circumstances, convicted traffickers can be sentenced to higher penalties. In the case of the commission of the crime involving two or more persons working in concert, if the victim is under the age of 18 or is in a vulnerable position...
Table 2  Themes and number of recommendations made in reports of the National Rapporteur

<table>
<thead>
<tr>
<th>Theme</th>
<th>Number of recommendations</th>
<th>Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation and regulations</td>
<td>43</td>
<td>1st, 3rd, 5th, 7th, 9th, 10th visible and invisible (II); prostitution and human trafficking; human trafficking. Effective approaches at the local level: Best practices; trafficking in human beings with the aim of organ removal and forced commercial surrogacy</td>
</tr>
<tr>
<td>(B9 and later) B8 regulation</td>
<td>20</td>
<td>1st, 3rd, 5th, 9th victim monitor 2012–2016</td>
</tr>
<tr>
<td>Victims of trafficking</td>
<td>6</td>
<td>1st, 3rd, 9th</td>
</tr>
<tr>
<td>Victim support and representation of interests</td>
<td>26</td>
<td>1st, 3rd, 5th, 7th, 9th victim monitor 2012–2016; report on unaccompanied minor asylum seekers UMAs; case law on trafficking in human beings 2009–2012</td>
</tr>
<tr>
<td>Law enforcement – general</td>
<td>20</td>
<td>1st, 3rd, 5th, visible and invisible (II); human trafficking monitor. Data on possible human trafficking victims 2011–2015</td>
</tr>
<tr>
<td>Police and investigation</td>
<td>29</td>
<td>1st, 3rd, 5th, 7th, visible and invisible (I)</td>
</tr>
<tr>
<td>Public prosecution service and prosecution</td>
<td>16</td>
<td>3rd, 5th, 7th</td>
</tr>
<tr>
<td>Central government policy</td>
<td>4</td>
<td>5th</td>
</tr>
<tr>
<td>Prevention</td>
<td>10</td>
<td>5th: case law on trafficking in human beings 2009–2012</td>
</tr>
<tr>
<td>Public awareness and identifying (possible) cases of trafficking</td>
<td>13</td>
<td>5th, 7th, 9th</td>
</tr>
<tr>
<td>Trial/sentencing</td>
<td>5</td>
<td>5th, 7th; case law on trafficking in human beings 2009–2012</td>
</tr>
<tr>
<td>Aliens policy</td>
<td>7</td>
<td>7th; human trafficking monitor. Data on prosecution and trial 2011–2015; report on unaccompanied minor asylum seekers</td>
</tr>
<tr>
<td>Training and education</td>
<td>6</td>
<td>7th, 10th; case law on trafficking in human beings 2009–2012</td>
</tr>
<tr>
<td>Improving quality of crime reporting</td>
<td>2</td>
<td>7th</td>
</tr>
<tr>
<td>Human rights approach</td>
<td>2</td>
<td>7th</td>
</tr>
<tr>
<td>Other recommendations</td>
<td>12</td>
<td>1st, 3rd, 5th, 10th</td>
</tr>
<tr>
<td>Recommendations reiterated from the first report</td>
<td>6</td>
<td>3rd</td>
</tr>
<tr>
<td></td>
<td></td>
<td>260</td>
</tr>
</tbody>
</table>

The number of recommendations in the themes in Table 1 is smaller than the total number of recommendations made. Several recommendations addressed more than one theme and were listed under each theme. For example, recommendation #7 from the First Report was listed under both “legislation and regulation” and also under “research and registration”; recommendation #29 from the First Report is listed under “legislation and regulation” and also under “other recommendations”; recommendation #39 from the Fifth Report is listed under “B9 regulation” and “victim support and representation of interests”
which has been abused, or if the perpetrator has committed violence against a victim, a term of imprisonment up to 15 years can be handed down. In the case of grievous bodily harm, a perpetrator may receive a maximum 18-year sentence, and a 30-year sentence can be handed down if the trafficking offense results in the death of a victim (Article 273, Dutch penal code).

Human Trafficking at the Level of the Municipalities

Gaps and opportunities in the tackling of human trafficking were identified from the perspective of health-care professionals and municipalities (Dutch National Rapporteur 2017b). These are two network partners who have the potential to play an important role in the detection of trafficking and victims thereof, but who, concluded the Rapporteur, too often fall short when it comes to knowledge of the phenomenon and measures to counteract it. For example, only 4.5% of municipalities that partook in the questionnaire of this study (overall response rate was 42.8% of all municipalities in the Netherlands. See Dutch National Rapporteur 2017b) had policy specifically focused on trafficking in human beings. Furthermore, 35.2% of responding municipalities were unaware if human trafficking occurred in their area. In response, the State Secretary of Justice and Security has pledged to include the issue of stimulating and facilitating municipalities to take their responsibility in the counteracting of trafficking in the upcoming national “integral plan of action” on trafficking in human beings (Kamerstukken II 2017/18, 2157853 (Kamervragen)). Moreover, in response to this report, questions have been raised all over the country by local and provincial council members on the awareness and specific measures in place to counter trafficking at the municipal level (such as in Vught, Barendrecht, Veenendaal, Meppel, Bergen op Zoom, and Vlissingen, and in the provinces of Noord-Holland and Flevoland in the collegial body of Gedeputeerde Staten (in English: Provincial Executive)).

In the recently published intergovernmental program (Interbestuurlijk programma), a plan for optimal cooperation and a joint agenda for all layers of government, victims of human trafficking were identified as one of the 11 key themes for the coming years (Rijksoverheid 2018). Specifically, in this program, the government commits itself to ensuring that within 4 years, every municipality in the Netherlands will have developed a specific policy on trafficking in human beings.

Regulatory Responses

One of the recommendations of the National Rapporteur in an early report was to encourage the government to establish a National Action Plan for Trafficking in Human Beings (Nationaal Actieplan Mensenhandel). In December 2004, the National Action Plan, the government’s response to the National Rapporteur’s recommendations in the Third Report, was presented to the Lower House of
Parliament. Many of the recommendations from the previous reports of the National Rapporteur have found their way into the National Action Plan on Trafficking in Human Beings and the additional measures to the National Action Plan (Fifth Report).

The need for a high-level task force was recognized by the National Rapporteur. The trafficking in human beings task force was established on February 27, 2008, under the chairmanship of the member of the Council of Procurators General responsible for the portfolio addressing trafficking in human beings. This task force, comprising representatives from many of the relevant partners, plays an important role in putting into practice, arrangements that had already been formulated, but not yet enacted. It is tasked with identifying bottlenecks, solving problems, and promoting innovative initiatives, in particular involving the processing of cases and victims through the system. The National Rapporteur, who is also a member of the task force, assumed from the outset that such a task force would also include representatives of NGOs. When it became clear that this was possibly not the intention, she repeatedly urged that NGOs should participate, emphasizing a lack of involvement and representation of victim assistance as a missed opportunity. Currently, the strategic consultation for human trafficking (Strategische Overleg Mensenhandel), a conglomeration of NGOs and victim assistance organizations in the field of human trafficking together hold one seat in the task force that rotates between the members.

Finally, as a result of the Ninth Report, several ministerial departments have developed a National Referral Mechanism (Nationaal verwijzingsmechanisme): a guide, or framework, in which various partners from both the government and civil society organizations coordinate to identify victims of trafficking in human beings, support and aid, and – when necessary – shelter them. The mechanism so far includes a directional website, a pilot with multidisciplinary advising on the plausibility of victimhood for human trafficking victims as alternative or complementary to criminal procedures, and the development of special interview studios at shelter locations.

**Regulating the Prostitution Sector**

The National Rapporteur called for a national framework and for harmonization between municipalities’ policies regarding prostitution policy. These recommendations led to the clarification from the Dutch government that sex worker permits will not be permitted to citizens outside of the EU including (at the time) citizens from Bulgaria and Romania. In addition, a bill was introduced in November 2009 aiming to “improve efforts to address abuses in the sex industry, provide better protection for prostitutes, and provide better support for combating human trafficking, prostitution by minors and forced prostitution through criminal law” (Bureau of the National Rapporteur, 2010b; 28).

In 2016, the Dutch National Rapporteur conducted research on prostitution and trafficking in human beings in the Netherlands. Quantitative analysis determined that
half of the individuals identified as presumed victims of trafficking for sexual exploitation in the Netherlands were detected in the escort sector and the branch of prostitution practiced from homes. These are less visible sectors of the sex industry compared to prostitution in windows, brothels, and sex clubs. In addition, these are generally ungoverned sectors, meaning fewer protections are in place to ensure the well-being and safety of sex workers in these sectors.

As of 2017, a revised bill regulating prostitution and combating abuses in the sex industry in the Netherlands is waiting to be reviewed by the Dutch Senate. In earlier reports, the Dutch National Rapporteur had expressed concern about the fact that the bill would exclude sex workers working as escorts or independently from home, from an otherwise general obligation for sex workers to apply for a license. This would make it increasingly difficult to regulate this part of the sex industry and thereby to prevent violations such as human trafficking and exploitation. There is now substantiated evidence such abuses take place in these less visible sectors of prostitution. These concerns of the National Rapporteur were shared by the police, the Public Prosecution Service, and the multiple local governments of major cities in the Netherlands who urged the Ministry of Justice and Security to ensure police and municipalities will still have effective means to monitor prostitution, including unregulated and unlicensed prostitution. In the coalition agreement of the newly formed government (late 2017), as well as letters written to Parliament by the State Secretary of Justice and Security, the government has stated its intention to alter the bill to also include a form of licensing obligation for self-employed prostitutes and escorts (Vertrouwen in de toekomst, Regeerakkoord 2017–2021 VVD-CDA-D66-ChristenUnie, oktober 10, 2017, p. 6; Kamerstukken II 2017/18, 2160353 (Kamerbrief)).

**Awareness Raising and Increased Protection for (Potential) Victims**

Already in the First Report, the National Rapporteur recommended increased publicity for “lover boy” practices (this modus operandi of human trafficking entails a practice in which men court and then groom young women to become prostitutes), which in turn led to the formation of programs in school curriculum that raised awareness among adolescents of the problem. In addition, in 2003, a national register of juveniles involved in prostitution was launched. Programs designed to help individuals who no longer wanted to work in prostitution and a program developed to assist unaccompanied underage asylum seekers were implemented (Bureau of the National Rapporteur, 2010b).

Early in her mission, the National Rapporteur recommended that unaccompanied underage nonresidents/noncitizens, many of whom were asylum seekers, should be assisted and provided protection. This resulted in the Immigration and Naturalization Service (Immigratie- en Naturalisatiedienst, IND), the Central Body for the Reception of Asylum Seekers (Centraal Orgaan Opvang Asielzoekers, COA), the police, and shelters developing guidelines on how to prevent or deal with the disappearance from shelters serving this population. In addition, 24/7 supervision was incorporated
Protection of Foreign Victims and Amendments to the B8 Regulation

Over the years, the National Rapporteur has made recommendations which have resulted in changes to the Alien Act and regulation which impacts the rights of international victims of human trafficking (under chapter B8 of the Aliens Act, *Vreemdelingencirculaire* (which replaced the B9 regulation), foreign victims of human trafficking can obtain a temporary residence permit (a reflection period) for 3 months in the Netherlands. Access is provided by the police. After the 3-month period, extension will only be extended if the victim decides to file an official complaint against the offender and only for the time period during which police investigation and prosecution take place. In addition to providing information to victims concerning their rights when testifying at trial, a “care coordinator” informs individuals of the consequences of reporting a crime and arranges medical examinations and medical treatment. The Legal Aid Board provides the necessary funds for legal assistance (Bureau of the National Rapporteur, 2010b).

A reflection period was introduced to make it possible for victims to remain in the Netherlands for a period of time to recover from their experience and decide how they want to proceed. The B8 Regulation was revised, and these protections were amended to apply also to victims of human trafficking outside of the sex industry. Furthermore, while the B8 regulation and the ability to remain in the Netherlands are directly tied to a victim’s willingness to cooperate in a police investigation, those victims who do not cooperate with the police are still provided assistance (Bureau of the National Rapporteur, 2010b). Victims who fully cooperate with the investigation and prosecution should be given B8 regulation benefits. Thus, “the Aliens Act Implementation Guidelines” were amended as suggested by the National Rapporteur (Bureau of the National Rapporteur, 2010b).

Other changes included the right of victims to work once a residence permit was granted. In addition, victims received assistance finding work and were given advice through a legal aid counselor (Bureau of the National Rapporteur, 2010b).
Furthermore, in order to prevent international victims from being re-trafficked, the National Rapporteur recommended that trafficked victims should be allowed to work if they have a temporary residence permit. Amendment to the B8 regulation made this possible.

Most recently, in the Tenth Report, the Rapporteur made recommendations to alter the Alien Act (and guidelines) to further ensure that all investigative authorities that offer possible victims a reflection period (namely, the police, the Royal Netherlands Marechaussee, and the Labor Inspectorate) are actually all included in the B8 regulation as being able to do so. Moreover, it was recommended to ensure that the threshold for offering the reflection period is the same in all three organizations and interpreted in the same way when applied in practice.

**Training, Awareness, and Identification**

The National Action Plan (a recommendation of the National Rapporteur) created a list of possible indications of human trafficking and called for its wide distribution among agencies that may come into contact with victims of human trafficking and ensured that individuals working with vulnerable children were trained to identify risk factors, that persons working with trafficked victims were trained to provide treatment, and training was established to help professionals identify “lover boys.” Training of police officers has been expanded. Since 2004, a specific module (including sections on conducting intake interviews, recording reports and interviewing witnesses, carrying out checks, and document verification) has been introduced into the training of detectives (Bureau of the National Rapporteur, 2010b).

Exploitation in sectors outside of the sex industry has received increased attention, and as a result of the National Rapporteur’s emphasis on labor exploitation, particularly in domestic work, the Ministry of Foreign Affairs responded by creating a policy where diplomats are to inform domestic workers of these standards (Bureau of the National Rapporteur, 2010b). Furthermore, in an effort to increase awareness of exploitation among populations at risk (asylum seekers and migrants with residence permits), the Ministry of Social Affairs and Employment published the Exploitation at the Workplace factsheet in 14 different languages. The factsheet has been distributed to NGOs, social services, municipalities, and police forces. An awareness-raising campaign aimed at customers of prostitutes (Schijn Bedriegt) to help them recognize signs of human trafficking was launched. Reports of suspicions can be made anonymously to Stichting M. (Crime Stoppers) (Bureau of the National Rapporteur, 2010b).

With regard to medical professionals and detecting victims of human trafficking, it was found that only around a quarter of the medical professionals stated that they had sufficient knowledge on human trafficking (27.4%) or had ever received any training on this topic (22.2%) (for this study, 333 medical professionals, of in total 7 different occupations, were questioned via an online survey. See Bureau of
the National Rapporteur 2017b). However, 75.9% expressed interest in a course or training if it would be offered to them. Moreover, half of the medical professionals (50.3%) did have suspicions that one, or more, of their patients was a victim of human trafficking. In addition, professionals that had received training identified significantly more often suspected victims of human trafficking than professionals that had never followed any training. Finally, it was found that almost none of the medical professionals knew of, or made use of, reporting codes or other guidelines that can help them with identifying and forwarding signs of human trafficking. This led to two recommendations: ensuring training of medical professionals in recognizing and forwarding signs of human trafficking and including the subject of trafficking in the reporting code “Domestic Violence and Child Abuse.” In response to these findings, the Royal Dutch Medical Association (KNMG) announced it would start working on these recommendations and that in a current review of the reporting codes, it would look into the possibility of mentioning human trafficking specifically (KNMG 2017).

**Prosecution and Trial**

In a 2012 study on case law regarding human trafficking undertaken by the Dutch National Rapporteur, it was found that there was a lack of uniformity and consistency in sentencing in human trafficking cases (Dutch National Rapporteur 2012b). Aggravating circumstances, for example, were frequently not taken into account in the sentencing, and methods for calculating damages to victims varied greatly. Hence, the Dutch National Rapporteur recommended the arrangement of specialization and training for prosecutors and the judiciary in human trafficking cases. The National Consultative Committee for the Chairmen of Criminal Law (Landelijk Overleg Vakinhoud Strafrecht, LOVS) heeded this message, and consequently, as of 2013, the Netherlands is the first country worldwide to ensure trafficking in human beings is a specialization within the judiciary. Specialized courts have been established “to address cases involving multiple victims and links to organized crime,” and judges and prosecutors have been given specialized training in applying the country’s anti-trafficking provisions and in dealing with traumatized victims (Library of Congress n.d.).

As a response to recommendations made by the National Rapporteur regarding the prosecution of traffickers, all 11 regional offices of the Public Prosecution Service implemented a dedicated regional prosecutor for human trafficking and migrant smuggling, and the Public Prosecution Service established the Programme to Strengthen the Approach to Combating Human Trafficking and Migrant Smuggling embedding the subjects at various levels within the organization (Bureau of the National Rapporteur, 2010b).

Furthermore, consistency in sentencing was introduced through guidelines established by the National Consultative Body for Presidents of Criminal Sectors of Courts (LOVS), and the Public Prosecution Service has created guidelines for sentences in human trafficking cases (Bureau of the National Rapporteur, 2010b).
The Dutch National Rapporteur in an International Context

In 2009, an informal EU Network of National Rapporteurs or equivalent mechanisms was established in line with the EU Directive 36/2011 on human trafficking. They are tasked with the collection of national data and the monitoring of the implementation of anti-trafficking policy in their respective countries. Under the coordination of the European Commission, the network meets twice a year (European Commission n.d.). The second Dutch National Rapporteur, Corinne Dettmeijer-Vermeueln, co-chaired the 2016 meeting in Brussels (The Global Initiative n.d.).

The National Rapporteur travels extensively attending and speaking at conferences, meeting with government and nongovernmental officials, and the Bureau has often been asked to contribute to projects on human trafficking managed by the United Nations Office on Drugs and Crime.

The Dutch model has proved so successful it is frequently cited as a model of best practice. In its “Explanatory Report on the Convention on Action against Trafficking in Human Beings” (para. 298), the Council of Europe explicitly refers other State Parties to the Dutch model (Council of Europe 2005).

Defining the Future Mission of the National Rapporteur

In the Annual Plan 2017, the Bureau of the National Rapporteur adopted its own mission and ambition aimed at five future situations in society. The National Rapporteur hopes to contribute to achieving these goals and applies them as a guideline and a touchstone in making choices and setting priorities. These are (1) general awareness of the nature and scope of trafficking in human beings and sexual violence against children, (2) preventive measures focusing on victims and offenders, (3) the protection and recognition of victims, (4) the identification and prosecution of offenders; and (5) policy that is based on sound research.

External Evaluation of the Work of the National Rapporteur

Under Article 9 of the Act on the National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, the Bureau must be evaluated to determine if the tasks of the National Rapporteur must be revised. In 2017, an external evaluation of the work of the Bureau was conducted by research bureau Pro Facto (Pro Facto 2017). Among other foci, there was an evaluation of the performance of the tasks. Data was gathered through analysis of documents and interviews with the National Rapporteur and a number of staff. In total, 35 persons were interviewed, and through a digital survey, the researchers received over 250 responses from relevant persons having contact with the office of the National Rapporteur.
The evaluation concluded that, overall, reports and recommendations by the Dutch National Rapporteur are very well received, with partner organizations and stakeholders assessing the Rapporteur’s work from mostly positive to very positive. The Rapporteur’s expertise, her steadfast attitude, and her agenda-setting function have been praised. The National Rapporteur is an extraordinarily authoritative official who makes her own judgments and strong arguments entirely autonomously and who brings her insights and judgments to the attention of policymakers and practitioners as much as possible (Pro Facto 2017; 69).

Criticism is not absent, though, and seems related, in particular, to the resistance that the National Rapporteur sometimes evokes through the direct, open, and sometimes confrontational way in which issues are dealt with in reports and other communications. Some respondents complained of a loss of nuance with the translation from the research reports to media coverage, while other respondents find statements in the reports of the National Rapporteur too critical. One respondent found the Rapporteur too concerned with policy advisement, which undermines the credibility of evaluation of the same policy. However, other respondents appreciated firm statements and the broad influence of the Rapporteur and thought that the National Rapporteur’s advice could be even more practice- and policy-oriented (Pro Facto 2017).

When it comes to the content of the reports, respondents expressed criticism regarding the strong scientific angle or the idea of the reports being presented from an ivory tower. Other criticism includes a frequent legal perspective and focus on the criminal justice proceedings. At the same time, respondents indicated that a certain distance from practice and practitioners is an advantage for the work of the National Rapporteur. Other comments regarded the readability of the research reports, mentioning length, thoroughness, and complexity as hampering the ability of the average person to read and understand them. On the other hand, those involved in a day-to-day practice dealing with human trafficking have expressed that the depth and integrality of the reports can be considered a benefit and that the reports are used for reference or as a basis for internal notes or a prosecutor’s case files (Pro Facto 2017).

Further suggestions for improvement concluded from the evaluation are focusing on other high-risk social domains in which trafficking and sexual abuse may occur, such as sports, for example, including the perspectives of other (social science) disciplines in research in addition to the legal perspective and setting up an advisory board as a more institutionalized forum for gathering insights and needs of those in policy and practice.

Overall, it is important to note that the Rapporteur does not and cannot operate in a vacuum. There are many stakeholders involved in combating human trafficking besides the National Rapporteur, and each of those organizations contributes to improving practice and changing policy. The Rapporteur needs to acknowledge and connect with those efforts. Evaluations such as these are important to establish where the office of the Rapporteur stands in the bigger picture and what steps may be undertaken to further improve its work.
Conclusion

The office of a National Rapporteur on Trafficking in Human Beings can help give a voice to ideas or concerns of various organizations and individuals in society, from NGOs to law enforcement or local authorities. In turn, the institution of a National Rapporteur relies on these stakeholders for areas of concern, questions, and data in need of analysis. In this symbiotic relationship, the office of a National Rapporteur benefits from a continual reassessment of its own role; its core vision, goals, and strategy; and how they can best meet the needs of the victims, the organizations involved, and the society. Each and every institution with which the National Rapporteur works will have a different motivation for performing its tasks and conducting research, and these may even be conflicting. As the examples in this chapter clearly indicate, a key aspect of the National Rapporteur’s mission is to conduct research that will benefit the protection of victims and the prosecution of traffickers. A position of independence coupled with an extensive network of national and international actors in the field, allowing different kinds of expertise to be combined, is an indispensable condition for the successful fulfilment of this mission.

References


Sale of Children and Trafficking in Children as International Crimes

Maud de Boer-Buquicchio

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Abstract

Trafficking in and sale of children are among the worst crimes against children brought to the forefront at varying degrees in the last few decades. Both crimes are very similar, though not identical. Hence, it is important to look at the issues from this dual perspective. This chapter highlights some forms of child abuse that are facilitated through or amounting to the sale of children for different purposes, including sexual exploitation, prostitution, forced labor, and child marriage, to name a few.

The chapter makes the point that the eradication of all forms of abuse, violence, and exploitation of children will depend on how the underpinning causes of the demand for the sale and sexual exploitation of children are being addressed by every single society across the world. The social, cultural, gender, and institutional constructs that foster the conditions in which the sexual

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exploitation of children is ignored, tolerated, or even accepted must be tackled as a matter of priority in the long run. In addition, accountability mechanism and prevention strategies must be put in place for both in order to eradicate the abuses. Without these profound human rights-based and child-centered reforms, we will be unable to provide a brighter future to our children.

Keywords
Human trafficking · Sale of children · Child marriage · Child prostitution · Forced labor · Illegal adoption · SDGs · Sexual exploitation · Commercial surrogacy · Information and communication technology

Introduction

 Trafficking in and sale of children are among the worst crimes against children brought to the forefront at varying degrees in the last few decades. Both crimes are very similar, though not identical. Hence, it is important to look at the issues from this dual perspective. In the twenty-first century with, and in part due to, technological as well as medical advances (e.g., information and communication technology, artificial reproductive technology), uncontrolled migratory movement of children, but above all the persisting disregard of children as rights holders, both sale of children and trafficking are harsh realities, in which serious concerns arise about the respect of children’s rights.

This section analyzes both phenomena in the light of a number of manifestations of these crimes, the way they should be addressed at national level, and the institutional response within the UN, which the Mandate of the Special Rapporteur on sale and sexual exploitation of children can provide. Whereas States have committed themselves to a number of relevant international treaties and are expected to live up to these legal commitments, the definitions of “sale of children” and “trafficking in children” are so intertwined that most State parties and experts struggle to delineate them. National legislation needs to criminalize both acts as failure to do so can lead to impunity if one of the substantial definitional requirements is not met. Conceptual and legal clarity are hence needed. The concepts of “sale of children” and “trafficking of children” are often conflated, without any clear distinction, including in existing international treaties. This confusion has led to disparate uses and interpretations of the terms and has become an issue with which major child protection agencies continuously grapple (cf. also Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, https://www.ohchr.org/Documents/Issues/Children/SR/TerminologyGuidelines_en.pdf). For example, both crimes are referred to in conjunction with each other and without clear distinction in the UN Convention on the Rights of the Child (CRC) (Article 35 of the CRC states that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”) and ILO Convention 182 (Article 3: For the purposes of this Convention, the term the worst forms of child labor comprises: (a) all forms of slavery
or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict. . .). The Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography (OP-SC) defines the sale of children (Article 2 (a)) (“any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”). and requires the criminalization of specific forms of this crime (Article 3 para 1).

On the other hand, human trafficking is defined by the Palermo Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, and includes trafficking of children. It is important to note that by virtue of Article 3 para (c) of the same Protocol (“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”), when the victim is a child, the “means” by which the crime is achieved mentioned in the definition does not apply. Seen from the perspective of children’s rights, this is an important exception providing additional protection: for the act to constitute the crime of trafficking where a child is concerned, what matters is the end result by which a person takes control over the child. Whether the result of trafficking or sale of a child, the reality is that children are indeed being treated as commodities, which is exactly what the CRC and the OP-SC tend to prohibit.

In her 1999 report, the then UN Special Rapporteur on the sale of children, child prostitution, and child pornography, Ofelia Calcetas-Santos, highlighted that “[i]n most situations where there is sale there is also trafficking involved.” Following a comparison of different definitions of sale and trafficking existing at the time, she concluded that “[a]s in the sale of a person, trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable” and that “[i]n most cases, elements of both are involved, but there is no line where one ends and the other begins. For this reason, and for the purposes of this report, the issues of sale and trafficking will not be treated as distinct and separate categories.” As noted by the UNICEF Implementation Handbook for the OPSC, “[m]ost acts that meet the definition of sale also meet the definition of trafficking, but there are some situations of sale that are not trafficking and vice versa.”

The confusion surrounding the term “sale of children” has also been observed at State level, as State party to the OP-SC, and thus obliged to report on its implementation at the national level, often report on the anti-trafficking legislation they have adopted also in the context of sale of children. Government briefings on the occasion of visits of the Special Rapporteur are also indicative of this confusion.

Despite a clear overlap, “sale of children” is not identical to “trafficking,” and a more in-depth analysis does allow some fundamental, albeit minor, distinctions to be made. The qualification of the crime as either trafficking or sale very much depends on the circumstances of each case: Was there a commercial transaction?, What was the purpose?, etc. Under international law “sale of children” requires both the transfer of a child from person to person and a transaction, consisting of some form of remuneration, which is not necessarily the case for trafficking. However this
distinction can be challenged since the “means, which is one of the constituent elements of trafficking, are irrelevant when it concerns a child, so it can just as well be a matter of trafficking. Secondly, sale of a child must not necessarily include the purpose of exploiting a child. An example of this is the sale of children for illegal adoption, whereby a child could be illegally sold to a couple wishing to adopt a baby and who has every intention to treat that child well and provide a good and caring living for her/him. On the other hand, the act in itself can be exploitative in nature. In such case the “exploitative” element can be found in the conduct of the intermediary, the seller, who receives for his/her own benefit the monetary compensation in exchange for the child. In doing so, he/she exploits the vulnerable birth parents (poverty, illiteracy) or the vulnerability of the child who has no say in the process at all. Such reasoning would be in line with the recent Judgment of the IACHR in the case of the Ramirez Brothers v. Guatemala, where the IACHR considered such situation to fall within the reach of trafficking within the meaning of Article 6 of the Inter-American Convention on Human Rights. (Judgment of 2 March 2018, in particular paras. 309–317 and footnote 511 which refers to the expert opinion submitted to the Court by the Special Rapporteur. Finally it is worth noting that “sale of children” can take place without physically moving the child out of her/his social environment, for example, in the context of sexual abuse in the online environment. Over the past years however there appears to be a tendency to get rid of the movement element in trafficking. Despite its existence in the international legal definition, it is at least partially dropped in the EU legislation which foresees that an “exchange or transfer of control” may suffice for an act to amount to trafficking, and increasingly dropped in practice, where the term trafficking is increasingly being used in a generic way when it relates to sexual exploitation. The conclusion therefore is that both crimes (trafficking and sale) sometimes overlap, but should nevertheless be distinguished because not identical and their qualification as either of them will depend on predominant features and particular circumstances of each case. It means that both crimes should be criminalized and offenders prosecuted for either sale as required by OP-SC or trafficking as required by the Palermo Protocol, or both!

Accountability and prevention mechanisms need to be put in place to cover both scenarios. In respect of accountability, it is important to consider not only those who directly exploit children such as purchasers of commercial sexual acts with children or of child abusive material, but also the crucial role of the intermediaries, those who act as facilitators between the immediate offenders and children as well as those who provide and promote their exploitation. Understanding the demand behind sale and sexual exploitation of children is an essential aspect of any inclusive prevention strategy. The traffickers, the child buyers, are only servicing an ever-increasing demand for exploitative child services.

Moreover, it is essential to address the underlying level of the demand factor which relates to the social, cultural gender, and institutional constructs that foster the conditions in which the sexual exploitation of children is either ignored, tolerated, or even accepted. These factors sustain the market for child sexual exploitation.
Some Specific Manifestations

Child Marriage and Sexual Abuse and Exploitation

Child marriage still exists as a cultural practice in many parts of the world. Whether sexual or other forms of exploitation such as forced (domestic) labor or prostitution was initially intended or not, the reality is that many of these girls are repudiated or abandoned and often end up in the prostitution market, frequently ashamed to return to their families.

Most child marriage agreements include a transaction in the form of financial payment or in-kind benefits like providing dowry (Dowry is a cultural practice, commonly practiced in Asia, where the bride’s family gives a certain amount or in-kind to the groom. On the other hand, bride price is a common cultural practice in the Middle East, where the groom will give a certain amount or in-kind benefits to the bride’s family to acquire the girl.) for younger girls or promise of settling family debts in exchange of a girl. In such transactions, children are treated as commodities and exchanged for goods or money or to settle debts or disputes (Catherine Turner 2013). Sexual abuse and/or exploitation are frequently the consequence of early and forced marriage.

While this phenomenon exists in times of peace, existing vulnerabilities to sale, trafficking, and exploitation, from gender-based violence to discrimination and to lack of economic opportunities, are exacerbated in situations of conflict and humanitarian crises. Moreover crises tend to fuel impunity, the breakdown of law and order and the destruction of communities, and foster the conditions in which these crimes flourish, often past the point at which hostilities or the humanitarian crises cease. Other aggravating factors are related to discrimination, whether gender-based, ethnic, racial, religious, social, within a community, or at the national level.

The practice of “temporary” or forced child marriages is a dangerous coping mechanism that girls face in humanitarian crises (UNICEF, Uprooted, p. 38). Such an uncertain environment increases the vulnerability of families, thus obliging many parents to marry off their young daughters to men whom they perceive could protect their girl and her family. Child or forced marriages of girls to older men are on the rise, which is perceived as a source of income and a protection mechanism. The abduction of girls from their homes or schools by extremist groups in conflict situations specifically for sexual exploitation and abuse is also giving rise to great concern: Boko Haram in Nigeria continues to abduct hundreds of girls, sexually exploit and abuse them, and leave many of them impregnated. Armed groups often traffic children for sexual purposes and sometimes use sales to sustain their activities financially. Sometimes during armed conflict, girls are themselves treated as the “wages of war”: Girls are gifted as a form of in-kind compensation or payment to fighters, who are then entitled to resell or exploit them as they wish (See S/2017/249). Child sexual exploitation is thus used as a means of recruiting, rewarding, and retaining fighters to advance their criminal endeavors. A report by the Independent International Commission of Inquiry on the Syrian Arab Republic describes how
Yazidi women and girls were sold by Islamic State in Iraq and the Levant (ISIL) in slave markets, through auctions and sometimes as groups to be resold individually (A/HRC/32/CRP.2).

Sale of Children on the Move

Hundreds of thousands of children are affected by armed conflict and related crises in Iraq, Syria, Somalia, Yemen, the Central African Republic, the Democratic Republic of Congo, Nigeria, South Sudan, and Myanmar, to name a few. These conflicts and crises foster the conditions in which sale, trafficking, and other forms of exploitation of children such as forced marriage, sexual slavery, and the worst forms of child labor, including forced labor and the recruitment and use of children in armed conflict, flourish.

The problem of children fleeing conflict zones or poverty and violence in search of survival and safety, whether accompanied by their families or separated or unaccompanied, is particularly acute in Europe because of the situation in the Middle East.

According to recent data published by UNICEF, 170,000 unaccompanied children applied for asylum in 2015–2016, accounting with separated children for 92% of all children arriving in Italy by sea in 2016 and the first months of 2017 (Unicef: A child is a child: Protecting children on the move from violence, abuse, and exploitation).

In the absence of clear information upon arrival at the borders or because they clandestinely cross borders, children and their families tend to seek help from traffickers who promise support for their onward journey toward their destination via dangerous routes.

In order to pay for the journey, traffickers often force children to resort to commercial sex. In Northern France, children were forced into commercial sex by receiving around €5 a time for sexual services to pay for their journey to the UK, revealing the level of pressure that they were under to raise the €5000–€7000 charged for their passage (UNICEF 2016, p. 80).

Existing prevention mechanisms and responses to various forms of sale and exploitation of children in the context of conflict and humanitarian crisis are largely ineffective. Indeed, the accurate identification of children who are victims of sale, trafficking, and other forms of exploitation is hindered by the inadequate training, or lack thereof, of frontline workers, challenges in age and filiation determination procedures, and a lack of communication and coordination among various actors. In spite of some promising practices, the interim care of and durable solutions for vulnerable children on the move often do not consider the specific needs of children, especially those separated or unaccompanied who live in mixed spaces with adult migrants or refugees in areas or camps that lack basic amenities.

Living in limbo for long periods owing to delays or inefficiencies in or the absence of regular channels for migration may drive children who have depleted their financial resources to seek alternative ways, whether legal or illegal, to earn
money either to survive or to continue their journeys. This situation leads them into
the arms of criminals who are able to facilitate their passage to other countries.

More emphasis needs to be placed on reducing the vulnerabilities of children on
the move. This implies the need for a proper functioning child protection system in
countries of origin, transit, and destination countries. Deficiencies in the system push
children to place their trust rather in traffickers and other criminals than in competent
authorities.

**Sale of Children Facilitated by Information Technology**

Live online sexual abuse is a practice on the rise, related both to sexual exploitation
of children through prostitution and sexual performances and to the production of
child abusive material. New data shows 37% increase in child sexual abuse URLs as
compared to 2016 (Annual Report 2017 Internet Watch Foundation). Pedophiles and
sex offenders are using all corners of the open and Dark Web to stream abuse, share
images, or posts on message boards. According to the latest threat assessment by the
WeProtect Global Alliance (The WePROTECT Global Alliance to End Child Sexual
Exploitation Online is an international multi-stakeholder platform dedicated to
national and global action to end the sexual exploitation of children online.),
technology is enabling offender communities to attain unprecedented levels of
organization, creating new and persistent threats.

Numerous cases have been reported of people having a child in a room, while
a number of users log onto the video feed to further abuse the child. Frequently
children are sold by their own parents in order to support the family’s dire
situation.

There has been a shift in the way material is traded, moving away from the web
to peer-to-peer networks, which facilitates evading filtering and other detection
software, therefore reducing risk to those seeking and distributing child pornography. The Internet allows for these clandestine illegal activities to be more shrouded
in secrecy, with advertisements being restricted to niche sites to hide their activities
from law enforcement. As a result, identifying the number of children who are
trafficked over the Internet for prostitution is very difficult. Online virtual currencies
also allow measures taken by the financial industry to combat commercial online
child sexual exploitation to be evaded, as they are often subject to less transparency.
The Internet also allows for anonymous payment methods which render even more
difficult to trace the purchaser of exploitative material.

As perpetrators are benefiting from the fast-evolving technologies, states should
invest in or partner with the technology industry experts to develop superior tech-
nologies to outpace any impunity enjoyed by the perpetrators. The Internet industry
is uniquely placed to act as a conduit for reporting suspicions and blocking inap-
propriate material and to reinforce key Internet safety messages. As prevention and
protection of children is a necessity, technology industry would again be the ideal
platform to raise awareness about online safety among children as and when newer
technologies and versions get created.
A multi-stakeholder approach involving technology industry along with all relevant stakeholders such as governments, law enforcement, civil society, and children themselves are the only way forward in addressing online sexual exploitation. At the international level, the Virtual Global Taskforce and the WeProtect Global Alliance against Child Sexual Abuse Online are a few examples of such multi-stakeholder approaches that exist today, which should be taken to scale.

**Sale of Children and Forced Labor**

The sale of children for the purpose of forced labor does not constitute a specific category for which data is collected at the global level. However, an examination of the data available for similar situations makes it possible to draw a picture of the extent of the phenomenon and major trends. The overwhelming majority of forced labor consists of labor exploitation. The latest global estimate concludes that a total of 20.9 million persons are victims of forced labor, of which 5.5 million (26%) are children. Women and girls represent the greater share of the total: 11.4 million (55%) (ILO 2012).

A review of global estimates (UNODC 2014) of trafficking in human beings makes it possible to highlight a number of common features characterizing the sale of children for the purpose of forced labor. First, the share of children trafficked for the purpose of forced labor is increasing, and the share of children involved in forced labor is particularly high. Second, while in Europe and Central Asia children may be sold for the purpose of forced begging and petty crime, in the rest of Asia and in the Americas, a high proportion of child victims may be sold for economic exploitation. Lastly, there are significant regional disparities and a lack of common definitions affecting the reliability of estimates, most likely leading to underestimates.

The sale of children for the purpose of forced labor is a multifaceted phenomenon with diverse root causes, risk factors, manifestations, and effects. Families may use the sale of children for the purpose of forced labor as a coping strategy for survival. Children, whether sold or entrusted to a third party, may fall into the hands of traffickers, who will in turn sell them for forced labor. They may also end up under the control of criminal organized groups. Demand for products with competitive prices is also a pull factor for the sale of children for forced labor and labor exploitation. In conflict situations, lawlessness and social, economic, and institutional breakdown, as well as deliberate conflict strategies, may lead children to be abducted and sold for the purpose of forced labor. Children are sold and compelled to engage in forced labor in a wide variety of sectors and occupations. While some situations are irrefutably identified as sale of children for the purpose of forced labor (e.g., minefields), there exist situations that are not easily identifiable.

The sale of children for the purpose of forced labor and other forms of exploitation in domestic work is widespread, yet due to its ambiguous and hidden nature, it puts children under the radar while being employer-dependent. Children can be forced into domestic work under the guise of adoption, in conditions similar to bonded labor (ILO 2013).
Sale of children is often seen in agricultural sector as a result of debt bondage, when children have to work to repay debts taken on by their families until the family debt is paid off or if they were born into bondage. Children were recruited by their parents, relatives, or recruiting agents, implying that in many instances a transaction had taken place (ILO 2013). Another form of bonded labor is when an intermediary lures children or their parents into farm work by promising good working conditions and later sells the child workers to the farmers (Paul Robson 2010).

Sale and exploitation of children for forced begging is another form of forced labor, in which child’s consent is not considered as relevant. Begging is a lucrative business for racketeers who exploit children to generate revenue based on human sympathy, sometimes with the complicity of parents. Children in a street situation are particularly vulnerable to the practice, given their lack of a protective environment. Children may be sold by their families or pregnant women may be recruited and forced to sell their babies. In Europe, children have been sold for up to 40,000 euros (Europol, “Child trafficking for exploitation in forced criminal activities and forced begging” (The Hague, October 2014)).

Children are forced and threatened to undertake criminal activities without their consent, which should be considered as a form of forced labor. Criminal groups use debt bondage and threats of reprisals against the children and their families to prevent them from escaping (ECPAT UK 2011). Europol has found that children are often forced to commit various types of robbery and theft (Europol, “Child trafficking for exploitation in forced criminal activities and forced begging” (The Hague, October 2014)). Criminal groups ensure obedience through threats, use of force, deprivation, and psychological manipulation and may take away their documents.

In refugee camps in Iraq and Lebanon, Syrian refugee children are trafficked for forced begging and selling items on the street (UNICEF, Uprooted, 2016, p. 38). Moreover, trafficked children are often obliged or induced by their exploiters to commit crimes, such as pickpocketing, burglary, and drug cultivation and transportation (A/HRC/29/38, para. 20).

Sale of children finds its root causes in the acceptability within societies to use children as laborers in the name of poverty and various other justifications. When harmful practices are socially accepted, protective factors are low and pull factors strong, and a child can be sold and exploited in forced labor conditions. Addressing the issue therefore requires comprehensive approaches that take into account the demand factor as well as the specific vulnerabilities of children being sold while recognizing children as rights holders entitled to protection but also to recognition of their agency in function of their evolving capacities.

Comprehensive strategies to prevent and eliminate the phenomenon call in the first place for a clear legal framework. Article 3 of OP-SC requires State parties to criminalize the sale of children for the purpose of forced labor in their legislation, including when committed by legal persons (e.g., companies). Overlap with other similar yet different crimes (such as trafficking) means that legislation is likely to criminalize acts relating to slightly different situations, while overlooking the specificities of the crime of the sale of children, which result in impunity. Moreover, the
limited implementation of legislation, in particular the difficulty of providing sufficient evidence to prove the offence in court, may lead to few convictions and low penalties for perpetrators.

Identification of victims is a critical first step toward ensuring the application of a protective framework. The justice system uses criminal approaches instead of referring child victims to child protection systems.

Access to an effective remedy is particularly important for prevention. Children who have been sold and are engaged in forced labor are often isolated, with no access to remedy. The vulnerability that is specific to the relationship of dependency with the employer presents specific challenges, in addition to the need for child-sensitive access to justice and redress mechanisms. Such children may distrust the police, fear retaliation, and lack the documentation for legally staying in the country concerned.

The Office of the United Nations High Commissioner for Human Rights has issued guidance on improving accountability and access to remedy for victims of business-related human rights abuse. It underlines the role of solid legal frameworks, which make it possible to hold companies criminally accountable for their actions, including when committed by third parties but with their contribution, through adequate procedures and deterring sanctions, effective enforcement mechanisms, coherent policy packages, and support for victims in accessing remedies (A/HRC/32/19).

Regulation of the activities of intermediaries in order to ensure respect for human rights standards combined with labor inspection and public private partnerships should further contribute to eliminate this scourge.

Sale of Children and Illegal Adoption

Illegal adoptions may be the result of crimes such as the abduction and sale of and the trafficking in children or are processed through the commission of other illegal acts or illicit practices such as the lack of proper consent of biological parents, fraud and improper financial gain, and violation of multiple child rights norms and principles, including the best interests of the child.

Methods employed and actors involved are often the same. The kidnapping of babies, falsely informing parents that their baby was stillborn or died shortly after birth, the consent of biological parents obtained through misrepresentations, bribery or coercion, and the payment for the child and bribes paid to intermediaries involved in the adoption process are among the most common methods of sale and illegal adoption of children. Inherent to these methods is the falsification of documents and bypassing of regulations. Majority of illegal adoption cases targets vulnerable parents, in particular single mothers, in economic hardship, from rural areas, who belong to indigenous communities, and who have no access to education and cannot make their voices heard or whose voices are completely ignored.

When corrupt financial transactions exist and consequent transfer of the child occurs in an adoption process, it automatically becomes an act of “sale of children” and thus a violation of the best interests of the child.
The aftermath of humanitarian disasters is a fertile ground for the illegal international adoption of children, as it is facilitated by the breakdown of institutions and the lack of border control. For example, following the earthquakes in Haiti in 2010 and Nepal in 2015, there were concerns that separated and orphaned children were being trafficked for sexual or labor exploitation, sold, or illegally adopted, sometimes by well-meaning families (See A/HRC/19/63; see also Anna Childs 2016; European Police Office (Europol) and International Criminal Police Organization (INTERPOL), “Migrant smuggling networks: joint Europol-INTERPOL report,” May 2016). In addition, the crossover between smuggling and trafficking represents a major risk for children, (European Police Office (Europol) and International Criminal Police Organization (INTERPOL), “Migrant smuggling networks: joint Europol-INTERPOL report”, May 2016) including those who go missing with the aim of reaching relatives or acquaintances in another country.

Baby harvesting (SHS/CCT/2006/PI/H/2–UNESCO published Policy Paper no. 14.2(E), Human trafficking in Nigeria – root causes and recommendations, p. 31.) is a recent development where pregnant women are sheltered by patrons to give birth to a baby, who is then sold to the families who wishes to adopt the baby at a premium. Baby factories in Nigeria are an example (SHS/CCT/2006/PI/H/2–UNESCO published Policy Paper no. 14.2(E), Human trafficking in Nigeria – root causes and recommendations, p. 31).

In order to effectively prevent and eradicate illegal adoption, States must take measures to address the push and pull factors, as well as the enabling environment, of the current adoption system, in which illegal adoption persists.

In respect of intercountry adoptions, countries of origin and receiving countries bear joint responsibility for tackling systemic problems. The current system not only facilitates and encourages illegal adoptions but also accepts measures that foster them. A major factor enabling illegal adoptions is the level of financial advantage that can be obtained from the procurement of children for intercountry adoption. As long as adoption fees and costs are not reasonable and not made transparent and as long as contributions and donations are involved, there will continue to be a substantial incentive for illegal adoptions to take place.

According to Article 21 of CRC, the principle of “best interests of the child” must govern all matters related to the adoption processes, both at the domestic and intercountry level. This principle stands breached when the purpose of adoption turns into a process of finding a child for the adoptive parents rather than a family for the child. Intercountry adoptions are governed by two additional principles: the principle of subsidiarity (According to Article 4 (b) of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, an adoption shall take place only if the competent authorities of the State of origin have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests. In relation to subsidiarity, see https://assets.hcch.net/upload/adoguide_e.pdf.) and the prohibition of improper financial gain. States have been reluctant to react adequately to illegal adoptions. The lack of accountability and redress for victims of illegal adoptions, in part due to a lack of comprehensive national
legislation criminalizing illegal adoption as a separate offence, is a major concern. In addition, investigations and prosecutions are rarely targeted at criminal structures involved in the commission of systematic illegal adoptions, often with State complicity. Sanctions for acts related to illegal adoptions rarely reflect the gravity of the crimes.

In addition, countries of origin and receiving countries bear joint responsibility for ensuring the rights to truth, justice, reparation, and guarantees of non-recurrence of victims of large-scale illegal adoptions that were tolerated or actively promoted by the State. States must acknowledge their responsibility vis-à-vis illegal adoptions by anticipating strategies and adopting comprehensive measures to ensure accountability and provide redress to victims, reparation, and guarantees of non-recurrence.

States must have the capacity to anticipate this quest by elaborating adequate databases and DNA records, facilitating the search of origins through awareness-raising campaigns aimed to identify birth mothers who are searching for their children, establishing processes that are not complicated and expensive, and providing psychosocial support to triad members (adoptive parents, adoptees, birth families).

**Sale of Children and Commercial Surrogacy**

With a growing industry driven by demand, surrogacy is another area of concern for the rights and protection of the child against sale. “Surrogacy” refers to a form of “third-party” reproductive practice in which the intending parent(s) and the surrogate mother agree that the surrogate mother will become pregnant, gestate, and give birth to a child. Surrogacy arrangements generally include an expectation or agreement that the surrogate mother will legally and physically transfer the child to the intending parent(s) without retaining parentage or parental responsibility.

Commercial surrogacy as currently practiced usually constitutes sale of children as defined under international human rights law. If the surrogate mother or a third party receives “remuneration or any other consideration” in exchange for transferring a child, the sale of a child occurs, as defined by the OP-SC. Undeniably, the promised and actual transfer of the child is usually of the essence of the arrangement and accompanying agreements and contracts, without which payments would be neither made nor promised. While the surrogate mother is paid, in commercial or compensated surrogacy arrangements, for the services of gestating and giving birth to a child, she is also being paid for the transfer of the child.

Surrogacy has reached a point of development, where both unregulated forms of commercial surrogacy and wrongly regulated forms of commercial surrogacy have created large-scale, highly organized international and domestic markets in children. The development of these markets is at a critical point and must be addressed now before they become further entrenched in law or practice.

A number of minimal requirements are needed for States to ensure that surrogacy does not amount to sale of children. The starting point is the rejection of any notion of a “right to a child” as there is no such concept under international law. The right to
“found a family” and to “respect for...private and family life” does not constitute a “right to a child.” Any such right would equate a child to goods or services that can be guaranteed or provided.

Commercial surrogacy could be conducted in a way that does not constitute sale of children, if it were clear that the surrogate mother was only being paid for gestational services and not for the transfer of the child. In order to turn this into more than a legal fiction, the following conditions would all be necessary. First, the surrogate mother must be accorded the status of mother at birth and at birth must be under no contractual or legal obligation to participate in the legal or physical transfer of the child. Hence, the surrogate mother would be viewed as having satisfied any contractual or legal obligations through the acts of gestation and childbirth, even if she maintains parentage and parental responsibility. Second, all payments must be made to the surrogate mother prior to the post-birth legal or physical transfer of the child, and all payments made must be non-reimbursable, even if the surrogate mother chooses to maintain parentage and parental responsibility, and these conditions should be expressly stipulated in the contract. If the surrogate mother chose to maintain parentage and parental responsibility, she may be legally obligated to share parentage and parental responsibility with others, including the intending parent(s). However, the surrogate mother would not be obligated to relinquish her own status by the surrogacy arrangement. Any choice by the surrogate mother after the birth to legally and physically transfer the child to the intending parent(s) must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation.

A properly regulated system of commercial surrogacy would also provide necessary protections for children, including post-birth individualized best interests of the child determinations, appropriate suitability reviews of intending parents, and protections of rights of origin and access to identity. For the protection of all parties, it is appropriate to conduct screenings and reviews of surrogacy arrangements prior to pregnancy, but pre-birth processes cannot be conclusive as to parentage and parental responsibility, which can only be determined upon appropriate review after the birth. Appropriate regulation of the financial and medical aspects of surrogacy, and strict regulation of intermediaries, would also be necessary.

Truly altruistic surrogacy does not constitute sale of children, since it is understood as a gratuitous act, often between family members or friends with pre-existing relationships and often without the involvement of intermediaries. Nonetheless, great caution must be taken around reimbursements to surrogate mothers for medical costs, which may be used to disguise a payment for the transfer of the child. Particular scrutiny is required around open-ended categories such as “pain and suffering” or “professional services.”

A properly regulated system of commercial surrogacy would also provide necessary protections for children, including post-birth individualized best interests of the child determinations, appropriate suitability reviews of intending parents, and protections of rights of origin and access to identity. For the protection of all parties, it is appropriate to conduct screenings and reviews of surrogacy arrangements prior to pregnancy, but pre-birth processes cannot be conclusive as to parentage and
The Mandate of the United Nations Special Rapporteur as an Institutional Response

The development of international law on the rights of the child with the adoption of the UN Convention on the Rights of the Child in 1989 pushed the UN Commission on Human Rights to appoint in 1990 a Special Rapporteur to consider all matters relating to the sale of children, child prostitution, and child pornography, including the adoption of children for commercial purposes (E/CN/RES/1990/68).

The mandate was renewed continuously, first on a biannual basis and then every 3 years. The broad scope of the mandate was significantly further detailed in 2008. The Human Rights Council stated that the Special Rapporteur is mandated to, inter alia:

- Analyze the root causes of sale and sexual exploitation of children
- Identify new patterns of the phenomena
- Exchange and promote good practices to combat it
- Promote measures to prevent it

In March 2017 the HRC (A/HRC/RES/34/16.) requested the Special Rapporteur “to advise States, intergovernmental organizations, civil society and other stakeholders on effective and sustainable practices to respect, protect and fulfil the human rights of child victims of sale and sexual exploitation in the implementation of the 2030 Agenda, and to undertake, in cooperation with relevant special procedures and actors of the United Nations system, thematic research on the effective implementation of Goals 16, 8 and 5, with particular focus on targets 16.2, 8.7 and 5.3, in accordance with her mandate.”

As the mandate on sale and sexual exploitation of children was created before the adoption of the OP-SC (2000) (E/CN4/RES/1990/68.), it is in no way limited to the application of this Protocol, although it constitutes an important reference frame. In addition, depending on the issues addressed, the mandate relies on several other treaties, such as the ILO Convention concerning the prohibition and immediate action for the elimination of the worst forms of Child Labor (No. 182 of 17 June 1999) and the Protocol to prevent, suppress, and punish trafficking in persons,
especially women and children, supplementing the UN Convention against Trans-
national Organized Crime (15 November 2000) and the 1993 Hague Convention
on the Protection of Children and Cooperation in respect of intercountry adoption.

States, as the primary upholders of the rights of children, thus need to assume
their responsibility to create an enabling environment to prevent and protect children
from various egregious crimes. The CRC and its Optional Protocols remains the
cornerstone in guiding Member States to implement the rights of children.
The monitoring mechanism created by the CRC and the work of the Committee
on the Rights of the Child over the years have helped to clarify a number of treaty
obligations and reinforce peer pressure where States fail to meet their commitments.

Special Rapporteurs are independent experts who serve in their individual capac-
ity. They are not staff members of the UN and do not receive a salary for their work. As an independent expert, the role of the Special Rapporteur is to ensure that these commitments are implemented in a tangible manner. With the independent expertise and knowledge acquired from all relevant spheres, the Special Rapporteur identifies the weaknesses and gaps in child protection systems that allow these crimes to continue to occur allowing the criminals’ impunity.

The Special Rapporteur has different working methods to achieve her/his objec-
tives during the once-renewable 3-year term of office. It purports to provide an
independent platform through dialogue with all stakeholders, including civil society
and children themselves, to identify and address the gaps. The Special Rapporteur
conducts country visits, at the invitation of the governments, to analyze the state of
child rights and child protection systems in a given country. The objective is to
assess the children’s situation in relation to the scope of the mandate and to issue
specific recommendations to improve the protection of children and their rights.

Each year, the Special Rapporteur presents thematic studies to the UN Human
Rights Council (HRC) and to the UN General Assembly on topics under the mandate
that warrant attention (A/HRC/37/60 2018; A/72/164 2017; A/HRC/34/55 2016;

Special Rapporteurs have discretionary power to act upon information received
with regard to cases of child rights violations or legislation, policies, programs, or
other measures which affect or may affect children’s rights. The special procedure
mandate holder, through this power of sending communications, may seek further
clarification on allegations of violations of children’s rights falling within the scope
of the mandate, to request putting an end on ongoing violations and encourage
accountability of perpetrators and to call for redress for victims. These communica-
tions may be addressed in the form of urgent appeals or allegation letters to
governments or other stakeholders. Communications can be directed to all States,
regardless of their status of ratification of international human rights treaties.

Within the UN system, coordination between various mechanisms including the
broader UN human rights framework is crucial. Similarly, joint action and coordi-
nation between Special Procedures mandate holders is a necessity to address viola-
tions against children.

In 2017, for the first time in the history of the Special Procedures system, the
Special Rapporteur on the sale of children, the Special Rapporteur on health, and
the Special Rapporteur on contemporary forms of slavery set the trend by joining together in conducting a joint study visit to Nigeria, in order to assess the recovery and care and reintegration measures put in place by the authorities for children abducted by Boko Haram and released or escaped (A/HRC/32/32/ADD2).

Also, the Special Rapporteur on sale and sexual exploitation of children and the Special Rapporteur on trafficking, in particular women and children, produced a joint report on the particular vulnerabilities of children on the move (A/72/164). This was the first joint report to the General Assembly of two special procedures mandate holders. This joint report reflects both Rapporteurs’ commitment to ensure complementarity among the mandates and to mainstream the protection of the rights of the child within the special procedures system and the human rights monitoring mechanisms. Indeed, there is growing awareness among Special Procedures mandate holders that all aspects of life raising human rights issues (e.g., health, healthy environment, education) should consider impact on children’s rights.

Acknowledging children as fully fledged rights holders on their own account also implies that it is of crucial importance that their human rights are explained to children in a child-friendly manner. The website of the Special Rapporteur on the sale and sexual exploitation of children displays a booklet which explains the mandate in a child-sensitive language. A child-friendly version of the report of the Special Rapporteur on the environment is another good example.

While some may argue for the merger of the mandate on trafficking (in women and children) and the mandate on sale and sexual exploitation of children, that option should be resisted. The mandate of the Special Rapporteur on the sale and sexual exploitation of children is indeed the only mandate within the Special Procedures system with an exclusive focus on children. It reflects the fact that children are rights holders, and that the best interest and specific needs of each individual child must be a primary concern in all circumstances. Merging children with other (unidentified) groups of persons on account of their vulnerability in some circumstances would be a step backwards. There would be, however, good arguments for the creation of a mandate within the Special Procedures system on children’s rights in general. It would also be a reflection of the fact that violence against children (whether sexual, physical or emotional) can only be effectively addressed through a holistic approach in the protection and promotion of children’s rights. Despite progress achieved, children remain the first and less empowered victims of most crisis and conflicts around the world. Children desperately need champions and authoritative voices to remind all actors in society that investing in children is the right and the smart thing to do. To assert the added value of a broader mandate, it would be interesting to reflect on how it would support the implementation of a number of key treaties (including the Convention on the Rights of the Child and its Protocols) and explore the scope for complementarity with other existing UN mechanisms and bodies addressing children’s rights, in particular the Committee on the Rights of the Child. In principle, the existence of a treaty-based monitoring mechanism should not constitute an obstacle to the creation of a Special Procedures Mandate, as both can be complementary, considering in particular the independent status of a Special Rapporteur, its wide spectrum of working tools, its flexibility and ability to quickly
address emerging issues and new developments and the fact that the activities are not necessarily circumscribed by the provisions of a particular treaty. It would certainly not be the only mandate which co-exists with a treaty-based monitoring mechanism (e.g., Special Rapporteur on persons with disabilities, Special Rapporteur on torture, Special Rapporteur on migration).

**Concluding Remarks**

In conclusion, in spite of its limited resources, the mandate of the Special Rapporteur on the sale and sexual exploitation of children has been undoubtedly instrumental in raising awareness on the different aspects of preventing and combating sale and sexual exploitation of children through a range of activities such as the many country visits, the thematic reports, and the communications with governments on incidents of sale or sexual exploitation of children. They have contributed to legislation and policy development through concrete recommendations to governments, both after country visits and thematic reports. Drawing attention to the responsibilities of the private sector, in particular regarding online exploitation of children and sexual exploitation in the travel and tourist industry, is also an example of the scope of action. The involvement of children themselves in preparing the assessment of issues has also proven to be an asset in the working methods.

The Special Rapporteur on the sale and sexual exploitation of children relies on his/her soft persuasive powers and the trust placed in the mandate and its incumbent by the HRC to end the child rights violations by changing the adults and governments’ mind-set. The core foundation of the mandate is that children are not commodities. As much as they are entitled to enjoy their childhood and to grow naturally toward adulthood, they are entitled to respect of their human dignity and physical and moral integrity.

For the first time, the international community has set itself clear targets to end all forms of violence against children through the adoption of the Agenda for Sustainable Development. Different methodologies to assess the magnitude of the problem of exploitation of children and progress towards achieving SDG’s, in particular Goal 16.2, are being developed both at international and national level. The required measurement for these sustainable developments goals should lead to an improved assessment of progress, namely, through the adoption of comprehensive legislation, effective prevention through quality education that empowers children, enhanced law enforcement, child-friendly reporting mechanisms, and all-encompassing victim support programs.

However, the eradication of all forms of abuse, violence, and exploitation of children will depend on how the underpinning causes of the demand for the sale and sexual exploitation of children are being addressed by every single society across the world. The social, cultural, gender, and institutional constructs that foster the conditions in which the sexual exploitation of children is ignored, tolerated, or even accepted must be tackled as a matter of priority in the long run.
If we want to celebrate in 2019 the 30th anniversary of the adoption of the Convention on the Rights of the Child in a meaningful way, these profound human rights-based and child-centered reforms must be pursued as a matter of priority.

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Protection of Migrants Against Labor Exploitation in the Regulation of Migration in the EU

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Abstract

The European Union (EU) is dedicated to the battle against human trafficking in general and labor exploitation as a specific form of human trafficking in particular. Article 5 (3) of the Charter of Fundamental Rights contains a prohibition of human trafficking including labor exploitation. The EU directive against human trafficking is more elaborate than the Palermo Protocol both in the definition of human trafficking as in the protection offered to victims.

Also in the legislation and policies regulating labor migration from third-country nationals into the EU as well as the regulation of intra-EU labor
migration, attention is paid to the exploitation of labor migrants. However, the
regulation of labor migration is not only directed at the social protection of
migrants, but it is also – and some claim predominantly – meant to contribute
to the economic benefits of the Member States and, as far as intra-EU migration is
concerned, to promote the freedom of workers, self-employed persons, and
services. This double purpose creates tensions between Member States and
leads to the risk of labor exploitation. The purpose of this contribution is to
analyze the EU legislation on labor migration and to expose the risks for – and
opportunities to protect migrants from – labor exploitation in the legal framework
regulating labor migration in the EU.

Keywords
Migration · Labor exploitation · EU law

Introduction

Since the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in
Persons, Especially Woman and Children in 2000 (Palermo Protocol) and the
subsequent entering into force in 2005, attention for labor exploitation as a form
of human trafficking has grown significantly. Until then the concept of human
trafficking was reserved for sexual exploitation (Gallagher 2010). Other interna-
tional legal concepts such as slavery, situations comparable to slavery, forced labor,
and servitude address situations which can be qualified as labor exploitation, but
these concepts did not have the same impact on the international attention for the
phenomenon of labor exploitation as the Palermo Protocol.

The Palermo Protocol is an instrument of criminal law, mainly directed at the
prosecution of the perpetrators of human trafficking. However it is generally
acknowledged that for the combat of human trafficking and labor exploitation, a
broader and an integrated approach is necessary (Middelburg and Rijken 2011).

When it comes to labor exploitation, migrants are a vulnerable group (Gallagher
2010; FRA 2015). This applies in particular to undocumented migrants but also to
migrants whose right of residence depends on having paid work, migrants who are
less aware of their rights due to a language and/or knowledge deficit, or migrants
who are not authorized to work under national migration law.

In a world system based on sovereign states where according to international law
everyone has the right to leave any country (see article 13(2) Universal Declaration of
Human Rights (UDHR), article 12 (2) International Covenant on Civil and Political
Rights (ICCPR)), this right is not complemented with a right to enter and reside in
another country. The right to enter or stay may only be deduced from the internation-
ally recognized right to seek asylum (article 14 (1) UDHR) and to non-refoulement
(article 33 Convention Relating to the Status of Refugees (1951) and article 7 ICCPR)
and in some exceptional cases the right to family life (article 17 ICCPR). This places
migrants in a situation where in principle national law governs the access to the
territory, the conditions for residence, and the right to work in another state. As
many states tend to be restrictive in their labor migration policies, this can lead to vulnerability of migrants to human traffickers and human smugglers in order to get access to the territory and for exploitation when they are seeking employment.

At the same time, migrants are not only vulnerable for labor exploitation, but migrants and migration law can also influence labor law and the labor market situation in a host state (Costello and Freedland 2014, Costello 2015). For example, in the EU, the freedom of movement for workers influences the labor supply in receiving Member States. This is assumed to lead to replacement of local workers by migrant workers and in this way negatively influences the local labor conditions (see, e.g., Bernaciak 2014). This phenomenon is referred to as social dumping.

As far as the EU is concerned, the legal system regulating migration is mainly – with regard to intra-EU mobility of EU citizens – or partly, as regards citizens of other non-EU countries, replaced by a regional legal system. In this legal system, the balancing exercise between on the one hand the protection and promotion of the economic well-being of the population of the EU as a whole but also of the individual Member States and on the other hand the protection of human rights, including the rights of citizen of other countries outside the EU coming to and residing in the EU, is visible.

In this contribution, the question to what extent the EU legal system with regard to the regulation of labor migration protects migrant workers against exploitation is explored. The first part focuses on the intra-EU mobility of EU citizens working in another Member State. In this part the three different types of intra-EU mobility are analyzed: the free movement of workers, freedom of establishment, and freedom to provide services. The second part is dedicated to the migration of third-country nationals (TCNs) to the EU. Since the founding of the internal market (Single European Act, 1986), defined as an area without internal frontiers where the free movement of goods, persons, services, and capital is guaranteed, compensatory measures regarding, among others, external border control and a common policy on migration and asylum were deemed necessary. The Amsterdam Treaty (1997) created the competence for the EU with the authority to develop an extensive body of directives and regulations in this field. In the years following the entering into force of the Amsterdam Treaty, a legal framework has evolved gradually. Nowadays, the admission to the EU territory, conditions for different types of residence, residence rights, and return is regulated by EU law. This body of law is analyzed in respect of the way it contributes to – or rather is a threshold for – the protection of TCN workers against labor exploitation.

However, first some explanation on the key terminology used in this section will be offered.

**Definitions**

In the introduction several terms have been used without defining the exact meaning of these concepts. In this part the concepts of migration, migrant, and labor exploitation will be clarified.
In this contribution the term migration is used for all cross-border movement of persons regardless of the purpose of the movement or the duration, i.e., family migration, asylum migration, and migration for the purpose of work or other objectives fall within the definition of this concept. Furthermore, for the meaning of migration in this section, the duration of the residence is irrelevant. Service providers who are performing cross-border services, seasonal workers, and migration for permanent residence all fall within the concept.

Given this broad meaning of migration, the subject of migration, namely, the migrant, should also be understood in a broad sense. Sometimes, a distinction is made between migrants and irregular or undocumented migrants. In this contribution the term migrant can encompass both the migrant who has authorization to enter or stay and the migrant who enters or stays irregularly. Only in parts where it is essential, the distinction is made. The term irregular is preferred above the term illegal; however where this term is used in legal documents, this terminology is followed. The term labor migrant is not only used to address the migrant who moved to another country with the objective to work but also for the migrant who came with other purposes but is performing work or services.

The term labor is used for all work including self-employed work or services performed by a person for someone else where this person normally receives a remuneration.

The most difficult concept is labor exploitation. As mentioned in the introduction, labor exploitation falls within the ambit of the definition of human trafficking but has no legal definition nor in the definition of human trafficking nor elsewhere. It is a commonly used concept, yet the scope varies from all labor rights violation to only severe forms of labor rights violations (Rijken 2015). Questions arise as whether some sort of coercion and involuntariness are constitutive elements of labor exploitation. When the concept of labor exploitation is reserved for situations of severe forms of labor rights violations, this still does not offer a solution for what should be classified as “severe.” From the perspective of the exploiter, exploitation is used to make profit. An exploiter of labor migrants can only profit if he treats the labor migrants less favorably than other employees, for example, by paying them less, by letting them make more hours, or by making pay-cuts on costs for living expenses. The parameters of vulnerability for labor exploitation in a broad sense and labor exploitation in a strict sense are the same. Therefore, for the purpose of this contribution, labor exploitation is considered to be a situation where a labor migrant is treated less favorable than a national employee for the purpose of making profit.

Intra-EU Labor Migration

EU law for Union citizens offers three legal constructions to work and reside in another Member State of the European Union: (1) free movement of workers, (2) freedom of establishment, and (3) freedom to provide services. These rights are part of the freedoms that form the basis of the internal market laid down in the Treaty on the Functioning of the EU (TFEU). The legal position of EU labor migrants
depends on under which of these three constructions a Union citizen works in another Member State. Article 45 TFEU provides that the movement of workers within the Union is free. Union citizens have the right to seek employment and to accept work, travel, and reside on the territory of the Member States for this purpose.

An EU citizen who wants to establish himself as an independent service provider in another Member State, is covered by the freedom of establishment. Article 49 TFEU provides for a prohibition on restrictions on the freedom of EU citizens to settle in another Member State. Freedom of establishment includes, inter alia, access to and the right to pursue activities other than in paid employment.

Finally, article 56 TFEU provides that restrictions on the freedom to provide services are to be prohibited in respect of Union citizens who are established in a Member State other than that of the person for whom the services are intended. The treaty considers a service to be “services” within the meaning of the treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital, and persons (article 57 TFEU). The freedom to provide services is further elaborated upon in the Services Directive (Directive 2006/123/EC). There are two possible constructions for a Union citizen to work in another Member State on the basis of the free movement of services. The first is that an independent service provider established in one Member State provides services in another Member State. The difference with the EU self-employed person mentioned above is that the EU service provider is providing services in another Members State than the Member State where he is registered in. The second option is that an undertaking established in one Member State provides a service in another Member State for which he makes use of posted workers who have an employment contract with the undertaking. If the undertaking is a temporary working agency, the service consists of posting of workers itself. This construction is regulated in Directive 96/71/EC (Posted Workers Directive).

Several factors influence the vulnerability of migrants for exploitation; three of these factors are the regulation of the right to residence, right to equal treatment, and access to social security. In the following paragraphs, the EU legislation concerning the three constructions to work in another Member State is analyzed in regard of these factors.

**Residence Right**

The right of residence of an EU worker based on article 45 TFEU is governed by Directive 2004/38/EC (further Residence Directive). Under article 7 (1) (a) of the Residence Directive (RD), a Union citizen worker has a right of residence without the additional requirement that he has sufficient means of subsistence for him and his family members. It follows from the case law of the Court of Justice of the EU (CoJEU) that the term “worker” within the meaning of article 45 TFEU is a community concept that should not be interpreted narrowly. The essential feature of an employment relationship is that for a certain period of time, a person performs services for, and under the direction of, another person in return for which he
receives remuneration. If the activities performed are effective and genuine, a low level of remuneration or the origin of the resources is not important (CoJEU, 3 July 1986, Case 66/85 (Lawrie-Blum)). The fact that a person earns below the minimum level of subsistence does not prevent that person from being regarded as a worker, even if an additional appeal to public funds is made. The EU worker retains his right of residence in the event of illness or temporary incapacity for work (article 7 (3) of the Residence Directive). In case of unemployment within a year, however, he can lose his status as a worker and consequently possibly his residence right based on being a worker. After 5 years of legal and continuous residence based on article 7, the worker can acquire a permanent residence right (article 16 RD). This residence right is no longer subject to conditions such as being a worker or having enough means of subsistence.

The right of residence of a self-employed Union citizen in another Member State also derives from article 7 (1) Residence Directive. Like the worker, the self-employed person retains his right of residence in the event of illness or temporary incapacity for work on the basis of article 7 (3) of the Residence Directive. The rules with regard to the retention of the status of self-employed after termination of activities as a self-employed person and the acquisitions of a permanent residence are the same as the rules in regard of a worker.

Under article 6 Residence Directive, every Union citizen has the right to travel and reside for 3 months on the territory of another Member State. The right of residence of an EU service provider for more than 3 months is not covered by the Residence Directive but implicitly follows from article 16 of the Services Directive. Article 16 (1) second subparagraph states: “the Member State where the service is provided shall ensure free access to and the free exercise of a service activity on its territory.” This applies both to the self-employed service provider who provides a service in another Member State as to the posted workers of a service provider. However as their residence right is not based on the Residence Directive, they cannot claim any protection based on this directive like the workers and the self-employed.

Equal Treatment

Under the second paragraph of article 45 TFEU, free movement of workers entails “the abolition of any discrimination on grounds of nationality between workers of the Member States as regards employment, remuneration and other conditions of work.” The general rule of equal treatment for equal work should apply in full to EU migrant workers.

Under article 49 TFEU, access to employment, other than in paid employment, is permitted under the same conditions as those laid down for its own nationals. The Services Directive regulates the free establishment of service providers in Chapter III. Conditions imposed on the establishment of service providers may not lead to discrimination on the basis of nationality.

The EU worker and self-employed EU citizen can also rely on article 24 of the Residence Directive, which offers a very broadly formulated right to equal treatment including a right to social assistance after an initial period of 3 months of residence.
Posted workers who are not residing on the basis of the Residence Directive cannot claim equal protection as laid down in article 24 RD. For posted workers with an employment contract with an undertaking in one Member State and working in another Member State, another legal regime is applicable. In an international situation, the rules that apply to an agreement are determined by international private law (IPL). For the European Union, this IPL is codified in Regulation (EC) 593/2008 (hereinafter Rome I). For intra-European posting, however, the Posted Workers Directive (PWD) has priority over the Rome I Regulation.

Posting is defined in article 1 (1) PWD as the situation in which an employer in Member State A temporarily provides employees – with whom an employment contract exists at the time of the posting – for the performance of work in Member State B. The Posted Workers Directive provides for three modalities (article 3): (1) an undertaking in Member State A is providing a service in Member State B for which he posts his own workers who work under his account and under his direction, (2) an undertaking post workers to an establishment or to an undertaking owned by the group in the territory of another Member State, and (3) a temporary employment agency in Member State A makes employees available to an enterprise in Member State B.

If a situation falls within the scope of the Posted Workers Directive, the terms and conditions of employment law of the country where the work is carried out apply in a number of areas (article 3 PWD). This includes, among other things, the regulation of the minimum wage, including the overtime allowance, the minimum number of paid days off, maximum working hours, and minimum rest periods. A condition for the application of the law of the country where the work is carried out is that these regulations are laid down in laws or generally binding collective labor agreements. Although the protection of the position of posted workers based on the PWD does not go as far as equal treatment with local employees, it offers a minimum protection in a limited number of working conditions. For all other aspects of the employment contract, including the termination of the employment contract and situations which fall outside the scope of the PWD, the applicable law must be determined on the basis of the Rome I Regulation. This can be the country where the undertaking is formerly established or the country where the posted workers “normally” work. According to the preamble of the Rome I Regulation, in case of temporary work in another country, the country where someone normally works does not change. The rationale behind this rule is clear: if an undertaking has to apply different national laws for each time the undertaking post workers to another country, this will considerably complicate the operational management. However in the absence of a definition of “temporary,” this rule offers ample opportunity to avoid applying equal conditions to posted workers and local workers.

**Access to Social Security**

The right to equal treatment of article 24 of the Residence Directive includes a right to social assistance after an initial period of 3 months of residence. However, the equal treatment rights are reserved to Union citizens residing on the basis of this
directive, and the right to social assistance can be reserved to workers and self-employed persons or Union citizens who retained the status of worker or self-employed. An application for social assistance may be grounds for terminating the right of residence. The case law of the Court of Justice shows that Member States have some discretion to refuse social assistance benefits in the case of economically inactive Union citizens and to first check whether – in the absence of sufficient means – there is lawful residence (see, e.g., the cases CoJEU 11 November 2014, C-333/13 (Dano), CoJEU 15 September 2015, C-67/14 (Alimanovic), and CoJEU 25 February 2016, C-299/14 (Jovanna Garcia-Nieto)). If the working or self-employed activities are of a very limited nature, this could lead to the conclusion someone does not qualify as a worker or self-employed person. In that case, an appeal to social assistance may be the reason for termination of legal residence (article 14 (1) and (3) RD). This places the EU worker in a more vulnerable position than the local worker.

The posted workers are not covered by article 45 TFEU and the Residence Directive and are therefore, in principle, not entitled to the protection afforded by article 24 RD to employees and the self-employed.

**Labor Migration of TCNs to the EU**

The EU legal framework regulating migration of TCNs to and their residence in the EU nowadays consists of a body of over a dozen directives and regulations. Five different instruments are directed at asylum migration. Furthermore a directive on family migration, on long-term residence, on knowledge-related migration (study, researchers and au pairs, volunteers, trainees, and exchange), and on return and several regulations in regard of access, border control, visa conditions, and procedures have been determined. In the field of labor migration, four different directives set rules for admission and residence of highly qualified labor, intracompany transferees, seasonal workers, and the procedures for applying for and rights after admission of labor migrants. Finally the Employers’ Sanctions Directive (ESD) is relevant. This directive is mainly an instrument in the fight against irregular migration but at the same time offers protection to irregular labor migrants.

In the following analysis of these migration instruments, five factors which influence the vulnerability of TCNs for labor exploitation are scrutinized. These are the regulation of admission to the EU territory, residence right on the territory, access to work, right to equal treatment, and access to social security and social assistance.

**Admission to the EU Territory**

The first hurdle a TCN migrant (hereafter further referred to as TCN or migrant) has to take is getting access to the EU territory. The EU, also labeled as Fortress Europe, has strict conditions for admission. From the wording of article 6 of Regulation (EU) 2016/399 (Schengen Border Code) can be deduced that if the conditions for a short-
term stay of no longer than 90 days are fulfilled, access will be granted. One of the conditions is being in possession of a visa. According to article 21 of the Regulation (EC) 810/2009 (Visa Code), in the examination of a visa application, “particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration (…) and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.” These conditions appear to give Member States a broad discretion in practice to refuse visa applications.

The entry conditions of the Schengen Border Code (SBC) only apply to short-term stay. These conditions cannot be a reason to refuse access of a migrant seeking asylum at the territory of the EU (article 14 (1) SBC), a migrant who holds a residence permit for one of the Member States, or a migrant whose application for residence has been granted (article 14 (1) jo. article 6 (5) (a) SBC).

The EU directives on work, study, research, exchange, and au pair solely apply to migrants who reside outside the territory of the EU Member States as far as the provisions for applying for residence are concerned. In principle, the same applies to Directive 2003/86/EC, the Family Reunification Directive (FRD). As a consequence a TCN can only get access to the EU territory for a stay longer than 90 days, if he applies for a residence permit while he resides outside the territory of the EU and after the application for a residence permit has been granted.

Directive 2008/115/EC, the Returns Directive (RD), has introduced the figure of a reentry ban for irregular-staying TCNs (article 11 RD). For instance, irregular-staying migrants can be migrants who overstayed their legal residence, whose application for a renewal of a residence permit has been denied or who illegally entered the EU territory. With a reentry ban, it is, in principle, impossible to get authorization to enter the EU territory for a certain period of years.

Residence Right

From the whole body of EU migration law, only the Family Reunification Directive (article 1 and 13 FRD), Directive 2011/95/EU on international protection, (Qualification Directive (QD) (article 24, QD)), and the rules for students (Directive 2016/801/EU on the regulation of students, researchers, volunteers, trainees, au pairs, and exchange, further referred to as Student and Researchers Directive, article 6) offer the migrant a clear right to residence if the conditions listed in the directive are fulfilled. All the directives with regard to specific labor categories allow Member States to take the national labor market situation in account and reject an application on this ground (see article 6 Directive 2009/50/EC, Blue Card Directive, article 8 (3) Directive 2014/36/EU (Seasonal Workers Directive), article 6 Directive 2014/66/EU (Intra-Corporate Transferees Directive), and article 6 Student and Researchers Directive (SRD)). These provisions are based on article 79 (5) TFEU which endows the Member States the right “to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.”
For all types of residents, except for the long-term residents, Member States can refuse to renew or revoke a residence permit if the conditions are no longer fulfilled. For all the residence types with the exception of residence based on international protection, having enough means of subsistence is a condition for acquisition of a residence permit and is as such also a potential ground to revoke a residence permit.

The residence right of the holders of a work-related residence permit relies on having a work contract. If the work contract is terminated, this can be a ground for losing their residence right. The Intra-Corporate Transferees Directive (ICTD) and the Seasonal Workers Directive (SWD) contain a set of almost identical grounds for withdrawal (or refusal to renew) of a residence permit which are from the perspective of vulnerability for exploitation reason for concern. If the employer or host entity has been sanctioned for undeclared or illegal employment, Member States shall, if appropriate, withdraw the residence permit (article 8 (2) ICPD and article 9 (2)(a) SWD). Furthermore, they may revoke the authorization where the employer or host entity has failed to meet its legal obligations regarding social security, taxation, labor rights, or working conditions (article 8 (5)(b) ICTD or similar article 9 (3)(b) SWD). In case of seasonal workers, even the mere fact that the employer did not fulfill his obligations under the work contract may be a reason to withdraw the authorization to reside (article 9 (3)(c) SWD).

Students may lose their residence right when the time limits imposed on access to economic activities are not respected (article 21 (2)(f) SRD).

Access to Work

Most of the directives provide for a (limited) right to work for migrants who are legally residing on the territory of the Member State. Asylum seekers who are awaiting a decision on an asylum supplication will “have access to the labour market no later than 9 months from the date when the application for international protection was lodged” if no decision in first instance is taken and the delay is not due to the applicant (article 15 (1) Directive 2013/33/EU Procedures Directive (PD)). However, Member States can decide on conditions for granting access “while ensuring that applicants have effective access to the labour market,” and they can give for reasons of labor market policy priority to EU citizens and TCNs legally residing on the territory (article 15 (2) PD). Immediately after international protection is granted, Member States shall authorize the beneficiary of international protection access to the labor market (article 26 (1) QD).

According to the FRD, family members will be entitled to employement or self-employed activities in the same way as the sponsor (article 14 (1) FRD). As one of the optional conditions for family reunification is that the sponsor must provide for sufficient means of income, in general, the sponsor will have access to the labor market. The FRD does contain two limits to the right of access to work. First, for reasons of labor market policy, the authorization of family members to exercise an employed or self-employed activity can be delayed for at maximum 12 months, and second, first-degree relatives in ascending line and dependent adult unmarried
children due to their state of health may be excluded from the right of access to employed or self-employed activities.

The same ambiguity as regards to access to the labor market of asylum seekers applies to students. Although, according to article 24 (1) SRD, students will be entitled to an employed activity of at least 15 h per week or the equivalent in month or per year and may be entitled to self-employed activities, at the same time, Member States may take the labor market situation into account (article 24 (3) SRD).

The long-term resident has equal access as nationals to employed and self-employed activities, except for activities which involve the public authority (article 11 (1) Long-Term Residence Directive (LTRD)). For the long-term resident who wants to make use of his right of intra-EU mobility for the purpose of performing an economic activity, Member States may restrict access to the labor market and as such the possibilities for intra-EU mobility (article 14 (2) LTRD).

For all the work-related directives, a valid contract of employment or binding offer is a prerequisite for obtaining a residence permit. For migrants who acquired a residence permit based on one of the labor migration directives, the issue is not whether they have initially access to work but whether they can change employer or if they have the right to look for another employer in case of unemployment before the end of the maximum duration of residence. The seasonal worker shall be authorized to extend at least once his stay with the same employer or a different employer, as long as the maximum duration of his stay is not exceeded (article 15 (1–4) SWD). The blue card holder has in case of unemployment during the period of validity of his residence card a period of 3 months to look for another employment which fulfills the conditions of the BCD. The researcher has a period of 9 months after completion of the research activity to seek employment or set up a business (article 25 (1) SRD).

Equal Treatment

Equal treatment in the field of labor-related rights serves a twofold purpose (Groenendijk 2015). Firstly, it should protect the indigenous population against social (or wage) dumping and unfair competition. Secondly, it has to protect the migrant workers against exploitation. This view is articulated in the preambles (no 19) of Directive 2011/98/EU, the Single Permit Directive (SPD): “Such provisions are intended to establish a minimum level playing field within the Union, to recognize that such third-country nationals contribute to the Union economy through their work and tax payments and to serve as a safeguard to reduce unfair competition between a Member State’s own nationals and third-country nationals resulting from the possible exploitation of the latter.” The SPD follows the fragmented approach toward labor migration by excluding several sectoral types of labor from its scope: seasonal workers, intra-corporate transferees, and au pairs (article 3 (2)(d,e) SPD). Furthermore, some other categories such as beneficiaries of international protection and long-term residents (article 3 (2)(g,i) SPD) are excluded. However, all the migration directives, except for the FRD, contain a clause in regard of equal
treatment. The long-term residents can claim the strongest protection (article 11 LTRD). The rights offered to the blue card holders (article 14 BCD) are stronger than the rights listed in the SPD (article 12 SPD), and the equal right protection of seasonal workers (article 23 SWD) lies below the level of the SPD. However, in regard of terms of employment and working conditions like remuneration, dismissal, working hours, leave and holidays, and health and safety requirements at the workplace, all work-related directives provide for equal treatment. Furthermore, labor migrants have the equal right to strike and take industrial action (see, e.g., article 21 (1)(b) SPD and article 23 (1)(b) SWD). The remuneration of the intra-corporate transferee should not be less favorable than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions (article 5 (4)(b) ICTD). In regard of other terms of employment, they shall at least enjoy equal treatment with persons covered by the Posted Workers Directive (article 18 (1) ICTD). Trainees, volunteers, and au pairs are entitled to equal treatment with nationals of the host state as terms of employment and working conditions are concerned in so far they are in an employment relationship. If they are not considered to be in an employment relationship, they only have a right to equal treatment in relation to access to goods and services (article 22 (3,4) SRD). The directive does not provide for any guidelines or criteria to decide whether work as a trainee, volunteer, or au pair should be classified as an employment relationship or not. This decision seems to be left to the margin of appreciation of the Member States.

**Access to Social Security and Social Assistance**

For most of the migration directives, the equal treatment rights discussed above only include social security rights based on their status as an employee. Only long-term residents and beneficiaries of international protection can claim social welfare for which no contribution has been paid. For other residence types, reliance on the social welfare system of the host state can be a reason to revoke the residence permit. This applies, for example, to the Family Reunification Directive (article 7 (1)(c) FRD) and the Students and Researchers Directive (article 7 (1)(e) SRD) where sufficient resources without having recourse to the Member State’s social assistance system are a condition for granting a residence permit but at the same time a ground for revoking the residence permit if this condition is no longer fulfilled.

**Undocumented Migrants: The Employers’ Sanctions Directive**

The above paragraphs discussed directives on migration of TCNs and analyzed the rights of legal residing migrants. In this paragraph the rights of undocumented migrant as laid down in the Employers’ Sanctions Directive (Directive 2009/52/EC) are explored. The main purpose of the ESD is to deter illegal immigration and illegal employment. According to the preamble, one of the strong pull factors for
illegal immigration is the possibility of acquiring work in the EU without the required legal status. The EU legislator believes the centerpiece of measures fighting illegal immigration should be a general prohibition of the employment of third-country nationals without legal stay, combined with sanctions against employers who infringe this obligation.

The directive also contains some measures to protect the rights of irregular-staying TCNs. According to article 6, Member States shall ensure employers are liable for back pay of any outstanding remuneration, including an amount equal to taxes and social security contributions that the employer would have paid in case the third-country national had been legally employed. Also, eventual cost arising from sending back payments to the country to which the third-country national has returned or has been returned has to be paid by the employer. Article 13 contains measures to promote the effectiveness of the rights of TCNs. They should create effective mechanisms through which irregular-staying third-country nationals can lodge a complaint against their employer and third parties like trade unions. Third parties with a legitimate interest in ensuring compliance with the directive should be able to engage on behalf or in support of the TCN in civil or administrative proceedings provided for on the basis of the directive. Article 14 prescribes effective and adequate inspections to be able to control employment of illegally staying third-country nationals.

The regulation of acquiring a (temporary) residence right is limited to irregularly staying TCNs who can be classified as victims of labor exploitation which amounts to human trafficking. The directive states that if the TCN is employed under particularly exploitative working conditions, the Member States shall ensure the infringement constitutes a criminal offense. For this situation, Member States have to define in national law the conditions under which they may grant a permit, for the duration of the national proceedings. Furthermore, article 6 (5) obligates Member States to define conditions in national law under which the duration of these temporary residence permit can be extended until the TCN has received back payments of the remuneration. However, the regulation of a residence right is not only limited to situations of severe exploitative labor conditions. Rather, it is a facultative clause leaving much discretion to the Member States and only foresees in a temporary residence right for the duration of national criminal procedures and potentially the settlement of back payments.

**Conclusion**

In this contribution, the question to what extent the EU legal framework on labor migration protects migrant workers against exploitation is analyzed. The three constructions for intra-EU labor migration and the whole body of migration law for TCNs have been scrutinized on several factors: access to the EU territory (only for TCNs), residence right, access to work, right to equal treatment, and access to social security and welfare.
For TCNs, the barriers to get access to the EU territory in the form of strict conditions for short-term stay and for the different types of residence in combination with Member States’ authority to regulate for all of the labor-related directive the volumes of admission are considerably high. The reentry ban as a consequence of irregular stay, as prescribed by the Returns Directive, reinforces this threshold. This not only makes TCNs vulnerable for human smugglers and human traffickers to get into the EU but also forms an impediment for reporting abuse in a working situation if after expulsion it is even harder or impossible to reenter.

Also, in the regulation of residence rights for TCNs, some provisions seem to enhance the vulnerability for labor exploitation instead of protecting migrants. For example, several directives contain provisions that insufficient means of subsistence can be a ground for withdrawal of a residence right. The work-related directives provide for the opportunity to revoke the authorization if the employer fails to meet several legal obligations, such as taxation or working conditions. If reporting abuse can lead to revocation of the right to residence, this strengthens the vulnerability of the TCN.

Compared to TCNs, EU-citizens have a rather strong residence right in other Member States of the EU. Especially the EU workers and self-employed citizens, who can rely on the Residence Directive, have a strong position, not only in regard of legal residence but also in regard of the right to equal treatment. The EU posted worker is less protected, because his residence right is not based on the Residence Directive but follows from the Service Directive. Not only is he not entitled to the strong right to permanent residence after 5 years of legal residence, but he also cannot rely on the equal treatment provision of the Residence Directive.

The right to equal treatment, in so far as basic working conditions are concerned, is in principle sufficiently regulated for both EU citizens and TCNs. The entitlement to equal treatment in a broader sense is different for various categories of TCNs. Here, the position of trainees, volunteers, and au pairs seems the weakest. Member States have discretion to decide whether these types of migration are classified as being an employment relationship. If not, migrants residing on these grounds are only entitled to equal treatment in the area of access to goods and services. Posted workers as well in the case of intra-EU mobility as based on the Intra-Corporate Transferee Directive also enjoy less protection. In principle, they can only rely on a minimum protection and not on equal treatment, except for remuneration for the intra-corporate transferee.

Access to work is no problem for EU citizens. They have an unlimited right to work under the same conditions as nationals. Some TCNs have only a limited right to work, like asylum seekers, students, and family members. Undocumented migrants not only do not have a right to access to work but are also the special target of the Employers’ Sanctions Directive in order to combat irregular residence.

Access to social security and especially social assistance is another weakness in the protection of migrants against labor exploitation. As in many regulations, sufficient means of subsistence is a condition for renewal and a possible ground for withdrawal of the residence right, a claim for social assistance might lead to the
loss of a residence right. This makes a migrant more dependent on a possible exploitative job than local employees.

In conclusion, the legal position of EU workers and self-employed persons seems in principle sufficiently regulated to protect these migrants against exploitation. The position of posted workers is less favorable, as they are not entitled to equal treatment with national employees. However, the mere existence of different categories with different conditions and costs for the employer is already an open invitation to try to use the cheapest construction by balancing at the edge or going beyond.

For TCNs, the tension between a restrictive migration policy where only migrants are admitted if there exists an international obligations or if they can contribute to the economic well-being of the Member States is visible. Migrants with a strong residence right are better protected against labor exploitation. Migrants with a less strong residence right or no right of residence who are already more vulnerable are less protected in this regard.

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Measuring a return on investment on funds spent in combatting human trafficking is challenging. Firstly, there is inconsistent empirical data that would require combining data from governments, international organizations, NGOs, the media, and academia. Secondly, organizations have differing measuring rules and, at best, are inconsistent or inadequate for sound criminological inquiry. Importantly, the lack of a consistent conceptual understanding of the definition of human trafficking poses challenges in creating a framework for measurement. This chapter attempts to examine the impact that funds to international organizations are intended to make in combatting human trafficking through funding provided for activities or projects or programs. Although investments in anti-trafficking activities have been targeted to developing countries, the question remains as to whether donors get a return on their investments through the projects or programs they fund. There is a considerable gap between what funding is meant for and what it achieves, especially in relation to its contribution to combatting human trafficking. The focus by some destination countries occasionally has an underlying political agenda on migration, but the short project cycles undermine the long-term returns on investments. Further in-depth research is certainly required.
to evaluate the real return on investments, including on victim support services, conducted in collaboration with donors. As noted by some authors, effectiveness of anti-trafficking initiatives tends not to include trafficked persons, even though they are key recipients of many anti-trafficking programs and policies and could add to the critical knowledge of human trafficking.

**Keywords**
Human trafficking · Trafficking in persons · Smuggling of migrants · Migrant smuggling · Anti-trafficking · Funding · Investment · Donors · NGOs · Impact · Evaluation

**Introduction**

This chapter aims to identify the primary focus more clearly on investments, spending, and the impact made in combatting human trafficking. It examines with some much needed academic rigor the financial aspects of anti-trafficking initiatives, including what conditions anti-trafficking approaches could be classified as sound financial investments in addressing human trafficking. The available literature regularly alludes to the reliance on simplified numerical representations that help inform anti-trafficking initiatives, but they are narratives that still remain questionable. For example, a common assertion normally made by many authors and different schools of thought is that people trafficked and exploited within and across countries generate considerable profits for criminal networks (Anti-Trafficking Review 2017; EUROPOL 2018). This assertion is not necessarily derived from in-depth criminological research but from publicly available information considered valid by the respective authors (see, e.g., Anti-Trafficking Review 2017; UNODC 2010). Other claims on the magnitude of trafficking are also made, for example, that it is the second largest criminal business or that sex trafficking and labor trafficking are the most common forms (Weitzer 2014). Reports by international agencies and governments state that victims are trafficked within countries, between neighboring countries, and/or across different continents and support the assertions that criminals exploit victims to generate vast profits (see, e.g., UNODC 2016). These assertions could be interpreted as a neutral stance underpinned by assumptions about what counts as valid knowledge and approaches to criminological enquiry (Robinson 2014).

Criminological research requires systematic application of theoretical concepts and frameworks to the understanding and explanation of crime and the systematic collection of data in relation to these concepts and frameworks (Jupp 1989: 85). Given the complexities attached to the conceptual understanding of the nature of human trafficking, assessing how money is invested and what impact or returns that money has made in combatting human trafficking appears virtually impossible to measure. There is even an element of doubt as to whether a clearer conceptualization of human trafficking will help or whether shifting the focus away from the scale of the problem and geographical concentrations of human trafficking will
contribute to the knowledge on spending in anti-trafficking work. Despite these methodological challenges, there have been calls for more robust evidence to prove or disprove claims about the investment’s types of responses (Yea 2017). In the last decade, there have been increasing demands for “evidence-based” results that are quantifiable and measurable (Merry 2011). Some authors have suggested that much of the discourse on human trafficking including policy making and law enforcement approaches have lacked an evidence base because so little has been done on the topic (Weitzer 2011; Zhang 2012). A substantial body of criminal justice research has demonstrated that specific, data-driven interventions and programs tailored to a specific problem are more effective at addressing problems than investing resources and responding in ways that do not reflect a solid understanding of the problem and its underlying characteristics (Wilson and Dalton 2007).

This chapter reviews some of the assertions and leans toward Wilson and Dalton’s (2007) argument for better understanding and research on funding anti-trafficking initiatives because there is an opportunity cost linked to the provision of resources. In addition, Gallagher and Surtess (2011) rightly point out that the human rights imperatives that underpin anti-trafficking work and the significant investment of public resources demand that interventions demonstrate accountability, results, and beneficial impact.

Globally, human trafficking receives a considerable amount of media, policy, and public attention, but how much do we really know about human trafficking based on best practice and sound criminological evidence? (Chuang 2014). Much of the scholarly writing on human trafficking contains few original data, and most originate from government agencies and international organizations (Zhang 2009). To date, many questions on effectiveness of anti-trafficking initiatives that receive funding remain debated. Firstly, there are a broad range of stakeholders with their own views on what determines success or failure. These stakeholders include, for example, the recipients or beneficiaries of the funding, the organizations supporting the implementation of the anti-trafficking initiatives, the technical experts, victim support organizations, etc. As Gallagher and Surtess (2011) research suggests, each stakeholder assesses the success (or failure) of an intervention using different standards and criteria of relevance to them as stakeholders. For example, a priority for a recipient government will differ from the donor who would want to know that the initiative has achieved results that can be quantified, measured, and reported on. Victim support agencies may judge an intervention on very different criteria, such as whether it facilitated victim removal from exploitation and that protection from further harm has been initiated.

Generally, the literature available suggests that there is limited comprehensive and comparative data on expenditures on combatting human trafficking and what benefits might have been gained. One reason may be the lack of transparency among donors concerning the true intentions of funding for anti-human trafficking programs, be they donors from governments, international organizations, or civil society (Dottridge 2014). The distinctions between these organizations – governments, international organizations, or civil society – form the basis of a typology that assists in the examination of criminological research. Each organization has their
own organizational interests which they will promote and protect, for example, on political interests and debates to promote their own polices (Soderlund 2005).

The definition of human trafficking has also been used variously as a framework to develop, fund, and launch projects and programs aimed at responding effectively to trafficking in persons. There are examples of donor funding used as an investment to combat human trafficking in source, transit, and destination countries. Most donor-funded projects are designed with specific anti-trafficking interventions in specific countries and with a very short time frame for implementation. This approach to funding is indicative of the fact that most donors operate not only within the constraints of geographic target areas and funding cycles of their institutions but also within political environments and government agendas. There have been many responses to combat and prevent human trafficking that are undertaken by multiple governmental, intergovernmental, and nongovernmental actors (ICAT 2016: vi). Even though policy makers, researchers, practitioners, and donors working to respond to human trafficking recognize the importance of evaluating anti-trafficking efforts, there has not been much systematic investment in monitoring, evaluation, and learning (MEL) approaches or a consolidated or shared approach to MEL practices and tools that can be used to inform the anti-trafficking sector (ICAT 2016: vi). A review of 107 evaluations aimed at measuring the impact of anti-trafficking evaluations concluded that there appeared to be few rigorous evaluations of anti-trafficking activities and little rigorous evidence of effectiveness (ICAT 2016: 9).

**Research Limitations**

As has been noted, human trafficking research methodology tends to focus on issues related to availability, reliability, and comparability of data (Aronowitz 2010; Gallagher and Surtess 2011). There has been a wide range of estimates of the size of the human trafficking problem by organizations worldwide. The inaccuracy of estimates and lack of measure on impact is blamed on methodological weaknesses and numerical discrepancies. Quantitative research that has been carried out in the field of human trafficking has endeavored to illustrate that there is an overrepresentation of people from developing countries among the victims (UNODC 2016). Victims are moved from poor environments to more affluent ones, and this pattern of movement is seen at the domestic, regional and global levels (UNODC 2016: 57). Some studies make use of qualitative approaches as a preferred research methodology, but qualitative research is seen to be too subjective and difficult to replicate and produces findings which are limited in scope and that it lacks transparency (Wincup 2017). In addition, the complexities of researching the human trafficking phenomena require a comprehensive understanding of the convergence of various disciplines including the legal, historical, economic, social, political, and gender prisms (UNODC 2018).

The general lack of methodological consistency and transparency on human trafficking data has meant that figures are sometimes not verifiable or comparable
with other data (Lee 2011). This suggests a critical need for consistency in data collection methods to generate reliable figures that can be used to measure trends and better understand risk factors. Sanghera (2005) also notes that there is no sound methodology to estimate the number of people trafficked meaning that the merit of existing estimates and reported figures continue to remain disputed. Gallagher and Surtess (2011) say that much of the data needed to evaluate criminal justice responses to trafficking is scarce or nonexistent, meaning that it severely compromises the capacity of criminal justice interventions to collect baseline information against which future developments can be assessed.

The methods of empirical inquiry are limited in this chapter, but in an attempt to connect the literature reviews with practice, the chapter has been supplemented with the author’s experience as a practitioner (see, e.g., Akullo and Spindler 2004, 2005a, b, 2012). Theoretically speaking, research has many paradigms, methodological frameworks, and various forms of data analysis, but in practice, there is consistently a strong preference by donors for quantifiable indicators as a measure of success on the funds donated, for example, on number of arrests, prosecutions, officials trained, and number of victims assisted. In addition, donors tend to demand deep policy and institutional change in beneficiary countries within a restricted time frame and budget, usually 3–4 years. This means that the sustainability of projects remains at the premature stage and with minimum impact because projects have only successfully tended to lay the basis for legal reform, institutionalizing capacity and strengthening coordination between various stakeholders.

A key challenge to the present analysis was the limited research literature and the need to provide a critical analysis of investments and how anti-trafficking work can produce beneficial results. Importantly, the difficulty has been to examine whether spending on combating human trafficking can be determined, whether investments in anti-trafficking initiatives make a measurable impact or not, or if it meets the priorities that the donor is looking for. There are ongoing discussions and debates by governments, international organizations, NGOs, the media, and academia on the conceptualization of human trafficking, and this has also seen the emergence of the academic discourse on the subject including discussions on linguistic ambiguity and the lack of consensus on the definition and conceptualization of human trafficking (see, e.g., Aronowitz 2010; Lee 2011; ILO 2014; UNODC 2016). Authors agree that definitions are fundamental to the measurement of social problems, their trends, and potential change. However, after reviewing over 20 definitions of human trafficking, Salt and Hogarth (2000) concluded that human trafficking was an imprecise and highly contested term that had multiple, sometimes oppositional, and shifting understandings of trafficking. In reality, many donors fund anti-human trafficking programs with specific objectives and outcomes already determined, but in the end, one is left questioning who the actual direct beneficiaries of such programs are and whether donors can conclude that they have had returns or benefits on their investments in anti-human trafficking programs. This prescribed approached could be counterproductive to addressing human trafficking as an issue and may in the end interfere with anti-trafficking efforts. Based on the extent of the literature, it appears that part of the challenge is that human trafficking is perhaps inaccurately
conceptualized, and so it is reflected in donors’ project designs that often result in misguided results on impact. There has been research that questions the extent that human trafficking is an acceptable global concept (see, e.g., Bassiouni et al. 2010). While the basic themes to answer these questions are skeletal in nature, there are also extensive debates and historical and philosophical underpinnings already in existence (see, e.g., Bhabha 2015).

There has also been a rise in results-based management for projects, but this approach does not wholly answer what it is that donors want to achieve with their funding of anti-human trafficking projects (UNDG 2011). Apart from short project cycles, there are also considerable variations in the scope and area of focus when funds are disbursed by donors to organizations implementing projects. See, for example, UNODC 2011 evaluation report on the Global Initiative to Fight Human Trafficking (UN.GIFT). In reality, as Yea (2017) and Dottridge (2014) among others have observed, there is a lack of rigorous evidence that estimates the return on investment on money spent in combatting human trafficking. Dottridge (2014) observes that there is no real insight into how money is allocated and spent, and so it becomes very challenging to choose a method to analyze anti-trafficking spending. Arguably, the public is increasingly aware of human trafficking, and criminal justice officials are advanced in identifying and prosecuting criminals and supporting people who have experienced trafficking (ICAT 2016). In practice, project outcomes focus heavily on number of capacity building activities, policy frameworks, and domestic legislation meeting international standards as per country’s international obligations.

**Historical Underpinnings in Defining Human Trafficking**

By the early 2000s, human trafficking had emerged as a major issue within international development and diplomatic circles (Akullo 2012). In 2000, human trafficking became enshrined in international law for the first time, through the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also referred to as the Palermo protocol. The Trafficking in Persons protocol is one of two “Palermo Protocols” to the Convention against Transnational Organized Crime with the other one being the Protocol against the Smuggling of Migrants by Land, Sea and Air. While the definition in the UN Trafficking in Persons Protocol remains much discussed, contested, and used to implement many activities, its emergence proffered a definition on human trafficking which became widely agreed and accepted as the standard definition with international standards on trafficking in persons (see Article 3, paragraph (a) of the UN trafficking Protocol (UN 2004)). Similarly, the internationally agreed definition of migrant smuggling is derived from the Protocol against the Smuggling of Migrants by Land, Sea and Air, which supplements the United Nations Convention against Transnational Organized Crime (Smuggling of Migrants Protocol). The Protocol defines the crime of migrant smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a
person into a State Party of which the person is not a national or a permanent resident” (UNODC 2018: 19).

Human trafficking and migrant smuggling are concepts that are often conflated and should be seen as different crimes requiring different responses. For example, smuggled migrants are also vulnerable to human trafficking and a range of other forms of crime including violence, rape, theft, kidnapping, extortion, and human trafficking (see, e.g., Salt and Hogarth 2000; UNODC 2018). The key differences between the two concepts relate to consent, purpose of exploitation, transnationality, the source of criminal profits, and the object of the crime (UNODC 2018: 20). The two protocols have near universal ratification by its member states, but the evaluation criteria for anti-trafficking success vary, opinions on the data evidenced by the empirical track record differ, and assessments of intervention efficacy diverge (Bhabha 2015). The varying interpretations and ambiguities of the definition of human trafficking have even led some member states to adopt a broad understanding of various terms, e.g., vulnerability and exploitation (Gallagher 2015). Nonetheless, the protocols have advanced thinking around human trafficking and how countries respond to it.

Spending in an Illegal Market

The available research suggests that human trafficking generates $150 billion annually in profits worldwide, while governments and various organizations are believed to spend a combined average of $124 million annually predominantly in Southeast Asia, Eastern Europe, and Sub-Saharan Africa (Ucnikova 2014: 4). This perhaps suggests that the financial resources targeted to combatting human trafficking are exceptionally low to make any real impact to the victims, who are estimated to be about 29.8 million in number (Ucnikova 2014). There is limited insight on spending on combatting human trafficking though there has been an attempt to analyze anti-trafficking spending and the impact it makes (Dottridge and Hoff 2014). A review of publicly available information on funding for anti-human trafficking efforts provided fragmented insights into how much has been spent (Idris 2017). Project descriptions are very general and broad and are usually directed toward a single country or group of countries and leaving the question – what happens when the funds are exhausted? Establishing a measure for assessing investment in anti-trafficking initiatives becomes challenging and problematic as the literature does not give precise figures for the funding and refers to the inadequacy of current funding for anti-modern slavery interventions (Cockayne 2015; Moses 2016). Available figures appear small in relation to the scale of the problem they are confronting (Idris 2017).

Somerville (1933), in reviewing Marx’s theory of money, says that money is seen as a measure of value determined by the quantity of labor-time embodied in its production. In the business world, a business invests money for profit, and it is a process undertaken with the intention of increasing the initial sums of money over time. Therefore, the profit from an activity for a particular period compared with the amount originally invested in that activity is often referred to as the return on
investment. In general terms, the term “investment” is defined “as the action or process of investing money for profit or a thing that is worth buying because it may be profitable or useful in the future or an act of devoting time, effort, or energy to a particular undertaking with the expectation of a worthwhile result.” Similarly, investment is “the act of putting money, effort, and time... to make a profit or get an advantage.” In a very general context, an investment could be viewed as an amount of money that is “put” into something with the expectation of something more in return.

Authors such as Marcus et al. (2016) have suggested that human trafficking is possibly the second or third most profitable illicit business in the world built on two assumptions – non-consensual labor being more profitable than consensual labor and that human trafficking involves a uniquely renewable and nearly limitless source of profit. Assertions that there are high profits in human trafficking assume that there is a low risk of being arrested for criminal activity. For example, as noted previously, human trafficking generates annual profits of $150 billion which are grouped into elements of exploitation, such as sexual exploitation ($99 billion), exploitation in the construction industry ($34 billion), exploitation in agriculture ($9 billion), and domestic servitude ($8 billion) (see, e.g., ILO 2014). For the same crimes, ILO reported that profits totaled USD$32 billion in 2005 suggesting a phenomenal increase in profits (Belser 2005; ILO 2005). However, it is still difficult to accurately measure the cost of human trafficking despite the figures provided by ILO 2014. The ILO report states that smugglers’ profits come from the fees that are charged to migrants for their transportation services. The fees are determined by the distance traveled, number of border crossings, geographic conditions, means of transport, the use of fraudulent travel or identity documents, risk of detection, and others.

Given this very basic conceptual framework on profits, human trafficking can be easily framed as an activity that is worth the investment because it is profitable even though it requires devoting time, effort, or energy to the trafficking process with the expectation that a worthwhile result will be attained. On this basis, what is clear is that human trafficking is seen as an economic activity because there are monetary terms directly linked to the trafficking process and there is a perceived value received in return. Countries that have ratified the UN Trafficking Protocol have an obligation to criminalize human trafficking under national legislation. However, in comparing profits and number of prosecutions, the literature indicates that there is a low level of prosecutions for human trafficking offenses. The reasons for this vary. Some authors have suggested that key aspects of the legal definition of the protocol are intentionally vague, resulting in conflation of legal concepts (Gallagher 2001) and thus results in low prosecutions. Others argue that the UN Trafficking Protocol seeks to strengthen this criminal justice response to foster effective suppression and prevention of human trafficking (Obokata 2005) and should be effectively applied at a national level.

The profitability and low initial costs of entry in the “illegal trade” in human being and the large demand for trafficked people therefore make it an attractive “business.” An illegal market necessitates an exchange of goods and services, the production, selling, and consumption of which are forbidden or strictly regulated by the majority
of states and/or by international law (Vlassis and Williams 2001). The very existence of illegal markets in human beings suggests that the exchange of human beings is reduced to economic benefits – a profit or “return on investment” (Wheaton et al. 2010). There is an evolving discourse on illegal markets and the economics of human trafficking including whether it is a monopolistically competitive industry in which traffickers act as intermediaries between vulnerable individuals and employers by supplying differentiated products to employers (Wheaton et al. 2010). In reflecting on the two opening questions of this chapter – Do the activities funded create a return on the donor’s investments? Who benefits from the investment and does it combat human trafficking? – there is limited information on funding for anti-human trafficking programs, and even if donors publicize the amount of funding to programs, it is still difficult to disaggregate the figures because of the general and broad nature of the information provided. In reality and on the international platform, donor governments do not have an international obligation to report on their funding though it should be noted that project reports provide some information on what has been spent on specific interventions. In some instances, funding for anti-human trafficking initiatives is often managed by different government departments, implemented by various organizations, for example, within the United Nations (UN), which makes spending difficult to aggregate or even calculate. Logistical issues (such as access) are important to consider, but political interests are equally important (Yea 2017). The EU, for example, generally donates to specific projects under specific criteria, for example, specific countries, organizations, and specific objectives within a specific time frame. Additionally, the short project cycle of most EU grants means that once projects conclude, tools, websites, and databases became obsolete (Hoff 2014: 117).

Conclusions

Arguably, the difficulties connected with providing a critical analysis on spending in combating human trafficking can be closely aligned to the fragmented information on funds for anti-trafficking projects. Organizations have differing measuring rules, content of records are inconsistent or inadequate, and there is a general lack of an understanding of the definition of trafficking which poses challenges in creating a framework for measurement. Commonly used descriptive research methods are good in describing situations, but they do not necessarily determine cause and effect. While there appears to be universal agreement that human trafficking is a profit-driven crime, the way anti-trafficking funding is allocated remains an open debate. Investments in anti-trafficking activities have been targeted to developing countries, and so examining the political and economic interests of donors could be useful in understanding the financial impact made in anti-trafficking programs. However, the question still remains – do donors actually get a return on their investments? It is impossible to estimate the impact of the “illegal” human trafficking market. It is even harder to determine return on investments by donors, given the clandestine nature of human trafficking (Maher 2018). Notwithstanding its clandestine nature, the way
human trafficking is conceptualized may also contribute to the difficulty in understanding donor’s specific reasons for their investment. For example, current legal responses to human trafficking often reflect a deep reluctance to address the socioeconomic root causes of the problem (Chuang 2006). Legal responses tend to overlook the broader socioeconomic reality that drives human trafficking, and to be effective, anti-trafficking strategies must also target the underlying conditions that impel people to migrate (Chuang 2006). Attempts have been made to measure the effectiveness of projects, and so for statistical rigor, it might be possible to combine information from donor governments, international organizations, NGOs, the media, academia, and the traffickers and victims (UNODC 2016: 47).

The literature on the financial dynamics of anti-trafficking initiatives is limited, thus making it challenging to conclude whether donor’s investment have or have not provided returns on investment. The inconsistent empirical data and current migration debates by governments is perhaps unhelpful in measuring impact (Político, Washington Post 2018). Any impact evaluations that have been conducted tend to focus on project process and outcomes and are open to interpretation. Davy (2016), for example, suggests that only a small number of these anti-human trafficking interventions have been evaluated and an even fewer number have been evaluated rigorously, meaning impact of these initiatives is blurred. However, what one can conclude is that, there is a clear disconnection in the relationship between activities and intended outcomes and a reliance on unarticulated assumptions or hypotheses that are not supported by available data (ICAT 2016: vi). Most anti-trafficking programs funded by donors have the broad aim of reducing the number of victims of trafficking and criminalizing offenders. The lack of robust evidence base that could help measure effectiveness, means that further in-depth research should be explored and be undertaken in collaboration with donors, relevant organizations, traffickers, and victims.

UN agencies and international organizations have questioned the efforts made and resources spent in anti-trafficking initiatives and whether these have indeed been effective? (The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) is a policy forum that has 16 member agencies working together to combat human trafficking. The 16 member agencies are Department of Peacekeeping Operations (DPKO); International Civil Aviation Organization (ICAO); International Criminal Police Organization (ICPO-Interpol); International Labour Organization (ILO); International Organization on Migration (IOM); Office of the High Commissioner for Human Rights (OHCHR); United Nations Joint Program on HIV/AIDS (UNAIDS); United Nations Development Program (UNDP); United Nations Educational, Scientific and Cultural Organization (UNESCO); United Nations Population Fund (UNFPA); United Nations High Commissioner for Refugees (UNHCR); United Nations Children’s Fund (UNICEF); United Nations Office on Drugs and Crime (UNODC); UN Women; and The World Bank. Six of its member agencies – ILO, IOM, OHCHR, UNHCR, UNICEF, and UNODC – guide ICAT as its core Working Group. http://icat.network/. Anti Trafficking Review, Special Issue – Fifteen Years of the UN Trafficking Protocol, Issue 4,
April 2015) Similar to questions posed in the introductory paragraph of this chapter, questions focus on whether efforts in responding to human trafficking have made a difference for the people who have experienced it; whether approaches to trafficking have improved over time; whether processes for identifying possible cases, providing victims with assistance, and investigating and prosecuting traffickers have improved; whether there are reasons to believe that efforts have made a contribution to slowing the growth of or deterring trafficking; and importantly whether they have helped to prevent new cases of trafficking. ICAT has provided a framework for aligning goals, defining and assessing progress, and building a robust and shared evidence base of effective programs and practices. This approach could work in measuring effectiveness of donor contributions to anti-trafficking programs and subsequently provide a better and critical analysis on donor’s investment in combatting human trafficking. Alternatively, microlevel research on human trafficking where identifying the magnitude of trafficking within a measurable context and documenting complexities in lived circumstance may be a better suited research approach (Weitzer 2014).

The assertion that if one cannot measure then it is difficult to measure effectiveness or returns on investment perhaps holds true, but Feingold (2010) argues that the characterization of human trafficking is one with numerical certainty, but statistical doubt creates a false precision of quantification and lack of sound criminological inquiry. The challenge is that human trafficking is both a national/domestic and global problem, but the structures needed to make an impact in addressing the crime are distinctly domestic. Definitions, theory, statistics, methodologies, and their conceptual frameworks continue to remain key challenges that are necessary to inform measurements of success for anti-trafficking initiatives. Perhaps returns on investment should be viewed from the perspective of saved lives or victims supported. It may answer whether the funds have been well spent. The research argues for transparency on how funds are allocated for anti-trafficking initiatives because it will help demonstrate accountability, measurable results, and beneficial impact. It could progress to providing some answers as to whether funds for anti-trafficking initiatives have contributed to addressing human trafficking.

**References**


European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking

Vladislava Stoyanova

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Abstract

Against the backdrop of the rich judicial output of the European Court of Human Rights (ECtHR), the case law under Article 4 (slavery, servitude, forced labor, and human trafficking) of the European Convention on Human Rights (ECHR) is scarce. To be more precise, the existing judgments in which the Court has dealt with abuses inflicted by non-state actors (i.e., employers) reaching the level of severity of Article 4 are eight. In this chapter, I will review these recent judgments and offer a comprehensive analysis of the challenges that need to be addressed in terms of definitional limits and the states’ positive obligations so that human rights law can more effectively respond to the factual reality that reveals that many individuals are subjected to severe forms of exploitation. As to the

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definitional challenges, one problematic development that I will highlight is the central focus on the concept of human trafficking that has been the dominant frame for conceptualizing abuses. While this development has had some positive effects, it has also led to some negative repercussions that need to be acknowledged. In particular, the concept of human trafficking has brought confusion and obscurity as to the nature and gravity of the harm suffered. As to the positive obligations corresponding to the right not to be subjected to slavery, servitude, and forced labor, the ECtHR has made some impressive advances that I will detail and analyze.

**Keywords**

Human trafficking · Slavery · Servitude · Forced labor · European Convention on Human Rights · Positive obligations under human rights law

**Introduction**

Considering the overall prolific output of the Strasbourg Court, it might come as a surprise that the case law under Article 4 (slavery, servitude, forced labor, and human trafficking) of the European Convention on Human Rights (ECHR) is very limited. In addition to the line of cases where the state demands services, which could amount to forced labor (Chitos v. Greece, App. No. 51637/12, 4 June 2015), there have only been eight cases in which the Court had to address circumstances where abuses inflicted by non-state actors (i.e., employers) qualify as slavery, servitude, forced labor, or human trafficking under Article 4. The first case in which the ECtHR had the chance to apply this provision in the context of harm inflicted by private actors was Siliadin v. France decided in 2005 (Siliadin v. France, Appl. No. 73316/01, 26 July 2005). This judgment marked the first time when the ECtHR had the opportunity to clarify that Article 4 imposes positive obligations upon states (Cullen 2006). Almost 5 years later, the Court delivered the widely applauded judgment of Rantsev v. Cyprus and Russia that concerned a woman allegedly trafficked from Russia to Cyprus (Rantsev v. Cyprus and Russia, App. No. 25965/04, 7 January 2010, para. 282). In 2012, the ECtHR rendered two important judgments under Article 4. In particular, C.N. and V. v. France clarified the distinction between forced labor and servitude and reiterated the finding in Siliadin v. France that states are under the obligation to specifically criminalize the abuses covered by Article 4 of the ECHR (C.N. and V. v. France, App. No. 67724/09, 11 October 2012, para. 91). In C.N. v. The United Kingdom, the Court further...

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1The practice of the Inter-American Court of Human Rights and the UN Human Rights Committee in this area is similarly limited (see Stoyanova 2017a). The Inter-American Court has issued one judgment on the topic; see Haddad (2017).

2This analysis is based on Stoyanova (2016a). This chapter does not include an analysis of applications filed under Article 4 of the ECHR that have been found inadmissible. An example to this effect is G.J. v. Spain, App. No. 59172/12, Decision 21 June 2016. See Stoyanova (2016b).
elaborated on the meaning of servitude (C.N. v. The United Kingdom, App. No. 4239/08, 13 November 2012, para. 80). M. and Others v. Italy and Bulgaria has to be also mentioned since, although the complaint by the applicants under Article 4 was found inadmissible, the Court reaffirmed the principles emerging from Rantsev v. Cyprus and Russia (M. and Others v. Italy, App. No. 40020/03, 31 July 2012, para. 146–170). On 21 January 2016, the Court delivered L.E. v. Greece (L.E. v. Greece, App. No. 71545/12, 21 January 2016). One year later, J. and Others v. Austria was decided (J. and Others v. Austria, App. No. 58216/12, 17 January 2017). At the time of writing, Chowdury and Others v. Greece is the eighth judgment under Article 4 of the ECHR.

The factual substratum of each case will be briefly described, and the innovations introduced by each case will be assessed.

**Siliadin v. France: Servitude and Forced Labor, but Not Slavery**

Siliadin was a girl from Togo who arrived in France at the age of 15 with Mrs. D. It was agreed that she would work at Mrs. D.’s home until the reimbursement of the costs for her air ticket and that Mrs. D. would attend to her immigration status. It was also agreed that Mrs. D. would find her a place at school. Instead, Siliadin became an unpaid housemaid for D.’s family, and her passport was taken from her. Subsequently, she was “lent” to Mr. and Mrs. B. and became their housemaid. She worked 7 days per week from 7:30 a.m. to 10:30 p.m., cooking, cleaning, and taking care of the children. She was occasionally authorized on Sundays to attend mass, but was never paid. Siliadin confided to a neighbor about her situation, and consequently the French authorities became aware of her case, whereupon Mr. and Mrs. B. were prosecuted. However, the French courts acquitted the defendants of criminal charges. Siliadin filed a complaint to the ECtHR alleging violation of Article 4 of the ECHR.

The Court found that these factual circumstances amount to forced labor and servitude, but not to slavery. The ECtHR interpreted the definition of slavery as requiring ownership sanctioned by the legal system (Stoyanova 2017b, 246), which practically implies that no slavery exists in Europe since no state recognizes the possibility of one person to legally own another. Despite this reluctance by the Court to interpret the definition of slavery progressively, France was found in violation of Article 4 of the ECHR since it failed to criminalize specifically the acts of servitude and forced labor (see Stoyanova 2014). As a result of this omission, the individuals that abused Siliadin were acquitted in the context of the national criminal proceedings.

**Rantsev v. Cyprus and Russia: The Addition of Human Trafficking and the Expansion of States’ Positive Obligations**

The importance of Siliadin is limited to triggering improvements in the national substantive criminal law and criminal proceedings (see Bourgeois 2017). In contrast, the findings in Rantsev v. Cyprus and Russia are much more far-reaching and certainly not limited in their effects to the criminal law field. The applicant in the case was the
father of Oxana Rantseva, who left Russia and entered Cyprus on an artiste visa to work as an artiste in a cabaret. (This analysis is based on Stoyanova (2012).) Under the Cypriot legislation, an artiste is “any alien who wishes to enter Cyprus in order to work in a cabaret, musical-dancing place or other night entertainment place and has attained the age of 18 years” (Rantsev v. Cyprus and Russia, at para. 113). She left her place of employment 3 days after starting. The manager of the cabaret found her in a discotheque and took her to the police asking the police to declare her as illegal in the country, supposedly in view of her being deported. (Pursuant to the artiste regime established in Cyprus, the number of artistes who could be employed in a single cabaret is limited (Rantsev v. Cyprus and Russia, at para. 116). If an artiste failed to come to work or breached her contract, she would be deported and the expenses would be covered by the bank guarantee which the cabaret manager was required to deposit in advance (Rantsev v. Cyprus and Russia, at para. 117).) The police concluded that Rantseva was not illegal. Instead of releasing her, the police called the manager and asked him to come and collect her from the police station. Rantseva was taken by the cabaret manager to the apartment of another employee, where she was taken to a room on the sixth floor. In the morning of the following day, Rantseva was found dead in the street below the apartment’s balcony. A bedspread was found looped through the railing of the apartment’s balcony. Based on a complaint by Rantseva’s father to the ECtHR, the Court found violations of Article 2 (right to life), Article 4 (prohibition on slavery, servitude, and forced labor), and Article 5 (right to liberty and security) of the ECHR. Under Article 2, Cyprus was found responsible for its failure to fulfill its positive obligation to carry on an effective investigation into Rantseva’s death (Rantsev v. Cyprus and Russia, at para. 234–242). The ECtHR found that Rantseva’s detention at the police station and her subsequent confinement to the private apartment to which confinement the state authorities acquiesced amounted to deprivation of liberty. Cyprus was declared to be in violation of Article 5 since the deprivation of liberty had no basis in the domestic law (Rantsev v. Cyprus and Russia, at para. 322–325). The factual and legal analysis concerning Article 4 is henceforth an object of more detailed investigation.

Rantsev signified two important developments: first, the material scope of Article 4 was extended to cover human trafficking; and second, the positive obligations under Article 4 were determined to be much more far-reaching than simple criminalization (for a critical analysis of this addition, see Allain 2010; Stoyanova 2012). As a consequence, states are also required to take additional protective measures.

On the first point, the ECtHR clarified that:

The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. […] There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes “slavery,” “servitude” or “forced and compulsory labour”. Instead, the
Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention. The Russian Government’s objection of incompatibility *ratione materiae* is accordingly dismissed. (*Rantsev v. Cyprus and Russia*, at para. 281–282)

In light of the corpus of positive measures that states have agreed to undertake to protect and assist victims of human trafficking, the addition of human trafficking to the conceptual limits of Article 4 can be heralded as an important development. However, this development has also brought a lot of uncertainty since the Court did not explain how exactly the factual circumstances in *Rantsev* qualify as human trafficking. (For a detailed discussion of the critique of the judgment see Stoyanova (2012).) The international law definition of human trafficking itself is also quite amorphous as to the required severity threshold of “exploitation” and “abuse of power or position of vulnerability” so that human trafficking is constituted (Stoyanova 2017b). As I will explain below, these uncertainties have not been resolved in subsequent cases before the Court.

As to the scope of states’ positive obligations, the ECtHR in *Rantsev* held that:

[... ] the duty to penalise and prosecute trafficking is only one aspect of member States’ general undertaking to combat trafficking. The extent of the positive obligations arising under Article 4 must be considered within this broader context. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking. (*Rantsev v. Cyprus and Russia*, at para. 285–286)

In relation to Miss Rantseva, the Court held that the specific regime of artiste visas in Cyprus did not afford her practical and effective protection against trafficking and exploitation. Accordingly, this was one of the reasons as to why Cyprus was found in a violation of Article 4 of the ECHR.

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**C.N. and V. v. France: Clarification as to the Distinction Between Forced Labor and Servitude**

*C.N. and V. v. France* is the second important case to breathe life into the meaning of servitude under the ECHR (Stoyanova 2017b, 246). The factual substratum of the case is strikingly similar to that in *Siliadin v. France*. The applicants were two sisters, who were brought to France from Burundi by their aunt, Mrs. M. They were accommodated in an underground room which was poorly equipped, poorly heated, and with deplorable hygiene conditions. The first applicant, C.N., never went to school. She

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This is only valid at regional European level, where states have adopted binding legal obligations to protect and assist victims of human trafficking. See Council of Europe Convention on Action against Trafficking in Human Beings and Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 5 April 2011. At the global level, the Palermo Protocol does not impose binding legal obligations upon states to protect and assist. See Stoyanova (2011).
was constantly busy with the housework and with the care of Mrs. M.’s child who was physically disabled. She had no days off and was not remunerated for her work. When C.N. turned 18, no steps were taken to regularize her migration status in France. The second applicant, V., was sent to school. When she came back from school, she had to do her homework and help her older sister with the housework.

After reiterating the principles reflected in *Siliadin v. France*, the Court observed that:

[... ] servitude corresponds to a special type of forced or compulsory labour or, in other words, “aggravated” forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced labour or compulsory labour within the meaning of Article 4 of the Convention lies in the victim’s feeling that their condition is permanent and that the situation is unlikely to change. It is sufficient that this feeling be based on the above mentioned objective criteria or brought about or kept alive by those responsible for the situation [emphasis added]. (*C.N. and V. v. France*, App. No. 67724/09, 11 October 2012, para. 91.

The proposition that the distinguishing feature of servitude is the permanence of the victim’s conditions originates from the Commission’s decision in *Van Droogenbroeck v. Belgium*, 5 July 1979, App. No. 7906/77. In *Van Droogenbroeck v. Belgium*, the Commission stated “[t]he distinction between ‘servitude’ and ‘forced labor’ is not explicitly stated. It may be considered, however, that in addition to the obligation to perform certain services for others, the notion of servitude embraces the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition.”

Applying this criterion, the Court concluded that the first applicant was held in servitude since she had the feeling that her condition could not improve and that this condition was unchangeable, especially as it had lasted for 4 years. The factual basis for this conclusion was that C.N. did not go to school and did not benefit from any professional training “that would permit her to hope to have a paid job one day outside the house of the spouses M.” (*C.N. and V. v. France*, App. No. 67724/09, 11 October 2012, para. 92) In addition, C.N. was in a state of isolation and did not have a chance to create contacts outside the house. In contrast to the first applicant, the second applicant had “the possibility to develop in an environment different from the home of the spouses,” and she was less isolated (Ibid, para. 93.). Thus V.’s situation did not qualify as servitude. As opposed to *Siliadin v. France*, in *C.N. and V. v. France*, the ECtHR did not make the age of the victims a significant factor in the judgment. Therefore, it can be more easily expected that if an adult migrant faces the same circumstances as C.N, the assessment will be along similar lines.

Having concluded that the older sister was subjected to forced labor and servitude, the Court proceeded to assess whether France has complied with its positive obligations under Article 4 of the ECHR. In this respect, the finding was identical to the outcome in *Siliadin*. Namely, the French criminal law was interpreted too restrictively by the national authorities and as a result the abusers were not eventually convicted. (On the subsequent changes introduced in the French criminal legislation, see Bourgeois (2017)). This gave the basis for the Court to find a violation of Article 4 of the ECHR.
C.N. v. The United Kingdom: Servitude and Subtle Forms of Control

The third case that offers some insights as to when abuses could be defined as servitude under Article 4 of the ECHR is C.N. v. The United Kingdom (Stoyanova 2017b, 246). The applicant was from Uganda. Her relative, P.S., helped her to obtain a false passport and a visa to enter the United Kingdom. P.S. introduced her to Mohammed, who ran businesses providing caregivers. She began to work as a live-in caregiver for an elderly couple. She claimed that the work was very demanding, that she was permanently on call, and that she did not have a day off. The couple transferred money to Mohammed; however, she herself did not receive remuneration for her work besides the small gifts which the couple directly gave her. Her freedom of movement was restricted and she was warned not to speak to anybody.

In C.N. v. The United Kingdom, the ECtHR did not determine whether the above depicted set of circumstances qualify as servitude. Rather, the issue whether the UK authorities failed to conduct an effective investigation was placed at heart of judgment. (On the positive obligation upon states to conduct effective investigation, see Stoyanova 2017b, 351.) However, in order to answer this question, the Court had to determine whether there was credible suspicion that C.N. was held in conditions of domestic servitude. It noted that:

 [...] domestic servitude is a specific offence, [...] which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance. A thorough investigation into complaints of such conduct therefore requires an understanding of the many subtle ways an individual can fall under the control of another. (C.N. v. The United Kingdom, App. No. 4239/08, 13 November 2012, para. 80)

The Court referred to the following circumstances of relevance for making a determination that a situation could classify as servitude “[...] her passport has been taken from her, that P.S. had not kept her wages for her as agreed, and that she was explicitly and implicitly threatened with denunciation to the immigration authorities.” (Ibid, para. 80.) In sum, C.N. v. The United Kingdom indicates that the assessment whether migrants are held in servitude needs to be sensitive to the subtle means through which they could be subjected to control. Most importantly, it became clear that for states to comply with the procedural limb of Article 4 (the obligation to investigate), an understanding of the subtle ways in which an individual can fall under the control of another is required (C.N. v. The United Kingdom, para. 80).

M. and Others v. Italy and Bulgaria: Reaffirmation of Human Trafficking

Although the complaint under Article 4 of the ECHR was ultimately found inadmissible, M. and Others v. Italy and Bulgaria also deserves to be mentioned. The first applicant argued that she was subjected to abuses falling within the scope of Article 4 of the ECHR since she was married after the exchange of a sum of money
and was subsequently ill-treated and forced to work for her husband (*M. and Others v. Italy and Bulgaria*, App. No. 40020/03, 31 July 2012). The Court reiterated its finding in *Rantsev* that human trafficking falls within the conceptual limits of Article 4 of the ECHR. In contrast to *Rantsev*, the ECtHR applied the international law definition of trafficking to the factual circumstances:

The Court has already held above that the circumstances as alleged by the applicants could have amounted to human trafficking. However, it considers that from the evidence submitted there is not sufficient ground to establish the veracity of the applicants’ version of events, namely that the first applicant was transferred to Italy in order to serve as a pawn in some kind of racket devoted to illegal activities. In consequence, the Court does not recognise the existence of circumstances capable of amounting to the recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. It follows that the applicants’ allegation that there had been an instance of actual human trafficking has not been proved and therefore cannot be accepted by the Court. (*M. and Others v. Italy and Bulgaria*, para. 154)

As the quotation suggests, the Court did not consider that there was sufficient evidence submitted by the applicant to substantiate the assertion that she had been a victim of human trafficking.

### L.E. v. Greece: A Slight Retreat

Human trafficking was also raised as an issue in *L.E. v. Greece*. The applicant *L.E.*, a Nigerian woman born in 1982, entered Greece in 2004 accompanied by K.A., who had allegedly promised her that in Greece she would work in bars and nightclubs (Stoyanova 2016a). As a result of these arrangements and once in Greece, she was told that she owed him €40,000. Upon arrival, K.A. confiscated her passport and forced her into prostitution for about 2 years. In the period August 2005–November 2006, L.E. was arrested three times for breaching the laws on prostitution and the laws on entry and residence of aliens in Greece. These proceedings resulted in acquittals. During the abovementioned period, she was also issued with a deportation order; however, the deportation was suspended on the ground that it was deemed not feasible. On 29 November 2006, while still in detention pending deportation, L.E. with the support of Nea Zoi, a NGO, filed a criminal complaint against K.A. and his partner D.J. accusing them of forcing her into prostitution. At this point, L.E. also claimed that she was a victim of human trafficking. The prosecutor at the Athens Criminal Court rejected the claim. The applicant requested a re-examination of her complaint arguing that the investigation into her case was insufficient given that important evidence was disregarded. In particular, the testimony provided by Nea Zoi was not included in the record. Her request was successful in that the prosecutor at the Athens Criminal Court was ordered to bring criminal proceedings against K.A. and D.J. for human trafficking. As much importantly, on 21 August 2007, the prosecutor officially recognized the status of the applicant as a victim of human trafficking, and a couple of days later, the
suspension of the deportation proceedings initially opened against her was approved. In the period 2008–2011, criminal proceedings were conducted at national level; however, only D.J. could be arrested and prosecuted. The national court found D.J. not guilty, since it was determined that the latter was not K.A.’s accomplice, but rather another of his victims who had been sexually exploited.

The applicant complained before the European Court that the delay by the police to investigate her case and the deficiencies in the conduct of the investigation had led to the impossibility to prosecute K.A, who was still at large, and to the incorrect acquittal of D.J. The applicant argued that the national court did not assess correctly the facts since, as she claimed, she was forced into prostitution not only by K.A. but also by D.J. She added that the initial rejection of her complaint by the prosecutor had serious consequences because she was not formally recognized as a victim of human trafficking and was not granted a special residence permit in Greece.

The judgment did not raise any challenging definitional questions, and in this sense the applicability of Article 4 of the ECHR was not under dispute. Following the tenor of Rantsev v. Cyprus and Russia, it was simply noted that human trafficking falls within the scope of Article 4 of the ECHR and that Greece did not dispute the characterization of the applicant as a victim of human trafficking. The core of the judgment concerns the scope of the positive obligations under Article 4. The European Court reviewed how the respondent government fulfilled the following obligations: (i) to adopt an appropriate legal and administrative framework, (ii) to take protective operational measures, and (iii) to conduct an effective criminal investigation and court proceedings.

In L.E. v. Greece, the Court adopted a very superficial approach when considering whether Greece has effective legal and administrative framework. (It has to be admitted that the applicant herself did not challenge the effectiveness of the national legislative framework. However, this should not have prevented the Court from examining its effectiveness since the Court has reiterated that “it is the master of the characterization of the given in law to the facts of a case.” Söderman v Sweden [GC] (2014) 58 E.H.R.R. 36, para. 57. For further elaboration, see Stoyanova (2016a).) The Court was satisfied that the national legislation criminalizes human trafficking and the definition of this criminal offence was in line with the definition in the UN Trafficking Protocol and the CoE Trafficking Convention. (Generally, it can be questioned whether copying the international law definition of human trafficking and pasting it into the national criminal law is sufficient for ensuring compliance with Article 4 of the ECHR since this definition can be subject to divergent interpretations. See Stoyanova (2013). For a comparison across different jurisdictions, see Allain (2014).) The national legal framework concerning identification and assistance for victims of human trafficking was not found problematic. This can be assessed as a retreat from the rigorous approach adopted by the Court in Rantsev, where, as mentioned above, the national legislative framework was subjected to a close scrutiny.

Despite this disappointment, in L.E. v. Greece, the Court still found the respondent government in violation of Article 4 of the ECHR. The basis for this finding was that the formal identification of the applicant as a victim of human trafficking was
delayed by the authorities. This had negative repercussions, including prolonged period of immigration detention pending deportation.

**J. and Others v. Austria: Continuation of the Uncertainty Introduced with the Addition of Human Trafficking**

The complaint in *J. and Others v. Austria* was filed by three women nationals of the Philippines (Stoyanova 2017c). As they described their story, the first and the third applicant were recruited by an employment agency to work as au pairs in Dubai, the United Arab Emirates. The second applicant did not use the services of an agency. Instead, she traveled to Dubai at the suggestion of the first applicant. Their passports were taken away. They were subjected to ill-treatment and exploitation by their employers. In 2 July 2010 the applicants’ employer took them along on a short holiday trip in Austria. They stayed in the same hotel as their employer, took care of the children, and performed other domestic duties. Their passports remained with their employer. One or 2 days after their arrival in Austria, they were subjected to extreme form of verbal abuse and threats since one of the children went missing. The night following the incident, the applicants left the hotel with the help of a hotel employee with whom they became acquainted.

It was only in July 2011 when the applicants decided to turn to the police and filed criminal complaints against their employer. They also claimed that they were victims of human trafficking and were willing to cooperate with the police. Criminal proceedings were initiated but subsequently discontinued since the alleged offences had been committed abroad and not by Austrian citizens. The applicants complained to the ECtHR that Austria had failed to undertake an effective investigation into their allegations that they had been victims of human trafficking.

The Court’s assessment starts off with some general statements about human trafficking. Most of these are repetitions of what the Court has already stated in *Rantsev*. The Court also added that it did not have to classify human trafficking as slavery, servitude, or force labor since:

> [t]he identified elements of trafficking – the treatment of human beings as commodities, close surveillance, the circumscription of movement, the use of violence and threats, poor living and working conditions, and little or no payment – cut across these three categories.’

*(J. and Others, para. 104)*

The Court thus simply refuses to take cognizance of the differences between these different terms within the conceptual apparatus of Article 4. Similarly to what it did in *Rantsev*, the Court simply determined that the facts of the case fall within the definitional scope of Article 4 without any analysis to this effect: “[. . .], the Court considers that the applicants’ allegations fell within the ambit of Article 4 of the Convention, as established by its case law on the subject” *(J. and Others, para. 108)*.

There is, however, one important difference between *Rantsev* and *J. and Others*. The applicants in the latter case were officially recognized as victims of
human trafficking by the national authorities and provided with assistance to this effect. Therefore, it could be argued that the Court deferred to the findings made at national level (such deference was, however, not made explicit in the judgment itself).

Moving to the obligations upon Austria, the Court stated that “the instant case essentially raises two questions: whether the Austrian authorities complied with their positive obligation to identify and support the applicants as (potential) victims of human trafficking, and whether they fulfilled their positive obligation to investigate the alleged crimes.” As to the obligation to investigate, the contentions issue here was whether Austria was under the obligation to investigate the crimes allegedly committed abroad. As the Court determined in J. and Others, Article 4 of the ECHR does not impose such a requirement: “[...] under the Convention, there was no obligation incumbent on Austria to investigate the applicants’ recruitment in the Philippines or the alleged exploitation in the United Arab Emirates” (J. and Others, para. 114). Neither did the Court find a failure by Austria to investigate any harboring or receipt of the applications in Austria. The efforts by Austria in terms of investigation were found sufficient. Most importantly, in light of the fact that the police was alerted only approximately 1 year after the alleged events when the employers had long left Austria, no unreasonable expectations could be raised against Austria in terms of investigation.

Another aspect of the case concerns the obligation to identify victims of trafficking and to provide them with assistance. It was easily found by the Court that Austria had not failed in this respect. However, the case did provide the Court with an opportunity to frame in very lucid and firm terms that Article 4 of the ECHR generates a positive obligation upon states to identify and support (potential) victims of trafficking and for this purpose states have to build a legal and administrative framework (J. and Others, para. 109 and 111). As much important, the Court made it clear that the identification and the assistance of victims is independent from any criminal proceedings. While the latter are intended to identify and potentially prosecute alleged traffickers, the former have a very different purpose (i.e., identification and assistance of victims). (For an in-depth analysis, see Stoyanova (2017b), 86.) More specifically the Court stated the following:

The applicants argued that the Austrian authorities had accepted that they were victims of the crime of human trafficking by treating them as such (see paragraphs 88-91 above). However, the Court does not consider that the elements of the offence of human trafficking had been fulfilled merely because the Austrian authorities treated the applicants as (potential) victims of human trafficking (see paragraphs 110-111 above). Such special treatment did not presuppose official confirmation that the offence had been established, and was independent of the authorities’ duty to investigate. Indeed, (potential) victims need support even before the offence of human trafficking is formally established, otherwise this would run counter to the whole purpose of victim protection in trafficking cases. The question of whether the elements of the crime had been fulfilled would have to have been answered in subsequent criminal proceedings [emphasis added]. (J. and Others, para. 115)

The clear articulation by the Court in J. and Others of the independence between crime investigation and victim identification has been a positive development.
**Chowdury and Others v. Greece: The Vulnerability of Migrant Workers**

As the above review reveals, all of the judgments delivered by the ECtHR under Article 4 concerning interpersonal harm cover severe forms of exploitation of migrants. The most recent case of *Chowdury and others v. Greece* is not an exception in this respect. In a stark way it reveals the serious vulnerabilities to which migrant workers are exposed. The applicants were 42 Bangladeshi nationals in Greece with undocumented status (Stoyanova 2017d, e). They were recruited to work on a strawberry farm in Manolada and were promised wages of 22 Euro for 7 h labor and 3 Euro for each overtime hour. They worked in plastic greenhouses picking strawberries every day from 7 a.m. till 7 p.m. under the supervision of armed guards. They lived in makeshift tents of cardboard boxes and nylon without running water and toilets. The workers were never paid their wages for which they went on strike a couple of times. They continued to work since they were afraid that if they were to leave, they would never be paid. After the employers recruited other migrants, the Bangladeshi nationals again demanded their wages. At this point, one of the armed guards opened fire and seriously injured many of them.

After this incident, the employers and the guards were convicted for grievous bodily harm and unlawful use of firearms (sentences that were subsequently commuted to a minimum financial penalty), but acquitted of the charge of trafficking in human beings. When applying to the ECtHR, the 42 Bangladeshi migrants argued that they were subjected to forced labor and human trafficking and that Greece has failed to fulfill its positive obligation under Article 4 to protect them against these abuses, to conduct an effective investigation, and to punish the perpetrators.

The Court found that the migrant workers’ circumstances fell within the scope of Article 4(2) of the ECHR and thus qualified as human trafficking and forced labor, but not as servitude. In this way, the Court confirmed that in some respects, forced labor and human trafficking can occur at the same time or one might happen after the other. More specifically, the judgment says:

> [...] exploitation of labour is one of the forms of exploitation in the definition of trafficking in human beings, which highlights the intrinsic relationship between forced and compulsory labour and trafficking in human beings. (Para. 83)

Yet, this intrinsic relationship is not one of overlap (Stoyanova 2017b, 292). At no point does the Court explain this intrinsic relationship; rather the judgment seems to suggest that these two forms of abuses overlap. It is also worthwhile to remind the reader that in *Rantsev*, the Court conflates human trafficking and slavery by defining the former through the definition of slavery in international law (Rantsev, para. 281. See also Stoyanova 2017b, 294), which has caused further confusion. Just as confusing, in some paragraphs in the reasoning in *Chowdury*, the Court talks only about human trafficking (*Chowdury and Others v. Greece*, para. 86, 87, 89) without mentioning forced labor. Even more puzzlingly, in other paragraphs the Court refers not only to human trafficking but also to the concept of exploitation (*Chowdury and
Others v. Greece, para. 88 and 93). “Exploitation” is not only left undefined, but as the international law definition of human trafficking suggests (a definition that the Court has endorsed), it is a broader concept than forced labor. No explanation has been offered as to the required threshold for defining exploitation and how it might relate to forced labor and servitude in the context of Article 4, which has left the minimum threshold of severity under Article 4 uncertain. Equally confusing, is para.99 in Chowdury, where the Court refers not to forced labor per se, but only to forced labor as a form of exploitation within the definition of human trafficking.

Leaving aside the above-described definitional carelessness, a very important contribution of Chowdury and Others v. Greece lies in the emphasis of the migrants’ vulnerabilities due to their precarious migration status. The Court observed that if the migrants had stopped working, they knew that they would never collect their wages. Even if it could be assumed that at the time of hiring, they consented to work, the situation changed as a result of the behavior of their employers (Chowdury and Others v. Greece, para. 97). It is critical that the undocumented status of the migrants and the risk of being arrested and detained to be deported are highlighted in the judgment as important factors denoting their vulnerability, which the employer took advantage of (Chowdury and Others v. Greece, para. 95). As a consequence, the Court observed that they had not offered their labor voluntary (Chowdury and Others v. Greece, para. 96). Then, the Court assessed the severe exploitative conditions to which the migrants were subjected, which denoted excessiveness.

As to Greece’s positive obligations under Article 4, the Court examined three types of positive obligations. First, the obligation to put in place an appropriate legal and regulatory framework was under review. No violation was found in this respect since Greece had criminalized human trafficking at national level and had incorporated the relevant EU law in this area (Chowdury and Others v. Greece, para. 107–108). The second type of positive obligation under review in the judgment was the obligation to adopt protective operational measures. The Court emphasized that the authorities were well aware of the situation of the migrant workers in the Manolada region and the abuses to which they were exposed, including the refusals by the employers to pay their wages. Despite this awareness, the authorities’ response was limited (Chowdury and Others v. Greece, para. 113). Importantly, the assessment of the positive obligation to protect by the Court was done in light of the positive obligations imposed by the Council of Europe Convention on Action against Trafficking in Human Beings. More generally, the Chowdury judgment is clear to the effect that regardless of the legal qualification of the circumstances as human trafficking or forced labor, the positive obligations generated by Article 4 of the ECHR must in principle be interpreted in light of the Council of Europe Trafficking Convention. (For the interaction between the human rights law and the human trafficking legal frameworks, see Stoyanova 2017b.)

Finally, the Court evaluated the effectiveness of the investigation conducted at national level. In regard to one group of applicants, the Court found a procedural violation of Article 4(2) since the national authorities did not examine their
complaint concerning human trafficking and forced labor (Chowdury and Others v. Greece, para. 119–122). In regard to a second group of applicants, the Court also found a procedural violation of Article 4(2) since although there were investigation, prosecution, and trial, it all ended in acquittals (Chowdury and Others v. Greece, para. 113–117). The reason for the acquittals was that the national court interpreted the crime of human trafficking in a very narrow sense. The bar for qualifying abuses as human trafficking was set so high by the national court that it required that the migrants be absolutely powerless to defend themselves and be deprived of freedom of movement. The ECtHR observed that restrictions upon freedom of movement cannot be a necessary element for qualifying a situation as forced labor and as human trafficking (Chowdury and Others v. Greece, para. 123).

Conclusion

Since 2005 when the first judgment under Article 4 of the ECHR involving interpersonal harm was delivered by the ECtHR, the Court has made an important progress. The most important aspects of this progress are, first, the development of states’ positive obligations under Article 4 and, second, the clear acknowledgment of the migrants’ vulnerabilities to exploitation. As to the first development, the following positive obligations can be distinguished under Article 4 ECHR. The obligation to criminalize at domestic level the abuses falling within the scope of Article 4 (see Siliadin v. France, C.N. and V. v. France, and C.N. v. the United Kingdom). Intimately linked with the obligation to criminalize is the obligation of conductive effective criminal investigation upon reasonable grounds to believe that a crime might have been committed (see Rantsev v. Cyprus and Russia and Chowdury and Others v. Greece). The positive obligation upon the national authorities to take protective operational measures when there is a real and immediate risk that a person could be subjected to abuses (see Rantsev v. Cyprus and Russia and Chowdury and Others v. Greece). The national authorities are also under the positive obligation to adopt effective regulatory framework that can be instrumental for preventing abuses (see Rantsev v. Cyprus and Russia).

The scope of these positive obligations under Article 4 of the ECHR and the determination whether migrants have been subjected to harm that falls within the scope of Article 4, i.e., harm that qualifies as slavery, servitude, and forced labor, are influenced by the migrants’ specific situation. Accordingly, their vulnerabilities are taken into account in the determination as to whether the definitional scope of Article 4 has been passed and in the judgment as to how demanding state positive obligations need to be given the specific circumstances of the case.

At the same time, the above analysis of the case law also shows that the ECtHR seems to be still struggling with the conceptual apparatus under Article 4. The source of this confusion is ultimately the insertion of human trafficking within the limits of Article 4, in this way overlooking and not developing with sufficient rigor the concepts that are explicit in the text of the provision (i.e., slavery, servitude, and forced labor).
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Introduction

Until about 15 years ago, many people thought that human trafficking is an issue that did not affect Finland, and many cases which included indicators of human trafficking were characterized as some other forms of exploitation, such as pandering. It is true that low levels of corruption, a well-functioning infrastructure, and comprehensive social security, together with a high degree of gender equality, make Finland less

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vulnerable to human trafficking than some other countries. Nevertheless, it has been recognized that Finland is a country of transit and a destination for human trafficking. Most cases involve sexual or work-related exploitation, but victims of forced marriages and individuals exploited as part of criminal activities have also been referred to the assistance system. Domestic human trafficking, in which both the victims and the perpetrators are Finnish, also exists in our country.

It can be claimed that the phenomenon of human trafficking only became a political and legal issue in Finland in 2003 when the United States criticized Finland for ineffective action against human trafficking in its Trafficking in Persons report. A year later, in response to a European Union framework decision, penal provisions on human trafficking were added to the Criminal Code of Finland. The assistance system for victims of human trafficking was introduced in 2006, about 1 year before the legislative changes concerning the activities entered into force. Under the changes to the Aliens Act introduced in 2006, victims of human trafficking can, under certain conditions, be issued with a residence permit. The first national action plan against human trafficking was adopted in 2005 (Ministry for Foreign Affairs 2005), and a cross-administrative steering group was established to monitor the implementation of the plan. Representatives of nongovernmental organizations were also invited to the group.

The appointment of a national rapporteur on human trafficking is recommended in a number of international instruments. In 2011, the European Union adopted the directive 36/2011/EU on preventing and combating trafficking in human beings, which obliges the member states to take the necessary measures to establish national rapporteurs or equivalent mechanisms. Under the directive, the tasks of such mechanisms include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions and reporting. Under the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005, each party shall consider appointing national rapporteurs or other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislation requirements.

In Finland, the idea of an autonomous and independent rapporteur on human trafficking was suggested in connection with the preparation of the first action plan against human trafficking in 2004–2005. Two years later, the steering group updating the action plan concluded, in its consideration of the issues central to the combating of human trafficking, that external evaluation would help to make the work more effective (Ministry of Employment 2007). Little was being done to identify human trafficking, and few of the victims were referred to the assistance system established for them. All parties agreed, however, that there are victims of human trafficking in Finland that need help. The relationship between the human trafficking provisions contained in the Criminal Code and offences against human dignity (such as pandering and extortionate work discrimination) was also found challenging, and little use was made of the grounds for issuing residence permits laid down in the Aliens Act. According to the steering group, the absence of the monitoring task was one of the weaknesses in the action against human trafficking in Finland. In fact, the appointment of an autonomous and independent rapporteur on
human trafficking was one of the most important development proposals submitted by the steering group. In 2009, the then Ombudsman for Minorities (now Non-Discrimination Ombudsman) was appointed as National Rapporteur on Trafficking in Human Beings.

Monitoring and promotion of human and fundamental rights are the common denominator in the Ombudsman’s statutory tasks as the National Rapporteur on Trafficking in Human Beings, the supervisor of the prohibition of discrimination, the official promoting the status and rights of foreign nationals, as well as the official supervising the removal of foreign nationals from Finland. The task of the Non-Discrimination Ombudsman is to assess how the rights of the individuals falling within her competence are enforced and submit proposals on how the status of these individuals could be improved. The wide scope of the matters within the Ombudsman’s purview allows her to monitor a broad range of societal developments and participate in the debate on them. In recent years, the Ombudsman has highlighted such issues as the legislative changes and increasingly stringent practices weakening the legal protection enjoyed by asylum seekers as well as the fact that many of them are vulnerable to human trafficking and other similar exploitation.

This article discusses the mandate, duties, and practical work of the Non-Discrimination Ombudsman who acts as Finland’s National Rapporteur on Trafficking in Human Beings. The content of the legislation and the actual tasks of the Ombudsman as the rapporteur are described in the first chapters. The article also details some of the challenges faced by the rapporteur in her work and takes a closer look at the problems involving the identification of the victims of human trafficking and their referral to the assistance system maintained by the authorities, a result of the close relationship between the assistance and criminal proceedings.

**Mandate and Duties of the Ombudsman as the National Rapporteur on Trafficking in Human Beings**

In Finland, the external monitoring and evaluation of action against human trafficking are the responsibility of the Non-Discrimination Ombudsman, an autonomous and independent authority. When the Ombudsman was appointed as the National Rapporteur on Trafficking in Human Beings, the view was that having an autonomous and independent rapporteur would make the action against human trafficking more effective. The idea was that the Ombudsman would work in close cooperation with the authorities and third-sector actors, collect reliable information on the state of the action against human trafficking, and would highlight problems and development priorities.

Provisions on the duties and powers of the Non-Discrimination Ombudsman are laid down in the law. The autonomous and independent status allows the Ombudsman to express critical opinions and submit proposals for legislative changes within its purview. The view is that the Ombudsman is also well suited for the task of the National Rapporteur on Trafficking in Human Beings because, in addition to having an independent status, it is also in a sufficiently strong institutional position to assess
the action against human trafficking and to submit proposals and recommendations for developing it.

Under the law, the mandate of the Ombudsman as the rapporteur covers a broad range of different sectors. It stretches from monitoring the activities of the authorities and other bodies responsible for tasks related to human trafficking all the way to international cooperation. In her capacity as the rapporteur, the Ombudsman monitors developments in the sector with the aim of identifying problems in the action against human trafficking. The Ombudsman collects information on human trafficking and the action against it from the authorities and, on certain conditions, from the providers of services and support functions, as well as conducts analyses of the information.

Under the law, in her capacity as the National Rapporteur on Trafficking in Human Beings, the Ombudsman also monitors phenomena related to human trafficking, prepares and issues reports pertaining to human trafficking and the related phenomena, and supervises within her competence Finnish compliance with international human rights obligations and the effectiveness of the Finnish legislation. The Ombudsman may also provide legal assistance and, in exceptional cases, assist victims of human trafficking in court.

By acting as an independent monitor, the Ombudsman supports the implementation of the action plan against human trafficking and legislative improvements. Even though the ultimate responsibility for the action against human trafficking lies with the government, the view is that an independent rapporteur monitoring the work helps to provide a better picture of the phenomenon and the priorities of the work on the basis of research, international contacts, and development proposals. The cross-administrative coordination of the action against human trafficking is the responsibility of the anti-trafficking coordinator and the cross-administrative secretariat assisting the coordinator. One of the coordinator’s tasks is to implement the recommendations and development proposals made by the Ombudsman in her capacity as the National Rapporteur on Trafficking in Human Beings. The anti-trafficking coordinator was established in the Ministry of the Interior in 2014, following the recommendation made by the national rapporteur in 2012.

When acting as the National Rapporteur on Trafficking in Human Beings, the Ombudsman is not an authority supervising the legality of the authorities’ activities, which means that the Ombudsman cannot in this task receive complaints and examine the legality of the authorities’ action in specific cases. This is a task of the Parliamentary Ombudsman and the Chancellor of Justice. The Ombudsman may, however, draw attention to irregularities in specific human trafficking cases and issue the authorities with advice with the aim of safeguarding the victims’ rights and to enforce criminal liability. The Ombudsman monitors the situation on a continuous basis and may issue opinions on inadequacies in the action against human trafficking.

The Ombudsman has extensive statutory rights to obtain information (including confidential information). Under the law, the rapporteur has a right to receive information from the authorities, from providers of services and support for victims of human trafficking, and from bodies that receive government assistance for action
against human trafficking. During the drafting of the Act on the Non-Discrimination Ombudsman, it was considered important that when working as the rapporteur, the Ombudsman has access to all essential information on human trafficking and that the Ombudsman can analyze and use it when deciding on the measures against human trafficking. An extensive right to obtain information helps to make the reporting more comprehensive and objective, and it also provides a basis for development proposals for efficiency improvements and better cooperation between different actors.

In addition to having the statutory right to obtain information from the authorities, the Ombudsman may on statutory basis also, on certain conditions, request information from nongovernmental organizations as well as private and public service providers. In practice, the right to obtain information means that when the Ombudsman requests details of a pretrial investigation or the assistance provided to a victim of human trafficking by the authorities, the actors in question must, as a rule, supply the Ombudsman with the information. In her capacity as the National Rapporteur on Trafficking in Human Beings, the Ombudsman may also monitor court proceedings held behind closed doors if the Ombudsman considers this necessary to obtain information on such issues as the application of the penal provisions on human trafficking.

Under the law, the Ombudsman must submit a report to Parliament every 4 years (once during a parliamentary term). The reports are based on the information on the state of the action against human trafficking that the Ombudsman has obtained from such parties as the authorities, nongovernmental organizations, and victims’ legal aid attorneys under her extensive right to obtain information. In the reports, the Ombudsman also provides Parliament with research-based information on the challenges faced in the combating of human trafficking and issues concrete recommendations for improving the work and for promoting the status and rights of the victims of human trafficking.

Work of the National Rapporteur on Trafficking in Human Beings in Practice

When the Ombudsman started her task as the National Rapporteur on Trafficking in Human Beings in 2009, she studied what is known of human trafficking in Finland, how widespread human trafficking is in Finland, how well the authorities are able to identify human trafficking, and how the rights of the victims of human trafficking, provided in international conventions, EU legislation, and Finnish legislation, are implemented. In 2009, one sentence for human trafficking was imposed in Finland, and only a small number of individuals were referred to the assistance system provided for victims of human trafficking each year. Few cases of human trafficking were identified in the asylum and residence permit processes, which is reflected in the negligible number of permits issued to victims of human trafficking.

In her first report on human trafficking to Parliament in 2010, the Ombudsman assessed the three main sectors of the action against human trafficking: work of the
assistance system for victims of human trafficking, procedures concerning the residence and removal from the country of victims of human trafficking, and the criminal proceedings as well as the application and interpretation of the penal provisions pertaining to human trafficking (The Finnish National Rapporteur 2010). In order to determine the functioning of the abovementioned sectors, the Ombudsman collected and analyzed information on human trafficking and the challenges facing the action against human trafficking obtained from the authorities, courts, and nongovernmental organizations. The Ombudsman also collected information by assisting victims of human trafficking in the safeguarding of their rights.

Based on this information, the Ombudsman concluded in her report that the most serious challenge in the action against human trafficking in Finland is the identification of the victims: victims of human trafficking were not necessarily identified at all, or they were not specifically identified as victims of human trafficking but of other crimes. The Ombudsman reported that, as result of the lack of identification, the statutory rights of the victims of human trafficking were not realized and it became increasingly difficult to prosecute actors guilty of human trafficking and to prevent human trafficking.

Based on her findings, the Ombudsman made a number of proposals for legislative changes that concerned the assistance provided to victims of human trafficking and the identification of human trafficking in the criminal proceedings. Based on the recommendations issued by the Ombudsman, Parliament called for the government to take measures to change the legislation. Parliament called for the government to report to the Ombudsman on the measures that it had taken on the basis of the recommendations.

The amendments to the Criminal Code drafted by a working group entered into force in 2015. The main aim of the amendments was to emphasize that the statutory requirements of human trafficking can be met even if the offence does not include physical violence or the deprivation of the victim’s liberty. With the introduction of the legislative amendments, it was increasingly understood in Finland that the psychological pressure exerted on the victim, the exploitation of the perpetrator’s position of authority, and the subordinate status of the victim with respect to the perpetrator are essential in human trafficking. The main criteria concerning the victim’s dependent status and vulnerable position were now clearer, and it was also increasingly evident that the legislators wanted to ensure that violence or threats of violence place the act in the aggravated category from the perspective of criminal law. The fact that there is now more emphasis on the means of psychological pressure in the application of the law may have facilitated the identification of such phenomena as work-related human trafficking and led to more sentences for human trafficking in Finland.

For example, the view has been that the criteria for penal provisions on human trafficking have been met in situations involving forced labor where the foreign employees concerned have resided in Finland and possessed no language skills or social networks and that have depended on their employer for employment, food, and accommodation. Attention has also been drawn to the fact that the employees have owed money to their employer and have been under the employer’s authority.
The courts have been of the view that in such cases of suspected human trafficking, the formation of the injured party’s opinions has been influenced in an inappropriate manner and for this reason the courts have not attached any importance to the injured party’s original consent to come to work to Finland.

In cases involving sexual exploitation, courts have drawn attention to such issues as the inadequate language skills and the lack of social safety networks of the injured parties, their weak economic situation arising from indebtedness, and the lack of means arising from the injured parties’ psychological characteristics or young age (see more National Rapporteur 2010 and 2014). In such situations, courts have meted out sentences for human trafficking, even though the injured parties have, seemingly on a voluntary basis, sold sex and no violence had been used to coerce them to sell sex. The essential factor has been that the prosecutor has been able to show that the perpetrators have used illicit means and thus exploited the vulnerable position of the injured party or the imbalance of power between the perpetrator and the injured party, which could have concerned the relationship between the injured party and the perpetrator, or the personal experiences or character, weak economic situation, or other vulnerabilities of the injured party (see more National Rapporteur 2010 and 2014; Roth 2012).

The report submitted by the Ombudsman to Parliament also led to improvements in the status of witnesses in pandering offences and better identification of human trafficking in the criminal procedure. In Finland, individuals subjected to pandering have traditionally not been granted the status of injured parties (victims) in the criminal proceedings, which has weakened their legal protection. As a result of the legislative changes, individuals subjected to pandering are now entitled to legal aid attorneys in the pretrial investigation and in the court process. The legislative changes also improved the legal protection of the individuals subjected to pandering so that the procurers must now also be separately charged with such offences as extortion and assault, in addition to pandering. Unlike in the past, the penal provisions on pandering in the Criminal Code no longer cover the other violations of the rights of the individuals subjected to pandering. With regard to these offences, the individual subjected to pandering has the status of an injured party, which means that they can claim damages from the defendant in a criminal case concerning extortion.

Based on the same report, the Ombudsman also started close cooperation with the assistance system for victims of human trafficking, which had been established in 2007. In Finland, assisting victims of human trafficking is mainly the responsibility of the authorities. Depending on their legal status, victims are provided with assistance in the reception centers intended for asylum seekers or in the municipalities. As stated above, in the early years, only a small number of victims of human trafficking were referred to the assistance system each year. As a result of the close cooperation between the Ombudsman and the assistance system, the threshold for being referred to the system was lowered, assistance system actors acquired more understanding of the human trafficking phenomenon, and the guarantees of good governance were strengthened. There are currently more than 400 customers in the assistance system, and some of them are underage children of the victims of human trafficking.
There have also been other improvements in the action against human trafficking in Finland. In 2016, the Ombudsman reported on the challenges concerning the practices applied by the Finnish Immigration Service to its decisions on asylum and residence permits (National Rapporteur 2016). The Ombudsman prepared the report on the basis of the decisions received by victims of human trafficking who had applied for asylum and residence permits. The Ombudsman produced the report after she had received information that a number of victims of human trafficking that had returned to Italy after having been refused entry to Finland had been forced to become victims of sexual exploitation again. The increase in the number of asylum applications submitted in Finland made the matter more urgent.

Under the Finnish Aliens Act, victims of human trafficking may be issued with a residence permit in two situations. The victims may be issued with a temporary residence permit if the issuing of the permit is necessary on account of the pretrial investigation or court proceedings. The residence permit may be issued on a continuous basis if the victim is in a particularly vulnerable position. A victim is in a vulnerable position, for example, when he/she is a single parent, does not have any safety networks in his/her home country, and if he/she has severe symptoms as a result of being subjected to a human trafficking offence. In practice, the threshold for issuing a continuous residence permit is very high.

The conclusion of the Ombudsman was that the practices concerning the application of the Aliens Act are partially unpredictable and inconsistent. Based on the decisions, the Ombudsman reported that it is difficult to draw conclusions on when an applicant is issued with a residence permit and what are the minimum grounds for approving the residence permit application. A “particularly vulnerable position” as grounds for issuing a continuous residence permit under the Aliens Act and the preliminary work thereof is demanding and the Ombudsman was of the view that the Finnish Immigration Service interprets the requirement in a narrow manner.

However, the main issue in the Ombudsman’s report was the manner in which the Finnish Immigration Service assesses the risk of re-victimization of the victim of human trafficking applying for asylum and/or residence permit after the repatriation. Based on the material available to her, the Ombudsman concluded that the assessment of the situation of the victims of human trafficking was partially inadequate or at the very least, inconsistent. Research on human trafficking as a phenomenon, on the individual implications and effects caused by human trafficking, and on the risks of re-victimization was poorly utilized in decision-making.

The Ombudsman was particularly worried that there was no consideration in the decision-making practices of the circumstances and the resulting risk of re-victimization or the best interests of the child at such individual level that it would make it possible to assess in practice whether the applicant and their children can be refused entry to Finland under international human rights obligations. The Ombudsman also reported that Finland does not take adequate measures to ensure that, when refused entry, the applicants and their children would be referred to the necessary assistance and support in the receiving country. The Ombudsman concluded that in this respect, Finland seems to neglect its international human rights obligations when dealing with victims of human trafficking. The Ombudsman referred to the Council of
Europe Convention on Action against Trafficking in Human Beings, which obliges the parties to take measures to prevent the re-victimization of the victims of human trafficking and other groups, especially in repatriation situations.

In her capacity as the National Rapporteur, the Ombudsman issued several recommendations and development proposals in regard to legislation and practices. The Ombudsman recommended that the Aliens Act should be changed so that more victims of human trafficking would be considered eligible for a residence permit. Based on the report and a fact-finding trip to Italy, the Finnish Immigration Service updated its decision-making practices. The Finnish Immigration Service decided that in the future it would give more case-by-case consideration to the situation of victims of human trafficking when receiving applications for asylum and residence permits from them. At the moment, more applications by victims of human trafficking are also submitted for material consideration in situations that concern the application of the Dublin regulation determining the responsibilities of the member states. This means that the victims refused entry to Finland are more seldom sent back to Italy for the processing of asylum applications in situations where the applicant has been subjected to exploitation in Italy and sought asylum or registered as an asylum seeker in that country.

At practical level, the work of the Ombudsman as the National Rapporteur on Trafficking in Human Beings covers a broad range of different matters. Even though the Ombudsman’s work mainly concerns the uncovering of structural inadequacies and the finding of legislative solutions, the Ombudsman can also work to improve the status of individual victims of human trafficking and make efforts to safeguard their rights. The Ombudsman can give advice to pretrial investigation authorities in matters concerning pretrial investigations of human trafficking, provide prosecutors with advice in the preparation of the application for a summons, submit statements to courts on the grounds for the victim’s residence permit and referral to the assistance system, or help victims of human trafficking to access therapy or other services in municipalities. At structural level, the Ombudsman may, in addition to producing reports, support authorities in the drafting of guidelines on human trafficking, submit opinions on legislative proposals to ministries and Parliament, and take part as an expert in legislative and other development projects aimed at, for example, ensuring that the authorities are better placed to identify the phenomenon of human trafficking. The Ombudsman can also provide police officers, prosecutors, and judges with training, assist victims of human trafficking in courts, or submit complaints concerning non-lawful treatment of victims of human trafficking to supreme overseers of legality (Parliamentary Ombudsman and Chancellor of Justice).

Generally speaking, other authorities have a positive view of the Ombudsman’s role as the National Rapporteur on Trafficking in Human Beings. Her work is not always easy or straightforward, however. Protection of the human rights of the victims of human trafficking is not the only political-ideological goal influencing the action against human trafficking. Management of immigration and the objectives concerning crime prevention are not necessarily in conflict with protecting victims’ human rights, but in practice they often clash. There are often both legislative and practical conditions and restrictions concerning the assistance and protection of
victims of human trafficking, the purpose of which is to find a balance between different objectives. Through her activities, the Ombudsman works to show that strengthening the human rights of the victims of human trafficking also facilitates crime prevention and manage immigration. The Ombudsman also endeavors to highlight the fact that there are also Finnish victims of human trafficking and that for this reason human trafficking cannot solely be considered an immigration management issue. The Ombudsman has also emphasized that the victims of human trafficking are entitled to assistance and protection, regardless of their status under the Aliens Act.

At practical level, there have been few problems in the cooperation between the Ombudsman and other authorities. Other authorities are satisfied with the fact that they receive support and advice in an issue that they are not always familiar with. Occasionally, it may be difficult for the authorities working to combat human trafficking and with victims of human trafficking to accept that the Ombudsman endeavors to persuade them to take an approach that differs from what they had originally envisaged. Sometimes the statutory right to obtain information is disputed, and the Ombudsman does not receive details of an ongoing pretrial investigation despite submitting a request for information. However, in the long term, a dialogue between the parties has helped to change the attitudes. Cross-border cooperation with international organizations, the European Commission, and authorities in other European countries has been a valuable means to change information and best practices. The Ombudsman has taken part in the work done in many international organizations against human trafficking, and she has been asked by many countries to share her experiences on her mandate and practical work as a National Rapporteur.

**Connection Between the Criminal Proceedings and the Assistance for Victims of Human Trafficking Is the Main Challenge in the Action Against Human Trafficking**

**Foreword**

Under international law and EU legislation, the victims of human trafficking are a group with a special status. The international community is of the view that human trafficking constitutes a violation of human rights and an offence to the dignity and the integrity of the human being. For this reason, the international community has determined that the victims of human trafficking are in need of special assistance and protection. From the perspective of the framework of international law and EU legislation and as a result of their special status, the victims of human trafficking have special rights making them entitled to social and health services, legal advice, and legal aid.

In Finland, the authorities play a more central role in the assistance provided to victims of human trafficking than in most other EU countries. Therefore, the victims of human trafficking referred to the Finnish assistance system are entitled to social and health services, accommodation, legal aid and legal advice, as well as other
assistance provided in accordance with individual needs. Under the Finnish law, the assistance system for victims of human trafficking in Finland constitutes a framework, in which two authorities have responsibility for the assistance: a reception center for asylum seekers located in Eastern Finland and the municipalities. The reception center provides assistance for victims of human trafficking who do not have a municipality of residence in Finland. They include, for example, asylum seekers, undocumented individuals, third-country nationals, and nonregistered EU citizens.

At the same time, municipalities are responsible for organizing assistance for victims of human trafficking that have Finnish citizenship or that have a municipality of residence in Finland. They include, for example, foreign nationals issued with extended residence permits in Finland. The reception center is responsible for the overall management and coordination of the assistance system and for providing the authorities and organizations with advice on assisting victims of human trafficking. Between 2006 and 2017, a total of 630 individuals received help in the assistance system for victims of human trafficking.

**Provisions on Assisting Victims of Human Trafficking in International and EU Law**

The key documents concerning human trafficking under international law and EU legislation are the Council of Europe Convention on Action against Trafficking in Human Beings, which Finland incorporated into its national legislation in 2012, and the EU directive on human trafficking (36/2011/EU) from 2011. These instruments contain provisions under which individual states must assist and protect victims of human trafficking. A key issue from the perspective of international law and EU legislation is to assess what assistance countries should provide to victims of human trafficking, when the assistance and protection should be provided and what conditions and restrictions can be applied when the assistance is provided. It can also be assessed whether the victims are in the same position concerning the access to the services, depending on whether they have the right to reside in the country or whether they are foreign nationals or citizens of the country.

Making access to assistance conditional on criminal proceedings is prohibited under the Council of Europe Convention and the EU human trafficking directive. Even though assistance must be provided to all victims of human trafficking residing in the country, it seems that the Council of Europe Convention and the EU human trafficking directive put the victims in a different position with regard to the continuation and duration of the assistance. It seems that under the provisions contained in the two instruments, assistance for victims that have an unequivocal right of residence in the country may not be linked to criminal proceedings. In other words, access to the assistance may not be made conditional on the willingness of the victim to act as a witness in a criminal case. On the other hand, it seems that the status of victims without a residence permit is weaker because their right to reside in a country may be linked to criminal proceedings. This is because issuing a residence
permit to victims without a residence permit can be linked with criminal proceedings and the willingness of the victim to cooperate with the authorities. In other words, the victim’s right to receive assistance can be restricted with the right of residence.

This means that under the provisions contained in the two instruments, if a victim does not have a residence permit and does not cooperate with the authorities, they are not necessarily entitled to the same assistance as other victims. In other words, it is not necessary to issue a residence permit to victims without a residence permit that refuse to cooperate in criminal proceedings, which may also lead to the end of the assistance and support. In this respect, the EU trafficking directive refers to the directive 2004/81/EC, which has also influenced the human trafficking provisions of the Finnish Aliens Act and under which the residence permit must only be issued to specific third-country nationals that have been subjected to such crimes as human trafficking.

Under the provisions contained in the Council of Europe Convention and the human trafficking directive of the EU, foreign victims residing in the country without a residence permit may also be removed from the country if the victim is unwilling and unable to report the crime to the police or if the criminal proceedings fail to make any progress. They can be removed from the country because there is no obligation to issue them with a residence permit in all circumstances. There are provisions in the Council of Europe Convention on Action against Trafficking in Human Beings that restrict the countries’ right to remove victims of human trafficking from their territory. Under the Convention, each party should make its best effort to favor the reintegration of repatriated victims into the society of the state of return. The purpose of the provision is to prevent the re-victimization of the victims of human trafficking.

Report on the Effectiveness of the Legislation Applying to Assistance for Victims of Human Trafficking

In cooperation with the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), the Non-Discrimination Ombudsman prepared a report on the effectiveness of the Finnish legislation on assisting the victims of human trafficking (Koskenoja et al. 2018). The purpose of the report was to determine whether the legislation and its practical application support the process of identifying and assisting the victims, whether the legislation and its practical application are in compliance with the obligations contained in international and EU law that Finland has undertaken to observe and whether there are any gaps in the activities and legislation that prevent the implementation of the rights of the victims of human trafficking. The main aim was to determine how the right of the victims of human trafficking to receive assistance in Finland is implemented.

The report was multidisciplinary in nature, and both jurisprudence and sociological research methods were applied. It was based on two different types of material: documentation and interviews. Jurisprudence was used to examine documentation in order to ascertain how the legislation and practical application of the act that applies
to the assistance of victims of human trafficking meet the obligations provided in international law and EU legislation. It was also examined how the objective and purpose of the act concerning assistance meeting the victims’ needs are realized in its application and how the provision of assistance is affected by other legislation (such as the Criminal Code of Finland and the Aliens Act). The documentation comprised such material as the decisions concerning the customers of the assistance system for victims of human trafficking and the entries in customer records concerning assistance provided to 66 victims of human trafficking. These entries were provided by the assistance system and municipalities.

Sociological research methods were used to determine which of the victims are referred to the assistance provided by the authorities, what assistance is provided, and how the legislation meets the actual needs of the victims. The interviews were used to ascertain whether the legislation and the manner in which it is applied meet the victims’ needs and whether there are victims in need of assistance that are excluded from the official assistance system. The interview material comprised more than 80 interviews with experts involved in the work against human trafficking. They included social and healthcare professionals, pretrial investigation authorities, prosecutors, and representatives of nongovernmental organizations.

The report showed that there are challenges concerning the availability of the services for the victims of human trafficking. According to the report, the situation is particularly difficult in municipalities that are responsible for assisting Finnish citizens and victims of human trafficking with an extended right of residence in Finland. This is because the municipal social and healthcare authorities responsible for the practical application of the legislation are not familiar with the legislation and its contents and they have not yet received adequate guidance in its application. Ultimately, everything hinges on how the legislation on assisting the victims has been constructed. Municipalities are partially responsible for organizing the assistance but provisions on the assistance are contained in the act on receiving asylum seekers and the steering of this piece of legislation is the responsibility of the Ministry of the Interior.

However, from the perspective of this article, it is more important to focus on the findings of the report suggesting that there are individuals in Finland that are in need of assistance due to severe exploitation with characteristics of human trafficking, but who do not receive adequate assistance, or who are not referred to or admitted to the assistance provided by the authorities. The inadequacies of the assistance system are connected with two issues: (1) which of the individuals are referred to the assistance system for victims of human trafficking and what prevents the victims from receiving the assistance provided by the authorities and (2) which of the individuals are entitled to continuous assistance and on what basis can access to the assistance be terminated.

The documents collected for the report showed that the Finnish assistance system for victims of human trafficking has developed into a system that mainly helps injured parties in human trafficking offences. The assistance system is best suited for victims that report the offences to the police, in whose case the criminal proceedings make progress and whose case may result in a court verdict on human trafficking. In
Finland, the assistance provided by the authorities is made more important by the fact that nongovernmental organizations can only play a limited role as providers of assistance.

According to the report, the legislation on assisting the victims of human trafficking is applied so that an individual is not considered to be entitled to the assistance provided by the assistance system in situations where the pretrial investigation authorities decide that, because of the lack of evidence, they will not investigate the offence as a crime involving human trafficking or where the crime category is changed from human trafficking to another offence during the pretrial investigation or the consideration of charges. The documentation collected for the report showed that almost 40% of the customer relationships in the assistance system between 2014 and 2016 were terminated because the crime category was changed from human trafficking to other offences during the pretrial investigation or consideration of charges. The documents also showed that the victim’s need for assistance is not the main criterion for deciding on the right to receive official assistance in Finland.

The pretrial investigation authorities and prosecutors interviewed for the report were surprised when they heard how significant their decisions on the initiation or progression of criminal proceedings can be on whether a victim of human trafficking has a right to receive assistance. The representatives of the criminal justice system interviewed for the report stated that their task is to evaluate the criminal evidence in a human trafficking offence and assess the adequacy of the evidence. The majority of them also assumed that the progress of the criminal proceedings and the related decisions are not connected to the assistance measures and to the victim’s right to receive assistance. They also emphasized that their basic task is to collect evidence on a suspected crime and to enforce criminal liability. The report showed that the pretrial investigation authorities and prosecutors are not always aware of how their decisions will affect the victims’ right to receive assistance. The pretrial investigation authorities and prosecutors who were aware of this connection said that they carry a heavy responsibility for the individual persons’ access to assistance, considering the fact that many of them are also in a vulnerable position.

The report’s findings also suggest that an assistance system for victims of human trafficking managed by the authorities is not well suited for reaching victims that are unwilling to describe to the pretrial investigation authorities how they have been exploited. Under the law, the information on referring the victim to the assistance system is always forwarded to the pretrial investigation authorities, irrespective of the willingness or unwillingness of the victim to cooperate with them. Based on the material collected for the report, the close link between the assistance system and the criminal proceedings seems to discourage some victims of human trafficking from seeking official assistance. The situation of individuals that have been subjected to sexual exploitation is particularly difficult in Finland. According to the report, the number of such victims referred to the assistance system is noticeably small. According the material collected for the report, less than ten such victims had been referred to the assistance system over a period of 3 years. The report also suggests that the situation of victims with unclear residence status or without right of residence is difficult.
Conclusions of the Report

According to the report jointly prepared by the Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), many victims of human trafficking are at risk of being excluded from assistance. The victims of human trafficking are afraid of seeking official assistance. One reason for this is the close link between the assistance and the criminal proceedings and the fact that their right to receive assistance provided by the assistance system is considered to have ended if the criminal proceedings do not make any progress and there is no verdict on human trafficking. If the defendant is sentenced for such crimes as sexual offences, pandering, or extortionate work discrimination, the victim, as a rule, will no longer be entitled to assistance under the assistance system. If the victim is afraid of the parties exploiting them or they do not trust the authorities, they may not even want to seek official assistance because the system does not necessarily provide a basis for genuine consideration. The information on the victims is always forwarded to the pretrial investigation authorities, irrespective of what they decide. There are also victims who do not want to have contacts with the authorities because they are afraid of being removed from the country.

The report shows that the Finnish legislation and the manner in which it is applied may in some respects be incompatible with international law and EU legislation. The problem arising from international law and EU legislation is primarily related to the material examined for the report showing that many victims of human trafficking are either refused official assistance, or they fall off the system because there is a close link between the assistance and the criminal proceedings. When we add to this that there does not seem to be adequate assistance available for the victims of human trafficking who are excluded from official assistance, the conclusion is that the legal state is not in full compliance with the international law and EU legislation binding on Finland. The strong link between assistance provided for legal residents and, for example, Finnish victims and the criminal proceedings is especially problematic in the light of international law and EU legislation. After the release of the report, the National Assistance System has made a decision that it will no longer automatically and on their own initiative forward the information on the victims to the pretrial investigation authorities. This decision can lower the threshold for the victims to seek assistance from the authorities. In 2019, the Parliament adopted, on a recommendation of the National Rapporteur, a statement and required the Government to amend the law so that the assistance would be disconnected from the criminal proceedings.

Discussion and Analysis

The manner in which the assistance for the victims is organized, which assistance eligibility criteria are applied, and when does the eligibility for the assistance end are issues that seem to have an impact on the willingness and ability of the victims of human trafficking to seek help. Even though the purpose of the close link between the assistance and the criminal proceedings is to ensure criminal liability, the report...
suggests that it may discourage some victims from seeking assistance and, consequently, have an impact on the uncovering and prevention of human trafficking. Nongovernmental organizations working with victims of human trafficking have reported that in 2018, many victims that they have identified have decided not to seek assistance from the authorities. An important reason for this has been the close link between the assistance and the criminal proceedings.

According to the research literature on violence against women, the situation of the victims of human trafficking is difficult. According to a Finnish study on the occurrence of violence against women, less than 10% of all cases of sexual violence are reported to the police (Heiskanen and Piispa 1998), and of these cases only about 15% lead to a sentence in which the perpetrator is found guilty. The situation is very similar internationally, and according to an international study, over a period of several years, fewer and fewer criminal cases have resulted in a sentence (Daly and Bouhours 2010).

There are several reasons for the lack of progress in criminal proceedings: the perpetrators cannot be identified, the police do not consider the case an offence, rape victims do not want to continue the criminal proceedings, prosecutors do not believe that the evidence is strong enough, or the charges are rejected by the courts. The criminal proceedings may also fail because the case does not correspond to the stereotypical idea of a rape. It may be difficult for the actors in the criminal proceedings to define the case as a rape if the victim knows the perpetrator, no physical violence has been used, the victim has not suffered any physical injuries, or the victim has not made any active resistance or has not made any attempts to flee. Victims may be asked about their own involvement in the case, which may be considered by the victims as an attempt to put the blame on them, and the accuracy of the victims’ account may be questioned (Kainulainen 2017).

Against this research background, it is problematic that the assistance for the victims of human trafficking is so closely connected with the start, progress, or the end result of the criminal proceedings. The conditions and restrictions applying to the assistance for victims of human trafficking are problematic, harmful, or even unreasonable from the perspective of preventing violence against women. The linkages between human trafficking and other forms of violence against women should be increasingly recognized (see also European Institute for Gender Equality 2018).

The situation of undocumented victims of human trafficking or victims with otherwise unclear residence status is even more difficult because in their case, international obligations are weaker or subject to the discretion of individual states. Nevertheless, their status can also be improved in the antihuman trafficking framework. By highlighting inadequacies in such issues as the legislation on residence permits and application practices, the criteria for issuing the permits can be reviewed, for example, in the manner discussed above.

**Conclusion**

Considerable progress has been achieved in Finland in the action against human trafficking over a relatively short period. As recently as 15 years ago, the existence of the phenomenon was largely denied in Finland, and there were little legislation or
other operational structures concerning the issue. The appointment of the National Rapporteur on Trafficking in Human Beings, an autonomous and independent authority, with a mandate to report to the Parliament has helped in the identification of human trafficking and led to more effective action against human trafficking.

There are still challenges, however. Internationally, there has also been an increasing amount of criticism of the action against human trafficking and the legal framework for human trafficking. The fact that the emphasis in the combating of human trafficking is on crime prevention and control is considered particularly problematic and one manifestation of this is the close link between assisting the victims and the criminal proceedings. It has been suggested that human trafficking is not practicable as a legal concept or regulatory entity and that the rights of the vulnerable individuals should be defended within such frameworks as modern slavery or forced labor.

On the domestic level, none of the international legal frameworks is free from the political-ideological disputes that concern such issues as the management of immigration. So far, the action against human trafficking is based on the strongest legal regulation from the perspective of the protection of the victims’ human rights. The member states of the European Union and the parties to the Council of Europe Convention on Action against Trafficking in Human Beings have managed to achieve a common legal definition, and they are specifically committed to assisting and protecting the victims of human trafficking. The manner in which the definition of human trafficking is applied and how the victims are assisted and protected is continuously tested and discussed in many countries.

An autonomous and independent national rapporteur on human trafficking may play a role in the efforts to improve the status and rights of the victims of human trafficking. As human trafficking creates a wide range of different thoughts among state-level actors and some of the thinking is control-oriented, it may be useful from the perspective of the action against human trafficking to consider the views emphasizing human rights. The views of an autonomous and independent authority and the research findings detailing the overall impacts of the action against human trafficking on the status of the victims and the implementation of their rights should also be communicated to legislators. Committing political decision-makers to legislative improvements and the action against human trafficking has been particularly useful in Finland in the work to enhance the status and rights of the victims.

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Part VII

The Work of Nongovernmental Organizations
Abstract

International efforts to address human trafficking are not new, but the rapid expansion of counter-trafficking programs and initiatives over the past two decades is significant. Following adoption of the United Nations Trafficking Protocol in 2000, most countries adopted criminal laws against trafficking, and the number of intergovernmental organizations (IGOs), nongovernment organizations (NGOs), and other actors addressing human trafficking greatly increased. Today, estimates number counter-trafficking organizations in the thousands, working in practically every country of the world, including those without anti-trafficking laws. This chapter provides an overview of counter-trafficking IGO and NGO efforts, along with their networks and partnerships with government agencies, the corporate sector, and civil society to reduce human trafficking, hold
violators accountable, provide victim services, safeguard workers’ rights, and expand anti-trafficking advocacy on a global scale. Though the efforts detailed here are global in scope, this does not imply domestic NGOs are insignificant. Many of the international organizations described depend on local organizations to carry out their mission. The chapter begins by describing the work of policy and advocacy organizations and then turns to an overview of NGO networks, public-private partnerships, direct service organizations, and organizations engaged in raising awareness and social movement building.

Keywords
Human trafficking · International organizations · Nongovernment organizations · United Nations

Introduction

This chapter provides an overview of contemporary efforts by nongovernmental organizations (NGOs) and intergovernmental organizations (IGOs), along with their networks and partnerships with government agencies, the corporate sector, and civil society to reduce human trafficking on a global scale. NGOs and IGO programs to coordinate counter-trafficking efforts, hold violators accountable, provide services, and further expand anti-trafficking advocacy have grown significantly over the past two decades and include a wide variety of actors and organizations (see Chap. 73, “Human Trafficking: An International Response”).

Efforts to address human trafficking are not new. Forced labor, slavery, and trafficking have a long history dating back hundreds of years (see Chap. 1, Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking”), and various waves of social movements have contested these practices throughout history (Bertone 2004; Gallagher 2010; Limoncelli 2010; Picarelli 2012). Anti-Slavery International, for example, an NGO based in the UK that continues to advocate against contemporary slavery, was founded almost 200 years ago by abolitionists organizing against the transatlantic slave trade. Nonetheless, the expansion of NGO programs, IGO initiatives, and global activities against human trafficking over the past two decades is especially notable.

Following adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (herein UN Trafficking Protocol) adopted by the United Nations (UN) in 2000 (see Chap. 38, “UN Palermo Trafficking Protocol Eighteen Years On: A Critique”), the majority of countries adopted domestic counter-trafficking laws, and the number of IGOs, NGOs, and other actors addressing human trafficking increased significantly (Foot et al. 2015; Gómez-Mera 2017; Limoncelli 2016). Whereas there were very few NGOs that focused on trafficking as recently as the 1990s, current estimates number these organizations in the thousands. Today, counter-trafficking organizations work in practically every country of the world, including those that do not have official counter-trafficking laws (Limoncelli 2016; Yoo and Boyle 2015). Indeed in some
countries, NGOs take the lead in addressing trafficking more so than their respective governments (Tzvetkova 2002).

Though the efforts detailed here are global in scope, this does not implicitly suggest that domestic or local NGOs are insignificant. Large IGOs and government agencies often receive the most funding, but many of the international organizations described here depend on domestic NGOs and affinity groups to carry out their mission. Counter-trafficking is not a state- or IGO-centered regime but a decentralized transnational one, governed by collective and coordinated efforts of local, national, and international actors (Gómez-Mera 2017). Thus, even when officially sponsored by an international NGO, contemporary action against trafficking occurs through the activities of local, national and international networks, linked together through common purpose and strategy, rather than through single entities working in isolation (Wong 2011). Moreover, as is characteristic of the contemporary global political economy, much of the world’s current financial investment in counter-trafficking flows from organizations and institutions in North America and Europe (see ▶ Chap. 78, “Return on Investment: Spending on Combatting Human Trafficking”). Because of this, the global activity discussed in this chapter is predominantly hosted in regions of the global north but recognizes that NGOs from all regions of the world contribute to these global processes. For an extensive list of domestic and international counter-trafficking NGOs, databases such as The Global Modern Slavery Directory, Freedom Collaborative, and End Slavery Now provide profiles of counter-trafficking organizations working in countries all over the world. (See “Recommended Resources.”)

NGOs and IGOs working to end human trafficking are engaged in a number of activities, including (but not limited to) lobbying for improved policy, offering training to government officials, assisting law enforcement with intervention, providing training to other NGOs, conducting research, developing accountability schemes for the private sector, distributing information to the public, and providing direct services to trafficked persons and affected communities (also see Foot et al. 2015). Such activities are often categorized by governments and IGOs into “four Ps” of counter-trafficking: prevention, prosecution, protection and partnership (see ▶ Chaps. 42, “The Investigation and Prosecution of Traffickers: Challenges and Opportunities” and ▶ 74, “EU Anti-trafficking Coordinator: Trajectory of a Unique Mandate”). Because human trafficking relates to a variety of adjacent social issues including migration, child exploitation, violence against women, economic development, food security, public health, and human rights (among others), the scope and focus of anti-trafficking activities vary and are distributed across multiple arenas of international cooperation. Many, if not most, counter-trafficking NGOs tend to focus their efforts on sex trafficking and/or on serving women and children, but the number of organizations addressing labor exploitation and forced labor appears to be increasing (see Foot et al. 2015; Limoncelli 2016).

The chapter begins by describing the work of international policy and advocacy organizations, including the United Nations and Council of Europe. It then turns to describing the activities of NGO networks and coalitions coordinating efforts across borders, international organizations supporting or providing direct services to
vulnerable communities, and, finally, NGOs and religious organizations engaged in awareness and social movement building among workers, trafficked persons, survivors, and the global public more broadly.

**Policy and Advocacy Organizations**

Policy work carried out by UN agencies and policy-oriented NGOs aims to bring trafficking-related issues to the attention of policymakers and governments, to set standards, monitor policy compliance, collect and distribute policy-related data, and advocate for policy improvements on behalf of trafficked persons and other affected populations. Though many organizations doing this type of advocacy work also run campaigns to raise awareness about trafficking among the general public, the majority of activities described in this section cater to governments and policymakers directly. The section begins with an outline of efforts being carried out by IGOs such as the UN and then turns to policy-oriented work done by NGOs and public-private partnerships.

**United Nations and Intergovernmental Organization Initiatives**

A chapter on international activities of trafficking organizations would not be complete without acknowledging the numerous activities of UN and IGO entities to implement trafficking policy and build the capacity of governments and NGOs. UN efforts to address trafficking and slavery date back to the organization’s beginnings in 1945, but this work was limited in scope until the early 1990s. After the UN Trafficking Protocol was adopted in 2000, UN agencies followed suit by intensifying their counter-trafficking efforts in ways relevant to their specific agency’s mandates (Bertone 2004; Gallagher 2010). Today, this includes a variety of counter-trafficking initiatives and programs carried out by the UN Children’s Fund (UNICEF), International Labor Organization (ILO), International Organization for Migration (IOM), World Health Organization (WHO), Office of the High Commissioner for Human Rights (OHCHR), Office of the UN High Commissioner for Refugees (UNHCR), UN Development Program (UNDP), and UN WOMEN, among others (also see Gómez-Mera 2017).

The UN Office on Drugs and Crime (UNODC) is the UN entity officially tasked with assisting signatories of the UN Trafficking Protocol with implementation of their treaty commitments. This includes working directly with countries to help draft domestic anti-trafficking laws, strengthen criminal justice responses, and enhance governments’ capacity to arrest and prosecute traffickers within and across national borders. In addition to working with individual governments, UNODC publishes resources and toolkits for implementing counter-trafficking measures, hosts a database of trafficking case law, provides grants to domestic NGOs providing legal and other support to trafficking victims, and publishes a biennial report assessing
trafficking patterns and country-specific legal responses called the Global Report on Trafficking in Persons.

Whereas UNODC is primarily focused on strengthening criminal justice components of counter-trafficking policy, agencies such as UNICEF, ILO, IOM, and UN WOMEN concentrate their efforts on protecting particular populations (children, workers, migrants, and women, respectively), and UN entities such as WHO, OHCHR, and UNDP work to strengthen policy approaches to trafficking beyond the criminal justice framework, emphasizing those related to health, human rights, and economic development. Though organizations such as these do not address trafficking as their primary mandate and their counter-trafficking programming often varies by country or region, each is active in strengthening policy, research, and support for trafficked persons and populations known to be particularly vulnerable. UNICEF, for example, has multiple initiatives to end child trafficking by supporting families so their children can attend school, lobbying for countries to strengthen child protection systems, and training professionals, teachers, social workers, and others to recognize signs of child exploitation. The OHCHR, mandated with monitoring human rights, published recommendations for enhancing the human rights of trafficked persons in 2002 and subsequently appointed Special Rapporteurs on trafficking in 2004 and on slavery in 2007.

ILO oversees numerous multilateral conventions on fair labor practices (e.g., Forced Labor Conventions Nos. 29 and 105, Convention No. 182 on Worst Forms of Child Labor) and partners with individual governments to regulate industries known for labor exploitation such as fishing, manufacturing, and domestic work. In addition, it sets global standards on eliminating forced and child labor, makes policy and programmatic recommendations to promote decent employment and worker’s rights, and manages an online knowledge portal of labor laws, standards, policies, and an international database on labor statistics known as ILOSTAT. In 2016, the ILO partnered with the Ford Foundation to initiate Alliance 8.7, an alliance of governments, NGOs, businesses and academic institutions to collectively pursue Target 8.7 of the UN’s 2030 Agenda for Sustainable Development to eradicate forced labor. IOM, which is based in Geneva but has field offices in over 100 countries, engages in similar policy activities but with a primary concentration on migration. IOM’s work against trafficking includes initiatives to assist countries with identifying migrants who may have been trafficked, managing open source data on trafficked persons, and directing public campaigns on safe migration. In 2017, ILO, in collaboration with the Walk Free Foundation and IOM, released a report called Global Estimates of Modern Slavery reporting new estimates for the number of people in modern slavery to be 40 million (ILO 2017).

In addition to the work of individual agencies, there are a number of cross-agency UN initiatives intended to build cooperation across UN bodies and other IGOs. In 2007, for example, the UN General Assembly mandated its agencies to enhance coordination against trafficking through the creation of the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), a policy forum for exchanging information and good practices among over 20 international agencies including
Interpol, the UN Education, Scientific and Cultural Organization (UNESCO), and UN Population Fund (UNFPA) among others described above. Aimed at collaboration beyond IGOs and governments, the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) was launched in 2007 by UNODC, ILO, IOM, UNICEF, OHCHR, and the Organization for Security and Cooperation in Europe (OSCE), to increase knowledge, provide technical assistance, and foster partnerships among governments, business, academia, and civil society.

At the regional level, the United Nations Action for Cooperation against Trafficking in Persons (UN-ACT, previously known as UNIAP) is managed by UNDP to coordinate policy, research, training, and services for trafficked persons across the Greater Mekong Subregion of Southeast Asia (see Chap. 52, “Regional Responses to Human Trafficking in Southeast Asia and Australasia”). Similarly, Global Action to Prevent and Address Trafficking Persons and Smuggling of Migrants (GLO.ACT) is a four-year initiative by UNODC and the European Union (EU), in partnership with IOM and UNICEF, to prevent trafficking in 13 countries of Africa, Asia, Europe, and Latin America as part of a broader strategy to enhance these countries’ capacity for implementing 2030 Sustainable Development Goals.

IGO efforts against trafficking are, of course, not limited to the UN. The Council of Europe has a series of initiatives against human trafficking and adopted its own Convention on Action against Trafficking in Human Beings in 2005. The Convention has been adopted by 47 countries to date and is monitored by a group of experts (GRETA) that evaluates policy implementation, publishes country reports, organizes hearings, and cooperates with legal practitioners, courts, NGOs, and civil society to improve victim protection. The European Union (EU) adopted their Anti-trafficking Directive in 2011, employs an appointed Anti-trafficking Coordinator responsible for improving counter-trafficking coordination among EU members, and supports anti-trafficking work through a variety of grants to EU and non-EU organizations. Other IGO efforts include agreements, standards, and initiatives by the OSCE, World Bank, Organization of American States (OAS), and Association of Southeast Asian Nations (ASEAN) (for more see Gómez-Mera 2017).

**Policy and Advocacy Efforts by Nongovernment Organizations**

Independent from the UN and other IGOs, counter-trafficking NGOs are do transnational and international advocacy work across a variety of policy arenas including migration, forced labor, sexual exploitation, child protection, and women’s rights. Though some of these organizations have a long history advocating against trafficking, others incorporated counter-trafficking initiatives in recent years or were recently founded with counter-trafficking as a primary objective. Through their policy and advocacy efforts these organizations aim to influence the policies of governments, international institutions, and the private sector through lobbying, research, policy analysis, and public campaigning.
Perhaps one of the oldest NGOs doing policy work against forced labor and trafficking is Anti-Slavery International, a British organization founded by abolitionists during the early 1800s to eradicate global slavery. In 1840, the organization convened the World Anti-Slavery Convention, which is often referred to as the first ever international convention on slavery and credited for being a catalyst of the women’s suffrage movement in the United States (Sklar 1990; Wong 2011). In the years that followed, Anti-Slavery successfully campaigned against King Leopold II’s use of slaves in the Congo, against indigenous slave labor in the Amazon, and lobbied the League of Nations and UN for what eventually became the 1926 and 1956 Slavery Conventions. Today, Anti-Slavery International lobbies for the elimination of forced labor, debt bondage, trafficking, child labor, forced marriage, the exploitation of migrant workers, and greater transparency in global supply chains through consultative status with agencies like ILO, Council of Europe, and the UN. They also partner with local organizations in Africa, Asia, and the UK to provide legal and social services for individuals leaving slavery. Free the Slaves, founded in 2000, does similar lobbying work against slave labor in the United States but with a greater concentration on building public awareness that slavery still exists and supporting grassroots organizations in the Caribbean, Africa, and South Asia with tools for prevention and community development.

ECPAT International, initially founded in 1990 as a campaign to end child exploitation in Asia, does global advocacy work with a focus on child rights and the sexual exploitation of children. Through an early partnership with UNICEF, ECPAT organized the First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm, Sweden, in 1996. Here, over 120 governments made commitments against child sexual exploitation, which was a notable accomplishment considering similar agreements such as the Optional Protocol to the UN Convention on the Rights of the Child on Commercial Sexual Exploitation of Children, the UN Trafficking Protocol, and other multilateral instruments on this topic had not yet come to fruition. Based in Thailand, ECPAT now has over 100 organization members and works in over 90 countries. Their activities include creating toolkits on preventing child exploitation, lobbying for national policies that better align with international child rights conventions, advocating for child participation in creating policies related to their own well-being, and establishing standards for travel and tourism industries to prevent child sex tourism. Large NGOs doing international advocacy for child protection against exploitation across multiple countries also include Terre des Hommes, Save the Children, and World Vision.

NGOs engaged in advocacy also include those providing law enforcement training and assisting with victim rescue and criminal prosecution. International Justice Mission (IJM), founded in 1997 and headquartered in Washington, DC, for example, assists governments and local authorities with investigating and arresting traffickers, identifying corruption and systematic gaps in criminal justice systems, and establishing mechanisms for victim services after trafficked persons are removed from exploitation. With field offices in Central and South America, Africa, and Asia, the organization was initially focused on rescuing children and young women from sexual exploitation and violence but has expanded their work to also include human
rights abuses such as land theft and forced labor. Other organizations using similar criminal justice approaches include The Human Trafficking Institute, The Lift Foundation (formerly Nvader), and Thorn, which work with private companies such as Microsoft to investigate sex trafficking using advanced technology.

**Public-Private Initiatives**

In addition to government advocacy, a number of public-private initiatives between IGOs, NGOs, and the private sector aim to leverage private industry resources and expertise for counter-trafficking efforts and to hold companies accountable for eliminating forced labor and exploitation from global supply chains (see ▶ Chap. 40, “Multisector Collaboration Against Human Trafficking”).

NGO efforts to leverage private resources include broad efforts like the ID2020 Alliance, an initiative between the UN, governments, philanthropic organizations, and private companies like Accenture and Microsoft to establish digital identities for refugees, trafficked and stateless persons. Drawing from the technological expertise of the alliance’s corporate partners, the aim of ID2020 is to implement Target 16.9 of the Sustainable Development Goals (“provide legal identity for all”) by creating an international infrastructure for digital identities. The program asserts that once provided with secure digital identities, migrants and other populations will no longer be “invisible” from the international system and will have access to social, legal, and financial services without paper documents (see DoCarmo 2018).

Other initiatives include The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (“The Code”), a collaborative between ECPAT and a number of travel companies including Hilton, Marriott, Delta Airlines, and Sabre Holdings to educate the travel and tourism industry about recognizing and reporting trafficking, and the Global Business Coalition Against Human Trafficking, including members such as Amazon, Coca-Cola, Google, and Microsoft. This coalition aims to assist members navigate business solutions for preventing trafficking, align themselves with UN Guiding Principles on Business and Human Rights, and assist with skill building programs for trafficking survivors. Though public-private partnerships such as these are a positive first step toward greater accountability within the corporate sector, significant work still needs to be done to make supply chains more transparent and subject to public scrutiny.

Though much research and advocacy attention has historically been given to alleviating factors of vulnerability in communities and places where exploitation occurs, projects such as The Global Slavery Index aim to hold those in higher-income countries responsible for consuming products generated from exploitative labor (see ▶ Chap. 48, “Human Trafficking in Supply Chains and the Way Forward”). Initiatives addressing forced labor and exploitation in global supply chains also include Verité, which partners with multinational brands and suppliers to improve working conditions through analysis of supply chains, and Made in A Free World’s supply chain transparency tool called FDRM, which is
Networks, Training, and Services

Within a few short years of the UN Trafficking Protocol, governments, aid agencies, private foundations, and NGOs developed a number of funding initiatives and programs for victim assistance. Trafficked persons often suffer from a myriad of issues related to their mental, physical, and sexual health and a number of legal and economic challenges. Therefore, comprehensive victim services include a broad variety of services and interventions from the moment individuals exit exploitation, through recovery and resettlement into a home community (see Chap. 41, “Health and Social Service-Based Human Trafficking Response Models”). At the very least, experts recommend trafficked persons be provided with shelter, medical, psychological and legal support, and basic needs such as food and clothing (Aronowitz 2009; Brunovskis and Surtees 2012) (see Chaps. 36, “Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation” and 47, “Psychological Care and Support for the Survivors of Trafficking”). Direct services for survivors also generally include some form of risk assessment to determine whether it’s safe for them to return home, as well as education, job training, economic relief, or temporary employment to help them avoid further exploitation.

As might be expected, many victim service agencies and organizations are local rather than global. However, because the demand for victim services has grown so quickly in recent decades and trafficking cases often require global coordination, many service agencies participate in regional and global networks for information sharing, referrals, resources, and training (Foot 2016). This section begins with a description of anti-trafficking networks and coalitions, followed by an overview of NGOs providing victim services across multiple regions.

Networks and Coalitions

Governments, IGOs, and NGOs generally agree that the complexity of human trafficking requires coordination and collaboration within and across organizations. As the fourth “P” for addressing global human trafficking, partnership includes coordination and collaboration among stakeholders, is a major component of advocacy and service provision, and serves to facilitate information sharing and training. Naturally, some networks and coalitions are more active and coordinated than others,
and there is diversity among networks in terms of priorities, focus, and overall strategy. Whereas some counter-trafficking networks and coalitions are established as independent organizations, others operate through membership or joint programs across multiple organizations. Regardless of structure, most engage in creating resources, coordinating information sharing, organizing referrals, and providing training to build the capacity of participating organizations.

The Coalition Against Trafficking in Women (CATW) based in the United States, for example, was founded in 1988 as an international network of organizations working against the trafficking of women into prostitution. The Global Alliance Against Traffic in Women (GAATW), based in Thailand and founded in 1994, does similar coalition building among counter-trafficking and human rights NGOs, but from an alternative point of view about how trafficking should be addressed. Focused primarily on advocacy, organizers and members of both networks were actively engaged in lobbying during drafting of the UN Trafficking Protocol (see Gallagher 2010) and continue to advocate for improved counter-trafficking policies by consulting at UN meetings, publishing position papers, initiating public campaigns, and facilitating communication among members. Other large networks addressing trafficking through advocacy include the Child Rights International Network (CRIN) and European NGO Platform against Trafficking, Exploitation and Slavery (ENPATES).

Besides coalitions and networks operating within individual countries (e.g., Freedom Network USA, UK Anti-Trafficking Monitoring Group), networks engaged in capacity building, coalition building, and coordination efforts across multiple countries include La Strada International, Chab Dai International, Survivor Alliance, Faith Alliance Against Slavery and Trafficking (FAAST), and European Freedom Network. Though often smaller in size than the above advocacy networks, these organizations have extensive expertise working one-on-one with organizations to monitor and evaluate their efforts, facilitate direct exchange of information, and recognize gaps in services in ways that individual organizations often do not have the resources or capacity to do on their own. La Strada, for example, helps coordinate the work of counter-trafficking organizations across Europe, facilitates joint campaigns, and organizes regular meetings for members to meet, share their work, and plan for joint actions and campaigns. Chab Dai works with coalition member organizations in Cambodia to assess their programs and track progress toward coalition goals and standards related to client protection, staff care, and organizational development. As Chab Dai has expanded coalition-building work into Africa, Latin America, and other parts of Asia, their member assessment model has been adopted and contextualized by local networks and coalitions according to local needs while drawing from Chab Dai’s experience and expertise. The Survivor Alliance, based in the UK, aims to build coordination and collaboration among trafficking survivors who are engaged in counter-trafficking efforts, providing them with an international forum to share ideas and facilitate direct contact with leaders in the counter-trafficking field.

Taking a different approach to coalition building, Liberty Asia is based out of Hong Kong and works with other NGOs, corporations, and financial institutions
across Asia to facilitate information sharing, expertise, and data management through high-level technology platforms. Their projects include an online case management system designed for partner NGOs to store, share, and analyze case records, a project allowing frontline NGOs to better access advanced telecommunications systems for cross-border collaborations, and Freedom Collaborative, an online forum and directory for counter-trafficking programs, initially launched in collaboration with Chab Dai International. Though not a formal coalition, The Polaris Project draws on their expertise operating the United States National Human Trafficking Hotline to coordinate efforts between service providers, law enforcement and government agencies around the use of hotlines, working with other countries and regions to improve hotline data collection and facilitate data exchange. Polaris also operates an online directory of global counter-trafficking organizations called The Global Modern Slavery Directory.

**Victim Services**

Direct services for victims and survivors of trafficking vary by organization, country, and region. Whereas in some countries, resources and victim services are available through government-funded programs, this often does not exist in other regions where IGOs, NGOs, charities, and/or religious groups are providing most of these services. Ideally, victim services are provided by local agencies and organizations with a working knowledge of local laws, procedures, and resources, but this is not always possible. Trafficked persons often have to work with multiple service providers, organizations, and offices across multiple locations or countries depending on circumstances of their case or the availability of services in their country of residence.

Many if not most NGOs providing victim services work locally, though some organizations that were initiated in one country have now expanded into additional ones. One example is Hagar International, a Swiss organization that initially established violence recovery programs for women and children in Cambodia in 1994. The organization has now extended their services to Afghanistan, Vietnam, and Singapore. Programs for trafficked persons are also provided by large international NGOs as part of more general international relief and development efforts. World Vision, World Relief, International Rescue Committee, The Asia Foundation, and Winrock International, for example, deliver services to trafficked persons through a variety of development projects related to child protection, health, migration, economic development, and gender justice. Several of the primarily policy and advocacy focused NGOs described above also provide technical support and training for communities and agencies working in under-resourced regions. Anti-Slavery International, for example, works in countries across Africa, India, and Nepal alongside grassroots organizations to provide shelter, education, legal assistance, and vocational training to children and communities vulnerable to exploitation.
Awareness and Movement-Building Organizations

According to a recent study, most counter-trafficking organizations claim to do some type of awareness raising (Foot et al. 2015). Awareness-raising and movement-building campaigns include everything from radio and television ads to education programs at schools, posters at airports, rallies, runs, and programs aimed at informing communities about their rights. Raising awareness, public education, disseminating information, and campaigning are common activities among domestic and international counter-trafficking organizations alike.

For some organizations, awareness raising and education are primary activities, and for others they serve as secondary to policy, services, or research. The actual objectives of awareness-raising efforts tend to vary. Whereas some organizations aim their campaigns at prevention, targeting groups known to be at risk of trafficking so communities can protect themselves from exploitation, others facilitate awareness raising as a way to shape public opinion, call people to action, or raise funds for their counter-trafficking programs (see Chap. 43, “Combating Trafficking in Persons Through Public Awareness and Legal Education of Duty Bearers in India”). This section begins with an overview of UN and NGO awareness and prevention campaigns, followed by a description of the movement-building efforts of various civic and religious groups.

Alongside UN campaigns such as UN.GIFT and UNODC’s Blue Heart Campaign, some of the NGOs facilitating movement building, raising global awareness, and educating the public include those described in previous sections for policy and advocacy activities. A primary objective of Free the Slaves, for example, is to raise public awareness that slavery “still exists.” Similarly, ECPAT manages several media campaigns against child sexual exploitation, and IJM actively engages churches and college campuses with special events, education resources, and fundraising campaigns. NGOs focused specifically on awareness and movement building also include Stop the Traffik based in the UK, and The A21 Campaign (A21) out of Australia.

Initiated as a 2-year campaign to coincide with the 200th anniversary of Britain’s abolition of the slave trade in 2007, Stop the Traffik aims to equip communities with information to prevent trafficking and inform consumers about how trafficking impacts global supply chains. This includes what the organization calls an “intelligence-led” prevention strategy, providing people with tools to recognize trafficking and report what they see. A21, founded in Australia in 2008, encourages people to stand up against trafficking “in their own way,” through campaigns such as Walk for Freedom (which also serves as a fundraising event) and Can You See Me? a public campaign aimed at distributing trafficking hotline numbers.

Recognizing that in some communities religious institutions are among the most influential in society, UNICEF released an Interfaith Toolkit to End Human Trafficking in 2017. Indeed, an abundance of churches, religious groups, and civic organizations have initiated campaigns and events to raise awareness about trafficking within their own communities and networks. Initiated by Walk Free Foundation, The Global Freedom Network unites faith leaders against forced labor and slavery from around the world, and The Coalition of Catholic Organizations Against Human
Trafficking is a network of over 30 international Catholic agencies engaged in counter-trafficking that provides preventative and informative education to parishioners of the global Catholic Church. Other examples include campaign efforts by The Salvation Army and T’ruah Rabbinic Call for Human Rights.

**Moving into the Future**

Compared to previous decades, counter-trafficking efforts are growing and may well be improving. Nonetheless, significant work still remains to coordinate efforts, assist trafficked persons, improve policy, and hold perpetrators and consumers accountable for trafficking and exploitation at all levels of society. As counter-trafficking programs, organizations, and public-private partnerships grow and expand, assessments should be made as to how efforts can be improved and the extent to which existing programs actually curb trafficking and/or improve the well-being of affected communities. Some studies suggest that whereas growing counter-trafficking efforts have increased general awareness of the problem and have perhaps improved the lives of some victims, they have ignored, further complicated, or worsened the situation of others (Brennan 2014; Esposito et al. 2016; Gallagher and Pearson 2009; Musto 2016).

Currently, the largest portions of counter-trafficking funding go to large INGOs, UN agencies, and large corporations based in the United States or Europe. However, it is essential that policymakers, funders, and civil society equally recognize and coordinate with the local, commonly under-resourced work of smaller-scale organizations and networks on which larger organizations depend. Rooted in the community, local efforts often have a deep understanding of the existing gaps in local and global policy and may offer improved solutions to trafficking that remain unrecognized by larger organizations (see Winterdyk 2018). Meanwhile, regional organizations and networks are equipped to recognize trafficking patterns and organize opportunities for capacity building and can assist with local or regional coordination. By further coordinating macro- and micro-level efforts, and assessing the impact of existing activities, counter-trafficking policy can be further improved and communities better served.

**Summary**

The number of counter-trafficking programs and organizations has grown significantly since adoption of the UN Trafficking Protocol in 2000. IGOs such as the UN, EU, and Council of Europe, in addition to a wide variety of NGOs, address human trafficking through a number of activities, including advocating for improved policy, partnering with private industries to keep forced labor out of global supply chains, coordinating efforts within and across borders, providing victim services, and raising awareness within vulnerable communities and among the general public. Because human trafficking relates to a variety of social issues including migration, child...
exploitation, human rights, and economic development, the scope and focus of these NGO activities vary, with a wide range of actors and organizations. Much of the world’s financial investment in counter-trafficking currently flows from organizations in North America and Europe, so the global activity outlined in this chapter is predominantly hosted in these regions, but with the recognition that NGOs from all regions of the world contribute to these global processes. By better coordinating macro- and micro-level programs, supporting local organizations, and assessing the impact of existing efforts, counter-trafficking policy and services can be further improved.

Cross-References

- Combating Trafficking in Persons Through Public Awareness and Legal Education of Duty Bearers in India
- Creating Sanctuary: Trauma-Informed Change for Survivors of Sex Trafficking and Commercial Sexual Exploitation
- EU Anti-trafficking Coordinator: Trajectory of a Unique Mandate
- Health and Social Service-Based Human Trafficking Response Models
- Human Trafficking in Supply Chains and the Way Forward
- Human Trafficking: An International Response
- Multisector Collaboration Against Human Trafficking
- Psychological Care and Support for the Survivors of Trafficking
- Regional Responses to Human Trafficking in Southeast Asia and Australasia
- Return on Investment: Spending on Combatting Human Trafficking
- The Investigation and Prosecution of Traffickers: Challenges and Opportunities
- Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking

References


**Recommended**

**Counter-Trafficking Directories**

End Slavery Now. https://www.endslaverynow.org

Freedom Collaborative. https://www.freedomcollaborative.org


**Organizations and Resources**

Alliance 8.7. https://www.alliance87.org
UN Global Initiative to Fight Human Trafficking (UN.GIFT). http://www.ungift.org
Soroptimist International’s Work in the Prevention of Modern-Day Slavery: Wales as a Good Practice Example of Partnership Working

Joan Williams

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Abstract

Soroptimist International (SI) is a worldwide nongovernmental women’s organization, which was founded in 1921 in Oakland, California, with the aims of bringing about change to the lives of women and girls worldwide. It is a global network of 4 federations with a volunteer membership of over 75,000. Soroptimism has as its mission transforming lives through education, empowerment, and creating opportunities. Many of its projects over the last decade have aimed to reduce and combat human trafficking and modern slavery, initially for the purpose of sexual exploitation of women, but in recent years to combat other forms of trafficking, including in supply chains. This article explains and provides examples of how worldwide member clubs of Soroptimist International continue to support the United Nations’ “4P” paradigm through the participation in stakeholder partnerships, consistent lobbying of their governments to gain appropriate legislative measures, and raising awareness of the prevalence of human trafficking and modern slavery and by working with other agencies and nongovernmental organizations to fulfil a commitment to aid the survivors of
trafficking in order to banish slavery from our world. There is more that the four federations can achieve, especially where the Soroptimist International takes a lead in directing all four federations.

**Keywords**

Human trafficking · Modern slavery · Sexual exploitation of women · Soroptimism · Partnership working

**Background**

The “4P” paradigm of prevention, protection, prosecution, and partnership continues to serve as the fundamental framework used around the world to combat human trafficking (now added to with two further “Ps” not covered in this contribution). This is reflected in practices that came out of the Protocol supplementing the United Nations Convention against Transnational Organized Crime (The Palermo Protocol 2000). In 2000, the United Nations (UN) was already clear as to what actions were required to encourage cooperation among state parties stating that “law enforcement, immigration or other relevant authorities of States Parties shall cooperate with one another by exchanging information achieved through training of law enforcement and others.” The Palermo Protocol also holds countries accountable to end human trafficking as it calls upon governments to take “legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation” to discourage demand (Palermo Protocol Article 9.5). Studies have shown that ratification of the Palermo Protocol increases the likelihood that nations will, in fact, criminalize the act of trafficking. However, there needs to be increased pressure from the international community on countries that have not yet ratified the Protocol to do so. As of 2018, 117 countries had ratified the Palermo Protocol. In 2009, former US Secretary of State Hilary Clinton brought to the fore the need for a “fourth P” referring to “partnership” and introduced the Global partnership of governments and NGOs to combat human trafficking (US State Department 2009). This chapter explains how Soroptimists work mainly within the fourth “P.” More recently, the UN committed to addressing the problems of migration, slavery, and human trafficking through the development of a Global Compact (GC) based on the New York Declaration for Refugees and Migrants (2016). It includes the principles of the Palermo Protocol with the intention to have an agreed Global Compact in 2018 and thereby fulfilling its commitment (in part at least) to the Sustainable Development Goals (SDGs) which include the goals and targets of ending human trafficking and slavery (e.g., Goals 3, 5, 8, 10).

Globally, an estimated 40 million people were victims of modern slavery in 2016, a quarter of them children, mainly through sexual exploitation and forced labor (UN 2016). The latest figures from the United Nations International Labour Organization show that 25 million people are trapped in forced labor globally, this form of exploitation now exceeding sexual exploitation (ILO 2017). Other forms of exploitation that victims of human trafficking are exploited through are domestic servitude,
forced marriages, forced criminality (e.g., begging/theft/cannabis farms), organ harvesting, and child sexual exploitation. Human trafficking for the purpose of sexual exploitation of women was what encouraged Soroptimist International to take on modern slavery (the legal term used in the UK) as one of its projects to fulfil its *raison d’être* as an organization: to improve the lives of women and girls worldwide. The next section will provide an outline of the organization.

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**The History and Structure of Soroptimist International**

Soroptimist International (SI 2017) has been in existence since 1921 and is a worldwide volunteer organization with the objective to improve the lives of women and girls. It is a network of over 75,000 members in 122 countries working at local, national, and international levels to educate, empower, and enable women and girls to achieve their full potential. The organization first became interested in working to end human trafficking/modern slavery as a result of a quadrennial project involving SI’s four federations in 1995–1999 conducted in the Chiang Rai province in Thailand. The Soroptimist International AIDS Mediation (SIAM) project addressed the high rate of HIV in the region and the number of young women who entered into the commercial sex industry. The SIAM project supported vocational training and education programs to enable women and girls to have a livelihood outside of the industry, which also removed them from the risk of contracting HIV infection. A decade later, the project continued to raise awareness of the dangers of HIV/AIDS in the commercial sex industry but also emphasized that the sex industry also exposed the women to human trafficking. Soroptimist International realized the extent of the crime of human trafficking and how it impairs human rights and poses a serious challenge to humanity, especially women and children. Since 2007, hundreds of local Soroptimist projects highlight human trafficking and stand proof of the organizational pledge to create a better world for women and young girls all over the globe. Today, Soroptimist International projects on modern slavery/human trafficking are based on the combination of the three As – awareness, action, and advocacy. A better world, according to the members, means a world without violence against women, of their equal opportunities for education and economic empowerment, dignity, and hope for all humanity.

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**The Work of the Four Soroptimist International Federations on Modern Slavery/Human Trafficking**

Each of these four federation regions has progressed work to eliminate modern slavery/human trafficking in different fora, at different times, by different means. Some of the information regarding their activities has been provided by personal communication with federation presidents and federation staff.
Soroptimist International of the Americas

In the SI of the Americas, a White Paper on the New Face of Slavery was published in 2007 and was revised in 2014 (SI Americas 2007, 2014), which provided information to clubs across Americas about awareness raising and giving a comprehensive account of the sex trafficking of women and girls worldwide with some recommendations of what needs to be done to end this widespread problem. It concludes that in order to end the sex trafficking of women and girls, victims must be provided with access to education including opportunities to lift them out of poverty. Voicing some of the calls for the Nordic model (2017), it demanded that purchased sexual acts must be addressed through public education and laws that are crafted to prohibit the purchasing of sexual services and to criminalize the traffickers. The White Paper also called for governments to recognize the need to support trafficked victims and to establish proper protocols to do so.

Soroptimists in the Americas have also worked to end sex trafficking of women and girls by club members distributing “sex slavery awareness cards” (SI Whitefish 2017) in highly visible locations including in police stations, women’s centers, hospitals, and legal aid societies. The Soroptimists “STOP Trafficking Program” has evolved to include a multidimensional approach to the raising of awareness, assisting victims, and advocating for better laws and enforcement (SI Stop the Trafficking Program 2017). These major programs assist women to receive skills and resource training, and each year, more than 1,000 women receive almost $1.5 million dollars through this program. Each year, the “Live Your Dream Awards” (SI 2017) are presented to survivors of trafficking and prostitution. These awards address human trafficking from two directions: by preventing vulnerable women and girls from falling victim to trafficking through access to education, increasing their economic potential, and by providing victims of human trafficking with the resources to create a better future. A 2010 Federation Award finalist from the Philippines experienced the “typical” international trafficking scenario. She was tricked by a neighbor, who promised her a more lucrative job abroad (Victim of Sex Trafficking 2018). She became the victim of human trafficking for sexual exploitation, but did, in time, escape her traffickers but was left homeless. Contact was eventually made with her mother, who gained her release. She reclaimed her life with the help of the Soroptimist award and worked to gain a Bachelor of Science degree in business administration at Baliwag University in Bulacan, Philippines, majoring in computer science.

The SI Americas realized early on that “rescue” is only the beginning of a lifelong road of recovery from the trauma to which victims have been subjected. Research for this chapter has only been able to discover one example of one club reporting discussions with victims: a member of SI Marin County Club, in the San Francisco Bay Area, catalogued her discussions with victims who had been rescued from being trafficked (Personal communication from Federation President and Programme Director). The road to recovery is long, and the best support that can be offered should also be long-term, trauma-informed care along with access to resources for housing, treatment, and job training, which, in turn, may help other survivors. It is
evident that the next step forward for SI worldwide must not only focus on rescue but emphasize long-term restoration for survivors as well. In recent years SI of the Americas has made great strides in campaigning against sex trafficking and all forms of violence against women and girls. The member organizations of the federation are now educating and raising awareness in their communities of the crime of human trafficking of women, children, and men in all its different forms. They provide resources, both financial and human, to assist governments and organizations to provide services to victims of human trafficking. They also advocate for strong state legislation to punish the perpetrators, rather than the victims of modern slavery/human trafficking. Implementation of any legislation is still very slow and takes time.

**Soroptimist International Europe**

Since 2009, much work has been achieved by Romanian Soroptimists, both at club and regional levels, spurred on by the fact that Romania has been a country of origin and transit of human trafficking into the European Union for a long time. The Romanian clubs enjoyed the support of the SI Union of Denmark, and also the cooperation of other Soroptimist clubs, such as the local clubs in Hässleholm in Sweden and Zwolle in the Netherlands. Romanian anti-trafficking projects address several issues – from trying to educate society to providing support for the reintegration of trafficked victim and nowadays to advocacy at a local level by creating partnerships with local authorities, e.g., town council and the police, and through awareness-raising campaigns in schools. They have distributed leaflets with advice on how the most vulnerable women and girls in society can protect themselves from becoming victims of human trafficking and how to get help if needed (Savu 2014).

In 2017, the SI Club Aalen in Germany, in cooperation with a retired police detective superintendent and two SI Clubs in Romania, raised awareness of the dangers of trafficking among school children in Romania. A film team from the German television broadcaster, ZDF, accompanied the Soroptimists on their awareness campaign in Romania developing a shocking report on prostitution leading to human trafficking – a film that was screened in June 2017 (ZDF 2017). In 2018, Club Aalen intends to launch a national lobbying initiative to change the prostitution laws in Germany.

Since 2016, the Norwegian SI Clubs show theater plays on human trafficking to inform, engage, and create debate about human trafficking, in particular among young people, so they will be aware of this complex and devastating issue that affects people just like them (Personal Communication from Federation Programme Director).

The EU Anti-Trafficking Day on 18 October 2017 was an occasion to reinvigorate the SI Europe-wide commitment for eradicating trafficking of human beings. SI Europe called for national governments to improve the identification of victims and provide assistance, both financial and personnel. Failure to ensure better investigation and prosecution of human trafficking crimes is still a real problem (Trottman Probst 2017).
Soroptimist International South West Pacific

As of 2018, Soroptimist International South West Pacific has clubs in 13 countries: Australia, Cambodia, Fiji, Samoa, Singapore, Hong Kong, Indonesia, Malaysia, Mongolia, New Zealand, Papua New Guinea, and Thailand. SI SWP has concentrated its projects on combating violence against women, strongly supporting the White Ribbon Campaign.

In Australia, prior to the passing in 2013 of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act, the offense of servitude was narrow and encompassed only sexual servitude. The new legislation covers all forms of human trafficking ensuring improvement of the Australian legal framework. Soroptimists in Australia are lobbying their federal government, and advocacy efforts are increasing to have the government produce a stronger Modern Slavery Bill with increased support for victims. That Bill passed through parliament, introducing an obligation on around 3,000 companies to report on slavery in their supply chain. However, it does not include sanctions against companies for non-compliance (see https://www.freedomunited.org/news/australia-introduces-modern-slavery-bill-but-no-penalties-for-failing/ [Accessed 4.9.2018]). Mentioned earlier, the SIAM project in Thailand continues to promote self-help in the villages in the Chiang Rai region (see above).

Soroptimists in many countries in the youngest SI Federation of the South West Pacific have yet to make public their projects in the fight against modern slavery. However, the awareness that human trafficking takes place in Thailand and Cambodia is high, as highlighted by ECPAT a nongovernmental organization with a global network of civil society organizations exclusively dedicated to ending the commercial sexual exploitation of children.

In November 2017, SI Region of Malaysia (SIROM) launched an awareness campaign entitled “Walk the Talk – Stop Trafficking Women and Girls.” The event was held in partnership with the Asia Pacific University of Innovation and Technology (APU) in Malaysia. The public forum on the theme of human trafficking proved to be highly informative and engaging. Speakers from various different backgrounds included the Royal Malaysian Police; a human rights lawyer; an activist from Tenaganita; a local NGO supporting the rights of trafficked victims, migrants, and refugees; and a member from MAPO – the Council on Anti-Trafficking and Anti-Smuggling of Migrants under the Ministry of Home Affairs (Narayanan 2017). SIROM’s main purpose in organizing the public forum was to raise awareness about human trafficking and all its various forms. The organization also wanted to educate the public, especially university students, about the roles they can play to end this problem. As future leaders, these students would hopefully be able to advocate for positive changes in policies and laws. The SI region of Malaysia believed that it was time for them to make a stand on this issue and successfully achieved publicity by working in partnership with others in their communities.
Soroptimist International Great Britain and Ireland

SI Great Britain and Ireland (SIGBI) consists of many clubs in some of the 52 Commonwealth countries around the world, with 8,000 members in 350 clubs in 28 countries including in Great Britain, Ireland, and countries in Africa, Asia, the Caribbean, and Malta. These clubs work at a local, national, and international level to educate, empower, and enable opportunities for women and girls (SIGBI 2018). In 2013, SIGBI was given Special Consultative Status (Category 2) with Economic and Social Council (ECOSOC) at the United Nations. This status allows SIGBI to actively engage with ECOSOC and its subsidiary bodies, as well as with the United Nations Secretariat, programs, funds, and other agencies.

At the SIGBI Newcastle Gateshead Conference in 2013, a resolution proposed by members of SI Dundee and seconded by SI Crieff in Scotland was passed to raise awareness of modern-day slavery (SI 2013). In the conference report, SIGBI observed that while 2007 marked the 200th Anniversary of the 1807 Slave Trade Act, which abolished the slave trade in the British Empire, it did not abolish slavery itself. SIGBI’s resolution to designate its project for 2014–2016 requested action on the part of all clubs to combat this crime. In particular, clubs within the whole federation were urged to undertake:

- Actions to raise awareness of the scale of slavery through publicity.
- Education programs to inform the public that many of the goods we purchase were produced by enslaved workers, including small children, noting that they often were forced to work without pay, under threats of violence having been tricked by traffickers into believing that they could expect good jobs or educational opportunities.
- Lobbying members of parliament to counteract the crime through appropriate legislation. In particular, SIGBI members were urged to lobby in support of the passage of the draft Anti-Slavery Bill 2013 into statute.

The resolution enabled SIGBI clubs to implement the aims of the resolution through local and regional activities, in the main, by lobbying parliament to legislate, and by raising community awareness of the crime of slavery and trafficking. A number of SI clubs in Britain had been working to raise awareness of this crime for some time (e.g., SI Poole, since 2007, with the Purple Tear Drop campaign; SI Tenby since 2007, by lobbying members of parliament and through local awareness-raising functions; SI Stratford-upon-Avon, since 2012) and have held several events in order to raise local awareness of human trafficking issues on their doorstep; in 2009 SI Cardiff started to work on raising the profile of human trafficking by raising awareness in the community, culminating in 2012 with a symposium on human trafficking with 160 delegates in attendance. One of the initiatives from the conference was providing taxis with stickers to raise awareness. The club has also supported nongovernmental organizations that give haven to victims of human trafficking.

The Commonwealth is in a unique position to help significantly reduce modern slavery in the world, for example, experts hope to encourage the creation of laws to
stamp out forced labor in all of the 52 Commonwealth countries. In spring 2018, the Commonwealth Heads of Government Meeting (CHOGM) took place in the UK (Rose 2017). At this conference, the heads of each country decided on a mandate of issues to work on in union. The lawmakers also held a special meeting to explore how the UK’s Modern Slavery Act 2015 could be rolled out across the Commonwealth.

SIGBI is well-placed to encourage its members in the Commonwealth to lobby their governments, providing an opportunity to shape the agenda for the foreseeable future, by ensuring that the fight against modern slavery is prioritized.

The Purple Teardrop Campaign (SI Poole 2018)
The Purple Teardrop Campaign was initiated at an SI Southern England conference in 2008 where the keynote speaker was Christine Beddoe, then Director of ECPAT UK. She spoke to the audience about human trafficking and told the story of one victim, who was transported to the UK in a crate to be exploited in 2008. The Poole Soroptimists came away determined to take action, with particular focus on the trafficking of women for sexual exploitation. This culminated in the largest program action projects undertaken by the club, with the whole membership working in one of three action areas:

- Raising awareness using a poster campaign
- Working with Crimestoppers to report human trafficking activity
- Raising funds for victim support by selling teardrop pin badges

These three areas have remained at the core of the Purple Teardrop Campaign since with SI clubs throughout the UK and far beyond continuing to bring human trafficking to the forefront of their local communities using the purple tear pins to raise funds. They have gathered thousands of signatures for the Purple Teardrop Campaign’s lobbying efforts to ban the advertising of “sex for sale” in newspapers. However, many publishers still feature “sex for sale” adverts. Soroptimists continue to collect signatures to ban sex for sale, especially because the venues often function as fronts for human trafficking activities. Advertisements in newspapers are now lower, but very much increased online.

UK Programme Action Committee (UKPAC)
The UKPAC consists of Regional Program Action Officers that provide help and guidance to Soroptimist clubs in the UK in how to devise, plan, and carry out their project efforts. Representatives from all 17 UK regions serve on the Committee.

A recent project was developed in partnership with the UK Modern Slavery Training Delivery Group (UKMSTDG), which includes civil servants from across the UK; representatives of statutory bodies, NGOs, and CSOs; as well as the UKPAC Soroptimist chairperson. Following a survey undertaken in 2016 by SI Northern Ireland, Kim Ann Williamson, who currently leads the UKMSTDG, requested that UK Soroptimists join in partnership to conduct a survey throughout the UK about the
level of public knowledge about modern slavery. The survey was undertaken in October 2017 online and by face-to-face interviews in a variety of locations around the UK (e.g., supermarkets, the street, public sector offices). The survey is an example of the fourth P (partnership working), whereby it was specifically designed to inform the UK Modern Slavery Training Group’s thinking around training and awareness-raising needs in the UK. The analysis of the results was presented at a Soroptimist study day in Belfast in July 2018 and demonstrated that only around 20% of people answering the survey understood that human trafficking occurs in their area, substantiating that there is still much work to be done even at the awareness-raising level. The outcome of the survey will also assist all clubs to consider where and how to focus awareness raising and training on how to combat this crime.

Two Soroptimists from Wales attended the United Nations Fifth Informal Thematic Session for Global Compact on Migration in Vienna in September 2017 (UN 2017) on behalf of SIGBI, where they were joined by two Soroptimist International UN representatives. The 2 days were spent discussing smuggling of migrants, trafficking in persons, and contemporary forms of slavery, including appropriate methods for identification, protection of and assistance to migrants, and trafficking victims. The audience heard experts on the subject with some stakeholders such as Community Schemes Ombud Services and NGOs were invited to speak on the topic.

In 26–28 April 2016, two more Soroptimists attended a workshop held at Oñati International Institute for the Sociology of Law. The discussions of the workshop on “Child Trafficking: The Challenges for Europe” culminated in a submission by the participants to the European Commission on Child Trafficking in a bid for action grants to support transnational projects. All of these activities are examples of working to raise awareness, building capacity within civil society, and lobbying government to be inclusive of victims’ needs (see Jones and Winterdyk 2018).

Wales as a Good Practice Example for Successful Partnership in the Fight to Combat Trafficking in Human Beings

In 2007, Tenby an SI Wales South (SIWS) club initiated their effort to combat modern-day slavery and human trafficking with a much publicized film premier to raise awareness that these crimes persist in Wales even though the year 2007 represented the bi-centenary of the abolition of the Slave Trade Act [1807]. In 2008, the same club organized a competition involving students in all schools in the area. It was designed to sustain the momentum of their awareness-raising activities. High school students were requested to submit works of literacy or art on the subject of “Modern-Day Slavery” which were then displayed.

Wales was the first devolved government in the UK to appoint a Modern Slavery Coordinator (MS Coordinator) – in 2011 – and Soroptimists work closely
with him. The first, Bob Tooby, was appointed by the Welsh government. In July 2012, SI Cardiff and District Club hosted a symposium with speakers including a councilor from Cardiff, the MS Coordinator for Wales, the Director of an NGO providing a safe house for trafficked victims, the Deputy Head of the UK Human Trafficking Center, and the Director of the National Working Group for Sexually Exploited Children and Young People, all giving their experience and perspectives of how to prevent and combat human trafficking. Attendees were from a wide range of professions and backgrounds from Soroptimists, the legal profession, healthcare, and social services. At the same time, the Welsh government, led by one of its assembly members, had been working for some time on addressing modern slavery. In November 2012, BAWSO organized its own symposium on human trafficking with delegates mainly drawn from the criminal justice system (e.g., police, lawyers, victim advocates). Both events complemented each other and succeeded in at least two respects. First, attendance was extensive and covered a large soave of key individuals who could effect positive change because they came in contact with potential victims of trafficking, thereby raising the possibility of identification. Secondly, it provided the space for the momentum for accelerated action on training and awareness raising in key areas across Wales.

The regions of SI Wales South and SI Cheshire, North Wales, and the Wirral took on modern slavery and human trafficking as their prioritized project for 2014–2016 following the resolution passed at the SIGBI Gateshead Conference. SI Wales South formed a group of interested members to establish an anti-slavery subgroup to coordinate the project at a regional level.

Importantly, an action plan was drawn up following the aims of the proposed SIGBI project to lobby, liaise, and work in partnership with other agencies involved in combating modern slavery in Wales.

The three objectives of the SI Wales South Modern-Day Slavery–Human Trafficking Project Action Plan were to:

1. Educate the public to be aware of human trafficking issues, in particular, the recent crimes of grooming and Internet crimes affecting children within their own communities, and to report such activities to the authorities.
2. Support those agencies that provide secure accommodation, support services, medical care, and legal advice to victims of trafficking in Wales.
3. Work toward the elimination of slavery and human trafficking at local, national, and international levels.

These objectives were to be achieved by working in partnership with national governments (Westminster and the Welsh Assembly), the Wales Anti-Human Trafficking Group (Four Multi-Agency Fora based on Police Force Areas within South Wales and one North Wales Police Force), voluntary organizations (e.g., Barnardo’s Cymru, BAWSO Wales, Salvation Army within Wales, Stop the
Trafﬁk, and The Purple Tear Drop Campaign), and statutory authorities such as the police; health, education, and social services; the port authorities; and local councils.

For some years, all Welsh SI clubs had supported different voluntary organizations such as BAWSO by providing the organizations with dried food, toiletries, bedding, and clothing so that they were well prepared when survivors of human trafficking and slavery were transferred to the safe houses. (BAWSO is an organisation that provides safe havens for survivors of trafficking and abuse in the UK. Available at: http://www.bawso.org.uk/ [Accessed on various dates in 2017].)

Beginning in 2013, elected representatives from the SI Welsh Clubs were invited onto the four Welsh Police Fora, now transformed to six regional anti-slavery groups, which report to the Wales Anti-Slavery Operational Delivery Group. The six regional anti-slavery groups facilitate engagement, partnership creation, appropriate information sharing, and shared learning between non-governmental organizations (NGOs), law enforcement, local authorities, and other public and third sector organizations and report to the Operational Delivery Group. The Wales Anti-Slavery Operational Delivery Group is responsible for the delivery of the Wales Anti-Slavery Leadership Group’s Annual Delivery Plan and facilitates the sharing of good practices by the regional groups working toward a common aim.

The second Modern Slavery Coordinator, Stephen Chapman, who was appointed in November 2012, worked with the devolved Welsh Government Leadership Group, which initiated an annual Development Plan with Strategic Objectives for actions on Modern Slavery. In 2014, the Welsh Assembly Government declared the week of 18 October to be an Anti-Slavery Week. Soroptimists contribute to this week by placing information boards in libraries and other public places, to inform the public about their work and of what signs of modern slavery to look for in their communities.

In 2014, the first contribution of Welsh Soroptimist Clubs to this week was to distribute 4,000 Welsh government stickers and posters across the country that said “Say No to Slavery in Wales” and were placed in toilets, libraries, medical and dental surgeries, and local shops. The posters provided information to communities about how to report any suspicions of modern slavery and who to contact if help was required. Welsh SI Clubs also lobbied the UK Government and local members of parliament (MPs) regarding any issues of concern within the draft Modern Slavery Bill, which at the time was under parliamentary debate.

In 2014, the Welsh government established its own anti-slavery logo, a red dragon (called Dewi) wearing a blue blindfold. Dewi was created to ensure public recognition and continuity in all future anti-trafficking campaigns. The choice of the blindfold marked that human trafficking is a hidden crime, and blue color indicated a commitment to UN principles. Dewi was created to ensure public recognition and continuity in all future campaigns.
The Welsh Government established its own anti-slavery logo, a red dragon (called Dewi) wearing a blue blindfold, a hidden crime with the blue color indicating commitment to UN principles. Dewi was created to ensure public recognition and continuity in all future campaigns. (Used with the kind permission of Steve Chapman, Wales Anti-Trafficking Coordinator).

In February 2015, SI Wales South invited Stephen Chapman, the Welsh Government Modern Slavery Coordinator, along with Fiona MacTaggart MP, then Co-chair of the UK All Party Parliamentary Group on Human Traficking and Modern Slavery, to give an update and report on the progress and potential impact of the Modern Slavery Bill.

The Modern Slavery Bill gained Royal Assent on 26 March 2015 and came into force in England and Wales later the same year. This Bill consolidated previous offenses relating to human trafficking and slavery. It established two new civil orders to prevent slavery; the appointment of an independent Anti-Slavery Commissioner for the UK and increased sentences to life imprisonment with perpetrators facing tough asset confiscation orders. The Bill requires transparency in supply chains for large companies and establishes a defense in law that enables the protection of enslavement or human trafficking victims, who committed an offense while enslaved.

In the week leading up to International Women’s Day in March 2015, SI Wales South volunteered to host the United Nations Global Initiative to Fight Traficking (UN.GIFT) Box from the NGO Stop the Trafik (SI South Wales 2015). The GIFT Box, a public art piece, was placed, with the assistance from South Wales Police, in the Quadrant Shopping Centre Swansea. The GIFT box is a unique way to raise awareness about modern slavery and human trafficking, to gather knowledge on the issue, and to inform the shopping public about the signs of modern slavery. The large walk-in street sculpture invited the public inside with different promises of a better life, but once inside a different reality was presented, the reality of the effects of being trafficked into exploitation and controlled by others. In 2015, SI Wales South held a Garden Party to raise funds for the main first responder organizations in Wales – BAWSO, Salvation Army, and New Pathways – organizations that give refuge and support to survivors of human trafficking and modern slavery. The garden event was opened by the Presiding Officer of the Welsh Assembly Government, and a government-funded film, “Sold,” was shown, based on true life stories of modern slavery.
involving Cardiff residents. The same year, the two Welsh SI Regions were invited to give a presentation at the SIGBI conference held in Glasgow about the efficacy of the stakeholder partnerships developed in Wales with other organizations in raising awareness of modern slavery and its impact on the lives of victims. The North Wales SI Regional Group supported by Soroptimists of Cheshire, North Wales, and the Wirral have focused their efforts on the sea port of Holyhead, which is often used as a route for traffickers to bring victims into mainland Britain from Ireland. The North Wales Soroptimists volunteer to operate a dedicated reception center in the area in the event of a need to urgently accommodate survivors of modern slavery as they enter the country. A similar site for such a center is to be established in South Wales.

Under the auspices of the Chairman of the Wales Anti-Slavery Operational Group, booklets have been produced to assist hotel staff should they come into contact with individuals, who may have been trafficked or exploited (Welsh Government 2017a). This booklet is also used by the UK Modern Slavery Training Group and circulated throughout the UK. Another similar booklet was produced as an UK university guide with the purpose to ensure that all university staff and students understand the signs to look for in order to identify possible victims of modern slavery, be vigilant of any suspicious activities in their community and by knowing what agencies to alert. In March 2017, the Welsh Government published a Code of Practice on Ethical Employment in Supply Chains (Welsh Government 2017b), the first for Wales and the UK. The Code covers employment issues in order to fulfil the requirements under the Modern Slavery Act 2015 and encourages the development of ethical employment in supply chains in private, public, and third sector organizations. The Code is designed to ensure that workers in supply chains are employed ethically and in compliance with UK, EU, and international laws. In signing up to the Code, organizations and employers will agree to comply with 12 commitments designed to eliminate modern slavery and support ethical employment practices while annually publishing statements to the Transparency in Supply Chains Register of companies voluntarily signing up to the Code.

A Wales Anti-Slavery Training Programme initiated by the chair of the Operational Delivery Group delivers courses approved by the Welsh Government National Training Framework to multi-agency partners, organizations, and individuals. Trainer Preparation (train-the-trainer) courses are delivered as and when required to maintain the pool of available trainers across Wales. A number of Soroptimists have trained to be trainers of awareness-raising sessions and participate in educating others to recognize the signs of slavery and the action to take if suspicious that slavery is taking place. The training offered is a 3-h introduction and awareness session on slavery and another 3 h of introduction and awareness session on child sexual exploitation. The course is designed to give those attending an understanding of slavery, how to spot the signs, and the action to take to report incidents. Also, a 3-h awareness-raising course has been presented to police forces, social services, health employees, council members, as well as third sector and voluntary organizations such as Rotary and Women’s Institute members. This course is designed to give first responders an understanding of slavery, how to spot the signs and the action to take
to report incidents. The course is also open to delegates from devolved and non-devolved organizations and the third sector. In addition, a 3-day organized crime and modern slavery course is currently delivered by the South Wales Police and North Wales Police centers. This course is for Senior Investigating Officers from law enforcement agencies and Crown Prosecution Service Prosecutors and Crown Advocates. In summary, in 2016 across Wales, over 5,500 people from a variety of sectors were trained to this consistent level.

A Wales Victim Response Pathway was developed in 2014 and regularly updated annually, which provides a care pathway bringing together multidisciplinary agencies required to support a trafficked individual. The care pathway requires a first referral to be made to a first responder organization. They will conduct a risk assessment and convene a Multi-Agency Risk Assessment Conference (MARAC) to look at the support needs of an individual. The individuals who attend these MARACs are specialists in human trafficking and are chaired by a Detective Chief Inspector or Detective Inspector, usually from the Police Protection Unit. The information is gathered by the first responder that will also convene the conference. The conferences are closed meetings for appropriate agencies to attend including the police, Department of Work and Pensions, UK Visas and Immigration, health and education services, and the referring agency that will present the case and any information regarding the case that is to be shared. Consent is sought from an individual to have their case taken to a MARAC. There are three possible outcomes from a MARAC process:

- The person is deemed to be a victim of modern slavery, and an NRM is submitted if it has not already been done. The risk assessment is then put in place.
- More information is required.
- The person is not a victim of modern slavery and dealt with by other means, e.g., as a migrant or asylum seeker.

Any follow-up meetings are coordinated by the first responder. The support provided by the first responder is ongoing until a conclusive decision is reached. The care pathway has been rolled out across the whole of Wales.

Unaccompanied children, who may be victims of human trafficking are referred to child protection services and are accommodated by a local authority under its duties to support children under the Children Act 1989 and, under the Social Services and Well-being (Wales) Act 2014.

The UK’s National Referral Mechanism (NRM) is a multidisciplinary victim identification and support process. It allows all agencies that could be involved in a human trafficking case to cooperate, share information about potential victims, and facilitate their access to advice, accommodation, and support provided by the MARAC process. Entry into the process must be with consent when a victim is an adult, and for a child under 18 years of age, no consent is required. The NRM is also the mechanism through which the Modern Slavery Human Trafficking Unit (MSHTU 2018), a multi-agency national organization led by the National Crime Agency, to collect data about victims provides a central point of expertise, support,
and coordination for the UK’s response to modern slavery and the trafficking of human beings. This information contributes to the understanding of the scope of human trafficking and modern slavery in the UK. Some victims do not consent to being referred to the NRM, so that the full extent of modern slavery in each UK jurisdiction is not fully known.

According to figures recently released by the Salvation Army, also a first responder, in the UK there has been a 300% increase in the number of victims of modern slavery referred for support in the past 6 years (Salvation Army 2017). In 2016, there were 33 victims identified in Northern Ireland, 150 in Scotland, and 3,499 in England, while 123 victims were recorded through the National Crime Agency’s Referral Mechanism in Wales. In Wales, during the first 9 months of 2018, 182 referrals have been made via the NRM. It is believed that many more individuals are enslaved in the UK and are hidden from sight. According to the UK independent Anti-Trafficking Commissioner, the estimate of 13,000 victims in the UK is based on old intelligence, and the true number may be in the tens of thousands.

The UN, the UK Anti-Slavery Commissioner, and the Wales Anti-Slavery Coordinator, Stephen Chapman, all advocate that future successful action is only possible with strong partnerships with the police, the courts, the Department for Work and Pensions, health and social care, and voluntary sector organizations across the UK. It is through such partnerships that the crime of modern slavery will be fought with greater hope of achieving its eradication.

Conclusion

Soroptimists in Wales will continue to volunteer on the Wales anti-slavery group and continue to campaign against modern slavery and human trafficking while supporting and helping multi-agency partnerships wherever possible. The Welsh Government Anti-Slavery Coordinator generously recognizes that Soroptimists, in partnership with the Wales regional groups, aim to make Wales hostile to slavery and to provide the best possible support for survivors. Multi-agency partnerships are the key to the success of the pan-Wales Anti-Slavery project and could be used as an example of how the fight against modern slavery can succeed.

Worldwide member clubs of Soroptimist International will continue to support the United Nations’ 3P paradigm of prevention, protection, and prosecution through the participation in stakeholder partnerships, upholding the fourth principle of partnership. This can be achieved by consistent lobbying of their governments to gain appropriate legislative measures, by raising awareness of the prevalence of human trafficking and modern slavery, and by working with other agencies and nongovernmental organizations to fulfil a commitment to aid the survivors of trafficking and banish slavery from our world.

Working together: Making a difference
Gweithio gyda'n gilydd: Gwneud gwahaniaeth
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NGOs Combating the Problem of Human Trafficking in South Asian Countries: A Review of Legal and Administrative Measures with Special Reference to India

Nirmal Kanti Chakrabarti

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Human trafficking is a discernible problem in the world today, and countries that are members of the South Asian Association for Regional Cooperation (SAARC) are not an exception. Asian countries in general and SAARC countries in particular are regarded as countries of origin as well as transit countries for trafficking of women and children. In this chapter an evaluative study has been carried out to describe what standards and roles are played by NGOs in SAARC countries such as India, Bangladesh, Pakistan, Sri Lanka, Nepal, Bhutan, Maldives, and Afghanistan. In analyzing the role of NGOs, the writer has also paid particular attention to administrative and legislative measures undertaken by the NGOs in a wider number of countries within SAARC. However, more detailed discussions and descriptions have been made about NGOs working in India. Many human rights organizations are also working to combat human trafficking. It is also revealed that NGOs committed to preventing human trafficking and sexual exploitation of children mainly working in India, Nepal, and Bangladesh have formed a network, namely, Action Against Trafficking and Sexual Exploitation of Children (ATSEC). Their work will be highlighted as good practice example.

**Keywords**

Human trafficking · Human rights · Access to justice · Protection · Rehabilitation · Legal awareness

The problem of human trafficking has many nuanced issues. Various nonprofit organizations with the aims of intervening and untangling the knots have stepped in at each step. They have been working diversely in source and destination areas, on rescue and rehabilitation, seeking government-friendly policies of prevention, protection, and prosecution of the flesh trade. At a regional conference held in November 1998, the Economic and Social Commission for Asia and the Pacific (ESCAP) jointly with the International Labour Organization (ILO), International Organization for Migration (IOM), National Commission for Women Affairs Thailand, and Asian Women’s Fund recalled the words of the United Nations
Declaration on Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention on the Rights of the Child (UNCRC), and the General Assembly Resolution 52/98 of December 12, 1997, on member state obligations to prevent trafficking of women and girls and Commission (ESCAP) Resolution 51/7 and 52/3 on implementation of the Jakarta Declaration and Plan of Action for Advancement of Women in Asia and Pacific and follow-up of the Fourth World Conference of Women, respectively. The concern for the increasing prevalence of trafficking of women was discussed at the conference which also recognized the important role of NGOs and other sections of civil society in combating human trafficking (ESCAP-Proceedings 1999). In this chapter an attempt has been made to identify some of the NGOs in the area of South Asian Association of Regional Cooperation (SAARC) specially in India and their legal and administrative actions. The role of some of these NGOs is discussed herein.

Role of NGOs in India

Prajwala

In 1996, the police carried out a major evacuation of thousands of women in prostitution in Hyderabad City to vacate the red-light area as a consequence of governmental policy to prevent prostitution in public places. This unforeseen situation uprooted and displaced the women and rendered the status of their children insecure. As a response to the plea of the mothers for a better and dignified future of their children, it was during this time that two visionaries Bro Jose Vetticatil and Dr. Sunitha Krishnan came together to establish Prajwala with the motto “Prevention through Education.”

Some of the various activities of Prajwala include:

- Prevention through education
- Community-based prevention
- Rescue
- Rehabilitation
- Reintegration

Prevention Through Education

The first transition center started in the year 1996 with just five girl children. Today, over 7000 children are admitted to these centers. Prajwala uses education as a tool to prevent these vulnerable children into getting imported to the “flesh trade” as well as to bring about attitudinal and behavioral changes in the mind-set of the people.

Community-Based Prevention

This was one of the large-scale intervention programs where people from all spheres of life were involved. Owing to this, a community-based prevention program was established. The main objective of this program was to sensitize the target group, which included men, women, and adolescent girls from all walks of life such as
schools, colleges, institutions, villages, and trade unions against trafficking and how they can contribute in saving a vulnerable person or someone close to them from getting trafficked.

This program includes the Men Against Demand (MAD) movement, which sensitizes men, especially auto-rickshaw drivers and industry workers, who work away from their families. These men are sensitized by trying to bring about a change in their mentality. They are shown a video about the dangers associated with such a trade and how it devastates the life of a young woman leaving them with a strong visual memory and deeper sensitization. The men are asked to think of the women in prostitution as their own mothers or sisters. At the end of the process, they are asked to sign a Men Against Demand (MAD) pledge wherein they agree not to indulge in prostitution. According to Annual Report 2012–2013, “in 2012–2013 alone, a total of 185 anti-demand programs were conducted in which 21,443 members participated. Signatures were collected from 20,419 people, who were sensitized, and 185 Community Vigilant Groups (CVGs) were formed consisting of 1,266 members as reported by Prajwala in its annual Report 2012–13.” However, there was no study undertaken assessing the impact of MAD program.

**Rescues**

Rescue operations were taken to save vulnerable girls, who have fallen into the trap of traffickers. The victims are sold and resold to various brothels repeatedly in a continuous cycle. Under the threat of the trafficker, the victim succumbs to her circumstances of prostitution; she is held as a captive. All her actions, movements, and interactions are monitored and restricted. She is always watched upon closely and is not allowed to act upon her own free will. In order to restore the psychological health of these trafficked victims, it was necessary to establish various rehabilitation and restoration centers. This compelled Prajwala to intervene to rescue these women and prevent them from the physical as well as mental exploitation that this sex trade imposed on them. Thus, Prajwala came up with the initiative of the “Rescue and Restoration Program” (RRP).

**Rehabilitation**

Rehabilitation precedes reintegration. Healing is understood from a holistic perspective irrespective of the age of the victim. Therefore, various curative methods are taken to heal the victim and get her self-esteem and self-confidence back. It becomes essential for the organization to create an ambience for healing and building capacities as this would act as a catalyst to the healing process. Rehabilitation is a concoction of economic, psychological, and civic identity changes.

**Economic Rehabilitation**

Prajwala has its own Employability Training Unit that is responsible for finding the suitable career option for a survivor. A survivor is assessed depending upon her needs and aptitude, and the best economic option with a good market value is identified for her. The victim is then provided with the suitable training. As the chances of social integration are relatively poor for these victims, any
intervention for family-based trade is often avoided. It has been noted that the victims have a tremendous amount of inner strength and lack of awkwardness in a male-dominated trade. The nonconventional and high-market value jobs like security guards, cab driving, and masonry, which are not considered apt for these victims because of a traditional mind-set, are in reality best suited for them.

Prajwala provides job opportunities to these victims at Prajwala enterprises and various corporate and professional firms. Prajwala has also tied up with various corporations and governmental agencies to provide the victims with suitable skills and training to increase their economic and employability in those corporations and government agencies as data entry or computer operators.

**Psychological Rehabilitation**
A victim of commercial sexual exploitation goes through various mental as well as physical traumas. Psychological recovery ensures recovery of the victim in a holistic manner. It doesn’t only focus on healing the mental health of the victim but also other elements such as sexually transmitted infections, reproductive tract infections, addiction, and HIV/AIDS. The psychological rehabilitation team at Prajwala looks at trauma counseling, barefoot counseling, peer counseling, and group counseling. They have a domain-specific model of medical intervention to meet the unique individualistic needs of the victims.

**Civic Rehabilitation**
Prajwala has a judicial team that help the victim fight the judicial recourse and also provide her with voter identity cards, ration cards, etc. They also provide them with health cards to ensure the medical treatment at government hospitals in subsidized rates. Over the years, 515 survivors have been given housing under the weaker section’s housing scheme, and 35 victims received government welfare benefits in the form of immediate relief funds.

**Reintegration**
For the survivor to live with dignity and pride in the mainstream society, social integration is essential. Social reintegration is the primary aim of most of the rehabilitation programs in India. Prajwala also aims to do the same. The victims rescued from different stages of human trafficking are provided with education, health care, and psychological and economic stability. Coupled with these Prajwala focuses on three primary ways for social reintegration: marriage, family reunion, and independent living. Prajwala has achieved significant progress throughout the years (Source: Prajwala website).

**Bhabna Association for People’s Upliftment**

BAPU, a socially mobilized organization, was established in 2001 in a highly human trafficking-prone area in the district of Murshidabad for the empowerment of people. BAPU aims to battle the human trafficking problem and build a network of
supporting people, which brings in the unity and empowerment to achieve self-productivity with a sense of self-confidence.

**Strategy**

A well-diversified village-level community is formed involving men, women, and youth proactively to plan strategically and implement the development programs at a grassroots level utilizing every resource available.

**Awareness Education**

The syllabus and structure of the program were aimed at learning the fundamental rights, health and hygiene, and various government schemes for integrated governmental planning (IGP) in which the education level of the participants was increased to make the person a good citizen. A school named “Little Flower English School,” which housed students right from nursery till class X, was established with availability of hostel facility to the students (Source: BAPU’s website).

**Prerana**

Prerana, a civil society organization, was established in the year 1986 to help the victims of commercial sexual exploitation in the red-light areas of Mumbai. The prime objective of Prerana is to stop second-generation prostitution, such as sex tourism and commercial exploitation of children. *Prerana* seeks to rescue these women and children and fight for their rights. They help these victims heal from the mental and physical trauma by providing them with all sorts of aids. *Prerana* works especially hard to make sure there is adequate protection for children. This can be seen in the broad spectrum of interventions that provide a sequence of care by bringing forward issues of child sexual abuse as well as anti-human trafficking.

**Anti-trafficking Centers**

*Prerana* has received constant support from the US government to start an Anti-Trafficking Center (ATC), which is a specialized resource center to tackle the nuances of human trafficking problems and, thus, prosper in anti-trafficking interventions. Being the first of its kind, *Prerana* had to make sure to create a platform to blend in all the stakeholders and participants for the issues created while working on anti-trafficking actions. The ATC became functional in 1999 and quickly received public acclamation. The ATC has a diverse set of functions and services ranging from training to sensitization and much more.
Night Care Centers

A very basic and innovative concept-based project called Night Care Center (NCC) was integrated and implemented in 1986 at a small red-light area in Mumbai called Kamathipura. It’s a shelter for all mothers to keep their children at the peak hours of the trade when “the vultures lurk the most.” The NCC provides a well-rounded package operating critically on a 24/7 basis.

Educational Support Program

Prerana has taken a priority movement in the field of “right to education” by ensuring a child’s basic right of educating himself/herself by establishing the first comprehensive Educational Support Program (ESP) in red-light areas. ESP works in its entirety with children by taking into account their educational and personal needs so that they can excel professionally in the future. Older children are also sponsored for vocational training programs so that they can attain success in the fields of driving and computer programming, as paraprofessional social workers, paramedical workers, in catering, etc. As of now, Prerana has three ESPs operational in the red-light district of Kamathipura, Falkland Road, and Vashi Turbhe. Aiding 350 children every day by helping them develop academically and harboring their self-sufficiency goals, the ESPs are working toward building a better India.

Institutional Placement Program (IPP)

In order to harmonize the child into the mainstream society, it is necessary to remove the child from the abusive environment and keep her or him in a healthy environment. Prerana considered the plea of the mothers to shift their children from the brothel. Prerana has a child welfare community to look after the welfare of the children. They also conduct regular meeting with the children’s mothers for counseling and also provide group homes for children. The children are provided with the utmost residential care until they reach the age of 18 or until they enter a safe environment. The IPP has impacted over 1200 children till date.

Group Homes

Prerana’s initiatives look at curing the problems of children completely and comprehensively. In 2004, Prerana established a few group homes to ensure that these girls do not end up getting re-trafficked owing to their vulnerable status. The team members address the issues of such girls once a month and counsel them as and when required. Presently, they have three group homes, one at Charkop, Mumbai, and two at Kamothe, Navi Mumbai. About 120 girls have benefited from this initiative.
Outreach

Prerana has directly provided shelter, protection, and other services to 15,000 children born to women staying in the red-light areas. More than 750 children have been rescued from brothels and are provided with counseling and victim assistance post their rescue operation. Legal aid is provided to 2250 children for their judicial recourse. The organization has also conducted training and sensitization programs at over 300 civil society organizations.

Guria

Guria, a 36-member NGO, was established in 1993 in India by Ajeet Singh. The NGO mainly focuses on the complex web of forced prostitution (e.g., the victim girl leaves her home to get a job but after being taken to brothels is forced to enter into prostitution) and sex trafficking that have worsened due to sex tourism and sexually transmitted diseases such as HIV/AIDS. The first brick of this organization was laid way back in 1988 when 17-year-old Ajeet Singh adopted three children from a woman from a red-light area. Along with empathizing with the victims and responding to their immediate suffering, Guria also focuses on dealing with the root causes of prostitution, that is, poverty and inequality (Source: Guria’s website).

Apne Aap Women Worldwide (AAWW)

Apne Aap is a registered charitable trust founded by 22 women in prostitution. The main objective of AAWW is empowering women and girls by forming self-empowerment groups, where these women come together to fight for their legal, economic, social, and political rights.

AAWW has successfully formed 150 self-empowerment groups for women in brothels, slums, and red-light districts and villages and has literally transformed the most marginalized section of our society into leaders, who fight for their own rights as well as their peers. This initiative proved to be a community-centered solution to end sex trafficking.

AAWW also works toward bringing about changes in policy for the welfare of victims of sex trafficking; AAWW follows a holistic approach, which they call a “10 × 10 approach,” for the independence of women trapped in prostitution to lead a life of their own independently in the mainstream society. The 10 × 10 approach involves talking about ten assets that can reduce the chances of a woman getting trafficked and which helps them to break free from the clutches of prostitution. When a victim of commercial sexual exploitation or trafficking laws, she becomes a member of the AAWW network. The organization then works to provide her with the ten assets within 3–5 years. Once the girl gains her ten assets, she gets a “ten on ten.” These are:
Legal Measures

Right to Legal Protection
AAWW has established a legal aid unit in response to the grievances of trafficked victims in each of the anti-trafficking centers. These units are steadfast in understanding the rights of women. Their legal protection programs are effective in enlightening the women and girls in SEGs about the criminal justice system, its functionality, and the path to be undertaken while vouchsafing justice to the sufferers of human trafficking. Along with legal awareness and training to women, they also understand about the market demand created due to their lust that continually exploits them. The women, when confronted with harassment and violence, are assisted by the legal project officers so that they can understand their legal options. The women are taught the laws and human rights that are instrumental in helping them protect their existence. To name a few, the included laws are:

- The Immoral Traffic Prevention Act
- The United Nations Trafficking Protocol
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention on the Rights of the Child

Training is rendered to members so that they can access the victim support program. Program officers also help the beneficiaries to accelerate their cases in the courts.

The victim support program of legal measures includes:

- Helping and supporting in filing First Information Reports (FIRs) against traffickers
- Ensuring that FIRs are registered with the proper authorities
- Providing lawyers to assist victims and ensuring successful prosecution
- Preparing witnesses to testify against their own exploiters in court
- Establishing groups to act as watchdogs in high-risk areas to prohibit traffickers
• Assisting the police officers, prosecutors, and lawyers to change their response to the illegal act of human trafficking, so that they prosecute traffickers instead of sufferers

Public interest litigations (PILs) are also filed to properly implement the child rights and to analyze the role of the government in protecting individuals from being trafficked. By doing this, awareness is raised, and the law and order system, judiciary, police authorities, and the state are held accountable under India’s human rights protocol.

**Right to Have a Dignified Livelihood**

Every woman in our society has the right to live with dignity and pride. AAWW ensures that the women, who join the self-empowerment groups of AAWW, are provided with education, skills and vocational training, and other income opportunities to lead an independent and self-sustained life in society. AAWW initiates new ways to integrate the victims of commercial sexual exploitation and trafficking into the mainstream society. The members of AAWW assess the interests of these women, the market value of these skills, and the scope for jobs in the respective skills before beginning their training. Along with entrepreneurship, AAWW also looks for opportunities for women to work in various corporate and professional firms for their economic sustainability. AAWW works to find the most suitable career options for women in the SEGs. In order to make the women self-sufficient to sustain their own livelihood and broaden their job-related options, they are provided vocational training in different skills such as sewing, jewelry making, tailoring, handbag craftsmanship, spoken English language, and basic computer skills to make them eligible to work in different national and international telephone answering outsourcing services.

**Right to Safe and Independent Housing**

It is a necessity to provide shelter for all women and girls. The government has many programs and schemes for the welfare of such women, and that includes provision of independent housing for their safety. The major concern of Apne Aap is that the majority of women, who are eligible for such schemes, remain unaware of these programs due to lack of information, corruption, and red tape. Due to lack of housing, these women become more vulnerable to sex trafficking and commercial sexual exploitation.

**The Right to Education**

**Formal Education**

The right to education is the basic right of every individual by birth. Apne Aap gives priority to children by getting them into mainstream schools, especially girls, by taking them out of red-light areas and slums. Easily accessible classrooms are instilled in local Apne Aap centers.
Accreditation
Apne Aap provides a helping hand to students by guiding them through the registration and preparation phase for the tests conducted by the National Institute of Open Schooling so that they can get recognition for the education they went through in the community learning centers.

Nonformal Education
There are many vulnerable children in red-light areas and marginalized communities who are not able to attend school because of their fear of learning. In these circumstances, Apne Aap takes care of providing them learning based on their individual needs. The teaching methods are built to facilitate each child’s way of acquiring knowledge and his/her interest in the subjects being taught while sticking to the goal of providing them with mainstream education in the near future (Source: Apne Aap’s website).

The Rescue Foundation
The Rescue Foundation is a nonprofit governmental grassroots organization founded by the late Mr. Balkrishna Acharya in 2000. The organization works toward the rescue of trafficked victims from different parts of India, Bangladesh, and Nepal. Their struggle to defend the rights of women is remarkable and they try to ensure that their human rights are protected, respected, and fulfilled.

The founder was a revolutionary and a visionary, who envisioned a society without injustice and antisocial situations. He rescued 13 girls. He became an angel for these victim girls, a savior for the underprivileged. Luckily, he got support from the Nepal government. Therefore, under the banner of the Indian Government, Acharya established the Rescue Foundation, a nonprofit government-recognized grassroots organization.

Investigation and Verification
The rescue operations are usually very dangerous and risky. The Rescue Foundation receives numerous reports of girls missing from India, Nepal, or Bangladesh, both minors and adults. The organization first locates these girls based on their photographs and descriptions given by their close family members in various brothels in Mumbai, Pune, Thane, or Delhi with the help of experienced investigators. Once the girl is traced, the mission for her rescue begins.

Rescue
The rescue team with the help of the police plans to rescue a girl from the brothels. At the time of the raid, all girls are asked whether they want to be rescued. They
tactfully locate hidden cells and successfully rescue the girls. Once the girls give consent, they are rescued. These girls are then taken to the respective police stations to lodge their First Information Reports (FIRs). The court then decides which girl should be sent to their families and which girls should be sent to the Rescue Foundation for rehabilitation and repatriation.

**Care and Protection**

The rescued girls are protected from the traffickers and brothel owners and are kept in protected shelter homes. All the girls are provided with good living standards. Each girl is provided with a comfortable bed, an individual fan, and good nutritious food consisting of four meals per day. In case of patients with HIV/AIDS or other sexually transmitted diseases, special care and attention is provided.

**Health Care**

The rescued girls often suffer from HIV/AIDS and other sexually transmitted diseases. The Rescue Foundation ensures that these girls are provided with proper health care by medical doctors on staff and medication and receives a nutritious diet. Their prime objective is to cure these girls from any illness.

**Vocational Training**

Economic rehabilitation is necessary for a victim of commercial sexual exploitation or sex trafficking. Keeping this idea in mind, suitable career option is chosen for each girl enrolled in the organization depending upon their skills, area of interest, and market value of the job. Training in areas such as tailoring, handicraft, painting, dancing, yoga, jewelry making, rearing cattle, and agriculture is provided to these women depending on their personal interest to enable them to take up jobs or start small-scale businesses, thereby empowering them economically.

**Legal Aid**

The rescued girls are provided with legal aid to file petitions against the traffickers in courts. The Rescue Foundation fights to punish these traffickers, brothel owners, and all others involved in this “flesh trade,” who coerced these girls into prostitution.

**Psychosocial Counseling**

Social and psychological rehabilitation for victims is also necessary. The rescued victims are emotionally vulnerable due to all the physical and mental trauma that
they went through while in prostitution. They lose all their faith in mankind. Hence, it becomes very important to provide them with intricate psychosocial counseling to prepare them for a fresh beginning of their lives (Source: The Rescue Foundation website).

**Shakti Vahini**

Shakti Vahini has clear-cut objectives and strives for an equal society. Shakti Vahini works toward defending and protecting the rights of people. It organizes campaigns to sensitize and promote awareness regarding human trafficking among communities, government officials, judiciary, students, youth, and people’s representatives (Source: Shakti Vahini’s website).

**STOP Trafficking and Oppression of Children and Women (STOP)**

STOP is a movement under the patronage of the Ramola Bhar Charitable Trust (RBC Trust) started in 1997. The turning point of this organization came when the founder of the RBC trust, Prof. Roma Debabrata, came in touch with a 10-year-old Bangladeshi girl, who had been trafficked to Delhi and was a victim of commercial sexual exploitation. STOP has rescued around 3000 women from trafficking and commercial sexual exploitation till date. The reintegration program includes around 700 child survivors. STOP has established “Aashray,” a Delhi-based shelter home that has the capacity to house around 60–70 child survivors, who are provided with formal education, health care, vocational training, creative skills, and counseling by the members of STOP to harmonize these children into the mainstream society.

**Community Intervention Programs**

STOP embraces a dual approach of social welfare and human rights protection under the community intervention program. Sensitization of the community is of prime importance in combating crimes such as trafficking or other forms of brutality against women and children.

**Legal Assistance**

STOP has a team of legal experts that are consulted for various legal matters. The legal team provides legal aid to the rescued girls at Aashray, whose cases are taken to court and criminal investigations are conducted. The legal team conducts counseling sessions through workshops and focus group discussions to make the women aware of their legal rights.

**Rescue Operations Through Community Vigilant Group**

STOP conducts operations to rescue young girls who have been trafficked and are forced into the commercial sexual trade. All the rescue operations of STOP are
planned with the help of the community vigilante group. These women have received training over the years by resource persons that have experience in such operations.

**Brothel-Based Rescue Operations**

STOP rescues girls from the brothels in Delhi. In the case of minor girls, in-brothel counseling is carried out to convince them to voluntarily come out of the exploitative environment as due to their situation, they are often incapable of trusting anyone. Adult women are also rescued provided that they willingly want to be rescued and rehabilitated (Source: STOP website).

**Anyay Rahit Zindagi (ARZ)**

ARZ is a social work organization established in 1997 by a group of volunteers of the Tata Institute of Social Sciences to combat sex trafficking and commercial sexual exploitation in Goa. ARZ originally worked mainly in Goa but extended its work to some districts of Karnataka, Maharashtra, Andhra Pradesh, Tamil Nadu, West Bengal, and Orissa, which are the neighboring countries of Nepal and Bangladesh. The ARZ was appointed by Goa police as the nodal NGO in the integrated Anti-Human Trafficking Unit to assist the police in providing witnesses, strategy for and conducting rescue operations, counseling and empowering rescued persons, and networking with other NGOs for the proper rehabilitation of the rescued persons. ARZ has conducted numerous social work interventions. Some of the projects under its banner discussed next.

**Ankur: Protecting the Future**

Ankur is an initiative of ARZ to protect the future of children by minimizing their vulnerability to human trafficking, commercial sexual exploitation, sexual abuse, or participation in any antisocial activities. Ankur works with children living in Baina, Vasco-Da-Gama, Goa.

**Prabhat: A New Beginning**

In 2005, ARZ collaborated with the Goa government to provide rehabilitative services to the inmates of the State Protective Home (SPH) in Merces, Goa. These services include counseling sessions, self-development, and self-expression training programs and recreational activities with the inmates.

**WISH: Women Initiatives Toward Self-Help**

ARZ looks at the rehabilitation of the victims of commercial sexual exploitation from a holistic perspective. Keeping this in mind, ARZ initiated its Economic Rehabilitation Program in 2005 to economically empower victims of sexual exploitation. With this, ARZ set up a Swift wash unit in Sancoale, Goa, which is fully mechanical and provided employment to the victims of “flesh trade.”
Voice
ARZ initiated a very interesting and innovative program called “Voice,” which is a resource center for research, documentation, and publication of short films and documentaries on the issues of trafficking of women and children in the Indian society. The intention behind this program was to conduct proper research on the issues of human trafficking and the reasons for the spread of commercial social exploitation from Baina to other parts of Goa before starting any kind of social intervention programs (Source: ARZ website).

Sanlaap
Sanlaap, a Kolkata-based NGO, has been working in the red-light areas of Kolkata and in the border areas of West Bengal for the rescue, rehabilitation, and reintegration of trafficked victims. They also provide legal counseling and other facilities and provide victims with better opportunities for employment and social rehabilitation, to help them lead a respectable and dignified life. The main objectives of Sanlaap are:

- To protect the interest of sex workers and to provide help, if needed
- To rescue and rehabilitate children forced into prostitution
- To provide legal, social, and moral support to trafficked women and children
- To research and disseminate information to other NGOs, government departments, and law enforcement authorities (Goenka 2011)

Socio-legal Aid Research & Training Centre (SLARTC)
SLARTC is another Kolkata-based NGO, which has provided legal aid and counseling to victims of trafficking since 1982. They took action in the prosecution of traffickers in the lower judiciary as well as public interest litigation in the Calcutta High Court toward repatriation of women who are victims of trafficking from Bangladesh (Goenka 2011).

NGOs in Other SAARC (The South Asian Association for Regional Cooperation) Member States
Nepal
Maiti Nepal
Maiti Nepal was established to protect girls and women from crimes like domestic violence, child abuse, trafficking for prostitution, and various forms of exploitation. Maiti Nepal runs preventive shelters at Nuwakot, Makawanpur, and Nawalparasi and
runs a training program for girls, which provides cytological counseling, and awareness about the ways of traffickers and trafficking. The program also focuses on income-generated schemes such as tailoring, handloom weaving, fabric painting, sewing, etc.

Maiti denotes a girl’s real family in which she was born. The word specially meant for married Nepali women, and she solely belongs to her husband and family forever. But Maiti Nepal to some extent is different in reality as it is a home for all women and girls regardless of being married or not. Its mission is to prevent human trafficking by reaching out to the community particularly children and women by way of awareness programs in the communities. It also extends life skills to prevent children and women being trafficked. Maiti Nepal extends support to trafficked victims by empowering them through personal participation and enhancing their livelihood skills. Maiti Nepal also provides legal services and counseling to survivors of girls trafficking. It also campaigns against trafficking of women and children. It also rescues trafficked children and women from exploitative conditions and in deserving cases repatriate.

The Legal Aid Section of Maiti Nepal has been working in Kathmandu and providing legal support to survivors of trafficking and deals with cases like missing girls, rescue from brothels, child sexual harassment, and trafficking. Survivors of trafficking are assisted in registering First Information Report, and this support is extended until the court pronounces a judgment. They also go for appeal at Appellate Court and Supreme Court.

**Samrakshak Samuha Nepal (SASANE)**

SASANE is an NGO established in 2008 to support and empower the survivors of human trafficking and gender-based violence. SASANE organizes Paralegal Training Programs in Kathmandu and Pokhran. Through this training program, the women survivors are assisted to enjoy their legal rights and are also provided education and employment skills.

**Raksha Nepal**

Raksha Nepal is working to protect victims of sexual violence and advocates making the society free from compulsive prostitution. Their major activities include providing shelter homes to girls and women, awareness about safe sex, HIV/STD prevention, research and survey to identify the magnitude of abuses, coordination with media, and psychosocial and trauma counseling. The rehabilitation and reintegration program for job placement are planned according to the will of women and girls.

Raksha Nepal (RN) was established in 2004 with a vision to make Nepal free of compulsive prostitution. RN provides shelter to women, girls, and children who are victims of sexual exploitation. It has established a polyclinic for free checkups of the women and girl victims. It undertook awareness programs about safer sex, reproductive health, and HIV/STD prevention through counseling, discussion, seminars, and information handouts. With the help of media, it focuses on issues of women in order to gain attention of all the stake holders. Such coordinated media activities help
in identifying problems faced by the women and girls who became victims of sexual exploitation. RN conducts various training programs to empower the women which include leadership development, income generation, and skill enhancement. RN is also providing educational opportunities by running two girls’ schools in different places of Kathmandu. This NGO has been recognized by the Ministry of Women, Children and Social Welfare, and the Nepal government.

**Respect, Educate, Nurture, and Empower Women (RENEW)**
RENEW established community-based support systems (CBSs) in 20 districts and a community outreach program from the RENEW headquarters. The main activities of RENEW at present are sensitizations with regard to HIV and AIDS, contraceptive methods, and comprehensive sexual and reproductive health services. RENEW believes no one should suffer in silence and offer to take part in any of their service-oriented programs, such as counseling, legal aid, emergency medical assistance, etc. It helps to reduce vulnerabilities among the poor, disadvantaged, and adolescent girls and women.

**Pakistan**

**Pakistan International Human Rights Organization (PIHRO)**
PIHRO was established in 2004 and was registered with the Securities and Exchange Commission of Pakistan under Section 42 of the Companies Ordinance, 1984. This NGO is a nonprofit, nonpolitical, and nonsectarian organization. It works toward implementing human rights of victims of human trafficking.

PIHRO has achieved tremendous results in backward areas of Pakistan, such as federally administered tribal areas of Pakistan. At the moment, PIHRO is working on human rights protection, human rights education, women’s empowerment, disability, legal help, emergency response, refugees, and capacity building and training. It was established in 2003 and is working without taking or requesting a single penny from any donor agency. Rather it is PIHRO’s members who have generously supported its initiative with the help of the local communities. It organized capacity building training for police officials, lawyers, and prosecutors. It conducted many training programs such as training curriculum Development and Training on Trafficking for Law Enforcing Officers and Immigration Official funded by UNODC and ILO, Training on Human Trafficking for Law Enforcing Officials and Public Prosecutors (in Khulna, Barisal, Rajshahi, and Rangpur Divisions), and Training of Trainers (TOT) on Anti-Human Trafficking for law enforcement officials and public prosecutors. They assisted in developing a Protocol on Anti-Human Trafficking Unit (AHTU) and Guideline on National Referral Mechanism (NRM).

**Society for Human Rights and Prisoners’ Aid (SHARP)**
SHARP is a nonprofit, nonpolitical NGO registered under Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961. It was established in 1999. SHARP aims to develop strategic partnerships with like-minded humanitarian
communities, both at national and international levels. It works to minimize injustices from the society by empowering individuals, protecting individual rights, strengthening communities, and creating opportunities through advocacy and litigation. It also supports victims who have suffered and have been affected at the altar of judicial process. It also fought against discriminatory laws based on caste, race, sex, religion, and for minority rights, etc.

SHARP has had experience of working with various population groups (refugees, IDPs, women, juvenile delinquents, street children, prisoners, etc.) in different thematic areas, including protection, child protection, emergency response, advocacy.

**Lawyers for Human Rights and Legal Action (LHRLA)**

LHRLA took up the issue of trafficking of women in Pakistan several years ago and has worked for the release of all women detained illegally and subjected to the practice of human trafficking. It took the cases in court and provided free legal aid. After the victims are released, they either joined their families or took refuge in Edhi Homes as they had no other recourse.

The system that LHRLA has adopted toward preventive and remedial legal help is noteworthy. It adopted a mechanism by which they are directly approaching law enforcement agencies, the DIG, the home secretary, the provincial governor, and other highly placed officials with reports, petitions, and statistics. It is an issue-based organization with moto and actions. LHRLA has prepared a document of cases of trafficking of women and children and thereby drawing the attention of national and international human rights organizations.

**Rozan**

Rozan is working to combat gender-based violence against women and children and to strengthen their emotional health. The volunteers under Rozan are psychologists, psychiatrists, community workers, management experts, researchers, teachers, and doctors. UNICEF supported Rozan to develop child sexual abuse training materials and to build capacity to prevent child sexual abuse.

The main focus of this NGO is to solve issues relating to child sexual abuse and their emotional and psychological health in order to achieve their core mission of a violence-free society. One initiative is creating a safe environment for children in a society where child sexual abuse is rife. Rozan has primarily concentrated their activities in and around Islamabad with specialized teams for conducting a need assessment in communities. After connecting with the community, Rozan’s teams identify and mobilize groups of women, children, and trafficked victims and ensure their safety. This process involves holding community meetings, drills, group discussions, and trainings.

**The Ansar Burney Trust**

Ansar Burney, an advocate in the Pakistani port city of Karachi, established this NGO in 1980. This Trust introduced the first true human rights movement in Pakistan. This organization is fighting against all forms of injustices, cruel inhuman and degrading treatment, child abuse, cruelty to women, and other more subtle forms of human and civil rights violations without any discrimination or affiliation.
Afghanistan

Afghanistan Independent Human Rights Commission (AIHRC)
AIHRC was established under Article 58 of the Constitution of Afghanistan, which states that “any person, whose fundamental rights have been violated, can file a complaint to the Commission.” The Commission can refer cases of violation of human rights to the legal authorities and assist in defending the rights of the complainant. The structure and functions of this Commission are regulated by law.

Humanitarian Assistance for Women and Children of Afghanistan (HAWCA)
HAWCA is one of the most active NGOs in the area of human rights in Afghanistan. The major activity of HAWCA focuses on trafficking issues and safe homes for women at risk. The women and girls at risk are referred to the house through the Ministry for Women’s Affairs and AIHRC. HAWCA provided shelter to a number of trafficked victims.

International Organization for Migration Afghanistan (IOM)
IOM has been working since 1951 and is the leading intergovernmental organization in the field of migration. IOM currently implements a range of humanitarian assistance including for victims of trafficking, community stabilization, and migration management. All these initiatives in Afghanistan are in cooperation with government and humanitarian partners as well as local communities.

Bhutan

RENEW (Respect, Educate, Nurture, and Empower Women)
RENEW is an NGO established in 2004 working to the needs of vulnerable and disadvantaged women. RENEW focuses on combating sexual and gender-based violence (SGBV) and domestic violence (DV) and campaigns to prevent and eliminate all forms of violence against women and children.

Bangladesh

ANTAR
ANTAR was established in 2000 to combat human trafficking through organizing workshops and meetings at district and grassroots level. It has been playing a very active role in organizing workshops and meetings on trafficking issue hosted by local NGOs. The main objectives of these programs are to launch a comprehensive campaign against human trafficking and encouraging participation of civil society and NGOs. These events covered the districts of Chittagong, Cox’s Bazar, Rangamati, Bandarban, and Khagrachari. Human trafficking has been looked into as a serious violation of human rights in the country. ANTAR has been actively involved in anti-trafficking activities.
ANTAR has published many counter-trafficking materials including workshop and orientation guidelines, posters, etc. It also produced and mobilized a lot of information material on trafficking issue and distributes them to other NGOs and stakeholders around the country. ANTAR has established an information resource center on rights-based issues, including trafficking. It has been observed that imams also can be major actors in promoting the rights of victims of human trafficking. ANTAR works with adolescent children toward capacity building on child rights, trafficking, safe migration, reproductive health, sexual abuse, and similar exploitations in the greater Chittagong area.

**Dhaka Ahsania Mission (DAM)**

DAM, which was established in 1958 in Bangladesh, has consultative status with UN ECOSOC and UNESCO. DAM works to serve disadvantaged groups of people. The programs of DAM cover various areas of socioeconomic and cultural development, particularly to improve the living conditions of the disadvantaged and deprived communities. DAM’s services include education, livelihood support including microfinance, health, human rights including anti-trafficking programs, environment, climate change, disaster risk reduction, etc. It has also established country-level networking with GO/NGOs and cross-border cooperation with Indian NGOs in West Bengal and other major cities to facilitate rescue and repatriation of Bangladeshi victims of cross-border trafficking.

**ATSEC Action Against Trafficking and Sexual Exploitation of Children, Bangladesh Chapter (ATSEC)**

ATSEC is a coalition of 15 NGOs working in Bangladesh to combat trafficking and sexual exploitation in women and children during the last few years. It was established in May 1998, by the members of Save the Children Denmark – Red Barnet Partners Coordination Body (RBPCB) and an expert group on the issues of children and women trafficking and sexual exploitation between Bangladesh and West Bengal, India.

ATSEC works for coordinated actions in combating human trafficking and sexual exploitation and discrimination within the country and the region. ATSEC created awareness and social mobilization and initiated research activities at the grassroots, subnational, national, and regional levels to prevent inhuman and heinous offenses like exploitative sexual crime and trafficking in women and children.

It helped with capacity building among GO and NGOs, established contacts, and facilitates networking and linkage among individuals as well as NGOs concerned with the issue of trafficking and sexual exploitation of women and children.

To create awareness among general public in remote areas within the country, ATSEC has selected some NGOs at the grassroots level that are willing to work on the same issue through dialogue, exchange meetings, border campaign, training/workshops, rallies, and street dramas. ATSEC is organizing a massive information campaign in the 20 districts of Bangladesh. It has also established a National Resource Center to distribute posters, leaflets, etc., to whoever is interested in the issue of anti-trafficking activities and sexual exploitation in children and women.

ATSEC is also working to sensitize and mobilize the policy planners of the country through seminars and workshops. It has its wide range of network within
the region. At present there are ATSEC Chapters in West Bengal, Delhi, and Nepal. ATSEC is working as a Regional Secretariat for three chapters in South Asia as well. Under an USAID grant and Save the Children Denmark’s guidance, ATSEC is working closely with the British Council, ECPAT International, ILO, IOM, UNICEF, and UNIFEM.

**Bangladesh National Women Lawyers’ Association (BNWLA)**

BNWLA, established in 1979, is an association of lawyers based in Dhaka. Its main goal is “to create equal opportunities and equal rights for every woman and child in the country.” BNWLA promotes the rights and status of women lawyers and fighting for access to justice for all women and children especially disadvantage for women and children in Bangladesh.

One of the major activities of BNWLA is to protect and integrate women and children in their packages like legal aid, shelter home, psychological counseling, and enhancing members of women lawyers’ professional capacity to act as “change agents” to fulfill its vision “to establish rule of law with gender equality.” BNWLA also undertake capacity building programs for the lawyers, judicial officers, police officers, community members, and local government representatives for bringing changes in practices and policies. They also developed countrywide widespread legal service delivery through mediation/sahalishes through their 6 divisional services, 42 outreach clinics, and 30 grassroots-level partner organizations.

**Bangladesh Mahila Samity (BMS)**

BMS is one of the largest NGOs in Bangladesh, with its head office at 4 Natok Soroni (Bailey Road), Dhaka-1000, with 16 branch offices all over Bangladesh. BMS works for the cause of women and children from all social status to combat poor health, illiteracy, and poverty with a slogan of “A Better Future.”

**Center for Women and Children Studies (CWCS)**

CWCS is another NGO in Bangladesh encouraging, sponsoring, and promoting multidisciplinary basic and action research toward achieving socioeconomic development of women and children.

CWCS is running health-care services including counseling and shelter services at Satkhira District Hospital, Bangladesh. The main objective of this organization is to enable the victims of trafficking and sexual exploitation health services and to improve integrated health service-oriented referral systems in collaboration with Ministry of Health and Family Welfare, law enforcement agencies, and NGOs. It provides transit shelter facility for victims of trafficking and sexual exploitation and those in vulnerable situations referred by police, Border Guard Bangladesh (BGB), health service providers, government officials, and other stakeholders. The survivors of trafficking and sexual exploitation were not only provided with shelter services but also provided training on sewing and dressmaking, and some were placed in jobs at government factory. It also provided counseling services to victims of trafficking and sexual exploitation. The center was established in April 1994 as a nonprofit, nonpolitical organization aimed at development of women and children. The vision of the center is the inclusion of women in policy
agenda to ensure equality in socioeconomic, legal, and political spheres, leading to distributive justice.

**Sri Lanka**

**Human Rights Organization of Sri Lanka**
The Human Rights Organization of Sri Lanka was established in 1983 as an Association of the Justices of Peace with 08 members. This NGO aimed at peace, harmony, and friendship among people. It has rendered unique service to all Sri Lankan communities in the sphere of social welfare and cultural aspects and fighting against numerous challenges, harassment, rebuke, and insulation.

**Caritas Sri Lanka**
Caritas Sri Lanka is the social arm of the Catholic Church in Sri Lanka. The Social and Economic Development Center (SEDEC) was founded in 1968 by Rev. Fr. Joe Fernando, a missionary priest, who was motivated to serve the poor and marginalized sectors of society. Over the years, SEDEC has grown and expanded its services and is now the National Centre of the Commission for Justice, Peace, and Human Development. It has a countrywide network of 13 diocesan centers covering all the districts of Sri Lanka. The main objectives of this organization are protection of the rights of Sri Lankan migrant workers in the Middle East, assistance to the migrant returnees and families of migrants, pre-departure training for the potential migrant workers, and post-arrival assistance.

**Their Future Today (TFT)**
TFT, which was established in 2006, focuses on institutionalized children, who survive alone and afraid and are denied access to basic human rights of love and education. This organization houses 100 young girls of 10 years or above, some who are mothers and have suffered rape, abuse, and rejection from their families. Some of the victims were locked up for punishment and protection and released at 18 years old with little or no education or self-worth. This project enables victims of trafficking to enhance life skills and qualifications in order to move on.

**Maldives**

**The Human Rights Commission of the Maldives**
The Human Rights Commission of the Maldives was established on December 10, 2003, as an independent and autonomous statutory body created under a decree promulgated by the President of the Republic of the Maldives. Its main objective is to lead the promotion and protection of human rights under the Maldives Constitution, Islamic Sharia, and regional and international human rights conventions ratified by the government of the Maldives.
Partnership Between International Organization for Migrants (IOM)
In coordination with the government of Maldives, IOM has provided support to understand the gaps and strengthen the capacity for border control and migration management. Some notable progress achieved so far are as follows:

- In light of the assessments done, capacity building trainings were carried out on provision of adequate migration procedures, human trafficking, human smuggling, and identification and care of victims of trafficking. Attendants included NGOs, prosecutors, employment tribunal members, media, cabinet, private sector, and parliamentarians.
- With the growing network of informed stakeholders, IOM led the drafting of standard operational procedures for the identification, protection, and referral of victims of human trafficking. It outlined the roles and responsibilities of relevant governmental and nongovernmental entities.
- In collaboration with three selected service providers, IOM further developed a training guide for the identification of human trafficking, subsequent assistance, and national referral system. This training guide was also pilot-tested.
- IOM also conducted a field survey of interviews with over 200 expats and 50 locals, to understand awareness and common practices of any exploitation or human trafficking behavior.
- Source: website of IOM Maldives

HRCM NGO Network
The Human Rights Commission of Maldives (HRCM) started in 2009 an NGO Network to support and assist human rights NGOs and to secure their cooperation. The number of NGOs in this network was 48 at the time of establishment.

The primary objectives of establishing the NGO Network are:

- To collaborate with these NGOs in the protection and promotion of human rights, since NGOs will be more aware of the troubles of the people and able to witness the human rights situation of the people from a close proximity
- To enlist the help of NGOs for HRCM’s works while increasing public sharing of human rights information and working toward protecting and promoting human rights
- To work with the NGOs in protection, sustenance, and promotion of human rights, since the NGOs play an important role in holding the government accountable

Conclusion
Human trafficking is a global problem, which is discernible in the SAARC region. SAARC countries are regarded mostly as source as well as transit countries of human trafficking. Human trafficking has very complex nuances, with deep multi-angular dimensions embedded. Many NGOs in the SAARC countries have stepped
in to combat this problem of human trafficking. They are working diversely in source areas and destination areas toward the prevention, protection, and prosecution of the “flesh trade.”

The concern for the increasing number of trafficking of women was discussed at a regional conference in 1998; the important role of NGOs and other sections of civil society was recognized in combating human trafficking (ESCAP-Proceedings 1999).

In this chapter an attempt has been made to identify some of the NGOs in the area of South Asian Association of Regional Cooperation (SAARC), especially in India, and their legal and administrative actions.

All the aforesaid NGOs are working mainly toward three objectives – intervention, legal aid, and rehabilitation of the victims of trafficking. Some of these NGOs are also focusing on preventive actions and awareness among girls and women. Broadly, their main functions may be categorized into three, namely, prevention, protection, and rehabilitation. These NGOs undertook various programs under preventive measures, such as establishing anti-trafficking centers, publication of literature on consequences of human trafficking, human rights education, establishing community-based vigilant groups, etc. Similarly, under their protection programs, these NGOs have introduced programs such as legal aid, group homes or shelter homes, night care centers, rescue operations, health care, psychosocial counseling, protection of human rights, etc. The most important program of these NGOs is rehabilitation. They are trying their best to extend their services to civic and economic rehabilitation, educational support, psychological support, vocational training, institutional placement program, legal support for reintegration, and repatriation in cases of cross-border trafficking. To implement the various programs more effectively, the NGOs in Bangladesh, India, and Nepal developed a network, ATSEC, to combat the problem of human trafficking.

Trafficking of people may be termed as “modern-day slavery” and is becoming a peril that threatens the basic values of modern civilization. To do justice to victims of human trafficking in general and women and children in particular, we have to change our social, legal, and the infrastructure of justice delivery system. Moreover, to limit the increasing trends of trafficking against women and girl children, it is necessary to create a wide atmosphere of resistance and protective measures in which women at all levels are increasingly empowered to stand up to fight and seek well-established trafficked victim support to live with dignity and honor.

End Note

Annual Report of Prajwala: Every year Prajwala prepare its annual report which reflects its various activities, such as prevention through education, community-based prevention, rescue, rehabilitation, and reintegration.

Counseling: The trafficked victims immediately after rescue always need mental support and counsel to overcome the trauma they are facing. NGOs are used to doing this within their program.

FIR: FIR stands for First Information Report. When there is any cognizable crime in India, the victim or any of
their relatives or any public may go to police station and lodge an FIR, giving details of the crime incidents. It is very much important in the investigation process.

PIL

PIL stands for public interest litigation. In the Supreme Court of India, any spirited public or NGO can send a letter addressed to the Chief Justice of India stating violation of laws.

Victim

Trafficking is treated as a crime or offense in almost all countries that have legislation on the prevention and control of human trafficking. Under the broad definition of victim, victims of human trafficking have also come under the definition of victims of crime.

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The NGO Response to Human Trafficking: Challenges, Opportunities, and Constraints

Gayle Munro

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Abstract

The support sector for victims of human trafficking within a British context is dictated by a contract culture in which services are commissioned and funded against a backdrop of governmental policy and legislation around human trafficking and modern slavery. British policy and legislative contexts around trafficking have been couched within the discourse of “modern slavery” since the introduction of the Modern Slavery Act in April, 2015. Lawyers, policy makers, and support providers have highlighted how such a shift in approach from using the language of “trafficking” (which is codified within international law) to “modern slavery” (which is not) has muddied the framing of the concept as a whole, exacerbated by the “hostile environment” on (illegal) immigration. This chapter highlights some of the challenges for nongovernmental organizations that provide support to victims of trafficking (herein after trafficked persons) within such a political and legislative environment. The discussion is based on

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ethnographic observations over a period of 10 years of the author working within the trafficking support sector and semi-structured interviews with staff working with trafficked people in England and Wales. Some discussion is devoted to how the sector has changed and matured over this period of 10 years.

**Keywords**

Trafficking · Modern slavery · Nongovernmental · Charity · Support

Many of those nongovernmental organizations working with trafficked people in the UK are faith-based organizations (FBOs) or have their roots or ethos based within organized religion (The majority of these are of the Christian faith.). The field of trafficking support and practice in the UK is one where definitions of exploitation, agency, empowerment, and victims’ rights frequently do not dovetail between policy, legislation, and practice. Within such a context, service provision across a mixture of FBOs and agencies that also may have differing feminist stances can raise interesting questions and debates. The chapter therefore discusses the often reciprocal relationship between a person’s individual faith or political standpoint and his/her work with trafficked people. The discussion also highlights some of the tension which can arise when service provision is based within such a contested field.

**Introduction**

Support for those individuals and families trafficked for different forms of exploitation both to and within the UK has traditionally been provided by nongovernmental organizations (NGOs), some with financial support from governmental departments. This chapter discusses some of the challenges facing those organizations that seek to provide support to individuals that are identified as victims of human trafficking. The ways in which the NGO response has evolved within the changing political and legislative context of human trafficking are first outlined before a discussion of the following themes: the faith-based nature of the NGO response, the ways in which the contractual nature of the governmental-NGO relationship in this sector may pose a challenge to the ethos of services, the tensions inherent within the sector, the human trafficking-slavery nexus, and the connections between trafficking status, immigration status, and recourse to public funds.

**Methodology**

The discussion in this chapter reflects the author’s personal experience of working within the human trafficking support sector for more than 10 years as a researcher and a first responder. At the time of writing, support provided to those trafficked into exploitation in the UK was provided via a referral and identification process known as the National Referral Mechanism (NRM). The role of the first responder within
such a support context was to carry out in-depth interviews with those referred into the service about their experiences, the details of which would then form part of the victim identified process carried out by one of the “competent authorities” (which make decisions around entitlement to support). It also draws upon a series of semi-structured interviews with staff working across a range of support services that work with those trafficked into exploitation in England and Wales. Interviews were carried out with a total of 21 individuals representing 7 different organizations in different geographical locations. The support providers that participated in interviews include faith-based and non-faith-based services; facilities for men, women, families, and mixed-sex shelters; and organizations that support those whose needs could be considered to be “high end” on a spectrum of need along with those that provide services to those with “low-level” needs. A scoping exercise of all known service providers which work with those trafficked into different kinds of exploitation was carried out. Service providers were plotted on a matrix, according to geographic location, size of organization, type of client by demographic variable, nature of service provided, and ethos of service. Potential interviewees were then approached from those organizations from across the matrix and from different positions within the organization, for example, volunteers, paid support workers, and management. Interviews were carried out between July and December 2017.

Interviewees were asked to reflect upon any changes (within the timeframe of their experience) across the sector of support for those trafficked into different kinds of exploitation. Staff were also asked questions concerning their personal motivation for getting involved in this type of support work, whether the way in which the support sector is funded and commissioned has had an impact upon service delivery, and the relationship between governmental policy in this field and direct support to trafficked people. Interviewees were also invited to comment more broadly on the challenges, constraints, and opportunities around working in this sector.

During the analysis of the research material, it was particularly difficult to dovetail observations made during more informal conversations held and practice witnessed within the context of first-responder work and those responses given in the structured interviews. The expected synergy between the two sets of material was missing in the majority of cases. Interviewees, especially those still directly involved in the sector, were reluctant to discuss in interviews the opinions they expressed when speaking “off the record” in a less formal research environment. While this observation is certainly not unique to the trafficking support sector (Hoolachan 2016), there was a clear demarcation between material gathered via observation and that via “official” research interviews.

Decisions made by the researcher related to the treatment of data gathered in an environment where he/she has a dual practitioner-researcher identity have clear ethical implications around disclosure and consent (Coy 2006). When the issue of a contractual culture around service delivery is added into the research melting pot of methodology and ethics, along with organizational reputational risk management, it is understandable why some interviewees are less willing to share opinions, which could be considered controversial or which could potentially place any governmental contractual relationship at risk; however robust are assurances of participant
anonymity. Ethnographic work undertaken in the role as a dual researcher-practitioner and entering into the environment for a time-limited period to conduct interviews can frequently generate different kinds of research data, especially in terms of the level of detail and reflections of the positionality of the researcher. And the tension inherent within such differences can also help to highlight the quality of the data taken away from research interviews alone. Trafficking as a field is popular with both journalists and PhD students, and given the differences observable between ethnographic observations and formal interviews, the challenges of capturing the complexities and nuances of working in such an environment via interviews alone are extensive.

**Trafficking and the Support Sector: Contracted Provision of Support**

Since 2011, The Salvation Army in the UK has held a victim care contract with the Ministry of Justice and later the Home Office to provide accommodation and support services for adult trafficked people in England and Wales. The contract is structured as a prime contract between the Home Office and the Salvation Army with a series of subcontracts administered by the prime contract holder. At the time of writing, the 12 subcontracted services were based across England and Wales and were members of a network of other NGOs that have opted to enter into a subcontractual relationship with the Salvation Army. Some of those NGOs are faith-based organizations, and some have their organizational roots in religious values and retain some of that ethos, while other NGOs are women’s rights advocacy groups or domestic violence refuges that have expanded their activities into the human trafficking sector. The mixed nature of underlying values in the sector involving both faith-based and women’s rights’ organizations, some of which have conflicting approaches to feminist ideologies and to consent and agency in sexual relationships, has led to lively discussions on the occasions when such differences are aired on public platforms. One such example was a conference held in December 2007 where heated discussions dominated the platform shared between two support providers whose representatives held very different views about the extent to which sex work could be considered to be exploitative. The position of one of the speakers was that all sex work, by its very nature, was exploitative. The counterposition, presented by the other speaker, was that sex work is a legitimate choice, made by a woman who has autonomy over her body, and should be respected as such. For this second speaker, sex work can become exploitative when the sex worker is no longer in a position to voice control over, for example, conditions, pay, and clients. For the first speaker, sex work begins as an inherently exploitative condition with no “tipping point” at which it then becomes exploitation.

The system of identifying a trafficked person in England and Wales is undertaken by the National Referral Mechanism (NRM) – a system which has come under significant scrutiny and criticism for the approach to identify “victims of trafficking” (VoTs) or “potential victims of trafficking” (PVoTs). Criticisms have been levelled at
the potential conflict of interest in decisions being made on trafficking cases by the same authorities as those making decisions on asylum cases, the length of time to make decisions (especially on cases from outside Europe), and justification for negative decisions. The NRM, introduced into the support sector in 2009, is a two-stage process in which decisions related to each individual’s case are made by one of two competent authorities: (at the time of writing) the National Crime Agency’s Modern Slavery Human Trafficking Unit (MSHTU) and the Home Office Visas and Immigration (UKVI).

When a potential victim of trafficking (PVoT) is identified, a first responder carries out a detailed interview to capture, in written form, the individual’s experiences. The report is sent to one of the two competent authorities for a decision on the case. The first stage of the decision of whether the case dictates that there is “reasonable grounds” (RG) that the person has been trafficked into exploitation is due after 5 days. The second stage of the decision, which is to determine whether or not there is “conclusive grounds” (CG) that the individual is a victim of trafficking (VoT), is, in theory, due after 45 days. In practice, however, many cases can take significantly longer for the decision-making process to be completed, especially for individuals from outside the European Economic Area (EEA), whose cases are usually handled by the UKVI. For those individuals, who receive a positive RG decision, a rights process known as the “reflection and recovery” period is triggered. During this process, the individuals are entitled to financial support and (in the absence of anywhere to live) accommodation for a period of 45 days. In many cases where the individual is deemed to be particularly vulnerable, the support provider can make a request (via the prime contractor) for this 45-day period to be extended. In practice, clients are often supported for significantly longer than the minimum 45-day period. Salvation Army data (The Salvation Army 2017) shows that clients are supported for on average 136 days within safe-house accommodation or 312 days in other accommodation with visits from an outreach worker.

When the referral is made to the prime contractor, a needs and risk assessment is carried out, sometimes conducted simultaneously by the first responder when completing the paperwork for the NRM referral. A decision is then made, based on the assessment information, as to which is the most appropriate support provider for the particular individual. Some subcontracted services are specialists in working with men or in supporting more vulnerable individuals, families, or younger clients/victims, who may be going through an age-determination process. In some cases, because of a risk that the individual may still be in contact with the trafficker, it is safer for the support to be provided at a different geographical location. In these cases, the referral would be made to another part of the country.

**Challenges to the Provision of Support Services**

As part of the UK government’s obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), the NRM has been the subject of a longer review process and the piloting of different decision-making
processes. This process has yet to reach a conclusion in terms of agreed recommendations on a way forward which serves to illustrate some of the complexities in the political and legislative processes in the field (Anti-Trafficking Monitoring Group 2010; 2013). The involvement of immigration case workers in a process, which is meant to secure the rights of victims of trafficking, has come under criticism for a potential conflict of interest, as has the protracted nature of the NRM decision-making procedure. Another concern is that a positive CG decision, after the reflection and recovery period ends, does not entitle the identified victim to access continued support and services in the UK. In the case of non-EEA individuals, a positive CG decision does not give an automatic right to immigration status or any right to stay in the UK.

The Development of the Trafficking Support Sector over Time

The support sector in its provision of services to trafficked people in England and Wales has changed considerably since the early 2000s when the sector was in its infancy. This is particularly evident when compared with more established support sectors, such as that of homelessness support services. The Salvation Army opened its first safe house in England with a small number of beds in 2006. At that time, the Poppy Project, part of Eaves Housing for Women, held a government contract to provide accommodation for adult women aged 18 and above. The criteria for a woman to access these support services included an agreement to cooperate with law enforcement and provide evidence against the trafficker. The Poppy Project operated a supported-housing model, where trafficked women would be accommodated in a house with other vulnerable women (usually those fleeing domestic violence). Staff were not on site 24 hours a day with support provided in the form of an outreach visit from a support worker. The Home Office published an evaluation of the Poppy Project’s pilot service (Taylor 2005). When the Salvation Army opened the Jarrett Community (with Salvation Army core funds) in 2006, the service was offered to girls and women aged 16 and above, pregnant women were accepted, and there was no expectation that the client would have to work with the police if she did not wish to do so. Because staff were on site 24 hours and it was a highly secure service, women with higher-end support needs would be referred.

Over the years, interest in the sector from the perspective of the media and from potential support providers and advocacy organizations has grown exponentially. In 2005, a cross-sector meeting would have had a handful of organizational representatives sitting around a table. In 2017, meetings organized by the Human Trafficking Foundation are standing room only with over a hundred representatives attending. The Human Trafficking Foundation (HTF) was founded in 2010 by Anthony Steen, who, while a member of Parliament, had formerly established the All-Party Parliamentary Group on Trafficking. At the time of writing, Mr. Steen was Chair of the HTF which brings together parliamentarians, NGO and statutory representatives, academics, and law enforcement agencies to develop policy recommendations. Of those support services which are part of the Salvation Army contract, about half are
FBOs, with some being more overt in stating their faith-based roots than others. Many of those support providers which do not have a connection to a faith base have their roots in providing services to women fleeing domestic violence. Non-contract direct service providers include a mixture of those organizations that openly claim their link with a faith and others that are more ambiguous in their stated connections with a faith base. Tensions are inherent within the sector between (a) those organizations from the faith-based end of the spectrum and those organizations that are known for a secular, feminist stance and (b) feminist organizations that self-identify as feminist but do not share the same position on choice and agency in sex work as other organizations that identify with a different feminist ideology. Such differences can have a resulting impact upon understandings and definitions of agency, choice, and exploitation. When the Salvation Army first began running services, there were explicit challenges by representatives from non-FBOs around how the ethos of the organization, particularly on the three subjects of birth control, abortion, and homosexuality, would have an impact upon service provision and also upon research carried out by the organization. However, as time has passed and the Salvation Army has become more established as a support provider for trafficked people, uniformed Salvationists reported in interviews that such challenges are raised less often.

The profile of clients referred into the NRM support system has also changed over time, although the demographic data is often influenced by law enforcement activity related to trafficking and modern slavery. For example, when law enforcement activity against perpetrators is focused on agricultural sites, construction sites, or commercial sex premises (sites where women and/or men are selling sexual services), then this attention would inevitably influence the “type” of trafficked person referred for support, as in whether the client is identified as a victim of sexual exploitation, labor exploitation, or domestic exploitation. Over a 6-year period between July 2011 and June 2017, the Salvation Army and its partners supported 5868 clients, 48% of whom were trafficked into sexual exploitation, 39% into labor exploitation, and 13% into domestic servitude. A total of 378 clients entered the service in 2011 compared with 1554 in 2017. The gender split for the number of clients supported was roughly 37% male and 63% female, with the majority of women being trafficked for sexual exploitation. The top 2 countries of origin for women in 2016 were Albania and Nigeria and for men were Vietnam and Poland (The Salvation Army 2017).

**Faith and Support Services for Human Trafficking Victims**

As many of the organizations contracted to provide support to trafficked people in England and Wales are either faith-based organizations or have their roots/ethos based within organized religion, interviewees were asked to reflect on the relationship between their faith and their work both on an institutional level and on a more individual basis (usually of the Christian faith). For many interviewees, what attracted many FBOs to provide support services within the anti-trafficking sector initially was due to how sex and sexual relationships are viewed by people of faith.
and by the Church – no matter what denomination. Over the years, the sector has
developed into providing support for both men and women, and to those trafficked
into different kinds of exploitation, although many FBOs started out working solely
with female victims of sexual exploitation. One male interviewee stated:

Some organisations have been drawn to working on victims of sexual exploitation, partic-
ularly Catholic organisations which have a particular position on the sacredness of sex
within a marriage. Trafficking for sexual exploitation then becomes a particular affront to
their ethos and values. Sex within the marital relationship is a gift, so sexual exploitation is
therefore a particularly awful form of exploitation. I think this is what attracts both feminists
and people of faith as an affront to their views on sex.

Many of the organizations that are not faith-based initially worked with women
escaping domestic violence. One interviewee noted that:

This is what FBOs and feminist organisations have in common: for FBOs it is the way in
which sex is viewed as a gift within a marital relationship which is being essentially
tarnished in a trafficking situation and for more explicitly feminist organisations, it is the
rights of women to have control and agency within their sexual relationships which are being
exploited.

Another interviewee, who does work for a faith-based organization, explained
how her motivation to work in this area was generated:

I came to realise the crossover with domestic violence and in particular the psychological
control that a man can hold over his partner. That has always made me so, so angry. I came to
realise the crossover with trafficking, particularly this male-female control.

An interviewee, who manages one of the FBO services, commented that in
addition to the perceived sacredness of a sexual relationship, which trafficking is
very much an affront to, the nature of the Church’s identity means that it is always
looking for “new evils to fight”:

Faith groups are interested in a new and exciting “product” (trafficking) and a fresh
challenge. There is also the perception that this is a new evil to fight. Faith groups love
fighting evil and have to make things seem new and exciting to their donors, who may be a
bit fed-up. When trafficking as a concern was perceived to arise, it was mainly about the
sexual exploitation of women. Let’s be honest there is nothing they like better than “saving
fallen women”. It’s deeply ingrained in their theology around the Madonna or the whore
argument. Lurking at the back is the Christian motif that sex should be restricted to the
sacrament of marriage.

In addition to the theological gratification this work may bring, the possibility of a
“new evil to fight” can also attract more funding from donors. Indeed, financial
security was one of the more tangible differences, which interviewees mentioned
that FBOs can bring to working with trafficking victims, something that more secular
institutions may not have. Many churches have a degree of financial capital simply
not enjoyed by other organizations. Another interviewee mentioned the amount of
government funding available for this kind of work, compared with, for example, the learning disability sector, which, he claimed, had made some organizations behave around potential donors like “sharks attracted to blood in the water.” Interviewees referred to the perception held by some within the anti-trafficking support sector that FBOs should not be contracted to run services for trafficked people because of the risk of proselytizing with particularly vulnerable individuals. One interviewee noted the need to be careful in managing who is selected to work directly with clients in order to counteract the perception that “a bunch of evangelists want to convert the vulnerable.” Another reflected upon how faith can interact with some motivations to work with trafficked people:

Lurking within this is the victim-abuser dichotomy. Christ assumes the position of the victim. The character of the evil abuser is absolutely essential for those to whom Christians are the rescuers. The act of practically saving then becomes about saving souls. A number of faith groups just aren’t interested in labour exploitation or in men because it doesn’t fit this. There is a hierarchy of victims. There are stereotypes of victims. It then becomes about the deserving and the undeserving. There is tension and conflict there because Christian love is meant to be unconditional. And then comes the accusation that faith groups are attracted to vulnerable groups because they can then proselytise to the vulnerable, confused and distressed. There is a power relationship between the victim and the support provider. The subconscious – unjustifiably – assumes that there is fertile ground for proselytization. And perhaps this is true, I would be willing to bet that I would have a higher “success rate” amongst a group of clients than with the general population – there is a captive audience. It can reinforce these things – the semiotics of bullying and language.

On an individual level when asked specifically about the relationship between their personal faith and their work, responses were quite complex. One interviewee talked about how she sees God present in all work with trafficked people, even through the work of non-Christians. Another interviewee, who had spent some time reflecting upon his faith and his work, talked in detail about how his faith helped him to deal with the cognitive dissonances ever present when working with victims of trafficking. He underlined that his faith gives him a structure when dealing, on a day-to-day basis, with chaos and constant challenges to that structure and also how what he termed “the moral ambiguity of the Catholic church” helps him to cope with the dissonances within his work:

Christians are mainly uncomfortable with the cognitive dissonance of women who don’t conform with the rescue industry – rescued syndrome. I am comfortable with the conflict, comfortable in familiar water. When prostitution and trafficking overlap or trafficked women then become the trafficker or when a man from one of the houses knifes one of my staff. Catholicism gives me the stability to be in that ambiguous ground. The church has learned to live with a degree of moral ambiguity. Some things they cannot rule on. This is a mystery and am comfortable with that. The moral ambiguity of the Catholic faith also helps me to deal with cognitive dissonance of trafficking. The ambiguity of one results in being comfortable with the other.

Another interviewee mentioned the power of prayer and made specific reference to working in the camps at Calais where she had encountered a great deal of hostility
[as a Christian] but where she believed the situation had been resolved because of intensive prayer:

I went to the Jungle in Calais with people from church (“The Jungle” refers to the encampment near Calais in use throughout 2015 and 2016, an area of tents and other temporary structures accommodating refugees and other migrants). I did a lot of training with volunteers there, mostly not Christian. There was a lot of political stuff going on: a lot of defensiveness, they wanted to work with refugees, didn’t want to know about traffickers. We were able to explain that some “smugglers” might have links with organised crime groups. We Christians can pray to God to get a sense of peace. Calais volunteers were very angry in some cases they had a right to be angry. Putting it all into the mix they thought why should we trust you? Christians can take a step back and look at the bigger picture and think what does God want in this? It did get a little bit hairy in some of those meetings. I was praying all the time and it turns out we all were from the church and then there was a shift in the meeting, we were able to cooperate more and work together. Something positive really did happen.

For some who provide support to trafficked people, their faith acts as an ever-present blueprint to their work. How does such a faith-inspired backdrop interact with a contract culture around the provision of support services provided by a government which has an unambiguously stated aim to foster a “hostile environment” around “illegal” immigration?

Relationship Between Contractual Culture, Government Discourse, Work with Trafficking Victims, and Faith

The contrast between the data gathered via observational work and direct, formal interviews became particularly evident in relation to the ways in which personal motivations for working with trafficked people clash with the institutional (and often limited) nature of the funding system. Those who have worked in the field for many years commented that the construction of the government’s support is treading a fine line between meeting its obligations under ECAT and not providing “so much” support that identifying as a victim of trafficking becomes an attractive option for undocumented migrants or, to use the government’s terms, “illegal immigrants” (In recognition that the Home Office’s definition of an “illegal immigrant” does not always dovetail with the experience of the individual migrant, many NGOs prefer to use the term “undocumented migrant.”). The British government has openly stated its aim to create a “hostile environment” around “illegal” immigration, codified in the Immigration Act 2016, which embeds immigration control into a number of aspects of migrants’ daily lives. The negative impact of the hostile environment on many migrants’ willingness to come forward for services to which they are entitled has already been well-documented (Munro 2017). When discussing the impact of the Immigration Act on trafficked people, who are referred into the service, one support worker from a FBO remarked that “[t]he Good Samaritan didn’t ask to see a passport first.” The frustrations peppered throughout that particular discussion around immigration status and entitlement to services are illustrative of the challenge of
reconciling faith and the provision of services to trafficking victims within a hostile environment on migration. And yet, in formal interviews, organizational representatives were reluctant to speak “on the record” about whether they felt that the nature of their contracted work posed a challenge to how their faith taught them to work with individuals in need of assistance. One interviewee said that the only potential area of concern might be when the 45 days of support comes to an end and the client has to move out from the service:

I don’t really see any conflict between the contract and Christian values, well, maybe in post-exit. I’m an optimist and I think we’ll get there – even with the post-exit support. There is a bit of a difference in the services when taking a long-term view and handing over. One (non-FBO) for example provide tough love whereas another (FBO) will give the client a ring every week even after they’ve left.

The reference to “post-exit” support above alludes to the stipulations of the contract, agreed to by each subcontractor, that contracted support ends when the supported client leaves the service after 45 days (or however long the contracted stay is funded for). Post-exit support has traditionally been a challenge for the sector when funding ends, but the client’s support needs are ongoing. Depending on the client’s immigration status, and especially if such a status renders the individual subject to a status of “no recourse to public funds” (NRPF), support options can be limited. Interviewees were also asked to comment on another aspect of the government discourse, specifically related to trafficking: the change in discourse from “trafficking” to “modern slavery.” The Modern Slavery Act, which was introduced in 2015, aims to draw together legislation to prevent trafficking and modern slavery, to prosecute perpetrators, and to protect victims under one umbrella piece of legislation (full text of the Act is available here: http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted). Some interviewees mentioned the apparent dichotomy between the governmental policy to create a hostile environment and moves to take such an uncompromising stance on modern slavery. Others explained away an apparent incongruity by the same government’s attempts to distance the issue of trafficking from migration altogether by reframing the debate through the lens of “modern slavery.” Another interviewee, close to retirement so perhaps able to be frank, was heavily critical of the move in the government discourse from trafficking to modern slavery. But that same individual also gave details about how the wider work of the organization has meant that they are able to fund trafficking work outside of the contract which has helped to resolve some of the tension points around both eligibility for support and post-exit support. Some criticisms of the support contract, for example, have been around the narrow criteria for eligibility for accessing support and also the time-limited nature of the help available:

I regret the change in terminology to modern slavery. It carries absolutely no legal weight, it widens the definitions and then it becomes about a global institutionalisation of trafficking. It’s creating an annoying crop of latter-day Wilberforces who want to save the world. Theresa May was basically desperate for a legacy. The ever-expanding numbers are
meaningless, the funding is going anywhere except making victim support the best it can be. The move to modern slavery was all about upstream funding instead of rolling up our sleeves and getting on with it. At the moment it’s low risk for a high return and need to flip this the other way around. May is basically trying to generate a sense of anxiety and dynamism.

The comments made above reflect the experiences of another interviewee, a frontline support worker, who observed that the change in policy and, in particular, the governmental change in language from trafficking to modern slavery had made little or no impact on the actual delivery of services to trafficked people:

We have had to change our paperwork – letterheads, referral forms, business cards, email signatures that kind of thing. But it’s all administrative. There has been no substantial change in what we actually do – none whatsoever. We have the same problems as before. The people who were left destitute at the end of this process are still that: destitute.

Conclusion

Those who have come to the UK to seek work may be working in conditions which law enforcement, the British government, and support providers would deem to be exploitative but may not always be understood as such by the trafficked individual. For some, being “rescued” from their plight means the simultaneous loss of accommodation, work, and income (however limited and exploitative any of these may be). Following exit from support services, such individuals may sometimes find themselves in a different, unfamiliar part of the country with nowhere to live and no means of earning an income. The support sector built to serve victims of human trafficking and modern slavery has changed over time as the sector matures and responds to changes in governmental policy and legislation. It is inevitable that the provision of support for trafficked people will, to a certain degree, be influenced by an environment in which the government has adopted a strategy of creating a “hostile environment” for “illegal migration.” As the nature of the support provided is increasingly dictated by government contracts, staff, who entered the sector to help provide support for and care for those trafficked into different types of exploitation, have spoken of their frustration when their support contract dictates that those whom they deem as vulnerable are not receiving the necessary care. The challenges of supporting those whose immigration status renders them “no recourse to public funds” after leaving the contracted support service were highlighted. This can have a profound effect upon staff morale and willingness to engage with what many deem to be a contractual, business approach to the provision of support. For those working for a faith-based organization, who personally may belong to a faith community, this tension can help to reinforce the belief that their work is driven by their faith and generate a conflict between the ethos of helping the most vulnerable (regardless of immigration status) on the one hand and those who governmental policy dictates can be supported on the other. This chapter has sought to highlight some of the challenges and tension which can arise when service provision for those deemed
vulnerable takes place against a backdrop of a political environment of pervasive immigration control combined with support services which may represent contested spaces of agency, empowerment, control, and differing understandings of “exploitation.”

References


The Role of Women’s Nongovernmental Organizations in Bulgaria for More Effective Protection and Assistance to Victims of Human Trafficking

Genoveva Tisheva and Anna Nicolova

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Abstract

This chapter briefly outlines the role women NGOs play in the protection of victims of trafficking and the role they play in the partnership relationship with government agencies in prevention and assistance of victims of trafficking in Bulgaria. The role women’s NGOs play in the legal process is also mentioned and one case is used as a good practice example in which the Bulgarian investigatory processes were legally challenged in the European Court of Human Rights.

Keywords

Assistance · Women’s NGOs, crises centers · Compensation

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Bulgaria, as a member of the EU, continuously strives to implement the EU Anti-Trafficking Directive 2011/36/EU. The Bulgarian experience is that women’s nongovernmental organizations (NGOs) are the main agents and representatives of the interests of the victims of trafficking and of the needed gender approach to the phenomenon, as proscribed by the Directive. It dictates that a gendered lens in policy and laws should be employed where, for example, the victims of sexual exploitation are mainly women. The gendered lens is employed in Bulgaria because the vast majority of identified victims of trafficking are women. Statistics from the Chief Prosecutor’s Office have indicated that the number of identified victims of trafficking in 2017 was 508 (an increase compared to 2016 – 447). Furthermore, identified women victims were the majority of victims of trafficking – 444; of this, the majority were women victims of sexual exploitation – 323 (Chief Prosecutor 2017).

The Role of Women’s NGOs in Assistance to Victims in Bulgaria

One of the major roles women’s NGOs play, as recognized by the Bulgarian government, is the creation of safety networks for assistance of victims of trafficking. International monitoring reports, like the US Department of State TIP report 2017, identified the need for increasing the capacity for sheltering victims and to provide specialized services for them as one of the main challenges for Bulgaria (US TIP 2017). In this context, the present article highlights the important role played by women’s NGOs in Bulgaria in the fight against human trafficking. First, the chapter outlines the work of women’s NGOs in assistance to victims. It then provides a legal example in order to demonstrate the challenges faced by the victims in order to obtain legal redress and the support women’s NGOs provide.

Ensuring the Basis for Services to Victims

In Bulgaria, nongovernmental organizations working with women victims of Gender-based violence (GBV) and their children remain the main resource for the protection of the rights and the delivery of assistance to women and girls who have experienced human trafficking, and this has been recognized by the Bulgarian Anti-Trafficking Commission in its Annual national reports (http://anti-traffic.government.bg/wp-content/uploads). The Commission has confirmed that the NGOs with which it cooperates for the placement of victims of trafficking are, in the first place, the leading NGOs which manage the specialized shelters for trafficking. The Commission also recognized that it cooperates with NGOs who manage crisis centers for women and children victims of violence and trafficking and that the major NGOs in this field are part of the Alliance for the protection from Gender-based violence. The same NGOs also ensure the gender-sensitive approach to assistance to victims of trafficking in the country.

The majority of services, and especially counseling centers, are not financed via a state-delegated budget (These are funds for social services from the national budget
through the local budgets.). Such centers are financed mainly through projects of women’s NGOS and are more flexible with regard to the provision of services – they have qualified teams with extensive experience in working with victims of violence and trafficking. The majority of such NGOs are members of the Alliance for Protection from Gender Based Violence (APGBV) (Referred henceforth as the Alliance or as the APGBV. www.alliancedv.org):

- “SOS-families at risk” Foundation, Varna
- “Demetra” Association, Burgas
- Bulgarian Gender Research Foundation (BGRF), Sofia and Haskovo
- Association “Open Door Centre,” Pleven
- “NAYA” Association, Targovishte
- “Ekaterina Karavelova” Association, Silistra
- “Pulse” Foundation, Pernik
- “Dinamika Centre” Association, Russe
- Foundation “H&D gender perspectives,” Haskovo and Dimitrovgrad
- Association “Knowledge, success, change” – Dupniza and Blagoevgrad

In addition to the counseling services managed by all these NGOs, the greater part of the organizations also run service crisis centers for women and children victims of violence. Such centers are managed by organizations in Varna, Burgas, Silistra, Pleven, Pernik, Ruse. The newest center and the biggest one at the moment is the one managed by the Bulgarian Gender Research Foundation branch in Haskovo. The center is located near Haskovo, in the town of Dimitrovgrad. With this latest center, the overall capacity of the centers of the organizations of the APGBV has reached over 120 places. Among the other organizations outside the Alliance for Protection from GBV and which provide counseling and crisis center for victims of trafficking are “Animus Association” Foundation, the International organization on migration – IOM in Sofia.

Specialized shelters for trafficked persons are established based on the Law on combating trafficking in human beings and collateral legislation and are operated through the Bulgarian National Commission on Combatting Trafficking in human Beings (NCCTHB) (Referred henceforth as the Commission or as the NCCTHB or Anti-Trafficking Commission.). The tenders organized by the Commission so far resulted in financing and authorization of several shelters: three specialized centers in the cities of Varna and in Bourgas for the delivery of assisted accommodation for adult victims of human trafficking, one of them for integration and against re-trafficking. Two other shelters were opened in Sofia – one for adult victims of trafficking and the other for child victims. All the tenders assigned the management of the shelters to the organizations from the Alliance – “SOS-Families at risk” – Varna and “Demetra Association” – Bourgas. Other smaller scale centers for services to trafficked victims, among other victims, are operated by the NGOs members of the Alliance Animus Association, IOM, etc.

Evidence demonstrates that the majority of the female victims of trafficking identified and those returned from abroad are being predominantly referred by the
NCCTHB to the centers of the Alliance, as well as to the IOM or other organizations based in Sofia. The NGOs also operate helplines for women victims of violence, which are available to victims of trafficking as well.

Funding Mechanism and Provision of Shelter Services to Victims

The social services provided by the Alliance organizations are governed by the social assistance legislation in relation to adults and children, respectively (the Law on Social Assistance and the Regulation for the application of the Law on Social Assistance; the Law on Child Protection), while the specialized shelters for trafficked victims are governed by the antitrafficking legislation (the Law on combating trafficking in human beings and respective regulatory acts regarding requirements for shelters for victims of trafficking). When a decision for opening a specialized shelter for trafficked persons is taken, the Anti-Trafficking Commission organizes a tender for the selection of a service provider to which funds from the state budget are allocated.

The social services in the community governed by the social assistance legislation are decentralized as it is up to the municipalities to identify the needs and develop services on their territory, including services for victims of violence. They propose to the central government the financing of new social services, like crisis centers for women and children victims of violence, and organize tenders for service providers in the community in the respective city. This is the other mechanism through which NGOs can be selected and approved as providers and obtain funds for their services.

The existing mechanism for funds allocation is functioning, although the existing services for victims of violence and trafficking are insufficient and underfunded. It is problematic that victims of trafficking referred to the crisis centers of the NGOs are not provided with additional funding (subsistence) corresponding to their specific needs, and similarly there is no provision for additional staff costs for delivery of specialized services for trafficked victims (Crisis center is defined as a residential service providing a complex of social services for persons suffering from violence, human trafficking or other form of exploitation, referred there for individual help, shelter, covering basic needs and legal consultation or psycho-social help.). Victims often remain long periods in the crisis centers (up to 6 months which is the maximum permitted duration). They require intense support and accompaniment to multiple appointments, including health services (Table 1).

Ensuring Coordination, Counseling for Victims Including Legal Counseling Without Delay

Women’s NGOs play an important role in the mechanisms for coordination and cooperation of institutions, linking assistance and services for victims of violence and trafficking. Such mechanisms are the National Referral Mechanism (NRM) for protection and assistance for victims of trafficking, the Co-ordination mechanism for
unaccompanied minors upon their return from trafficking and exploitation abroad, the *Special coordination mechanism for children at risk* and crisis situations.

The services run in the consultative centers of women’s NGOs are largely underfunded and often completely unfunded. All members of the Alliance and other women’s NGOs have consultative centers for victims of GBV. This is a complex of social services that is not explicitly regulated by the Law on Social Assistance. The consultative centers offer programs for psychological, social, and legal counseling as well as legal representation, where needed, in addition to referrals to institutions, services, and other NGOs. Most of the centers offer services through a helpline. Consultative centers provide “entrance” to the other services as well as a “supportive unit” after leaving a crisis center. The counseling services of women’s NGOs are crucial for upholding the rights of victims of trafficking. They offer independent legal counseling and early legal intervention for trafficked victims. The practice shows that expenses incurred by NGOs for specialized services for trafficked victims, including for legal representation in some isolated cases,
are sometimes reimbursed from the budget of the Commission, but there is no reliable and sustainable mechanism for financing these important services, even though they play an essential role in the process of recovery of the victim.

Women’s NGOs clearly demonstrably play a key role in the prevention and protection of victims of trafficking in Bulgaria. However, there is still a need for the recognition, enhancement, and formalization of the role and input of specialized women’s NGOs in identifying potential victims, proactively screening for indicators of trafficking, provision of *early legal intervention/intervention without delay as soon as there is indication of trafficking in human beings*, increased cooperation between law enforcement and NGOs, ensuring eligibility of victims for services irrespective of criminal proceedings, risk assessment of immediate protection needs, early collection of all relevant evidence and documentation, working in partnership with other stakeholders, and supporting and accompanying victims in order to prevent re-traumatization.

**Protection and Support Offered to Victims of Trafficking by Specialized Women’s NGOs – Summary**

**Crisis Intervention**
It represents a package of urgent measures for protection and care giving of victims. The following activities are covered:

- Emergency psychological support
- Continuous psychological consultations
- Providing of humanitarian aid
- Health services
- Assistance in renewing or issuing documents

**Support During Reflection Period**
- Consultation about possibility to collaborate in the investigation process
- Physiological consultation related to decision to collaborate for revealing of the crime
- Legal consultations

**Long-Term Psychological and Social Support**
- Psychological consultation/psychotherapy
- Programs:
  - Program “Parental capacity” (for victims who need to provide care for their children)
  - Program “Occupational orientation and assistance in finding a job”
  - Program “Budget management”
  - Program “Equal Gender relationships”
- Assistance and support in continuing education and professional qualification
- Social advocacy and communication with institutions
• Improving of health status
• Investigation and preparation of the environment, where the victim may be re-integrated

Safe Return
• Providing all needed documentation for the travelling
• Collaboration with institutions/NGOs cooperation upon the return
• Consultation on safe traveling
• Organization of the departure
• Collaboration with authorities and institutions on the arrival

Summary
The above demonstrates that the women’s NGOs in Bulgaria are prepared and equipped with skills and commitment for meeting the needs of the victims of trafficking and to ensure their rights according to the European and international standards.

Legal Standards and Measures for the Protection of Victims of Trafficking and Realizing Responsibility of Offenders. The Role of Feminist Lawyers and Women’s NGOs

Assistance to victims of trafficking, legal aid, and compensation is still a problematic area in Bulgaria. The Committee monitoring the implementation of Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) considered the combined fourth, fifth, sixth, and seventh periodic reports of Bulgaria at its 1045th and 1046th meetings, on 12 July 2012. The Concluding Observations dated 7 August 2012 (Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/455/66/PDF/N1245566.pdf?OpenElement) covered several aspects of the situation in the country relating to trafficking and the legal mechanisms available for victims’ assistance.

The Committee noted the positive development in the legal aid system in the country: the enactment of a law on legal aid and the establishment of a national legal aid bureau. However, concern was expressed regarding the practical obstacles faced by women seeking redress and the insufficient counseling and legal aid services available to women, especially women belonging to disadvantaged groups.

• The Committee urged the government of Bulgaria to “Provide women with effective access to legal aid by strengthening the legal aid facilities in place and ensure that, when pursuing legal remedies, women are sufficiently informed of their rights during proceedings.” (Legal complaints mechanisms, point 14 c)

The Committee further expressed concern of “the inadequate assistance and protection provided to victims and the lack of rehabilitation procedures, of compensation and of funding for non-governmental organizations that provide assistance
and temporary shelter to victims” (Trafficking and exploitation of prostitution, point 27). The recommendation in this respect urged the government of Bulgaria to:

- “Provide adequate assistance and protection to all women victims of trafficking, increase the number of shelters for victims, expedite efforts to establish compensation mechanisms for victims and strengthen programs for victims’ reintegration into society” (Trafficking and exploitation of prostitution, point 28 b).

These challenges in Bulgarian laws and policies represent the dichotomy between law on paper and law in practice: if there is insufficient or no legal aid, there can be no access to justice for victims of trafficking. The same is the case for transformative equality: without access to adequate assistance and protection, there little transformation can take place.

There are equally challenges for Bulgaria in relation to the status of the transposition of Directive 2011/36/EU. The vast majority of major changes in the legislation were enacted in 2013. The Amending and Supplementing Act to the Bulgarian Criminal Code, promulgated in State Gazette No. 84/27.09.2013, introduced amendments to the Bulgarian legislation for harmonization with Directive 2011/36/EU. The approach of the Bulgarian legislator, as stated in the process of transposition, is to introduce only the new rules by which the Directive builds on the standards of the Council of Europe Convention on Action against Trafficking in Human Beings.

Among the important provisions that have been introduced or transposed by the Directive are:

- The requirement of Article 8 of Directive 2011/36/EU for protection from prosecution or punishment of victims of human trafficking for acts they have been compelled to commit (New article 16а of the Criminal Code).
- The requirement of Article 2, paragraph 3 of Directive 2011/36/EU for obligatory inclusion of begging as form of exploitation under the criminal offence of trafficking of human beings. (Amended provision of article 159а of the Criminal Code).
- The definition of “trafficking of human beings” under the Law on Combatting the Trafficking in Human Beings has been amended to include the term “exploitation.”

Bulgaria has also complied with the requirements of Directive 2004/80/EC by adopting the Law on Assistance and Financial Compensation of Crime Victims. A national scheme on compensation to victims of violent intentional crimes exists and is operated by the National Council for Assistance and Compensation to crime victims. Despite this, the compensation limit and the lack of compensation for moral, nonpecuniary damages, for the trauma, the harm suffered in terms hurt feelings, loss of perspective in life, ruined future life, etc., damages pose problems for the victims of trafficking.

At the same time, Bulgarian lawyers, mainly working with women’s NGOs providing assistance to victims, started working on and taking cases on the issues of protection of victims, investigation and prosecution of perpetrators of trafficking.
One example of partnership working in legal arena is the case of S.Z. v. Bulgaria. It concerned the prosecution of traffickers and was sent from Bulgaria to the European Court of Human Rights (ECtHR) in Strasbourg, supported by women NGOs.

**Bulgaria: The Facts**
The applicant, S. Z., is a Bulgarian national who was born in 1977 and lives in Sofia (Bulgaria). On 19 September 1999 S.Z., who was then a student aged 22, left Sofia for Blagoevgrad in a car with two young men, who during the journey told her that they intended to “sell” her as a prostitute. She was taken to a flat where she was held against her will and repeatedly beaten and raped by several men for about 48 h before managing to escape. In the course of being interviewed by the police, who had been alerted by the occupants of the flat where S.Z. had taken refuge, the applicant attempted to throw herself out of the window.

A criminal investigation was instituted. The applicant identified two of her assailants in particular and two police officers with whom they had allegedly spoken before holding her against her will. She also stated that the men were part of a criminal gang involved in human trafficking who wanted to force her into prostitution in Western Europe. The investigation was closed four times and the case sent back for further investigation on the grounds that the necessary investigative measures had not been carried out or that procedural irregularities had been committed. In 2007 seven defendants were committed for trial in the Blagoevgrad District Court on charges of false imprisonment, rape, incitement to prostitution, or abduction for the purposes of coercing into prostitution. Twenty-two hearings were held, about ten of which were adjourned mainly on grounds of irregularities in summoning the accused or witnesses. In a judgment of 27 March 2012, five of the accused were convicted and given prison sentences and fines. Of the two other accused, one was acquitted and the proceedings against the other one were declared time-barred. In a final judgment of 11 February 2014, one of the convictions was set aside on the grounds that it was time-barred and the prison sentences of some of the other convicted prisoners were reduced.

**Strasbourg: Complaints**
Relying on Articles 3 European Convention on Human Rights (ECHR) (prohibition of inhuman or degrading treatment) and Article 8 ECHR (right to respect for private life), the applicant complained of the ineffectiveness of the criminal proceedings for the false imprisonment, assault, rape, and trafficking in human beings perpetrated against her. She complained in particular of the lack of an investigation into the possible involvement of the two police officers and the failure to prosecute two of her assailants and of the excessive length of time taken to investigate and try the case. She also submitted that the excessive length of the criminal proceedings, in as far as they concerned her claim for damages, had infringed the requirements of Article 6 § 1 ECHR (right to a fair hearing within a reasonable time). She submitted, lastly, that her case was illustrative of a certain number of recurring problems regarding the ineffectiveness of criminal proceedings in Bulgaria, in particular in cases of human trafficking. The application was lodged with the European Court of Human Rights on 3 May 2012.
The Judgment

In the case of S.Z. v. Bulgaria (application no. 29263/12), the European Court of Human Rights held unanimously that there had been: a violation of Article 3 ECHR (prohibition of inhuman or degrading treatment) on account of the shortcomings in the investigation carried out into the illegal confinement and rape of the applicant, having regard in particular to the excessive delays in the criminal proceedings and the lack of investigation into certain aspects of the offences.

The Court found it to be a cause of particular concern that the authorities had not deemed it necessary to examine the applicant’s allegations of the possible involvement in this case of an organized criminal network of trafficking in women.

The Court also observed that it had already, in over 45 judgments against Bulgaria, found that the authorities had failed to comply with their obligation to carry out an effective investigation and considered that these recurrent shortcomings disclosed the existence of a systemic problem. It considered that it was incumbent on Bulgaria, in cooperation with the Committee of Ministers, to decide which general measures were required in practical terms to prevent other similar violations of the Convention in the future.

More specifically, The Court considered it appropriate to examine the applicant’s complaints solely under Article 3. With regard first of all to the criminal proceedings, the Court observed that these had lasted over 14 years in all – for the preliminary investigation and two levels of jurisdiction. That period appeared excessively long having regard to the obligation on the authorities to proceed speedily given that criminal proceedings had been instituted and some of the persons responsible had been committed for trial. The Court was not satisfied that such a delay could be explained by the complexity of the case.

The Court went on to observe that the investigation had been closed four times, but the prosecutor had decided to send the case back for further investigation on the grounds that the necessary investigative measures had not been carried out or procedural irregularities had been committed.

That lack of diligence on the part of the authorities had delayed the investigation phase of the proceedings and resulted in the prosecution of certain less serious offences being time-barred. Admittedly, S.Z. had not challenged the decision to drop the case against the two police officers she had identified. It was a cause for concern, however, that given the nature of the offences in the present case and despite the applicant’s statements that her assailants were members of a network trafficking in women with a view to coercing them into prostitution abroad, the authorities had not considered it necessary to examine the possible involvement of an organized criminal network and had confined themselves to prosecuting the individuals directly responsible for the abduction and assault of the applicant. Likewise, the authorities had not taken concrete steps to find the two other people identified by the applicant. Regarding, lastly, the judicial stage of the proceedings, which had started in 2007, the Court considered that the considerable length of those proceedings was not entirely justified by their complexity. Indeed, many hearings had been adjourned without an examination of the merits of the case on the grounds that some of the accused had not been properly summoned or had failed to appear.
The Court noted, further, that the excessive length of the proceedings had undeniably had negative repercussions on S.Z., who, clearly psychologically very vulnerable as a result of the attack, had been left in a state of uncertainty regarding the possibility of securing the trial and punishment of her assailants and had had to return to court repeatedly and go back over the events during the many examinations by the court. The Court accordingly held that there had been a violation of Article 3.

The applicant, who submitted that her case was illustrative of recurrent problems regarding criminal proceedings, asked the Court to indicate to Bulgaria which individual and general measures should be adopted for the purposes of Article 46 of the Convention. That provision did allow the Court to assist the State in identifying ways in which the situation found to violate the Convention could be brought to an end. The Court reiterated, however, that it was primarily for the State to choose, subject to supervision by the Committee of Ministers of the Council of Europe, the means to be used in its domestic legal order to execute the Court’s judgments.

The Court observed that it had already, in over 45 judgments, found violations of the obligation to carry out an effective investigation in applications concerning Bulgaria. Among the reasons for these findings had been substantial delays in the investigation resulting in termination of the prosecution as time-barred; the exclusion of evidence or suspects by the authorities; and repeated refusals by the prosecutor to comply with the court’s instructions regarding the preliminary investigation. These recurrent shortcomings disclosed the existence of a systemic problem regarding the ineffectiveness of investigations in Bulgaria. However, the Court, being aware of the complexity of the problem, did not consider itself in a position to indicate which measures should be implemented in order to execute the judgment in the case of S.Z. It found that the Bulgarian authorities, in cooperation with the Committee of Ministers, were the best placed to decide which general measures were required – in practical terms – to prevent other similar violations in the future.

The Court held that Bulgaria was to pay the applicant 15,000 euros (EUR) in respect of nonpecuniary damage and EUR 2,500 in respect of costs and expenses.

Challenges of Implementation of the Judgment: The Issue of Compensation

In addition to the issues posed by the case mentioned above, and separately, three cases were filed in the Sofia City Court for recognition of a foreign judgment authorizing enforcement in connection with trafficking cases, considered and decided by the District for criminal cases of Vienna, Austria, and the issuance of writs of execution for the amounts awarded. The victims are all Bulgarian women trafficked for the purpose of sexual exploitation and claim recognition of their judgment for compensation awarded by the Austrian court. In fact, by judgment of 21.03.2012 of the District Court for criminal cases of Vienna, Austria, in a criminal case № 142 Hv8-12 f, entered into force on 21.03.2012, it was recognized that five Bulgarian women had been trafficked by a criminal group, were forced to engage in
prostitution, and suffered physical violence. The compensation awards were on average around 10,000 Euros and out of five victims, only three women managed to apply to Sofia City Court. Others had obstacles in proving the connection and identity of their real name with the name used for them in the penal proceedings and the verdict in Austria. The difficulties might be related with the different names given sometimes by traffickers to the women in sex exploitation. They thus were not recognized in Austria and not given their compensation.

The above example is illustrative of the level of support and length of time it takes in order to take a case to court in order to obtain justice for the victims of trafficking. Even if the case is brought, time passes, a successful judgment is handed down, there might still be issues of implementation of the order in domestic settings. That was the case here. Victims are still waiting and cannot obtain closure until their case is finally resolved. Women’s NGOs, as far as is practicable and lawful, support women for years during this process. This is financially draining.

Despite these challenges, more cases are being brought in different ways and due to different circumstances for each of the victims, as well as due to consideration by different judges.

Currently there is final recognition for two of the cases and the lawyer who is specialized in trafficking issues and works closely with women’s NGOs will undertake further steps for the effective execution against the traffickers. Further obstacles for the practical realization of the rights of the victims at national level are expected. These challenges affect, but do not hinder, further cases from being brought. Currently, there is another pending Bulgarian case before the ECtHR. It concerns lack of domestic remedy available to the victims of human trafficking for claiming pecuniary damages from the trafficker – Application No. 18269/18, Krachunova v. Bulgaria. In this case, the lawyer is a specialist and is working with women’s NGOs. We are awaiting the outcome.

Conclusion

In conclusion, the role of Bulgarian women’s NGOs and expert lawyers in the field of violence against women and trafficking for purpose of sexual exploitation is decisive and crucial for the rights of women and girls victims. It should be accounted for and further encouraged and supported through the cooperation with state institutions.
Abstract

The Human Trafficking Foundation (HTF) was set up by parliamentarians and, as Secretariat to the All-Party Parliamentary Group (APPG) on Human Trafficking and Modern Slavery, has always had a prominent role in promoting issues around human trafficking and slavery to parliamentarians. With the creation of the Modern Slavery Act 2015 (MSA), there was an aspiration that some of the HTF’s work could gradually be discharged. However, the MSA lacked clear provisions on support for victims, while its statutory duties around identification have struggled to become mainstream practice, particularly within local authorities. As a result, the HTF has refocused some of its efforts around the
implementation of the Act by looking at ways to improve the identification of
victims of trafficking under Section 52 of the Act, as well as improve the support
provisions provided to victims, both inside the Government-funded safe houses
with the National Referral Mechanism (NRM) and by statutory authorities and
others when a survivor exits this service. To carry out this work effectively, the
Foundation uses a model of working with stakeholders and partnerships across
the entire sector. This includes work with cross-party parliamentarians within its
Trustee membership and the APPG to lobby for change, alongside its vast
network of stakeholders via its National Advisory Forum, and its partnerships,
via it National Network Coordinators Forum, London Working Group, and
International Anti-Trafficking Group, to garner expertise and work collabora-
tively for change, while also setting up new networks through its work with local
authorities.

**Keywords**
Modern Slavery Act 2015 · Local authorities · Long-term support · National
Referral Mechanism · Modern Slavery (Victim Support) Bill · Care Act 2014 ·
Prevention Orders · Partnerships · All-Party Parliamentary Group (APPG)

**The Human Trafficking Foundation: Partnerships and Parliamentarians**

The Human Trafficking Foundation (HTF), UK, was established out of the All-Party
Parliamentary Group in the Westminster Parliament in 2010 by three cross-party
parliamentarians, Anthony Steen CBE, Baroness Butler-Sloss, and the Right Hon-
orable Clare Short with three clear objectives.

First is to equip policy makers with a greater understanding of the rapidly
changing realities of human trafficking, by connecting them directly with those
working on the front line to support survivors. Second is to provide a sustained
and collective voice for all the very different organizations working in the sector and
use this expertise to inform anti-trafficking policies. The last is to increase public
awareness of trafficking (including through an annual Anti-Slavery Day campaign),
so that a greater degree of public concern would make the UK increasingly hostile to
traffickers.

Anthony Steen CBE established the All-Party Parliamentary Group (APPG) on
Human Trafficking and Modern Slavery as an MP in 2006. Today, as Chairman of
the Foundation, Anthony Steen is Special Adviser to the APPG, and the Foundation
acts as its Secretariat. It is also assisted by Parliamentarians directly involved as
Trustees. The Foundation sits on a number of Government and statutory groups,
such as the Modern Slavery Strategy and Implementation Group (MSSIG) which
meets quarterly with the Minister covering human trafficking, presently Victoria
Atkins MP. In these roles the HTF aims to bring attention to new evidence and
information gathered from grassroots groups across the country through the Foun-
dation’s partnership networks, described below. Indeed, the Foundation’s success
has been grounded in partnership and multiagency working. The HTF has good working relations with many NGOs and statutory service providers (such as the police, health providers, local authorities, justice bodies, and NGOs funded by Government to provide statutory support to survivors) and is able to bring stakeholders together from across the sector. Its Advisory Forum, which meets four times a year, has a reach of over 500 stakeholders with approximately 100 NGOs from across the UK attending. The Foundation’s National Network Coordinator Forum (NNCF) supports 25 partnerships across the UK, while its international working group connects 30 members, and its London local authorities’ newsletter reaches around 1000 people working in statutory authorities, while its Anti-Slavery London Working Group brings together over 100 members from NGOs, diaspora groups, and pan-London statutory organizations. All of these structures, processes, and engagements facilitate lobbying and have led to success in terms of the most recent England and Wales specific piece of anti-trafficking (recast and extended in the UK as modern day slavery) legislation.

**The Modern Slavery Act: The End of the Journey?**

Prior to the Modern Slavery Act, human trafficking was not prioritized across England and Wales, and there was limited funding available for proactive work or support for victims. Many reports highlighted these concerns, including those written by an anti-trafficking research group of leading NGOs called the Anti-Trafficking Monitoring Group, as well as reports by the former Leader of the Greater London Conservatives, Andrew Boff (Shadow City 2013), and the think tank Centre for Social Justice’s report (It happens here, 2013).

The HTF played a key role in the passage of the Modern Slavery Act 2015 (MSA) for England and Wales by bringing together statutory and nongovernmental organizations at the Forum to inform the Act’s content and development. In addition, its Chairman acted in a formal advisory “Modern Slavery Envoy” role to the then Home Secretary Theresa May, MP, with the Foundation’s trustees sitting on the Joint Committee of the Modern Slavery Bill, which made recommendations on the content of the Act. This Act consolidated a host of previous offenses relating to trafficking and slavery. The Act provided mechanisms for seizing traffickers’ assets and channeling these in part toward victims as compensation, as well as providing better protections to victims, including a statutory defense for victims forced to commit any crime under duress (Section 45). The Act also introduced two civil orders in the form of Slavery and Trafficking Prevention Orders, STPOs (MSA, Part 2 Section 14), and Slavery and Trafficking Risk Orders, STROs (MSA, Section 23), to restrict the activity of those who pose a risk of causing harm. It also created an Independent Anti-Slavery Commissioner role as well as making provisions for Independent Child Trafficking Advocates (MSA, Section 48) which provide specialist independent support for trafficked children, in addition to existing statutory service provision, and have now been piloted successfully in parts of England and Wales. The Act aimed to introduce frameworks designed to promote best practice
and drive improvement across the Anti-Slavery response in the UK and was lauded by the USA (Evening Standard 2017) and others as a legislative model to follow for the world, with countries including Australia examining implementing similar legislation to tackle modern slavery themselves.

There was, however, significant concern at the time that victim support was not set out on the face of the Act. Indeed the Home Secretary’s Human Trafficking Envoy, the HTF Chairman, felt this was a “lost opportunity.” Nonetheless Ministers in parliamentary debates at different stages of the Bill made clear that this would be implemented at a later stage, in the statutory guidance and in Sections 49 and 50. It was felt instead, at the time, that driving the Act through Parliament before its dissolution should be a priority. The sector was told by Ministers that including this element risked slowing the progress of the Bill.

The passing of the MSA created a mood of renewed optimism that the UK’s fight against modern slavery – of more effectively finding victims, convicting traffickers, and getting support and justice for victims – would be enshrined in law and would turn rhetoric into practice. The hope was that HTF’s mission of raising awareness and ensuring victims are found, protected, and supported in the UK might even be completed over this period and its work wound down.

Certainly following the Act, with new statutory duties for police and local authorities and immigration and increased funding in the Home Office to tackle slavery, the number of referrals into the Government’s National Referral Mechanism (NRM) for identifying victims continued to rise year on year, with a 35% increase between 2016 and 2017 and approximately 50% more prosecutions against traffickers in 2015 than 2016 (CPS 2017). However, there are some key concerns.

The United States’ TIP Report (Trafficking in Persons 2017) stated that “The Government of the UK fully meets the minimum standards for the elimination of trafficking.” Even if the UK were to lead the way in many aspects, the baseline for most of the world to tackle human trafficking and modern day slavery is not high as US TIP reports recognize by highly critiquing those countries they judge as being in “Tier One.” While the Act raises awareness and the Government now invests significantly more funds to tackle modern slavery in the UK as well as in other source countries, the UK is not yet winning in its fight against slavery. Indeed, there are yet to be significant tangible outcomes for many victims of slavery in the UK.

The data published by Government shows that the UK is identifying more potential victims every year since the National Referral Mechanism (NRM) was set up in 2009. In the last year, a huge increase has been reported by the National Crime Agency whose NRM statistics show that there are 5,148 referrals in 2017 – a 35% increase on the year before (NCA 2018). But while the number of referrals is increasing, the figures still do not even begin to reach the Home Office’s own modest estimate of the numbers of potential trafficking victims in the UK which lies between 10,000 and 13,000 victims in the UK (HM Government 2015). The majority of victims of slavery, therefore, are still not being identified, or alternatively many are being criminalized instead. When survivors of trafficking do overcome this hurdle and are identified, in many cases they are failing to access adequate support or
compensation. Meanwhile, convictions for human trafficking or modern slavery offenses remain low, with most traffickers avoiding detection, as well as avoiding paying compensation or receiving any form of justice.

One of the main issues to consider is why more victims of slavery and human trafficking do not feel empowered to come forward or be referred and subsequently identified by the National Referral Mechanism (NRM). However, the reasons for the low numbers of victims being identified are manifold.

**Section 52: A Duty to Notify**

Section 52 of the MSA introduced a statutory “duty to notify” provision for certain public authorities, including the police and local authorities. This involves acting as first responders for the NRM. What this means in practice is that police and staff in local authorities have a statutory duty to identify victims and then interview them to fill out the referral form that is then sent to the National Referral Mechanism, NRM, or anonymously notify the Home Office about any potential victims of modern slavery unwilling to enter the NRM that they may encounter. The existence of this duty within Section 52 of the Act has no doubt played a significant factor in the rise in victims identified that has been seen in the last year. But compared to the scale of potential victims in the UK, there is a widespread belief that these numbers barely scratch the surface and that many more victims remain hidden to the authorities.

The first reason numbers remain so low is that those in statutory services, who have the statutory responsibilities to identify victims of trafficking and refer them into the NRM, are simply not doing so, as Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Service (HMICFRS) report of the police identified in 2017. This is both due to a lack of proactive activity to find victims and also because they are failing to recognize the indicators or know how to respond when potential human trafficking cases do materialize, in part due to a lack of training.

In practice Section 52 signifies that all those working in the police, whether as constables on the beat or as detectives, or those working in local councils, whether they are licensing officers or social workers, need to possess adequate knowledge on human trafficking and modern slavery to be able to carry out a number of different tasks. First, they must be able to identify a potential victim of slavery and so know the indicators and the barriers to disclosure for survivors. Second, once they are able to recognize the indicators, a first responder is required if they come across an individual with indicators of trafficking (the threshold for this being low) to know how to respond. That is, they need to know that they are required to make a referral to the NRM, anonymously if the potential victim is an adult and doesn’t consent. They therefore also need to know how to complete a referral form to pass to the Competent Authority (CA) who will make an initial decision as to whether the individual is likely to be a victim. If the potential victim is an adult and is destitute or in need of other types of support, the first responder would be required to know how to handle a case before the person is able to enter a safe house.
Low Awareness

However, it is likely that the majority of those working in local police and local authorities are unaware of this new statutory duty. When the HTF has asked attendees at annual safeguarding days run by local authorities if they know what the NRM is, there are currently still only likely to be a handful that will be able to raise their hand.

Even when those working in local police or local authorities are made aware of this duty, they do not necessarily have the knowledge or resource to respond appropriately. There has been no additional wide-scale funding to, for example, train local police or staff in local authorities, and calls for all social workers to have modern slavery in their official curriculum have failed to be implemented. Instead piecemeal efforts have been made around the country in a handful of areas where an individual in a local force or council has taken the initiative, for example, in Croydon where an individual working in the council took the lead and in Kent & Essex where the work is supported by their Police and Crime Commissioner.

Identification in Local Authorities

The Modern Slavery Act was led by the Rt Hon Theresa May MP when she was Home Secretary. The result of the legislative process having been instigated by the Home Office is that the police, who fall under the Home Office’s jurisdiction, at least on a strategic level, are more cognizant of modern slavery, the Act, and their related duties under it. While the process of filtering this awareness to a local level is a protracted and challenging task, every force now has at least one officer with responsibility for slavery and, in best case scenarios, entire teams dedicated to slavery, for example, the Modern Slavery and Kidnap Unit in the Metropolitan Police.

Local authorities, however, fall under the remit of a different Government Department run by a different Secretary of State, called the Department for Communities and Local Government. While the Prime Minister created a number of cross-departmental bodies to tackle slavery, including the Inter Departmental Ministerial Group on modern slavery (which was intended to bring all Government departments together to tackle slavery), the reality is that the burden of the responsibility for tackling slavery fell on the Home Office. In 2016 the National Crime Agency’s (NCA) NRM statistics indicate that 1512 referrals were made in the Metropolitan (London) area. Only 131 of these were referrals from the local authorities in London, which has 33 local authorities within its geographical boundaries – so an average of four were identified by each borough. (It is interesting to note that after the HTF started this work with local authorities in London, this figure has now almost doubled in recent published NCA NRM figures for 2017.) The rest of the 1512 potential victims were identified by police, immigration, or NGOs.

The method of reporting itself is problematic. The NCA, by presenting this data in this way – by which organization acted as the first responder rather than by the
borough in London in which the victim was found – risks consolidating the belief among local authorities in London that there is a limited amount of human trafficking in their vicinity. In reality, this is not the case. While Southwark Council is linked to (having identified) only one adult victim of trafficking in 2016 in the NCA’s annual report, a report by Hestia (2017), a Government-funded safe house who support over a quarter of all victims referred into the NRM in England and Wales, found that in their services alone in 2016, 54 victims of trafficking they supported had been found in the London Borough of Southwark, though clearly at least 53 had not been identified by local authority staff. In many cases local authorities are believed to be handling human trafficking cases without being aware that they are doing so. The London Working Group Protocol (2018) cites an example whereby an Eastern European woman was labeled by the authorities as a victim of domestic abuse. Several months later, while she was being supported by the refuge, she revealed that she didn’t know the ethnicity of her husband and it became clear that this was “sham marriage,” with elements of coercion used against survivor. While not having been recorded as such, she was clearly a potential victim of trafficking who should have been referred into the NRM. However all studies, such as those by Shadow City (Boff 2013), suggest most social workers (63.3%) and teachers (90%) have never heard of the NRM. This is an extremely worrying trend.

**Preventative Work and Identification by Police**

The MSA also introduced new powers to curtail the movement and activities of individuals where there was evidence that they may be attempting to groom or target a potential victim to commit a modern slavery or human trafficking offense (Part 2 of the MSA). The STPOs apply prohibitions and conditions to those convicted of modern slavery or human trafficking offenses, including, for example, restrictions on foreign travel (Section 18). STROs are civil orders used to apply prohibitions to those who have not been convicted, but pose a threat of committing offenses.

However, the HMICFS report (2017) found there has been very limited use of these Slavery and Trafficking Prevention and Risk Orders with the majority of those working in police forces or local authorities unaware of their existence or possessing a mistaken belief that a conviction was required to apply for a Risk Order. As a result, across the whole of England and Wales, only 8 forces had applied for STPOs between the implementation of the MSA and mid-December 2016, while only 4 forces had applied for STROs, applying in total for 16 Risk Orders. Therefore authorities are failing to identify victims of slavery and human trafficking, and the lack of awareness of these Orders indicates that victims are not being protected through use of all the powers available.

Furthermore, not only are statutory authorities failing to identify victims of modern slavery or prevent cases using the powers available, but when they are coming across potential victims, instead, many are being criminalized for immigration offenses or criminality they have been forced to commit as part of their exploitation. This is in spite of the creation of a new statutory defense for victims
compelled to commit a criminal offense within the MSA (Section 45). This is not only the case with adult victims of trafficking but has even been regularly evidenced in the case of children. An investigation by the \textit{Times} (27 March 2018) found that between 2012 and 2017, police arrested 1,133 Vietnamese children who were potential victims of human trafficking. A report commissioned by the HMICFRS (2017) to inspect the police’s response to the implementation of the MSA acknowledged this problem with a number of horrifying case examples and stated that “many victims of modern slavery and human trafficking receive a wholly inadequate service from the police.”

\section*{The HTF’s Work with Local Authorities}

One of the challenges in the sector has been to engage with local authorities. In 2016, a year after the MSA had been enacted, much of the Home Office’s efforts still concentrated on the police and border force – organizations within their sphere of responsibility – while the local authorities remained broadly untouched. With some notable exceptions, including in Wales and the London Borough of Croydon, they also, in the main, remained impervious to outside efforts to raise awareness of Section 52 and their duties around identification let alone support, cited in the Care Act 2014 as well as in international legislation, for victims of slavery. (The Care Act and accompanying guidance places a series of new duties and responsibilities on local authorities about care and support for adults. It helps to improve people’s independence and wellbeing. It makes clear that local authorities must provide or arrange services that help prevent people developing needs for care and support or delay people deteriorating such that they would need ongoing care and support.)

The HTF decided to initiate a project to tackle this problem, and a decision was made to focus on London, which has 32 Councils as well as the City of London Corporation and where the majority of all human trafficking cases were being identified through the NRM.

In early 2016, the Foundation tentatively reached out to local authorities in London. A small number responded and seven councils agreed to send an officer to a roundtable with the Foundation on the issue of human trafficking. However, following this meeting, engagement halted, as local authorities struggled with competing priorities.

In the spring of 2017, a Project Leader joined with a specific remit to manage certain new projects including a piece of work to focus on London. Due to the previous challenges around contacting local authorities individually, the Foundation engaged with various pan-London bodies including London Councils – an overarching cross-party organization that worked with local authorities across the capital. It was agreed that the Project Leader would speak at a number of pan-London meetings, such as London Councils’ pan-London Community Safety meeting, where all the relevant lead Council Managers, would attend from every borough.

In these talks the HTF laid out the key areas of concern around the low level of identification of victims by staff in local authorities and then the limited support
provided to these victims. This was contrasted with explaining the local authority’s new statutory duties, as well as the financial risks around judicial reviews for councils in ignoring these duties. Many councils appeared largely unaware of this new duty or had limited understanding of what this duty comprised.

Following these meetings, the Foundation met with those councillors and/or officers who had shown an interest. These initial meetings took a number of different formats. In some cases the first meeting would be to groups of councillors, either in an informal, arranged meeting on slavery or within a formal committee structure already in place – such as at scrutiny or children’s committees. In meeting with councillors and formalizing their buy-in as part of the minutes and actions of these meetings, the Foundation was able to continue to develop its work with those councils in many cases, with the help of this political endorsement.

However, in many cases the work of the Foundation with councils was able to develop without the need to engage directly with the political leverage of councillors. For example, the Foundation found meeting with Council Managers working in the local authority’s community safety team could be equally effective.

From Meetings to Multiagency

The Foundation has had some forms of activity with 30 of the 32 boroughs, although in some of these cases, contact has been with the local National Health Service (NHS) or police teams rather than council teams. In a few boroughs, all that has taken place so far is one initial meeting, or the Foundation has been asked to present on slavery at their annual safeguarding events. In other boroughs, a stronger working relationship has developed, and the Foundation has been asked help organize and/or present at entire days organized for staff focused on slavery alone. The Foundation has also helped create council slavery task and finish groups where all council departments, alongside local police and NHS leads, meet together to look at options around training, structures, and pathways. As a result, some councils have used these groups to create a localized slavery report or strategy, create modern slavery Single Points of Contact – “SPoCs” or “Champions” – in relevant departments, or consider options around creating slavery-free procurement models or long-term support provisions for victims leaving the NRM. At the time of writing in March 2018, the Foundations had sat on, was about to sit on, or was sitting on 11 different councils’ new slavery task and finish groups in London that it had in most cases also helped establish.

SPOC Network

A year into the project, in May 2017, the Foundation ran, in partnership with The Shiva Foundation and ECPAT UK, a large event for all local authorities in London. (Shiva Foundation is a corporate foundation that aims to tackle and prevent human
trafficking and modern slavery in the UK, by facilitating a more collaborative and systemic approach to making change. ECPAT UK is a leading children’s rights organization working to protect children from child trafficking and transnational child exploitation.) Initially it was estimated a maximum of 100 attendees would attend, in light of the limited interest from councils in early 2016. However, there was a waiting list for the event that took place in a 300-capacity room in City Hall. The event presented examples of best practice partnerships across the UK, as well as talks from Police, a survivor of trafficking working with ECPAT UK, and discussion from NGOs on how to provide support for adults and children.

Part of the aim of the event, as well as raising awareness, was to encourage attendees to sign up to be the Modern Slavery Champions or “SPoCs” for their departments and boroughs. Again there was a prediction by the organizers that only a small number would sign up to this. However over half the attendees signed up to be SPoCs during the event. This success was in part due to the powerful talks and videos shown which led to feedback from attendees saying they had been moved to act as a result of understanding more about this crime and the experience of victims. No doubt another motivation was that, as well as the Foundation’s Vice Chair and Co-Chair of the APPG on Slavery, Baroness Butler-Sloss, speaking alongside other politicians, the event was opened by the Deputy Mayor of Policing, Sophie Linden, and the Mayor made a formal statement on its importance for the conference booklet. Although the Foundation had organized the event, with support from The Shiva Foundation and ECPAT UK, the Foundation’s connection with parliamentarians and the support garnered from the Mayor’s office helped formalize the nature of the requests at the event and contributed to its success.

Following this event, the Foundation now coordinates the statutory London SPoC network, providing them with updates and support. At the end of 2018, the Foundation ran another smaller event, providing a specialist training workshop for the SPoCs where the Minister with the modern slavery portfolio, Victoria Atkins MP, filmed a video to the SPoCs thanking them and citing their work as best practice. In 2018 the Foundation published the SPoC directory, with the SPOCs’ contact details broken down by borough, as well as by NHS trusts in London, of almost 200 SPoCs. This directory was in part aimed to assist those in statutory authorities so staff would know who to contact if they came across a potential slavery case. The directory was also available to NGOs to assist them if they had a case and were struggling to access support, such as housing or medical assistance or police cooperation; they would then be able to contact the local SPoC who would have more understanding of the issue and be able to assist with their organization’s response.

Pan-London Working

A key cornerstone in the ethos of the Foundation is to work in partnership with the sector rather than create projects in silos – apart from other organizations’ work. In working with councils, it became clear that there was no pan-London partnership or forum to share the work the Foundation was doing to engage other organizations and
involve their expertise. As a result the Foundation set up the Anti-trafficking London Working Group (LWG) for London NGOs, including those in the anti-trafficking sector, homelessness sector, diaspora communities and relevant legal firms, and also pan-London statutory organizations such as NHS England, the Metropolitan Police’s Modern Slavery & Kidnap Unit, the Gangmasters Labour and Abuse Authority (GLAA), the Mayor’s Office for Policing and Crime (MOPAC), and the Home Office’s Modern Slavery Unit and Voluntary Return Scheme’s team. In effect, the LWG is the first permanent pan-London partnership working on human trafficking although it is less formalized than many of the, largely Police and Crime Commissioner (PCC) funded, partnerships that exist disparately across the UK.

The group initially acted as a way for the Foundation to broadcast its work giving other NGOs the opportunity to work with those councils the Foundation was engaging with, and attend meetings or to forward complaints. It was also a way for NGOs to provide expertise, for example, if a local authority was looking for specialist knowledge (i.e., regarding children) or to feed into protocols or community safety plans being produced by individual councils. The LWG was initially an online e-group, but soon meetings started to take place every 4 months or so, with stakeholders coming to raise issues that they felt the LWG could assist with. At one of these meetings in 2017, it was agreed that the LWG should create practical best-practice protocols and pathways for frontline staff in local authorities on how to identify victims of trafficking, how to refer them into the NRM, and how to provide safeguarding before, during, and after this process.

Meanwhile a strategic Local Government Association document was also compiled for local authorities with the Independent Anti-Slavery Commissioner. Earlier in 2016, the Foundation met with the Head of Community Safety at the Local Government Association (LGA) to lobby for a strategic guidebook for councils to be available on slavery, as already existed on FGM, gangs, and other crime types. In 2017 the LGA with the Independent Anti-Slavery Commissioner (IASC) published a guide on slavery, which included some of the Foundation’s recommendations for councils, including its call for SPoCs. The combination of these two documents from the LGA/IASC and LWG should help lead the way in raising awareness of what local authorities must do to tackle slavery and then how to carry that out on a practical level.

**Inadequate Support: Day 1 and Day 46**

Low identification is not exclusively the fault of local authorities or the police. The other central reason for low levels of identification formally via the NRM is that many survivors are unwilling to engage with the NRM due to the lack of long-term, effective support it provides, as highlighted by the Foundation’s report, *Day 46* (2016).

There are a range of concerns that the anti-trafficking sector possess around care and support provisions for victims of slavery from when a potential victim is identified to when they leave the NRM. These continued after the Modern Slavery
Act 2015 for England Wales was enacted, when victim support and assistance was not written into the legislation, unlike in the Scottish and Northern Irish legislation. Instead, for example, Section 50 of the Modern Slavery Act grants the power to introduce Regulations on support, which are yet to be forthcoming. There is therefore a serious loophole for victim protection within the Act.

Government-funded support provided specifically to identified adult victims of modern slavery is conducted through the NRM. Potential victims become eligible for support following a positive Reasonable Grounds, or first stage decision, that they could be a victim of slavery or trafficking. Support continues until either 2 weeks following a positive final stage or Conclusive Grounds trafficking decision has been issued or 48 h following a negative decision. In October 2017, the Government announced this would be increased to 45 days and 2 weeks, respectively, but it is not clear when this will be implemented or what move-on support will be provided during this time.

The Foundation has carried out research and led petitions on a number of areas around modern slavery, but two of its longest-standing campaigns have been on safe house support provisions within the Government’s NRM – days 1 through to 45 of what is meant to be a 45-day period of “reflection and recovery” and long-term support after they leave a safe house, the so-called Day 46 (HTF 2016).

**The Trafficking and Survivor Care Standards**

At present, Government-funded support is contracted to The Salvation Army (TSA) who then subcontract support out to a range NGOs who run safe houses throughout the UK. There is currently no external monitoring of the Safe Houses or the standards of care, including advocacy support. There is also an absence of statutory needs-led pathways for victims either into the NRM or beyond. Instead the care and support victims receive very much depends on chance and what happens to be available locally. Under the Council of Europe Convention for Action against Trafficking in Human Beings 2005, victims are entitled to legal advice, physical and mental health care, education and training, and compensation (Articles 12 and 15). In practice, however, their access to all of these provisions is very much dependent on availability and local capacity alongside the networking and advocacy skills of their support providers.

The National Audit Office report (2017) found that only 21% of clients were being accommodated in safe houses, with most clients (79%) receiving only outreach support. For some survivors outreach support may be sufficient, but there are concerns that housing is provided on the basis of availability rather than always according to need. Even so, for many victims with complex needs, the basic safe house provision may not be sufficient, meaning people with high needs – i.e., mental health issues or addictions – may not be being housed adequately if at all in some cases. Anecdotally there is evidence in the sector, from organizations working with the Foundation, that some of the most vulnerable survivors of trafficking are being re-exploited, while they are within the NRM system by staying with individuals that
pose a risk to them. Considerable questions arise as to the suitability of the accommodation they are in if they are not in a safe house. For example, asylum accommodation is widely considered unsuitable for trafficking victims but is regularly used – leaving female survivors of sexual exploitation living in mixed gender accommodation with individuals, some of whom may have criminal records; and there is anecdotal evidence of entire families living in one room without cooking facilities (Ferrell-Schweppenstedde 2016).

Hestia, one of the Salvation Army’s subcontracted safe houses within the NRM, published a report (2017) which showed that 91% of the survivors supported in Hestia presented mental health symptoms yet only 39% accessed any kind of therapeutic support.

The National Audit Office’s (NAO) report (2017) noted that “The Home Office has not put in place a robust inspection regime to check the quality of care and support provided in safe houses.” The NAO also reported no evidence that safe houses are independently inspected. There are, therefore, concerns regarding the standard and consistency of care available to survivors. “In the absence of care standards and a robust inspection regime, the Home Office has no way of evaluating the quality of care provided.”

In 2015, the Foundation worked with a number of NGOs to launch the “Trafficking Survivor Care Standards” (TSCS), which aimed to provide a blueprint for UK-wide service providers offering care to adult survivors of modern slavery and human trafficking and were officially endorsed by the UK’s Independent Anti-Slavery Commissioner, Kevin Hyland OBE.

The standards were the result of a collaborative Expert Working Group, formed of frontline practitioners from 12 NGOs who came together in recognition of a need to develop survivor care standards applicable across the UK. The Trafficking Survivor Care Standards provided a flexible framework with guiding principles and practical recommendations that safe houses could incorporate into their own existing policies and procedures. The Foundation lobbied, through its work with parliamentarians, for a set of standards for safe houses within the NRM, as it was a real concern that highly vulnerable adults were living in Government accommodation and having their support needs handled in a potentially inconsistent and not always best practice framework.

In October 2017 the Home Office responded with an announcement that they would implement the Human Trafficking Foundation’s Trafficking Survivor Care Standards as part of the next NRM safe house care contract. The Foundation is therefore working with the Home Office and other NGOs to update the Care Standards, although it is not yet clear how those standards will be monitored to ensure they are implemented and adhered to.

**Long-Term Support**

There is currently no attempt to measure outcomes of Government-funded support for victims who have been in receipt of it, nor is there any national data as to what happens to victims once they have left support. Even victims, who receive a positive
final stage decision and are identified as trafficked, receive no guaranteed access to support beyond the 2 weeks they are allowed to remain in a safe house. Being recognized as trafficked gives them no definitive “rewards” of leave to remain, priority housing, or even compensation. The risk, with no system in place to ensure they are housed and supported, is that the vulnerabilities which led to a survivor of human trafficking being referred into the NRM in the first place are unlikely to have been removed. Instead these vulnerabilities risk worsening on being exited from a safe house without long-term support plans in place.

Although there remains little data or information as to what happens to most victims once they have been through the NRM, it remains clear that some are still faced, once they leave the safe house after what can be as little as 45 days, with the option of reentering exploitation or facing destitution together with ongoing mental and sometimes physical health issues.

There is worrying anecdotal evidence of victims, on exiting the NRM, becoming destitute, and actively entering exploitation to ensure they have a roof over their heads – with police informing the HTF that they have referred victims of trafficking into the NRM multiple times. The NAO (2017) noted that, “There is no clear Government provision of support for confirmed victims after they receive an NRM decision. A confirmation that someone has been a victim of modern slavery has no legal status in the UK and does not entitle the victim to support... The Home Office has no assurance that victims are not trafficked again, potentially undermining the support given through the NRM.”

The Foundation has continued to make the case for the need for long-term victim care and support. It produced two reports on this issue, “Life beyond the Safe House” (2014) and “Day 46” (2016). Day 46 investigated the situation of 30 women in London 6 months after losing support – the first quantitative research providing data on this problem. It found that 18 survivors (out of a total of 73 survivors of trafficking) were uncontactable. One woman had not attended her Home Office interview and seemed to be missing as she was uncontactable. In another ominous case, a man answered the personal mobile of one of the survivors. He claimed it was the wrong number. Those who hadn’t gone missing were also struggling in many cases. One woman, in the report Day 46 (HTF 2016), had just had a baby and had been moved four times in the first 4 months after giving birth, living in various hostels with no cooking facilities.

The report recommended that victims of trafficking should be prioritized by both National Asylum Support Service (NASS) processes that support those victims also claiming asylum and the local council for suitable accommodation. This would not be a radical departure from other policies, but rather continue procedures already in place around victims of torture, as there is currently a concession within the asylum application process which allows those who are receiving treatment from the Helen Bamber Foundation or Freedom from Torture to remain accommodated in London. Second, it recommended that a provision of advice and support should be made available to adult survivors beyond the duration of the 45 day “recovery and reflection period” as is the case in Scotland. Also, as recommended in the Home Office’s 2014 “Review of the National Referral Mechanism for Victims of Human
Trafficking,” the report suggested there should be a single management process for trafficking cases. This would ensure that when survivors left a safe house appropriate mainstream support was in place. Lastly, and most controversially, the report recommended a provision of leave to remain. Again this was not in fact a radical departure from other Government policies. Domestic workers who have been trafficked can be granted 2 years leave to remain to work in the UK. Meanwhile recognition as a refugee through the asylum system grants an initial 5 years of leave to remain in the UK, followed by the opportunity to apply for Indefinite Leave to Remain.

Following this report, between March 2016 and March 2017, in coordination with the Home Office, the Foundation set up a long-term support working group coordinating 22 other anti-slavery organizations, ranging from support providers in and outside of the Government care contract, and lawyers to produce minimum policy asks for “Supporting adult survivors of slavery to facilitate recovery and reintegration and prevent re-exploitation.” The aims was to examine the issues and create national recommendations for the Home Office on how to provide long-term support for victims, rather than just the statutory 45 days of support. This was the first document of its kind to set out, in step-by-step detail, with clear evidence, the need for a minimum which survivors would need in order to stand a realistic chance of recovery to rebuild their lives.

These asks were given to the Independent Anti-Slavery Commissioner to feed into his recommendations to the Minister on the reform of the NRM as well as to the Modern Slavery Unit of the Home Office. The Foundation also used this evidence to provide oral and written evidence to the Work and Pensions Select Committee for their report on victims of modern slavery which was published in March 2017 and whose recommendations strongly reflected the Foundation’s evidence.

In December 2017 the Government responded to the recommendations made by the Committee’s report but rejected many of the recommendations, including that confirmed victims should be granted leave to remain for 1 year with access to public funds and support. They asserted that this would lead to “fraudulent claims” of trafficking by victims even though a potential victim of trafficking cannot put in a claim to enter the NRM themselves.

A survivor needs to be identified and referred in by a first responder such as the police or council. The Competent Authority will then decide if the individual has been trafficked. It is the UK’s responsibility to have these professionals properly trained, equipped, and supported to make correct identifications. Furthermore, offering victims a minimum of 12 months in which to begin to reflect and rebuild their lives is far less generous than the system in the USA which has been in place since 2002. The “T visa” in the USA for victims of trafficking was introduced to allow for human trafficking investigations and prosecutions and to offer protection to victims. Once a T nonimmigrant visa is granted, a victim can apply for permanent residence after 3 years. Only 1,062 T visas were granted to victims of trafficking in 2015 (Attorney General’s Annual Report 2015). The relatively low number of applicants for the T visa, which has been in place for 15 years, further undermines the suggestion that granting 12 months leave to remain in the UK would create a pull factor.
An essential aspect of ensuring long-term support and giving victims of trafficking who are foreign nationals confidence is guaranteeing immigration status for survivors. Secure immigration status can relieve some of the anxiety which survivors suffer and allows them the time to access support services and legal advice on compensation. Secure immigration status can also help police and prosecutors do their jobs. According to the US Citizenship and Immigration Service, “immigration relief options encourage victims to report crimes and work with law enforcement.”

In spite of this disappointing response, a parliamentarian on the APPG, Lord McColl, had begun to work alongside the NGO, Care, to engage with the sector to produce the Modern Slavery (Victim Support) Bill – a Private Members Bill which if enacted would put victims’ right to support into legislation, ensuring them greater protection. HTF was a strong supporter of Lord McColl’s Bill, promoting support for the Bill among the sector and briefing Parliamentarians. This Bill is currently going through the House of Commons as this chapter goes to publication.

Meanwhile the Foundation worked with the Co-Chair of the APPG on Slavery to enact a debate in the Commons on Slavery, which took place in October 2017. During this debate the Minister announced a series of positive proposals including that confirmed victims of trafficking will have 45 days to leave support (instead of only 14 days) and that they would pilot long-term support projects with local authorities in 2018/2019.

The Human Trafficking Foundation welcomed the rise to 45 days but remained concerned about the lack of ongoing specialist support beyond this time and the vulnerabilities which would still persist with many victims. In particular the Foundation was concerned by the absence of any provision for a residence permit, with recourse to public funds, to allow for a meaningful reflection period, with time to access support, begin to recover from their traumatic ordeal, seek legal advice, and claim compensation from their traffickers.

The Foundation nonetheless has been working with the sector to promote models for recovery for survivors. The Co-op established the “Bright Futures” program in 2017, which gives survivors paid work experience with the option of a noncompetitive interview. The Foundation worked with the University of Liverpool to conduct an evaluation of the Bright Future program in 2018 and found the program offered great potential, as long as survivors are properly supported and have permission to work, and that options for survivors who are not work-ready are also available.

Meanwhile by working with Councils, the Foundation has been able to promote the need for long-term support. Many local authorities cite that they are not able to house and support survivors if they have no recourse to public funds and that even under the Care Act 2014, a potential victim of slavery is ineligible for support. However, the Foundation has been highlighting the powers in the Care Act’s guidance around support as well as internal duties and case law to demonstrate the legal and actual risks posed to the Council itself as well as to survivors by not providing support. The best-practice protocol for local authorities that the London Working Group has created underscores these points and contains a section on a council’s duties and powers, based on a document by the Legal Director of the NGO, Hope for Justice.
Conclusion

The Modern Slavery Act 2015 was a significant moment in the UK’s efforts to tackle modern slavery and human trafficking. For the HTF it was the beginning of a new stream of work around both ensuring the implementation of, and improving, the Act to ensure victims were being identified and were then willing and able to use the Government NRM and receive support that ensured genuine long-term recovery and an escape from further exploitation. This work is still ongoing but with the assistance of parliamentarians, other NGOs and partnership working, improvements are underway. The Government’s announcements at the end of 2017 on increasing long-term support and the creation of a network of Slavery SPoCs across local authorities are small but significant and positive steps. However, the experiences of many victims still remain fraught with challenges – the HTF hopes to continue to use its expertise and their stakeholder relationships to pursue improvements in identification and support so that the UK becomes a place where traffickers, not victims, fear the law and survivors are supported to genuinely turn around their lives.

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Further Readings

HM Government (13 December 2017) Victims of modern slavery: Government Response to the Committee’s Twelfth Report of Session 2016–17, HC 672
How Lifelong Discrimination and Legal Inequality Facilitate Sex Trafficking in Women and Girls

Samantha Ferrell-Schweppenstedde, Jacqui Hunt, and Tsitsi Matekaire

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Abstract

This chapter will explore the life of a girl, based on a composite drawn from case studies globally, highlighting how sex discrimination and inequality – often explicitly underpinned by law – set girls and women up to be particularly vulnerable to sex trafficking and sexual exploitation as compared to their male counterparts. Many women and girls are systematically pushed into the hands of sex traffickers via this route. For example, a girl victim of childhood sexual abuse or a woman escaping domestic violence in contexts where social safety nets, if they exist, have failed are likely to be more vulnerable to sex trafficking, which may be further compounded by prior and/or concurrent discrimination including regarding access to education, economic empowerment, marriage, family planning, and access to justice. The chapter will further explore the interplay between

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consent and coercion in the context of such structural inequality and the right to not be subjected to sexual exploitation, concluding with positive obligations of the state and taking into account the Sustainable Development Goals.

**Keywords**

Sex trafficking · Vulnerability · Sex discrimination · Consent and coercion

**Introduction**

According to the United Nations Office on Drugs and Crime, which is the custodian of most conventions and treaties on human trafficking, particularly the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (commonly referred to as the Palermo Protocol), 96% of all victims of trafficking for sexual exploitation are women and girls (UNODC 2016). There is no question that trafficking for sexual exploitation is a gendered problem, the vast majority of its victims are female, and equally the vast majority of perpetrators are male. Women and girls are bought and sold as sexual objects for male pleasure. Why is this the case? What are the determining factors that result in women and girls being sold in a manner that men and boys largely do not experience?

Overwhelmingly, it is girls and women who are circumstantially pushed, groomed, or trafficked for sexual exploitation. This comes down not to gender essentialism, but to the generally inferior position they hold in societies and the stereotypes that reinforce this position, underpinned by customary and codified laws, enacted largely by men and which subjugate girls and women. Women and girls are discriminated against and violated across all aspects of life in every country of the world. For instance, in 100 countries, women face gender-based job restrictions confining them to low-paying activities, more often than not in the informal sector (The World Bank 2015), and out of 121 countries covered in the Organisation for Economic Co-operation and Development’s (OECD) 2012 Social Institutions and Gender Index, 86 have discriminatory inheritance practices or laws (UN Women 2012), leaving women and girls at the whim of their male relatives. From birth, women and girls have to navigate systems in which most men are privileged – in charge in the family, business, politics, law enforcement, institutions generally, and society at large. Just as men are privileged with real power, women are stereotyped as being of generally lesser value. To the extent that women do have value, this is often perceived as relative to their sexual and reproductive roles and further devalued based on intersecting forms of discrimination such as race, class, ethnicity, disability, religion, immigration status, etc.

The life path for a boy, even from the same family and circumstances as a girl, is likely to look very different and almost certainly not end in prostitution, unless he too is subjected to gender discrimination and violence and associated vulnerabilities.
How Gender Discrimination in Law and Practice Sets Women and Girls up for Sexual Exploitation

Although there is no single route, an examination of the possible life trajectory of girls, using a variety of examples from around the world, provides insights into how and why women and girls are more likely to be the ones trafficked for sexual exploitation. In many parts of the world, including the world’s most populous countries, boys are preferred over girls from the moment of conception. For example, up until 2016, China helped underpin such gender-preference discrimination through its one-child policy, which is largely believed to have led to 30–60 million “missing girls,” either due to sex-selective abortions or lack of birth registration in order to hide multiple births and keep birth registration for the son as the only “official” child (The University of Kansas 2016). While lack of birth registration is itself a vulnerability to trafficking at the individual level, as the child has no formal identity and may be unable to register for school or receive medical care, at the macro level, 30–60 million missing girls can mean an increase in trafficking for sexual exploitation and forced marriage in the long term, as men will continue to want or otherwise be culturally pressured to obtain brides (The Economist 2017; The US Department of State 2017).

In contexts where the boy child is preferred, when a girl is born, she may be viewed not as a blessing but a burden to the family. She may therefore be underfed and malnourished compared to her brothers, less likely to receive medical care, and less likely to go to school, instead staying home to help with the household chores. Where she is able to attend school, she is nevertheless likely to be doing much of the housework, taking away from her play and study time (and opportunity to thrive), while her brother does little or none, and she can expect this to remain the case throughout her entire adulthood, no matter where in the world she is living (The Hunger Project 2014).

As she enters adolescence, the girl will be sexualized: both physically as her body develops and she begins to menstruate and in how she is viewed in society. Her own sexuality – however undeveloped, unexplored, and not yet self-realized – will be to varying degrees outside of her control. Such control limits girls’ and women’s reproductive health and choices and is also manifest in harmful practices such as female genital mutilation; child, early, or forced “marriage” (itself increasingly recognized as a form of trafficking (Equality Now 2014; Global Estimates of Modern Slavery 2017)); and “honor” crimes among others. At the same time in many countries, the media, including social media, sexualizes girls at younger and younger ages through images and messages that normalize them as sex objects. It creates the perception that a girl’s worth is based on her “sexiness” (as the flip side of her sexual purity) and also condones and creates demand for sexual exploitation of girls. The constant pushing of boundaries on what is acceptable of girls sexually results in society’s acceptance that sexual exploitation is a normal part of life, to the extent that some girls in India born into a particular socially constructed caste and therefore outcast from mainstream society are expected to end up in prostitution as their so-called destiny (Rehman 2016). The whole general effect of these layers of
discrimination is increased sex trafficking and sexual exploitation of girls beginning in childhood and adolescence. In the United States, for example, studies show that the majority of girls bought and sold in the sex trade had experiences of sexual abuse and harassment in their early life (Goswami 2002).

Should she instead remain in school, the girl may find herself struggling to attend on the days she is menstruating, out of shame due to lack of sanitary products, a situation that many girls are confronted with in many countries around the world. For example, in the United Kingdom, there have been media reports of schoolgirls in Leeds, some as young as 10 years old, routinely missing school because they were unable to afford menstrual products (George 2017). Or in Kenya, a study which collected responses from 3418 menstruating females aged 13–29 years found that 25% used materials such as cloth, paper, or tissue, with 10% of girls below 15 years old depending on makeshift items. These girls become vulnerable to sexual exploitation including sex trafficking, as reports show they are pushed to exchange money for sex in order to access sanitary pads (Phillips-Howard et al. 2015).

In cases of extreme poverty, or following the destruction of self-worth through experiences of rape and sexual abuse, she may end up “agreeing” to propositions from men offering food, money, or assistance in exchange for sex acts or otherwise groomed to do so by a trusted “boyfriend.” In other cases, she may receive propositions from teachers who request favors from their pupils in exchange for passing grades, with all of the implied pressure that their position of authority entails (Equality Now 2017).

Even if the girl has managed to avoid early “marriage” and has remained in school thus far, she is at risk of childhood pregnancy, as a result of ongoing abuse or rape, coupled with a strong likelihood of lack of or limited access to forms of female-controlled contraception, which is banned in places such as parts of the United States without parental consent unless (perversely) the child is married. If she becomes pregnant in a country such as Sierra Leone or Tanzania, she may not be able to continue with her education. For example, despite laws in place that entitle her to education and protection from discrimination, pregnant girls are banned altogether from school, even if pregnancy is the result of abuse. The girls are also at risk of being arrested and prosecuted (Equality Now, Tanzania 2017). Denied the opportunity to further her education, the girl is more likely to become trapped in poverty and to remain in a situation of potential sexual abuse or exploitation. The same men who first catcalled and propositioned her on the street as an adolescent may now bring her to “clients” in taxi driver rings in the United States, the United Kingdom, or Kenya (Yee 2012). Without even having left her home, she is being trafficked. As a child under the age of 18, the Palermo Protocol provides that her “consent” is irrelevant and only an act such as transfer, receipt, or harboring for the purpose of exploiting her needs to have occurred. The sexual exploitation that follows is nothing short of sexual abuse, regardless of the circumstances.

The Palermo Protocol recognizes that a girl who was commercially sexually exploited as a minor (under the age of 18) remains a victim of trafficking throughout her adult life. The history of her exploitation does not disappear. But what about women who only enter prostitution, through trafficking or otherwise, as adults? A
study across 11 European countries found that 60% of sex trafficking victims reported violence prior to being trafficked. The study notes that although it is difficult to assess exactly how these levels of violence may have affected women’s decisions to take up the (deceptive) offer of a trafficker, or whether this may have made her a target for recruitment, this high percentage of women reporting pre-trafficking violence hints that abusive situations may be a push factor for women (Zimmerman et al. 2006). An estimated 30% of all women will experience some form of gender-based violence in their lifetime, frequently by someone she knows (WHO 2017). In many countries violence against women and girls is still treated as a private issue either in law or in practice. If she is in Russia, for example, the laws were rewritten in 2017 in her abuser’s favor, when some aspects of domestic violence were decriminalized and those suffering abuse, if they dare, are left legally and financially responsible to bring complaints (Isajanyan 2017). Recent research in the United Kingdom shows that almost half of a homeless charity’s rough sleeping clients had experienced domestic violence and one in five experienced abuse as a child (St. Mungos 2014). Even if her marriage has just routinely broken down, a woman might be left with few resources yet have obligations for housing and possibly childcare. Yet male homeowners and renters are cynically exploiting women’s homelessness by offering them rooms in exchange for regular sexual “favors” and thereby perpetuating a cycle of physical and emotional abuse (Bibby and Terry 2016) and soliciting women into a new avenue of prostitution.

Given these layers of discrimination and abuse and in a global economy of increasing disparities of wealth, opportunity, and safety nets, it is important to analyze how much free choice is exercised in entering prostitution and therefore how clearly the line with trafficking for sexual exploitation can be drawn. Could it be that varying and complex paths and circumstances – discrimination; gender-based violence; inequality; poverty; vulnerability; manipulation by others including traffickers, buyers, pimps, and landlords; and lack of protection from violence by the state, all rooted in her childhood and spanning throughout her life – are more decisive factors?

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**Human Rights and Protection Under the Law**

The law expresses how governments value and treat their citizens. It reflects one’s rights as a citizen and is a primary tool for holding a government accountable to protecting those rights. International law is the set of rules and minimum standards that governs relations between nations and sets standards for how a state treats the people that it governs. It should guarantee equal rights and protections to women and girls, including equal access to justice for everyone, legal frameworks that protect everyone equally, and the proper implementation of laws.

There are different levels of laws that help shape policies and inform social norms. International laws set the standard for regions and nations and are typically more progressive than national law on women’s rights. Africa, Europe, and the Americas have well-established regional laws. Regional laws often match
international laws, and are sometimes tailored to specific issues in that region, e.g., the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol). Additionally, each country’s government sets laws that apply to individuals within its borders. Since national laws have the most direct effect on individuals, it is critical that they meet international standards.

International law is most often in the form of a treaty. Treaties are written agreements under which states agree to be bound to a common basis of rights and responsibilities. When a country ratifies a treaty, it is obligated to abide by the requirements of that treaty. There are ten core international human rights treaties. The three most critical to the issue of sexual exploitation are:

- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979:** Sometimes described as the “bill of rights” for women, this treaty was the first to address women’s rights as human rights. CEDAW is the international standard used to measure individual countries’ progress to eliminate discrimination against women and girls.
- **Convention on the Rights of the Child (CRC) 1989:** Outlining the rights of children, including civil, social, economic, and health rights, this treaty changed the way children are viewed and treated as human beings with their own distinct set of rights. This treaty is especially useful for cases on girls’ rights.
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol) 2000:** Because the Palermo Protocol commits ratifying states to prevent and combat trafficking in persons, protect and assist victims of trafficking, and promote cooperation among states, in order to meet those objectives, it is essential to work to end sex trafficking.

However, significant jurisprudence with respect to women’s equality and the right of women to be protected from violence has also been developed under the other treaties.

The three main regional treaties on women’s rights include:

- **The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention):** This instrument is based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women.
- **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol):** As one of the most advanced and progressive legal tools on women’s rights, the Maputo Protocol is a groundbreaking treaty for Africa and a model for other nations.
- **Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará):** This was the first instrument to specifically define violence against women and to call for systems to protect and defend women’s rights as a way to combat violence and discrimination. The treaty spells out the commitment of nations in the Americas to protect and defend women’s rights and prevent abuse.
There are also the United Nations Sustainable Development Goals (SDGs), a non-binding set of 17 goals which nations commit to achieving by 2030, under the motto “leaving no one behind.” Goal 5 focuses on achieving gender equality and alongside goals 8 and 16 has targets specifically relating to trafficking.

From international law to the SDGs, each has direct impact on the lives of women and girls and each of the discriminations and abuses they may experience as described above. The table below revisits key points from a girl’s life cycle story as told above and explores them in the context of relevant legal frameworks and the SDGs. While the life examples highlighted above are a composite of many women and girls’ experiences, the specific examples below are drawn from anonymized real-life trafficking cases, to directly illustrate the manner in which the discriminatory laws and practices described set women and girls up for exploitation.

<table>
<thead>
<tr>
<th>Discriminatory practice</th>
<th>Underpinned by law and policy</th>
<th>(In)compatibility with a rights-based framework</th>
<th>How the discrimination sets girls up for exploitation: real-life trafficking case examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Boys are preferred over girls at birth</strong></td>
<td>China’s former one (now two)-child policy: Population and family planning law of the People’s republic of China (order of the president no. 63) (2001 law)</td>
<td>SDG 16.9 provides for legal identity for all including free birth registrations Article 16 (1) (e) of CEDAW provides for the right to decide “the number and the spacing” of children Article 12 (1) of the international covenant on economic, social and cultural rights (ICESCR) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”; “health” includes the right to the control one’s body and reproductive health</td>
<td>A Chinese woman and her three (unregistered) daughters were trafficked into prostitution in Europe after attempting to escape the authorities who were seeking to remove the children and imprison the mother in breach of the one-child policy Long-term effect: Trafficking for forced marriage and prostitution is seen to increase where fewer women are available (The Economist 2017)</td>
</tr>
<tr>
<td><strong>Boys are prioritized for education</strong></td>
<td>Laws and policies to ensure universal primary and secondary education are not properly implemented (In</td>
<td>SDGs 4.1 and 4.2 provide for girls and boys to access equal and quality early childhood and preschool, primary,</td>
<td>A girl from Uganda was sent from a rural village to the city ostensibly to attend school. Instead she was put to work as a</td>
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### Discriminatory practice

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<th>Underpinned by law and policy</th>
<th>(In)compatibility with a rights-based framework</th>
<th>How the discrimination sets girls up for exploitation: real-life trafficking case examples</th>
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<tr>
<td><strong>1997 Uganda introduced universal primary education and in 2007 universal secondary education.</strong> However, demand outstrips available resources. Girls are more likely to fall through the safety net and be at risk of exploitation as families seek alternatives to support their education (see example in the right column)</td>
<td>Article 28 of CRC provides for the right to education and encourages states to encourage young people to reach the highest level of education possible</td>
<td>child domestic servant and carer until her body physically matured, at which point the head of the house sold her to a brothel. Long-term effect: Lack of education decreases opportunities and income and is a vulnerability to trafficking for domestic servitude, itself often a precursor to commercial sexual exploitation (The Population Council 2018)</td>
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### Harmful practices such as FGM and child marriage primarily affect girls

| 93 countries legally allow girls to marry before the age of 18 with parental consent, and 54 countries allow for girls to marry between 1 and 3 years younger than boys (Girls not Brides 2017). While FGM (a common precursor to early marriage) has been criminalized in most practicing countries, not enough is being done to end it, meaning three million girls remain at risk globally every year. In Sierra Leone, FGM remains legal | SDG 5.3 calls for the elimination of all harmful practices, such as child, early, and forced “marriage” and female genital mutilation. Article 19 of CRC requires states to ban all forms of violence against children, while article 24(3) stipulates that “states parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”. Article 5 of the Maputo protocol provides for protection from harmful practices such as FGM, and | A girl is brought to undergo FGM in Sierra Leone. Understanding that the ceremony is a precursor to what will be a forced marriage with an older man, she runs away. A woman offers to help her and sells her to a trafficker who takes her abroad. Long-term effect: Early and forced marriage is itself a form of trafficking for sexual exploitation |

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<td>Most sexual abuse victims are girls and women, while nearly all perpetrators are male</td>
<td>Estupro is a lesser rape charge, often applied in cases in which the victim is an adolescent girl aged 14–17 and viewed by the legal system as a temptress rather than the abused girl she is: Article 309 of the Bolivian penal code, among other countries, has this provision</td>
<td>SDG 5.2 calls on states to eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation Article 2 (c) and (g) of CEDAW provides that state parties must have an effective and accessible legal and service framework in place to address all forms of gender-based violence against women committed by state agents, on their territory or extraterritorially</td>
<td>A girl is regularly sexually abused by her cousin in Bolivia. When a young man shows her affection, she willingly goes with him to escape the abuse at home. He quickly grooms her into a sex trafficking ring, and she is prostituted across the country Long-term effect: Sexual abuse is a precursor to sexual exploitation and can be a form of grooming, leading to compounded trauma and a breakdown of self-worth and confidence in which girls often see their only value as sexual commodities</td>
</tr>
<tr>
<td>Women and children are the primary victims of domestic abuse, and men are the primary perpetrators</td>
<td>In 2017, Russia decriminalized non-aggravated battery and removed the provision regarding assault of close relatives from the article. As a result, violence committed against family members is now only an administrative offense: Amendment to Article 116 of the Criminal Code</td>
<td>The Istanbul convention creates a comprehensive legal framework and approach to combat violence against women and is focused on preventing domestic violence, protecting victims, and prosecuting accused offenders The CEDAW Committee has defined article 2 of the convention to include</td>
<td>A young woman in Russia is physically, sexually, financially, verbally, and emotionally abused by her husband. He is in debt for gambling, and one day men showed up at the door and took her away. When she is put in a brothel, she realizes she has been sold to pay his gambling debt</td>
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Discriminatory practice | Underpinned by law and policy | (In)compatibility with a rights-based framework | How the discrimination sets girls up for exploitation: real-life trafficking case examples
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prohibition of violence against women, whether in public or in private, and establishes such violence as a form of discrimination | CRC prohibits violence against children, including in the family | Long-term effect: Abuse breaks down self-confidence and self-worth, normalizing future abuse. Women who leave their abusers are often left impoverished and, without support networks, vulnerable to trafficking and commercial sexual exploitation

**Distinguishing Trafficking, Sexual Exploitation, and Prostitution: The Exploitation Continuum**

International law, specifically General Recommendation 35 of the Convention on the Elimination of All Forms of Discrimination Against Women, explains that governments must ensure “that the definition of sexual crimes, […] is based on the lack of freely given consent and takes into account coercive circumstances” (emphasis added). In the case of the above and in light of the life experiences highlighted, governments should re-examine their approach to prostitution and the laws that deal with it. As Siddharth Kara, Director of the Program on Human Trafficking and Modern Slavery at the Kennedy School of Government, said, “You may encounter a woman (…in the sex trade) at age 25, but she probably started at age 14. If she suffered 10,000 counts of rape from age 14 to 18, what options does she have now?” (Swarens 2018). The vast majority of those who end up in prostitution do so following lifelong instances of abuse and/or systematic discrimination (Farley et al. 2003):

I realized I had entered into this circle where nothing was ever free. Even the “nice people” expected something from me. I had to pay for everything with my body. (Roxanne 2018)

As increasing attention is given to human trafficking globally, so too has understanding deepened as to what counts as trafficking and how exploitation actually occurs. One area in which this has particularly been the case is child sexual exploitation in local communities, which is increasingly recognized as trafficking, along with forced criminality and exploitation in youth gangs. What may have previously been treated as low-level criminality on the part of “troubled youths”
and therefore resulted in their detention or arrest (including so-called child “prostitution”) is now recognized as structured forms of exploitation and coercion, in which young people are controlled in an organized, hierarchical manner (Dearden 2017; Brayley and Cockbain 2014).

Given this increasing tendency to more deeply consider local forms of systems’ failures coupled with coercion as trafficking, it is also possible to use this same lens to look at prostitution as a whole and the structurally coercive circumstances in which it tends to take place globally. In doing so, one can draw lessons from the trafficking world in understanding how exploitation and coercion operate, and also from the #MeToo movement and Harvey Weinstein’s now infamous example, where behavior, some of which had previously been considered consensual, if transactional, is now recognized as gendered and an exploitative abuse of power. It is within this framework that prostitution falls. As recounted by prostitution survivor Autumn Burris, “Prostitution is #MeToo on steroids due to the hourly sexual harassment, rape, unwanted advances/penetration and aggressive and violent behavior by white, privileged men sexually commodifying our bodies” (Farley 2018).

As the examples in the previous section illustrate, the same vulnerabilities that leave women vulnerable to trafficking are those which push women into prostitution and other non-trafficked forms of sexual exploitation. When it comes to prostitution, the lines between trafficking, circumstantial coercion, and choice are extremely blurred and may be better described as a continuum, the positioning along which is constantly shifting. This is demonstrated by the lived experience of trafficked or prostituted women, in what is a commonly recounted story as follows: a woman, due to a variety of inequalities as highlighted above, is trafficked abroad and forced under threat of violence into prostitution in a manner that easily matches the definition in the Palermo Protocol. After some months or years being held in the brothel, a regular “customer” casually inquires how she entered the trade, and she discloses that she never wanted to be there. The “customer” assists her to escape, and then invites her to stay with him, as she has nowhere else to go. She is free to leave whenever she wishes, but in order to stay, she must agree to have sex with him when and as he pleases, which he may or may not state explicitly. She has moved from a situation of what legal frameworks would define as trafficking to one of transactional sexual exploitation. As his demands increase over time, she eventually leaves and enters an extended period of street homelessness. While living on the street, she is raped and harassed and continues to exchange sex for food, accommodation, and money in what is commonly thought of as street prostitution. At some point, a pimp or gang may pick her up and begin to control her, and the law would again frame her experience as one of trafficking. Would it then be true to say that her experience in prostitution is distinct and disconnected from her experiences of trafficking?

Just as women in prostitution often move between traffickers, so too do they move in and out of exploitative situations ranging from “sex for rent” transactions to independent street, brothel, or online prostitution and back again. In each of these situations, women are likely to experience the following to some degree: objectification, harassment, stalking, fear or terror, physical violence, rape, grooming, controlled movement, and torture (Farley et al. 2003). The same is true of the
experiences of a woman in a situation of trafficking, and she may very quickly move from one “category” (i.e., online prostitution) to the next (trafficking). Even the most empowered individual entering prostitution as her chosen livelihood is likely to experience objectification and harassment at the hands of her “clients,” as well as incidents of stalking, rape, or physical violence. And even if there may be adult women who can be shown to make and maintain a truly free, empowered decision to choose selling vaginal, oral, and/or anal penetration from a range of real and viable options, the pathway of vast numbers of women is through layers of violence and discrimination into a system predicated on violence and discrimination. These experiences and how they play out in reality can be neatly disentangled in theory only.

Abuse of Power

While it is critical to look at how women end up in prostitution and the inequalities that push them there, the drivers for prostitution, trafficking, and sexual exploitation are those who would use their power gained through structural inequalities – who are overwhelmingly male – to demand privilege over women’s bodies. One hard-hitting campaign designed to show what sex buyers think of, and how they treat, women in prostitution received over 1,000 contacts in merely 20 days. It showed that in response to an advertisement to buy sex from an obviously trafficked woman, the respondents on the whole had very little concern toward the woman. Sixty-eight percent of callers persisted in inquiring about the sexual services on offer even after being told the trafficking story of the woman being prostituted and the violence and subjugation she was being held under (Ruhama 2018):

When I book a “mistress” that provide all sorts of interesting services I expect an escort with drive, initiative and lust. She was never really present, nor trying to fake it. Mobile was constantly buzzing and she didn’t want to look at me, kept focusing on some distant point out the window. . . Just pathetic. (Equality Now, The Lion Within 2017)

The session was really difficult because Houng* spoke no English. I opted for sex in doggy position, but it was a real struggle entering her. I could tell I was a bit too big for her so I withdrew and asked her to finish me by hand. Amount paid £50. (PunterNet user 2017)

*named changed

These quotes, which are typical on online prostitution review boards, demonstrate how the buyer believes the money he has paid entitles him to treat the woman as any other commodity and to demand performance as from a bought commodity. What he ignores is that the woman is not an object, rather a person who has more than likely no interest in him other than what he can pay and who may already have suffered years of violence and discrimination. What he chooses to overlook is that she may be trafficked, she may be financing a drug or alcohol dependency, which is statistically more likely to be the result of coping in prostitution than it is to be the reason she entered, and she may just be doing the best she can for her children. His logic is “I
pay you, so I own you, so I can do anything I want to you,” but the fact that he is buying sex means he is likely to have real socioeconomic power: as men in a patriarchal context, as Westerners in a postcolonial context, as people with capital in a capitalist context. Intersecting inequalities based on systematic discrimination mean women in prostitution are in fact not on equal footing with buyers, who are choosing to use their relative socioeconomic power to coerce sex acts. What is important to him only is that he has paid for a service and he wants to be satisfied, irrespective of the experience of, and harm to, the woman concerned, to which he prefers to remain ignorant. He has the money, the power, and the choices. She predominantly will have few, if any, options, and years of abuse might well have dented her self-esteem so badly she will find it a long haul to pursue a way out.

The SDGs are about not leaving anyone behind. Yet, taking only the narrowest interpretation of trafficking with a focus on force, as appears to be the case in New Zealand, which does not take into account other means such as “abuse of a position of vulnerability” (and until 2015 required cross-border movement) does precisely that: it leaves many women in prostitution behind (New Zealand Parliament 2017). Coupled with legislation which fully decriminalizes every aspect of the sex trade, the result is that women in prostitution are seen as having proactively chosen prostitution and thereby “put themselves” into these situations in which exploitation and violence occur. This comes down not to the facts behind any particular case, but how those facts are interpreted in law. Where, for example, the law does not stipulate internal trafficking as a form of trafficking, the coordinated movement of women in prostitution is not going to be treated as cause for intervention. Similarly, where trafficking definitions narrowly focus on the use of force and ignore systematic forms of coercion and vulnerability, only a very small percentage of women on the continuum of exploitation are going to be identified as deserving protection and support.

What can, and should, governments do? Lived experience shows that trafficking, exploitation, discrimination, and prostitution are closely connected. Given this knowledge, how can laws be drawn and implemented in a way that acknowledges this reality?

**Government Responses to Managing the Exploitation of the Prostitution of Others**

As long as inequality and discrimination exist, women and girls will either be trafficked into prostitution explicitly or pushed there by failures to provide and protect on the part of government and society at large. What then are some government approaches to prostitution, which in its extreme form is linked to trafficking?

One approach is regulation through legalization of the prostitution industry, and another is the full decriminalization of buying and profiting from women’s bodies. Both are aimed at harm reduction, with the former premised on a belief that prostitution is only dangerous because it is illegal and unregulated, while the more libertarian approach of full industry decriminalization seemingly ignores any pre-existing inequalities by presupposing that prostitution is a mere exchange between
equal and willing parties and requires no state involvement. When states go down these legislative routes, a consequential growth of the prostitution industry as a whole can be observed (Cho et al. 2012). This occurs due to the legitimization and therefore market expansion of lucrative opportunities for organized criminal gangs, in particular pimps, traffickers, and even corporations to legally increase their profits from selling vulnerable women (Spiegel 2013) coupled with increased demand due to normalization of paid sex as a legally and socially acceptable right of men. Human trafficking by necessity increases to meet this newly legitimized demand, underpinned by a culture of male entitlement and privilege.

For example, the Netherlands legalized prostitution in 2000 with the main purpose to improve the situation of people in prostitution. Daalder’s evaluation report (2007) assessed the situation in prostitution 7 years following legalization and found “there has been no significant improvement” and “the prostitutes’ emotional well-being is now lower than in 2001 on all measured aspects, and the use of sedatives has increased.” Meanwhile, the national police force (KLPD 2008) estimated the following year that 50–90% of women in licensed prostitution “work involuntarily” indicating that legalization has dramatically failed to reduce trafficking (Werkman 2016).

Some countries such as England and Wales have chosen neither to fully legalize nor fully criminalize prostitution and have instead made paying for sex with a victim of trafficking a strict liability offense, meaning it is prosecutable regardless of whether the “customer” knew the woman had been coerced or not. For a victim of trafficking for prostitution, every sex act that occurs is by its very nature an act of assault. This informs the logic of designating any paid-for sex with a trafficking victim as a criminal offense. While the intent of the law in England and Wales is, again, to separate out trafficked women from non-trafficked prostituted women, in reality, the police have not been prosecuting sex buyers using trafficked women – only one person was prosecuted under this offense in 2016. Meanwhile, it is thought that approximately 3.6–8.9 million rapes were committed annually against trafficked women based on the number of identified victims, the perpetrators of which should have been held strictly liable yet were not (NCA 2017; Poppy 2008). This lack of implementation of the law shores up men’s entitlement to buy sexual gratification no matter the cost.

States can and sometimes do go a different route: they look at reducing the prostitution industry and thereby the harm involved, including trafficking. States such as Sweden have recognized that if you acknowledge and are intent on addressing inequality, you need to take a different approach. In addition, you cannot regulate coercive and exploitative practice out of prostitution. Other states, such as the Netherlands, which initially took a harm reduction approach through legalization, are now beginning to roll back on legalization by reevaluating brothel licensing in recognition of the continuation of exploitation and organized criminal coercion (Werkman 2016).

Given these trends and state reactions to these trends, what should an effective shrinking of the industry entail?
Primarily, states need to address inequality and discrimination systemically in their societies through a range of holistic measures including addressing stereotypes and valuing women’s and men’s contributions, experiences, and talents in equal measure. This includes fulfilling their international human rights treaty obligations and the SDGs, as well as addressing power imbalances such as the entitlement and demand of men which fuels the sex industry. States can be guided here by several existing examples in international and regional law:

- The UN Committee on the Elimination of All Forms of Discrimination Against Women’s General Recommendation 35 recognizes that being in prostitution is a position of vulnerability that can lead to discrimination and calls for decriminalization of women in prostitution.
- The CEDAW Committee has also called on states to discourage and criminalize the demand for prostitution, addressing male entitlement and exercise of power:
  - The Committee has recommended to Finland to “[p]ursue steps to criminalize the demand for prostitution and take measures to discourage such demand.”
  - The Committee has called on states including Korea, Denmark, the Bahamas, Cameroon, Croatia, and Poland to discourage the demand for prostitution in order to suppress trafficking and the exploitation of people in prostitution.
- Article 6 of the Council of Europe Convention on Action Against Trafficking in Human Beings recommends measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking.
- In 2014, the Parliament of the European Union adopted non-binding resolutions recommending member states to consider reducing the demand for prostitution by “punishing the clients, not the prostitutes” (EU Parliament 2014).
- In 1999, as part of a Violence Against Women Act (Ekberg 2004), Sweden passed a law that criminalized buyers of sex while keeping the person who sold or was sold for sex decriminalized. Sweden understood that gender inequality and sexual exploitation could not be fought effectively by assuming a gender symmetry that does not exist and allowing the purchase of access to another – often more vulnerable and disadvantaged – person’s body. This was followed by similar versions in Norway, Iceland, Canada, Northern Ireland, France, and the Republic of Ireland due to concerns regarding sex trafficking and exploitation and to better promote gender equality and fight exploitation.

**Conclusion**

States need to ensure that discrimination and inequality across all aspects of life are eliminated for women and girls so that they are on a level playing field with men and have real choices. It may be true that not every woman currently found in prostitution was trafficked, as defined by the Palermo Protocol, into that situation. But given the extent to which violence and discrimination against women and girls are perpetuated around the world, stereotypes of women’s worth and value are frequently tied to her
sexuality in some form and that, consequent on that objectification, women’s bodies are still significantly effectively controlled by men, all of which is underpinned by structures and laws which uphold inequality; trafficking and prostitution cannot be delinked to define easily separated categories of abused and not abused. In this context, societies that allow a man to use his power to buy control over and use of a women’s body signals its deep disregard for all women and their equality. Only by addressing trafficking and prostitution as interlinked phenomena occurring on a continuum of sexual exploitation and underpinned by sex and other intersecting inequalities (such as race, caste, or disability) will we start to see the solutions needed to end sex trafficking and sexual exploitation. The more societies seek to draw a clear understanding of what constitutes exploitation of vulnerability, the more nuanced the understanding of coercion, exploitation, and thereby trafficking becomes.

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ACT Alberta: A Canadian Case Study of a Collaborative and Evidence-Based Approach to Address Human Trafficking

Andrea Burkhart and Karen McCrae

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Abstract

The Action Coalition on Human Trafficking Alberta (ACT Alberta) is a nonprofit, charitable organization that has creatively and collaboratively worked to become a leader in Canada’s response to human trafficking. This chapter will explore the organization’s origins, development, strategic shifts, and key approaches to the coordination of collaborative responses to human trafficking in the province of Alberta in Canada. ACT Alberta works to respond to human trafficking by relying on two major strategies: (1) cross-sectoral collaboration and (2) evidence-informed practice. This chapter will analyze the history of ACT Alberta and the way that the organization has responded to a shifting political landscape and an unclear definition of human trafficking. It will further explore how the organization’s chosen strategies are used to support the major program areas of ACT Alberta, namely, training and awareness raising on human trafficking and coordinating service for victims.

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Human trafficking · Canada · NGO · Awareness raising · Collaboration · Victim services

Introduction

Human trafficking is a serious crime and human rights abuse that has received global attention from researchers, policy makers, frontline service providers, and the general public. Although human trafficking in Canada has not been the focus of international commentary and criticism to the same extent as in countries in Southeast Asia, Eastern Europe, or West Africa, the country has been internationally recognized as a source, transit, and destination country for men, women, and children subjected to sex trafficking and as a destination country for men and women subjected to labor trafficking (US Department of State 2018). In 2002, Canada was among the first countries to ratify the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (hereafter the UN Trafficking Protocol). Since that time, a multitude of municipal, provincial, and national responses to human trafficking have been developed across the country.

Among these responses include the Action Coalition on Human Trafficking Alberta (ACT Alberta), a nongovernmental organization mandated to identify and respond to all forms of human trafficking within the province of Alberta. This chapter will explore ACT Alberta’s origins, development, and the anti-human trafficking strategies that support the organization’s programming (namely, the coordination of services for victims and the provision of training and awareness raising on human trafficking to stakeholders). ACT Alberta’s chosen strategies of cross-sectoral collaboration and evidence-informed practice have in turn allowed the organization to work with a multitude of partners of varying ideological stripes in pursuit of its goals.

History of ACT Alberta

In 2007, Changing Together – A Centre for Immigrant Women, an Edmonton-based nongovernmental organization, responded to a growing concern about human trafficking in the community by conducting a survey of 44 organizations in the public health, social services, and law enforcement sectors (Changing Together... a Centre for Immigrant Women no date). According to unpublished data, nearly half (45.5%) of respondents stated that they were aware of human trafficking cases in their communities and indicated a desire for training and education on: (1) how to identify individuals, who had experienced trafficking, (2) how to provide human trafficking victims with appropriate assistance, and (3) current human trafficking legislation in Canada. The results of the survey formed the basis for a 2007 Symposium on Human
Traficking, which was convened for the purposes of engaging, informing, and educating the stakeholder community in Alberta about human trafficking. During this symposium, participants requested improved coordination efforts in Alberta involving government, law enforcement, and community service agencies (ACT Alberta 2012). In order to facilitate this coordination, Changing Together established the Alberta Coalition Against Human Trafficking (ACAHT) project, which had evolved by 2010 into ACT Alberta, an independent nongovernmental organization with the mission to increase knowledge and awareness on human trafficking, advocate for effective rights-based responses, build capacity of all involved stakeholders, and lead and foster collaboration for joint action against human trafficking. From the beginning, ACT Alberta’s stated goals were to identify and build relationships with strategic stakeholders, to develop community-based responses and protocols, and to provide education on human trafficking in the province.

Among ACT Alberta’s earliest supporters were a small network of service providers, provincial government officials (namely, representatives from the Ministries of Public Safety & Solicitor General Alberta and Alberta Employment and Immigration), and law enforcement officers from the Edmonton Police Service, the Royal Canadian Mounted Police (RCMP), and the Canada Border Services Agency. At the time, there were few Canadian organizations focused on human trafficking, although in the neighboring province of British Columbia, the provincial government had developed an Office to Combat Human Trafficking (BCOCTIP) in 2008, which ACT Alberta established close ties with.

In 2009, ACT Alberta responded to the appetite of existing partners for a provincial human trafficking strategy by opening additional chapters in Red Deer and Calgary, with additional chapters opened in Grande Prairie, Lac La Biche, and Fort McMurray in 2010. These chapters initially focused on awareness raising and network development, but a significant increase in reports, referrals for service provision, and requests for training necessitated a shift in resources to more targeted engagement and service coordination (in 2008, the organization received one referral; in 2012, it received 55). These referrals and reports came both from self-identified victims of human trafficking seeking assistance and service-providing organizations seeking support for their clients. However, the rapid increase in demand for services soon proved unsustainable due to a lack of corresponding increase in funding, and several of these chapters were closed. As of 2018, ACT Alberta has chapters in Edmonton and Calgary but provides outreach and education on request across the province.

ACT Alberta has taken the 4P paradigm (the international framework that structures anti-human trafficking efforts according to prevention, protection, prosecution, and partnerships (UNODC 2008)) seriously since the founding of the organization, going so far as to encapsulate the 4Ps into its philosophy (ACT Alberta 2012). In its work, ACT Alberta prioritizes two of the four Ps, namely, protection of trafficking victims and partnerships. ACT Alberta aims to ensure that victims of human trafficking are identified and are given access to appropriate services. This is done primarily by relying on strong local and regional partnerships with service providers, government agencies, and law enforcement and by providing province-wide
education and training on human trafficking. The following section discusses the essential strategies that support these two Ps: cross-sectoral collaboration and evidence-informed practice.

Strategy I: Cross-Sectoral Collaboration

ACT Alberta’s early successes were born out of collaborative efforts that established strong relationships with government agencies, law enforcement, and local service providers. In 2008, the RCMP referred a trafficked person to Changing Together, the ACAHT’s host organization – the first human trafficking victim that the fledgling coalition assisted. Over the course of the next year, formal collaborative mechanisms were developed between strategic stakeholders to support the provision of wrap-around support for trafficked person, who require intensive support. By leveraging these relationships, the coalition was able to ensure that the individual was able to access a multitude of services, including psychological counselling, safety planning, and legal supports. It soon became apparent during this process that additional resources were required in order to facilitate collaboration and coordination efforts. Although ACT Alberta’s early funding was primarily allocated to training and awareness raising, the organization was able to redirect resources to facilitate collaboration and coordination efforts, thus enabling the trafficked person to access much-needed supports.

This early process also revealed long-standing policy gaps, including a lack of healthcare for those with tenuous or nonexistent immigration status in Canada, difficult or nonexistent pathways to temporary and permanent residency, poor monitoring of recruiters and employers of low-wage temporary foreign workers, a lack of income supports for newcomers, and laws that criminalize and stigmatize sex workers and that severely restrict the mobility of temporary foreign workers. At this early stage, ACT Alberta advocated for policy changes in contacts with the provincial government in order to support the trafficked individual, eventually resulting in a change to the provincial income support policy to include access to benefits for internationally trafficked persons possessing a temporary resident permit for victims of trafficking in persons (Government of Alberta 2014). This early success affirmed the importance of establishing trusting relationships between ACT Alberta and stakeholder organizations – a partnership that was instrumental to this change in policy. ACT Alberta has continued to emphasize advocacy for evidence-informed policy change, although policy reform has proven to be a slow and arduous process.

It also became apparent early on in ACT Alberta’s history that the large number of stakeholders involved in identifying and providing support for victims of human trafficking required facilitated collaboration. It was in this context that ACT Alberta prioritized collaboration as a means to ensure that trafficked people could access a multitude of services. For example, in a single case of human trafficking, particularly cases involving foreign nationals, ACT Alberta may need to liaise with dozens of government agencies and service providers, including (but not limited to) Immigration, Refugees and Citizenship Canada, Employment and Social Development
Canada, the Temporary Foreign Worker Advisory Office, Occupational Health and Safety, Service Alberta, Edmonton Police Services and/or the RCMP and/or Canada Border Service Agency, various nongovernmental service providers, and civil and/or immigration lawyers. The critical importance of collaboration, trust, and information sharing between these organizations became apparent early on, resulting in ACT Alberta strategically shifting toward an emphasis on collaborative engagement.

Early on, ACT Alberta also prioritized providing training and raising awareness on human trafficking to those strategic stakeholder agencies that ACT Alberta identified as likely to come into contact with victims. Although the publication of the National Action Plan on Human Trafficking in 2012 brought an increase in general and stakeholder awareness of the issue of human trafficking, the definition was vague and open to interpretation based on political leanings. For example, it was during this period that ACT Alberta became aware that some stakeholders were conflating human trafficking with other issues, such as sex work and migration, while the issue received backlash by those who recognized the problematic nature of this conflation. As a result, in the absence of a robust national awareness campaign, ACT Alberta experienced challenges in its efforts to collaborate with a wide variety of stakeholders (discussed in more detail below).

To further address the challenge of collaboration in the context of vague definitions, ACT Alberta developed various formal collaborative mechanisms and protocols. Early on, monthly stakeholder meetings were held in each ACT Alberta chapter with the goal to create a space for dialogue among stakeholders and develop standardized protocols. Over time, these meetings became less frequent and attendance became less consistent. To address this, ACT Alberta began to hold targeted meetings for information sharing, mutual learning, problem solving, and protocol development in 2015. Various types of collaborative engagement were also developed, including:

1. Network-level events: These provide an opportunity for stakeholders with an interest in human trafficking to attend general human trafficking education, information sharing, and networking events. Network-level events are held biannually and are open to all interested stakeholders. They are intended to provide space for a range of stakeholders to meet and share trends and developments in policies and programs related to human trafficking.
2. Human Trafficking Response Teams (HTRT): These multidisciplinary teams are convened in response to specific cases of human trafficking. They work through issues such as coordination of services, information sharing, problem and conflict resolution, and case planning. Through case-specific collaboration, Human Trafficking Response Teams have helped to identify specific successes and challenges in accessing services for victims of human trafficking in Alberta. This feedback has led to the development of response practices, such as the refinement of intake policies at domestic violence shelters.
3. Collaboration meetings: In 2015, ACT Alberta started to host meetings with targeted groups of stakeholders to develop strategies to address specific aspects of the response to human trafficking. The discussions held at these meetings are...
not case-specific, but rather involve the identification of opportunities for increased coordination and information sharing. These meetings work to develop broader strategies that can then be implemented at a case level. In the spring of 2016, some of these groups were formalized with an ongoing commitment to collaborate through the creation of two formal collaboration teams: one focused on enforcement and another on the provision of support services. These groups typically include federal and provincial public policy makers, law and regulatory enforcement bodies, and community service providers.

ACT Alberta also facilitates informal collaboration meetings and initiatives when specific opportunities to develop new response practices to human trafficking are identified. These meetings are generally initiated by the Human Trafficking Response Teams during the course of assisting a trafficked person. Once an opportunity is identified, ACT Alberta will convene a targeted group of stakeholders to develop a new community response practice. For example, ACT Alberta currently convenes an informal group of lawyers and law students with the goal to develop specific response practices in immigration and legal matters faced by trafficked people.

ACT Alberta also meets regularly with individual stakeholder organizations to facilitate the development of formal and informal referral practices and working relationships and benefits from the relationships developed through regional and national networks. For example, the Canadian Council for Refugees has developed a national network of agencies working on this issue, with ACT Alberta being an active part of this network since the beginning (The Canadian Council for Refugees is a national nonprofit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. The membership is made up of organizations involved in the settlement, sponsorship, and protection of refugees and immigrants (CCR 2018)). Through these relationships, ACT Alberta has facilitated referrals and coordinated services for victims of human trafficking across Canada.

Challenges to Stakeholder Collaboration

Although collaboration stands at the core of ACT Alberta’s work, there are significant challenges in working with a multitude of stakeholders. Stakeholders adhere to varying (and sometimes contradictory) definitions of human trafficking, which can make working together challenging. For example, several of ACT Alberta’s stakeholder organizations take the stance that prostitution is inherently exploitative, concluding that many (if not all) women who engage in prostitution are inherently exploited and trafficked. Other stakeholder organizations disagree with this perspective and may go so far as to challenge the fundamental concept of sex trafficking in a Canadian context. Some groups take issue with what they consider disproportionate attention directed at certain populations, including newcomers and indigenous peoples, while others are concerned that these populations do not receive adequate
attention. These fundamental disagreements pose a significant challenge, especially in the light of the importance that ACT Alberta places on reaching any and all stakeholders that may be in contact with potential trafficked people and on working together collaboratively to provide services in a holistic and comprehensive manner. ACT Alberta continues to struggle to ensure that all voices are heard and included in the response to human trafficking and has historically not commented publicly or discussed issues that do not, in the organization’s determination, meet the UN Trafficking Protocol definition of human trafficking.

In an attempt to introduce a level of objectiveness, ACT Alberta uses an assessment tool to identify elements of human trafficking. This tool was first developed by Legal Assistance Windsor, an Ontario-based nongovernmental agency mandated to provide direct assistance to victims of human trafficking, and was refined by the Canadian Council for Refugees in 2016 through a national consultation process within its human trafficking network. ACT Alberta amended the tool to the Alberta context and uses it on every case of human trafficking. Some Canadian organizations that are involved in responses to human trafficking have taken less ideologically neutral positions, allowing for deeper collaboration with like-minded organizations. Although ACT Alberta’s political and ideological neutrality may create tensions, the organization continues to attempt to offer a neutral approach to the issue that attempts to find common ground between diverse opinions.

ACT Alberta has also consistently weighed the importance of nurturing relationships with a wide array of partners against the need for funding. The organization has been strategic when considering funding opportunities and in certain cases has decided against applying for funding – even when likely to receive it – if doing so would risk significantly damaging valued partnerships. For example, in 2015, shortly after changes to the Canadian Criminal Code that legalized the sale (but not the purchase) of sex in Canada, Public Safety Canada issued a call for proposals for the Crime Prevention Action Fund: Measures to Support Exiting Prostitution. In 2014, the Canadian Criminal Code was amended to criminalize the buying of sex. The new laws further prohibit discussing the sale of sex in certain areas, advertising sex services, and receiving “material benefit” from the sale of sexual services. The funding could have been used for programs to support victims of sex trafficking looking for a new life, but, after careful consideration, ACT Alberta decided against applying as doing so may have further muddied the definitional waters and strained relationships with other organizations in the community. As ACT Alberta has been careful to communicate to stakeholders that it does not conflate human trafficking and prostitution, applying for a fund specific to this legislation could have been seen as contradicting that position. ACT Alberta has also consistently avoided applying for funding specific to indigenous or newcomer communities in an attempt to avoid competing with agencies that serve these populations for the limited pool of available funding. The decision to apply primarily for human trafficking-specific funding has had serious long-term consequences for the organization. Historically, the majority of this funding has come from Public Safety Canada, Justice Canada, and Status of Women Canada; proposed projects and programs have been largely tailored to meet the objectives of these funders, resulting in strategies that have leaned
heavily toward supporting and collaborating with criminal justice partners and developing women and/or sex trafficking-specific projects. The organization has had to make a concerted effort to maintain focus on human trafficking of all forms and of all genders.

Strategy II: Evidence-Informed Practice

Human trafficking is an issue that is often deeply sensationalized, misrepresented, and politicized, with shocking and highly emotive language and imagery employed by anti-trafficking advocates. Oftentimes, complex human trafficking scenarios are simplified to fit advocacy and political agendas, and human trafficking stories reported in the media are flattened and simplified which, in time, distorts policy responses and public perceptions (Albright 2017). The numbers of identified victims of human trafficking are often grossly inflated and vary dramatically depending on the definition of human trafficking used and the organization collecting the data. For example, numbers for 2014 range from 20 million victims globally (US Department of State 2014) to 35.8 million victims globally (Walk Free Foundation 2014). In what law professor Janie Chuang calls “exploitation creep,” some policy circles have warped the definition of human trafficking to the point where it encompasses all forms of forced labor (Chuang 2014) – for example, many Canadian political leaders have described the Temporary Foreign Worker program as slavery or akin to slavery (CBC News 2014; Tencer 2014). Even more commonly, human trafficking is conflated with prostitution and sex work by policy makers, the media, and the general public (Sanghera 2005). This conflation was particularly apparent during the discussions leading up to change in Canadian sex work laws in 2014 (Allen 2014) (although by no means limited to this time period) and is particularly problematic – if all commercial sex is considered exploitative and violent, then actual instances of human trafficking will not be adequately distinguished as no thresholds for human trafficking are delineated (Kempadoo et al. 2017). When all commercial sex is considered exploitative and violent, empowered sex workers may be inaccurately identified as trafficked, further obscuring the identification of those who have experienced human trafficking. This can result in grossly inflated figures, a dismissal of the human rights of sex workers, and a discounting of human trafficking accounts among stakeholders and the general public. This highly contentious and fraught debate has led many NGOs focused on sex workers’ rights, migrant justice, and labor rights to tend to avoid the language of trafficking and modern-day slavery altogether (De Shalit et al. 2014).

In the context of an exclusive focus on human trafficking, and in an attempt to remain collaborative and evidence-informed, ACT Alberta prioritizes data collection. Upon receiving a report of potential human trafficking or a referral for service provision, a data analysis form and assessment is completed (see CCR 2015), collecting demographic details and elements of human trafficking. Often the human trafficking situation is presented by the client or service-providing organization in a narrative form, making it difficult to immediately identify if a case is, in fact,
human trafficking. Careful and resource-intensive analysis is almost always required to identify if significant elements of human trafficking are present. In 2016, ACT Alberta transferred information collected in data analysis forms into a secure database, simplifying the process of analyzing and evaluating human trafficking cases both individually and in aggregate. This data is cross-referenced with media, community, and police reports. ACT Alberta staff regularly meet with law enforcement, community partners, and other stakeholders to ensure that the information collected is accurate and up-to-date. Relationships curated for the purposes of data collection at the local, provincial, regional, and federal levels are carefully maintained. In the absence of consistent definitions of human trafficking or any national mechanism to collect data on human trafficking in the provinces (Ricard-Guay 2016), ACT Alberta’s data collection activities serve the critical function of creating an evidence base about human trafficking in both Alberta and across Canada.

ACT Alberta has also undertaken several rigorous evidence-gathering projects. In 2011, ACT Alberta supported the development of a report on human trafficking in Calgary, which represented the first Canadian attempt to document a major urban center’s response to human trafficking (Quarterman et al. 2012). This report indicated a notable level of confusion surrounding what constitutes human trafficking by frontline service providers. It documented that incidents of human trafficking are regularly falling outside of the criminal justice response and that sensationalist representations of human trafficking present challenges in identifying victims of trafficking. ACT Alberta relied heavily on the findings of this report in developing education and training materials and engaging stakeholders in Alberta.

From 2013 to 2015, ACT Alberta completed an extensive needs assessment on sex trafficking in Edmonton through community consultations, surveys, interviews, and focus groups. The assessment documented how sex trafficking was perceived in Edmonton and how it manifested in the city and created a local body of knowledge on sex trafficking. It resulted in a community action plan that created a framework to respond to sex trafficking in a collaborative and community-based way. This action plan received broad support by a number of key partners in the city, including Edmonton Police Services, the City of Edmonton, and a number of nonprofit service-providing agencies (Wilson and McCrae 2015).

In 2016, ACT Alberta undertook a similar needs assessment that focused on labor trafficking in Edmonton using focus groups and interviews with cross-sectoral stakeholders. The study confirmed the results from previous research carried out on the topic of labor exploitation in Canada and concluded that predominantly low-wage temporary foreign workers were being exploited for their labor in situations of control and abuse. A diverse group of individuals and organizations indicated that they regularly come into contact with trafficked people in Edmonton, highlighting the need for wide-scale training and collaboration. The report included a series of recommendations that the organization continues to rely on to guide its work on labor trafficking (McCrae 2016).

In 2017, ACT Alberta initiated a community needs assessment and the development of an action plan on human trafficking in Calgary. This assessment, which is still undergoing, aims to identify and solidify local knowledge on the realities,
trends, and manifestations of human trafficking in Calgary. The objective of the resulting action plan is to collaboratively reduce and prevent human trafficking of all kinds in the city. The plan already has considerable buy-in from local community organizations in Calgary and is expected to be completed by the end of 2018. The evidence that ACT Alberta gathers is used to inform strategic program decisions and guides the daily work of the organization, including training and awareness raising, as well as victim assistance.

Program Areas: Training and Awareness Raising on Human Trafficking

Since its inception, ACT Alberta has based its response to human trafficking on the assumption that basic awareness of human trafficking is required to form a foundation for victim identification and service provision. In the early years (2011–2014) of the organization’s development, ACT Alberta cast a wide net for training and directed awareness-raising efforts toward both the general public and service providers through community events, presentations, and social media outreach. The organization also developed and refined a basic Human Trafficking 101 presentation, which was determined, through participant feedback, to be an effective tool to raise basic awareness of human trafficking in Alberta. The presentation focused primarily on the UN Trafficking Protocol definition of human trafficking (UN 2000) as well as on general human trafficking trends in Alberta. As client referrals increased, ACT Alberta began to provide more detailed information about local human trafficking to the general public. Importantly, ACT Alberta began to develop trainings targeted to strategic stakeholders that were identified as being more likely to be involved in identifying and assisting victims of human trafficking such as law enforcement, healthcare providers, migrant-serving organizations, sexual assault centers, and inner-city shelters. ACT Alberta also initiated specific educational activities with municipal, provincial, and federal policy makers through targeted meetings and engagement.

During this time, national initiatives and research increased across Canada, with the development of the federal National Action Plan on Human Trafficking (Government of Canada 2012), Public Safety Canada’s Local Safety Audit Guide (2013), and numerous community-based research projects, such as a human trafficking review in Nunavut (Roos 2013) and Project Protect in Ottawa (PACT Ottawa 2013). ACT Alberta amalgamated these resources with internally gathered data to develop evidence-informed and targeted presentations. Since the beginning, ACT Alberta has received a large number of requests for training of professionals and service providers. In 2011, ACT Alberta worked with the Stollery Hospital Centre for Child Protection to develop training for medical students to identify child trafficking and advised the RCMP on the development of a national conference on human trafficking. ACT Alberta has also partnered with law enforcement in the development and implementation of training for criminal justice professionals, reaching hundreds of prosecutors, police officers, and support agencies at the 2014
RCMP Human Trafficking Conference. ACT Alberta was also invited to take part in a provincial tour with the Human Trafficking National Coordination Centre in 2016 and with the RCMP Serious and Organized Crime Division in 2017.

With more comprehensive presentation content came increased requests from various organizations for assistance in developing internal human trafficking response processes and training capacity. For example, in 2015, Edmonton Police Services and ACT Alberta jointly identified that Police Information Check staff were likely coming into contact with potential victims of human trafficking, due to the fact that in Edmonton, all licensed practitioners in adult entertainment businesses, including body rub centers, escort agencies, and exotic dance clubs, are required to undergo a police check before starting employment in massage parlors (City of Edmonton 2013). ACT Alberta partnered with city police to provide comprehensive training on human trafficking to Police Information Check staff and continued to work with staff afterward to help address questions and concerns (e.g., what staff should do if they encounter suspected human trafficking victims in their processing of police checks, what interventions could and should occur in those moments, and how information should be exchanged with police services).

Although the majority of ACT Alberta’s attention is directed toward training stakeholders, the organization also works to raise public knowledge about local human trafficking. In 2015, in an attempt to increase the number and accuracy of referrals of human trafficking, ACT Alberta developed a myth-busting campaign and in 2016 partnered with Crimestoppers Alberta to produce a human trafficking-specific edition of its quarterly magazine. The organization also collaborated with the Advertising Club of Edmonton on a public marketing campaign entitled “Hidden in Plain Sight.” However, due to a lack of resources, ACT Alberta began moving away from public education and engagement in 2017 and now focuses almost exclusively on providing training to strategic stakeholders.

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**Coordinating Services for Victims of Human Trafficking**

ACT Alberta’s primary goal is to ensure that victims of human trafficking in Alberta are able to access services and support in a comprehensive, trauma-informed, and streamlined manner. In its victim response model, the organization aims to leverage services and resources that already exist in the community as a means to provide support to identified victims. Although cases can be complex, the needs of human trafficking victims are not unique; there is significant overlap in services required by other vulnerable and traumatized populations, including victims of sexual assault, domestic violence, and various other crimes. ACT Alberta receives referrals from community agencies, healthcare providers, law enforcement, and family members who suspect that their loved ones are trafficked and occasionally directly from individuals seeking assistance. At the time of intake, staff members conduct a needs assessment to determine any safety concerns, identify requested and required services, and establish appropriate next steps. While there are occasions when a case requires only a single referral to services, more often a web of services is required. In
ACT Alberta’s experience, a victim of human trafficking will require on average four different services to address their needs, but some clients require as many as a dozen (ACT Alberta, personal correspondence). ACT Alberta works to access existing service systems and resources to respond to human trafficking rather than creating stand-alone, human trafficking-specific services.

With this in mind, ACT Alberta focuses on equipping service providers, law enforcement officers, government officials, and other professionals with the tools and capacity needed to identify victims and respond to human trafficking. ACT Alberta typically facilitates the development of networks by building relationships with psychologists, police officers, lawyers, shelters, and many others.

However, gaps in services remain a significant challenge. For example, many service providers are reliant on funding structures that formally prevent them from helping people with precarious or nonexistent immigration status. While there are some organizations funded to provide services to newcomers to Canada, funding is frequently specific to permanent residents or citizens – leaving many without access to needed services, including many temporary foreign workers (a population disproportionately affected by human trafficking (McCrae 2016)). ACT Alberta works to build a network of service providers able to operate outside the funded social services sector and provides direct support and services to trafficked people without immigration status as needed.

In addition, there are other situations in which ACT Alberta will provide direct support to trafficked individuals rather than relying on existing organizations and programs. ACT Alberta recognizes that identifying stakeholders that are mandated and equipped to work with victims of human trafficking in every community in Alberta is unrealistic. Cases of human trafficking are very often complex, and working with victims can be emotionally draining, increasing the need of stakeholders to access training on human trafficking-specific response practices and additional support. Although the organization’s preferred approach is to facilitate case coordination through collaborative mechanisms, ACT Alberta will provide direct victim support as needed. For example, Canadian social service systems are complex and can be difficult to navigate. Currently, many victims of human trafficking must find their own way to various bodies and must report their situation anew each time – to law enforcement, healthcare, government agencies, and various levels of service providers. This can be particularly challenging for individuals with limited English skills and those dealing with the effects of trauma or other barriers. ACT Alberta staff will provide a case management role and assist victims of trafficking in navigating these various systems and barriers when needed. When necessary, ACT Alberta will accompany a client to an interview or appointment or may directly challenge government decisions that result in unsuccessful applications for support (Fig. 1).

The following case study illustrates ACT Alberta’s service-providing model. A young woman, who has experienced long-term sex trafficking, may require housing support, financial assistance, counselling, and medical assistance. If she chooses to be involved in criminal proceedings as a witness or complainant, she may also require coordination support with law enforcement. If she does not have residency
status in Canada, she may require immigration and legal supports, or she may need transportation and travel assistance in order to return to her country of origin. In such a complex scenario, ACT Alberta will support the client with multiple and ongoing referrals to services, including convening a Human Trafficking Response Team to identify and address gaps in service provision, inter-agency communication, facilitation, and conflict resolution. When there is no or insufficient support available in the community, ACT Alberta may provide direct support to the trafficked individual. This may take the form of advocacy, service navigation, or the provision of direct financial benefits.

Between 2008 (when ACT Alberta began tracking referrals) and 2016, the organization aided 187 trafficked individuals, and provided referrals and advice to an additional 166 people who required some form of assistance, but who had not experienced significant elements of human trafficking (For example, ACT Alberta receives referrals for immigrant women experiencing domestic violence and temporary foreign workers who have not experienced coercion and control but who are facing immigration challenges).

**Conclusion**

ACT Alberta has grown and adapted significantly from its original formation as a small project in Edmonton in 2008. While reports and referrals have increased dramatically since that time, resources have not, forcing the organization to work innovatively and collaboratively in order to respond to the needs of victims of human trafficking. Although human trafficking is a complex and contentious issue, by
remaining politically neutral on areas of contention, ACT Alberta has created space for intersectoral collaboration and problem solving to occur, allowing for the leveraging of a wide array of existing community resources. Despite the challenges in this approach, ACT Alberta remains a “big tent” for organizations to come together to find common ground. By maintaining an evidence-based approach, ACT Alberta attempts to diminish both the sensationalism and denial of this crime, both in Alberta and across Canada. Since 2008, ACT Alberta has established and maintains one of Canada’s only repositories of data on human trafficking and prioritizes staying focused on the issue of human trafficking in order to accurately identify and assist trafficked persons while increasing a collective understanding. Prioritizing collaboration and evidence gathering as means to strengthen training and victim assistance are strategies that have emerged naturally over time and through practice. ACT Alberta is frequently invited to share its knowledge, both nationally and internationally, and has been received as a scalable model to address human trafficking. Though it takes concentrated and sometimes arduous effort, the approaches involving broad collaboration and data collection have contributed to the organization’s success in aiming to create collaborative and evidence-based responses to complex social justice issues such as human trafficking.

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State-Level Interventions for Human Trafficking: The Advocates for Human Rights

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Abstract

The Advocates for Human Rights works to end human trafficking with a human rights framework using research, documentation, and advocacy both locally and internationally. The Advocates’ decades of experience working to end violence against women and to protect the rights of migrants and asylum seekers underpins its anti-trafficking work. The Advocates partners with nongovernmental organizations, pro bono practitioners, university researchers, and government agencies to build practical approaches based on human rights principles. These strategies center on the needs of victims while ensuring accountability for those who violate the human rights of people directly affected by trafficking.

The Advocates for Human Rights was founded in 1983 by a group of Minnesota lawyers who recognized the community’s spirit of social justice as
an opportunity to promote and protect human rights in the United States and around the world. Today The Advocates has produced more than 75 reports on a wide range of issues documenting human rights practices and offering policy recommendations. The Advocates works with partners overseas and in the United States to restore and protect human rights and holds Special Consultative Status with the United Nations.

For more than a decade, The Advocates has used a human rights approach to identify gaps in legal protections relating to human trafficking, engage stakeholders to identify sound strategies, and work with policymakers to implement change. The Advocates researches the laws and documents and analyzes the experiences and opinions of stakeholders, including people in government, NGOs, and those with lived experience. The organization develops and evaluates its policy proposals to ensure health, safety, dignity, and justice for those affected by the laws. This analysis necessarily entails balancing the rights of all stakeholders. The human rights approach helps avoid the polarizing ideological positions which plague the anti-trafficking discourse by focusing on the actual impact identified by people directly affected by public policies relating to trafficking, prostitution, immigration, and other related issues.

Today Minnesota has a robust, diverse, and engaged community working to prevent and respond to human trafficking and is representative of a good intersectional practice example of the fourth “P”: partnership working.

Keywords
Law · Sex trafficking · Youth · Minnesota · Partnership working · Labor trafficking · Health

About The Advocates for Human Rights

The mission of The Advocates for Human Rights (The Advocates) is to implement international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, the organization builds broad constituencies in the United States and selects global communities. The Advocates for Human Rights was founded in 1983 as the Minnesota Lawyers International Human Rights Committee. As the organization evolved and its work expanded to include a broader base of volunteers, it changed its name in 1992 to Minnesota Advocates for Human Rights. In 2008, the organization again changed its name to The Advocates for Human Rights to better reflect its global mission.

The organization was originally formed to educate its members, lawyers, and the public about human rights issues; to promote, support, and encourage the efforts of lawyers worldwide in establishing judicial systems that protect human rights; and to contribute legal expertise in specific instances involving international human rights issues. The group organized and trained local
professionals and advocates to use their skills and experience to defend human rights in Minnesota and around the world. While the mission remains essentially the same, The Advocates today focuses on those at risk of human rights violations due to discrimination, marginalization, and injustice, including refugees and immigrants, women and girls, LGBTI persons, and people on death row.

The Advocates works in partnerships to build respect for internationally recognized human rights, such as those contained in the Universal Declaration of Human Rights and other international treaties. The Advocates works to change systems, represent individual victims of human rights violations in court and before international bodies, educate communities about their rights, and educate the public about important human rights issues. The organization partners with colleague organizations, human rights defenders, pro bono attorneys, directly affected persons, and other volunteers to accomplish its mission. It engages volunteers in all aspects of its work, from legal representation in asylum cases to pro bono design of the website. Each year The Advocates leverages its cash budget up to five times through this pro bono and volunteer engagement.

Since 2006, The Advocates has provided statewide leadership in Minnesota to end human trafficking, catalyzing the creation of new protections for trafficking victims by (1) documenting gaps in the state’s response to trafficking; (2) training prosecutors, police, and other professionals to identify trafficking; and (3) advocating for strong anti-trafficking laws.

### Human Trafficking in Minnesota

Minnesota is a predominantly (81%) white state that nonetheless has significant Native American, African American, and immigrant populations. The state has some of the worst racial disparities in the country, with people of color experiencing poorer outcomes in employment, income, housing, education, health care, and more (Advancing Health Equity 2014). These disparities contribute to human trafficking by creating a pool of people who do not enjoy their basic human rights and are disconnected from government services that could assist them, making them attractive targets for traffickers.

Human trafficking in Minnesota is under-identified and underreported. Currently available numbers are based on surveys of service providers and law enforcement agencies and almost certainly undercount the number of trafficking victims. In 2016, service providers in Minnesota reported working with 57 victims of labor trafficking and 661 victims of sex trafficking (MN Office of Justice Programs 2017). Two years prior, before widespread implementation of training and services for sexually exploited youth, service providers reported working with 29 labor trafficking victims and 175 sex trafficking victims (MN Office of Justice Programs 2017). The dramatic increase over a 2-year span suggests that reported numbers of trafficking victims reflect the level of training service providers have received, not the actual incidence of trafficking.
Research, Education, and Advocacy to End Human Trafficking

The Advocates’ strategic legal reform work has resulted in a dramatic change in the state of Minnesota’s legal response to human trafficking. This work, grounded in The Advocates’ expertise on violence against women and on refugee and immigrant rights, also resulted in a change of attitude and perception in those involved in the legal system and others who work with victims of trafficking. Consistent with The Advocates’ approach, the work measures impact by the effects of public policy changes on the human rights of the affected populations. In the case of trafficking in Minnesota, those affected populations are predominantly women and girls, people living in poverty, people of color, Native Americans, and immigrants.

Sex Trafficking

2008 Sex Trafficking Needs Assessment Report

Beginning with research undertaken in 2006 to support the State of Minnesota’s newly formed human trafficking task force, The Advocates identified gaps in state law, policy, and practice relating to sex trafficking. The Advocates analyzed the effectiveness of the recently enacted state sex trafficking statute and police practices related to trafficking. The research resulted in the 2008 Sex Trafficking Needs Assessment for the State of Minnesota. This report informed the advocacy strategy that resulted in important legislative and policy changes that have dramatically improved the state’s response to sex trafficking.

The advocacy strategy to improve the state response to sex trafficking started before the formal release of the report with deliberate outreach efforts to potential government partners. The report detailed many problems with different government agencies and justice system actors, including police, prosecutors, federal immigration authorities, and others. The Advocates sent an embargoed copy of the report to all of the government agencies and individuals involved in the research and scheduled a roundtable discussion to give all of the stakeholders the opportunity to respond, ask questions, and dispute findings before making the report public. This process allowed The Advocates to correct any errors that might have been misleading. The process not only gave the government agencies an opportunity to express concerns with the report but also to prepare for the media attention the report generated. The Advocates did not represent that it would make specific changes an agency might request; rather, The Advocates indicated it was open to discussion and further information about the issues presented in the report. This process was instrumental in helping to build trust with the agencies, and it provided a common platform to build partnerships and collaborations to begin the process of addressing the findings and recommendations of the report.

The Advocates’ research revealed widespread confusion about the differences between the US federal law on trafficking and the Minnesota law on trafficking. The main difference centers on the requirement of establishing “force, fraud or coercion.” The federal law requires an adult victim to show that the trafficker used force, fraud,
or coercion to compel participation in the commercial sex industry to be considered a victim of sex trafficking. This standard is often very difficult to prove because of the nature of the underlying trafficking crimes. Minnesota law does not include the same requirement. Rather, the Minnesota law is based on the proposition that a person can never consent to being exploited by another person.

The research also revealed a widespread lack of understanding of the dynamics of sex trafficking throughout the legal and criminal justice systems. Law enforcement largely focused on the actions of the victims rather than the crimes of the traffickers. Victims were routinely prosecuted for crimes resulting from the trafficking with no recognition that they were being exploited by individuals profiting from the situation. Adult victims were arrested and charged with prostitution and related offenses, while minor victims were judged delinquent and placed into the juvenile justice system. Neither adult nor minor victims received services to address the harms resulting from their trafficking victimization.

The Advocates found that no prosecutions had been brought under the Minnesota statute in the first years following enactment, largely because police and prosecutors had not been trained to use the new law and because the law failed to designate specific penalties. The report formed the basis for legislative changes in 2009 which strengthened penalties against traffickers.

The Advocates also launched a statewide prosecutor training initiative in 2010, partnering with the Minnesota Association of County Attorneys. The training focused on the new law and included experienced prosecutors from other jurisdictions to share strategies and best practices with Minnesota prosecutors to overcome barriers to holding traffickers accountable. As a result, prosecutions under Minnesota’s human trafficking statute are now routinely brought and convictions secured. In 2007, just before the release of the Needs Assessment, there were 5 convictions under the statute governing solicitation of prostitution and sex trafficking; in 2016, there were 45 convictions (MN Office of Justice Programs 2017).

The Advocates also reported that Minnesota regularly arrested and prosecuted trafficking victims, including minors, for engaging in prostitution. The Advocates identified several key recommendations to shift the focus to providing necessary services to victims and ensuring their safety. The Needs Assessment highlighted that trafficked persons need greater access to services tailored to meet their specific needs, that Minnesota law should prioritize the protection of trafficked persons over their arrest and prosecution, and that professionals who respond to sex trafficking need effective protocols for victim identification and referral to services.

**Safe Harbor for Youth**

In 2010, based on the findings of the Needs Assessment, The Advocates convened stakeholders to explore developing a better response to sex-trafficked youth. The resulting **Safe Harbor for Sexually Exploited Youth Act**, enacted in 2011, amended in 2013, and which took effect in 2014, removed people under 18 who “engage in prostitution” from the state’s definition of a juvenile delinquent. The law established a statewide service delivery model and required widespread training of law enforcement and prosecutors. Today the Minnesota Department of Health’s Safe
Harbor Director leads statewide anti-trafficking efforts, and the state provides more than $13 US million in biannual funding for housing and supportive services to individuals 24 and younger.

During the process of drafting the 2011 legislation, it became clear that the juvenile delinquency approach to dealing with sexually exploited youth could not be eliminated without replacing it with another system that would meet the needs of the children and, most importantly, keep them safe. It was equally clear that the expertise of a wide array of professionals from across sectors would be needed to envision an effective replacement system. The Advocates proposed that Safe Harbor 2011, therefore, should include the creation of the working group and delayed implementation of the changes to the delinquency definition to accommodate this process.

Throughout 2011–2012, as directed by Safe Harbor 2011, the Commissioner of Public Safety, together with the Commissioners of Health and of Human Services, convened a statewide stakeholder consultation process to create recommendations for the structure needed to support the approach to providing services and support to sexually exploited youth and to youth at risk of sexual exploitation. A Safe Harbor Working Group was formed to identify what was needed to ensure the law would work when the final provisions came into effect in 2014. The working group was multi-jurisdictional and included prosecutors, public defenders, judges, public safety officials, public health professionals, child protection workers, and service providers from around the state. The Safe Harbor Working Group adopted the vision that no matter where sexually exploited youth or youth at risk of sexual exploitation seek help – no matter which door they knock on – they will be met with an effective victim-centered response. The Working Group participants described their vision as the “No Wrong Door Model.”

The Working Group’s core values included recognition that trauma-informed, individually responsive care, combined with prevention strategies and effective victim identification, is the most appropriate response to sexually exploited youth. Research has shown that the upfront commitment to preventing and protecting youth from trafficking is a worthwhile investment for Minnesota. In 2012, alongside the work of the Safe Harbor Working Group, the Minnesota Indian Women’s Resource Center undertook research, conducted by Lauren Martin and Lauren Stark of the University of Minnesota and economist Richard Lotspeich of Indiana State University. The research focused on the financial benefits and costs of early intervention to prevent sex trading and trafficking of adolescent females. The researchers analyzed the projected impact on the public budget by Safe Harbor. The research indicates that for every $1 of public cost, early intervention yields $34 in benefit. This research provided a convincing argument to legislators for fully funding a robust network of services for victims.

The Working Group recognized several basic model assumptions. Among them is that Minnesota’s model for implementing Safe Harbor would rely on existing assets and strengths and that duplication of resources had be avoided. Minnesota has developed many resources and best practices that are relevant and useful to responding to sexually exploited youth. For example, Minnesota has led the world
in developing innovative responses to domestic violence (Critical Issues 2005). In recent years, that system has seen significant cuts in resources resulting in shelter and program closures. Minnesota also has sophisticated sexual assault nurse examiner and sexual assault response team systems, which also have faced significant funding cuts. Finally, Minnesota was at the cusp of addressing longstanding systemic resource deficiencies for shelter and services for homeless youth, which have been underfunded despite dramatic need.

The Safe Harbor Working Group recognized that funds for domestic violence, sexual assault, and homeless youth shelter and services are vital to providing for the needs of Minnesota’s sexually exploited youth without creating costly bureaucracy and infrastructure. Support for existing programs would need to be maintained and strengthened while at the same time making available to those and other programs funding specific to meeting the need for housing and services for sexually exploited youth. Rather than develop a duplicative infrastructure, the Safe Harbor Working Group sought to build on these existing resources. The needs identified by the Safe Harbor Working Group relied on the full funding of existing services and shelter for sexually exploited youth in Minnesota through appropriations.

A multidisciplinary stakeholder group from across the state met regularly over the course of a year to identify core values for working with sexually exploited youth and youth at risk of sexual exploitation. The resulting document included legislative recommendations for funding, training, and staffing. That process has proven to be critical in propelling Minnesota’s response to trafficking forward, not only developing a comprehensive framework but also creating momentum for making the proposed changes a reality. The No Wrong Door Model was implemented in 2014 with services, support, and housing for sexually exploited youth. A statewide Safe Harbor/No Wrong Door director is housed in the Minnesota Department of Health’s violence prevention program, providing statewide leadership on human trafficking.

Safe Harbor represented a turning point in Minnesota’s response to human trafficking. In addition to identifying these children as crime victims rather than delinquents, initial training efforts followed by increasing and innovative law
enforcement have resulted in arrest, prosecution, and conviction of sex traffickers. A public information campaign by the Women’s Foundation of Minnesota dramatically increased the public’s understanding that trafficking is not something that only happens in other countries (Global Estimate 2017) but is a crime and a human rights abuse in local communities. This increased awareness has ensured that Safe Harbor continues to be fully funded and, indeed, was expanded in 2016 to include victims who are 24 and under.

**Strategic Plan for Adult Trafficking Victims**

In 2017, the State of Minnesota enacted legislation seeking to identify the most appropriate and effective response for adults impacted by commercial sexual exploitation and sex trafficking, as well as the harms that criminalization of prostitution causes to people involved in commercial sex. The strategic planning process builds on Safe Harbor for Youth and the No Wrong Door Model which was implemented in 2014 with services, supports, and housing for sexually exploited youth.

The Safe Harbor for All strategic planning process was mandated by the legislature to help decide next steps. The legislature funded a grant to pass-through the Minnesota Department of Health (MDH). MDH awarded the project to a partnership of three agencies led by the University of Minnesota’s Urban Research and Outreach-Engagement Center (UROC) with The Advocates for Human Rights and nonprofit Rainbow Research. The strategic planning process includes stakeholder input, analysis of existing data, and review of the literature.

In January 2018, the strategic planning team convened an expert Process Advisory Group of 35 individuals from across the state and diverse communities with a wealth of knowledge and experience that is centered around the wisdom of those with personal experience selling or trading sex and survivors of trafficking. This Process Advisory Group reviewed all community engagement plans and protocols to ensure that our process was open, inclusive, safe, and transparent. The Process Advisory Group was convened at the end of the community engagement process to review data analysis plans and provide feedback on the report.

The research team sought stakeholder input to identify potential impacts of policy changes on the health, wellness, and dignity of adults involved in commercial sex, including victims of trafficking and exploitation. It explored people’s opinions about intended and unintended consequences related to different legal frameworks. The strategic planning process engaged stakeholders from across Minnesota from a wide variety of communities as described in the legislation. The team focused on two groups:

- People with personal experience in trading or selling sex, which includes adult victims and survivors of sex trafficking and commercial sexual exploitation, and sex workers
- Systems professionals with expertise on sex trading and trafficking, which include law enforcement, prosecutors, social service providers, advocates, and more
The legislation that created the strategic planning process also mandated statewide input from people of all genders and sexual orientations, racial and ethnic communities, immigrants and new Americans, tribally affiliated individuals, and more.

The strategic plan addresses relevant criminal issues, availability and access to prevention and intervention services for adult victims of sexual exploitation and trafficking, unintended consequences of any recommendations, and identification of intersections with other areas of oppression. Also, as mandated by legislation, the strategic plan includes specific recommendations regarding the adoption of a partial decriminalization, or “Safe Harbor for All,” statewide model.

The strategic planning team undertook extensive community engagement across the state of Minnesota, across sectors, and across cultural communities, with specific focus on victims and survivors of sex trafficking and exploitation and others with personal experience in commercial sex.

The three agencies developed and executed a participatory community engagement process to gather information from over 290 stakeholders across the state. Starting in 2017, the strategic planning process used purposeful sampling methods to invite a wide range of opinions and perspectives from knowledgeable stakeholders from rural, urban, and suburban Minnesota. This was not a representative sample or public opinion polling; rather, the process engaged people from all the stakeholder groups mandated by the legislature for inclusion. The process recognized that transactional sex can take many forms, including sex trafficking, commercial sexual exploitation, independent selling or trading sex, and sex work. The process centered the voices of diverse people engaged in transactional sex and also sought perspectives from advocates, service providers, police, prosecutors, people with tribal affiliation, and people from Greater Minnesota and the Metropolitan area, as well as communities most impacted by sex trafficking in Minnesota, including people of color, indigenous people, immigrants and refugees, LGBTQ communities, and others across the state.

The team developed a strategic planning process that included multiple ways of gathering information from stakeholders. Over a period of several months, the team travelled across the state conducting in-person interviews one-on-one, in small groups, and other convenings. Researchers also used phone interviews and an online survey. The semi-structured interview guide was modelled on the Minnesota Department of Health’s request for proposals, the legislative mandate, and substantial revision and input from the Process Advisory Group. Methods were designed to protect confidentiality and where appropriate gather information anonymously.

Safe Harbor for All: Results of a Statewide Strategic Planning Process in Minnesota was submitted to the Minnesota legislature in January 2019 and is available at https://www.theadvocatesforhumanrights.org/uploads/safe_harbor_for_all_strategic_planning_process_report.pdf.

**Labor Trafficking**

The Advocates’ work on labor trafficking is grounded in research and in its immigration legal practice representing asylum seekers and immigrants. Beginning in the

**Asking the Right Questions**


The report found that labor trafficking and labor exploitation are closely related. Trafficking victims are frequently victims of labor exploitation and other forms of abuse, including unpaid wages. Labor trafficking is a crime; labor exploitation is handled by administrative enforcement agencies.

Protecting victims and preventing abuses depend on correctly identifying when trafficking and exploitation have occurred. Victims, service providers, and government agencies, however, all struggle with identification. Even when victims are identified, the help available to them falls short. This lack of identification and protection hampers prosecution of traffickers. Meanwhile, enforcement of laws against labor exploitation is limited by a lack of resources and a confusing system that workers have difficulty navigating.

Working with multi-sector stakeholders, The Advocates created tools for use in the field by advocates and law enforcement. Throughout 2017 and 2018, The
Advocates has worked with the Minnesota Department of Health to provide extensive training about labor trafficking around the state to government agencies, service providers, and other audiences.

**Statewide Labor Trafficking Protocol**

In 2018, at the request of the Minnesota Department of Health, The Advocates developed a statewide protocol to assist state agencies, county and municipal governments, service providers, law enforcement, and others in identifying and responding to labor trafficking.

The Advocates found that responses to labor trafficking cannot be accomplished by one agency. To effectively respond, all systems – social services, victim services, and judicial – must be actively involved in the response, and other communities must understand who they should contact if they suspect labor trafficking.

Minnesota’s unique context may place a greater burden on organizations and agencies to implement the protocol. Many government services are decentralized, with elected county and city officials exerting substantial control over agency policies and practices and affecting the conduct of law enforcement, child protection, adult protection, social welfare services, education, and other sectors. This allows policies to be responsive to local conditions, but also requires organizations and agencies implementing the protocol to investigate who is best placed to serve labor trafficking victims at the local level and the process their community will follow.

The Advocates applied a human rights monitoring methodology to develop the protocol. The methodology combined qualitative research strategies, including interviews and data collection through survey instruments, with research and analysis of current literature, policies, and laws.

The Advocates began by collecting preliminary data to identify organizations and agencies that were already serving victims of sex and labor trafficking in Minnesota. It developed an online survey that was widely disseminated to service providers, law enforcement, anti-trafficking networks, and other stakeholders. In-person interviews were conducted to determine available services, barriers to identification and accessing services, and shared goals for an effective response to youth victims of labor trafficking. The Advocates developed stakeholder interview questions tailored to specific sectors that may come into contact with labor trafficked children and youth. The Advocates identified geographic outreach priorities based on the survey results and the Safe Harbor network of services for sex-trafficked youth and interviewed stakeholders from the northwest, northeast, southwest, southeast, central, and Metro Safe Harbor regions. The Advocates conducted a total of 93 interviews around the state with prosecutors, child protection and adult protection workers, health-care providers, police and other law enforcement officers, victim advocates, housing providers, legal service providers, worker organizations, public health officials, school administrators, social workers, and others who work with youth. Based on the information obtained through the surveys and interviews, The
Advocates created a preliminary draft protocol to circulate to stakeholder groups convened by discipline and industry. Individual subject matter area experts also reviewed the draft protocol to provide input. The Advocates made revisions based on gaps identified and areas where further clarification was needed.

The protocol identified factors which contribute to labor trafficking, including worker vulnerability due to immigration or other status and the demand for cheap labor. Traffickers often operate in industries with persistently high rates of labor exploitation not connected to trafficking. An environment of impunity for abusive employers allows the traffickers’ violations of labor and employment laws to go undetected or unprosecuted (Owens et al. 2014).

**NEED A JOB?**

Help wanted in the following high-risk industries:

- **ILLEGAL**
  - Strip clubs
  - Commercial sex
  - Illegal drugs operations
  - Theft rings
  - Traveling sales crews
  - Performing arts troupes
  - Carnivals
  - Manufacturing
  - Farm work
  - Construction
  - Janitorial services
  - Restaurant work
  - Hotel housekeeping
  - Home health care
  - Domestic service

- **ITINERANT**
- **FISSURED**
- **ISOLATED INVISIBLE**

The protocol, which focuses on expanding the existing Safe Harbor for Sexually Exploited Youth system to youth who experience labor trafficking, identified core values which stakeholders deemed critical for successful prevention and intervention. These values include:

1. Service providers must prioritize the youth’s safety and well-being.
2. Service providers are committed to understanding labor trafficking.
3. Youth who are labor trafficked are victims of a crime and should be treated as victims, not perpetrators or illegal aliens.
4. Victims should not feel afraid, isolated, or trapped.
5. Youth should receive comprehensive services based in trauma-informed care.
6. Comprehensive services also should be responsive to the needs of individual youth.
7. Services should be offered statewide and designed to reflect the specific regional needs of different areas.
8. Youth have a right to privacy and self-determination, including the right to understand and consent to the data that is collected and shared about them.
9. Services should be based on positive youth development principles.
10. Labor trafficking can be prevented.

The protocol next identified prevention, collaborative responses, victim identification, and intervention strategies for communities to undertake. These include practical tools for working with individuals and for developing multidisciplinary teams which are specially equipped to respond when victims are identified. This protocol is scheduled to be released in January 2019.

**Lessons Learned and Next Steps**

In recent years, there has been an increased recognition of human trafficking (in any of its expressed forms) as a fundamental violation of human rights. The human rights framework focuses on protecting victims and holding offenders accountable for these violations. A human rights documentation methodology lends itself well to identifying effective interventions. This community-driven method engages all of the stakeholders, including directly affected people, in identifying and solving systemic failures that undermine enjoyment of basic human rights.

The human rights framework provides a standard against which anti-trafficking measures can be judged. The human rights framework considers the dignity, safety, and access to justice of all stakeholders and helps avoid becoming mired in unhelpful ideological positions.

Engaging stakeholders builds trust and allows for the development of solutions that address the reality of the lived experiences of the victims of the human rights violations. Law enforcement can, and often wants to, be engaged in creating practical solutions to problems. Advocates, service providers, and academic researchers bring insight into systemic gaps or problems. Policymakers have the power to enact systemic change. People with lived experience know what they need to move out of exploitative situations. These stakeholders need to be in relationship with one another in order to earn trust and develop a shared commitment to dignity, health, safety, and justice for those affected by laws, policies, or practices.

In The Advocates’ experience, solving complex human rights issues is an ongoing process. New opportunities present themselves, and new stakeholders emerge as new interventions are implemented. New approaches – particularly those informed by the people who are directly affected by the human rights violations which result from human trafficking – can help ensure that new interventions are adapted to be as effective as possible (see, e.g., Discover Human Rights: A Human Rights Approach to Social Justice 2017).

The Advocates continues to address the issues identified in its research on sex trafficking and labor trafficking to build on the successes of its past programming. Its main focus is on improving interventions that provide safety and security to victims.
of trafficking and those that build systems of accountability for those individuals who profit from the exploitation of others. In addition, victim identification results in increased need for direct services. The Advocates has expanded its staff to provide direct legal representation to labor trafficking victims and is now working with nearly 50 victims.

Conclusion

As is well documented now, human trafficking is a worldwide epidemic resulting in wide-ranging human rights violations. While the problem often crosses state and national borders, a localized approach to research can provide essential information on the impact of trafficking on individuals and communities. This research informs potential government interventions that can be replicated more broadly and best practices for advocates, service providers, and others. Labor trafficking and sex trafficking should be studied independently as well as together. While each form of trafficking presents unique challenges, some interventions can be applied in both situations. Additionally, in cases that involve both labor trafficking and sex trafficking, an understanding of both the similarities and differences is necessary to identify appropriate responses.

As governments implement new laws and other interventions, they should monitor them closely to determine their effectiveness. This monitoring should be an ongoing process because conditions change over time. A human rights framework focused on the dignity, safety, health, and justice for people who have been trafficked provides the best hope for eradication of the problem.

Relevant Statutory Provisions

Federal Statutes

U.S.C. Title 22, Chapter 78 – Federal Victims of Trafficking and Violence Protection Act

22 U.S.C. § 7102 (9) (2018): The term “severe forms of trafficking in persons” means— (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.


**Minnesota Statutes**

Minn. Stat. § 609.321, subd. 7a (2018) defines sex trafficking as receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual or receiving profit or anything of value, knowing or having reason to know it is derived from sex trafficking.

Minn. Stat. § 609.281 (2018) defines labor trafficking as the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, for the purpose of: debt bondage, forced labor or services, slavery or slave-like practices, or organ removal.

**References**


Part VIII

Future Issues and Directions in Controlling Human Trafficking
The Praxis of Protection: Working with – and Against – Human Trafficking Discourse

Luke S. Bearup

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Abstract
This chapter considers the symbolic violence that is inflicted when trafficking discourse is imposed on social phenomena, vulnerable groups, and the praxis of protection. It is argued that this symbolic violence derives from the reductive construction of trafficking discourse and its foundation in international criminal law and the combative deployment of this discourse by powerful movements, organizations, governments, and rival social fields. Consequently, those who have the power to construct social phenomena as human trafficking tend to do so in accordance with the prevailing aims and understandings within their groups and social fields. Such perspectives can be difficult to reconcile, however, with the alternative aims, understandings, and priorities of those who are closest to the social action, and particularly those who are less powerful and more vulnerable. It is argued, therefore, that the imposition of trafficking discourse, and even the rights ideals associated with victim protection, risks imposing significant social harms. Such risks demonstrate the importance of seeking to understand social problems in the light of local perspectives, social arrangements and cultural

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norms, and the reflexive challenge of working with – and against – human trafficking discourse.

**Keywords**

Human trafficking · Victim protection · Reintegration · Antitrafficking

Once buoyed by a host of aims and ideals, the global antitrafficking project now seems encumbered with the great weight of these diverging expectations. Questions abound about the modest numbers of prosecutions and victims assisted, the collateral damage visited upon vulnerable populations, and the lack of progress in achieving systemic change aimed at reducing exploitation. Accordingly, this chapter problematizes the discourse of human trafficking and argues that the social problems that are labeled as such are often poorly understood and the proposed solutions lacking in their correspondence with local realities. In response to these challenges, this chapter emphasizes the importance of seeking to understand local perspectives on social problems and the reflexive challenge of reconciling abstract rights ideals with local social arrangements and cultural norms.

This chapter is divided into five sections. The first describes the rationale that has guided the selection of the literature and the constructionist commitments that have informed the analysis. The second explores how the legal concept of human trafficking was transformed into a (contested) global project and a universal social problem. It argued that the imposition of trafficking discourse tends to obscure, rather than illuminate, local social problems and realities. Evidence for these claims is presented in the section “Local Perspectives on Social Phenomena Constructed as Human Trafficking,” in the form of various research which juxtaposes human trafficking discourse with the perspectives of research participants. These arguments related to the construction of victims and the praxis of protection are developed in the sections “Constructing Victims of Trafficking at Large” and “Constructing Individual Victims of Trafficking.” Drawing evidence from Australia and Cambodia, it is argued that even the best intentions can impose significant harms on vulnerable populations. These examples demonstrate the challenges associated with policymaking, human trafficking and international development, and the praxis of protection.

**A Vantage Point on Human Trafficking and Protection**

Actions taken to identify and protect victims of human trafficking are ordinarily funded and coordinated by governments, donors, international agencies (IAs) and nongovernment organizations (NGOs). The practice of victim protection occurs, therefore, within an evolving legal and policy framework that is sometimes described as the “Protection Pillar” of the global antitrafficking project. This chapter aims to promote greater reflexivity within this social field, concerning the range of competing agendas that are at work in the ongoing construction of human
trafficking, and the potential tensions that exist between such aims and the perspectives of those closest to the social action. This rationale has guided the selection of the literatures to be considered. These literatures relate to the legal foundations of trafficking discourse and its construction as a global social problem, and examples of related research, literature, and policymaking that demonstrate contestation in the official accounts of experts, and a disjuncture with local social realities.

The analysis of these literatures is guided by a social constructionist approach which aims to consider human trafficking in the light of competing perspectives and a range of possibilities (Berger and Luckmann 1967). This contrasts with positivist and legally inspired efforts to identify real instances of human trafficking in social life. In this chapter, the social constructionist approach contributes to the challenge of understanding the competing discourses and social fields that construct various forms of social phenomena as human trafficking. These social fields are guided by contrasting, if not competing aims and normative conceptions of development and progress. As will be demonstrated, these cultural norms sometimes clash violently with the perspectives of locals and those designated as vulnerable to, or as victims of, human trafficking.

These constructionist insights draw on the critical sociologies of Michael Foucault and Pierre Bourdieu. In this chapter, human trafficking (and antitrafficking) is described as a discourse, or a web of language, law, policy, practices, and power relations that constitute various social phenomena (Foucault 1989). The chapter further invokes Bourdieu’s explanatory concepts of doxa, symbolic violence, and social field (Bourdieu 1977). These concepts are employed to describe how antitrafficking efforts depend on accepted or official truths (doxa), to reveal how the imposition of trafficking discourse can obscure or overpower local perspectives and interpretations (symbolic violence), and to describe the constellation of social relations that have developed around the aim of combatting human trafficking (social field). Human trafficking is described, therefore, as both discourse and social field, as related to both internal and external contestation. Although the prevailing doxa constructs human trafficking as a global problem of importance, because of the ongoing contestation between social fields, it remains difficult to gain consensus on what this problem is exactly, or how it should be addressed.

This chapter builds on cross-disciplinary critiques of the discourse of human trafficking (e.g., Molland 2012; Brennan 2014; Stoyanova 2017; Andrijasevic 2010; Suchland 2015; Hesford 2014; Boiro & Einarsdottir 2018; see also Mediated Representation of Human Trafficking: Issues, Context, and Consequence) as particularly related to the practice of victim protection. These critical efforts aim to promote greater reflexivity in this field, in regard to the “bad science” and the “bad politics” that risk making human trafficking a textbook example of counterproductive regulation (Grabosky 1995, pp. 356, 360). In addition, this chapter aims to affirm the distinction between the so-called Pillar of Victim Protection as a component of antitrafficking work (UNODC 2009), and the preexisting field of protection more broadly. The latter relates to social welfare orientated interventions aimed at the protection of children and vulnerable populations and ending discrimination and violence against women, as codified within various human rights instruments (e.g., UNCRC 1989; CEDAW 1979).
The Making of a Global Social Problem

Focus is now given to briefly describing the means by which human trafficking transitioned from obscure legal concept to global social problem. Accordingly, Gallagher describes the motivations of the legal architects of the Trafficking Protocol in the introduction to The International Law of Human Trafficking. Reflecting on her time working for the UN in Vienna in 1998–99, Gallagher explains that:

[I]t was clear to our organizations that forced labor, child labor, debt bondage, forced marriage, and commercial sexual exploitation of children and adults were flourishing ... Globalization, bringing with it the promise of wider markets and greater profits, had created complex new networks and even new forms of exploitation. We all believed that trafficking was an appropriate focus for international law ... [and] that the existing international framework was woefully inadequate ... [yet] ... it was far from clear that another area of [criminal] international law ... was up to the challenge.... (Gallagher 2010, pp. 1–2)

Gallagher’s account describes how human trafficking, a little-known area of human rights law, rose to prominence following its transplantation into (the competing field of) criminal law, towards the aim of promoting stronger international action against transnational crime. Following extensive consultation, drafting, and eventual adoption by the UN General Assembly, the legislation was included as an additional protocol to the Convention Against Transnational Organized Crime.

The Trafficking Protocol established the definition of human trafficking and the legal foundations of human trafficking discourse. Accordingly, human trafficking is defined as being comprised of three constituent components of action (e.g., harboring, transfer or receipt of persons), means (e.g., deceit, coercion and control), and purpose (e.g., exploitation for forced labor, slavery or servitude), as necessary for the identification of victims and perpetrators (Gallagher 2010, p. 29). This definition established the criteria for retrospectively examining social phenomena to identify perpetrators and victims of what has been legally constructed as the crime of human trafficking. As observed by Gallagher, these abstract criteria were “sufficiently broad to embrace all but a very small range of situations in which women, men, and children are severely exploited for private profit” (Gallagher 2010, p. 2).

Gaining further impetus from the passing of the Trafficking Victims Protection Act (TVPA 2000), a growing emphasis on border security, and the establishment of antitrafficking as a core pillar of US foreign policy (Siskin and Wyler 2013), the antitrafficking project quickly gained global support. While capitalizing on the surge of millennial goodwill, antitrafficking efforts had little connection with the Millennium Development Goals (MDGs), or related ambitions to halve extreme poverty or cancel the large debts of developing nations. Rather, the field of antitrafficking coalesced around the abstract aim of combatting human trafficking, as based on the very same abstract legal concept only recently constructed.

The broad construction of the trafficking concept, at least initially, appears to have served the project well. By 2016 there were an estimated 1861 antitrafficking NGOs operating in 168 countries (Limoncelli 2016, p. 320). Yet the proliferation of antitrafficking activity was further accompanied by a pervasive lack of clarity, as
signaled by the title of Limoncelli’s abovementioned article: “What in the World are Anti-Trafficking NGOs Doing?” (Limoncelli 2016). This has led to criticisms that “diverse advocates have appropriated the ‘trafficking’ label…” (Chuang 2014, p. 610). The resulting confusion has generated enduring questions about the definitions of human trafficking (Molland 2018), how it relates to “modern slavery,” and “what exactly is everyone trying to fight?” (Chuang 2014, p. 609).

In Gallagher’s estimations, the Trafficking Protocol was drafted with the aim of mitigating the negative effects of globalization and addressing issues such as forced labor, debt bondage, forced marriage, and commercial sexual exploitation (Gallagher 2010, pp. 1–2). Yet apart from the probable harms of these activities or their potential to contribute to cross border movements or exploitation for private profit, what do these social phenomena have in common? How fundamentally similar, or different, for example, are the social problems of child marriage in Niger, bonded labor in the brick kilns of Hyderabad and the pimping of youths in the USA? Apart from its legal status, what qualifies human trafficking as a framework that is suitable for understanding such diverse social phenomena and developing related interventions?

The importance of such questions has been affirmed by Gallagher herself. Writing in relation to the declining influence of the US State Department’s Trafficking in Persons Reports, Gallagher claims that:

> [t]he task of unraveling the tangled political economy of human trafficking is an urgent one: until we understand not just what is happening but why, our responses will inevitably be faulty and incomplete. (Gallagher 2015)

It is not readily apparent, however, that understanding the “political economy of human trafficking” will lead to the development of more adequate responses. It is assumed that Gallagher is not suggesting that we embark on the (impossible) task of unraveling the “political economy” of an abstract legal concept. Rather, Gallagher seems to be advancing the positivist claim that we should strive to understand human trafficking as it exists objectively, out there in the social world. The challenge, of course, is that this legal concept was only recently constructed. It does not exist in the world until it is proclaimed via official declaration and thereafter imposed as an interpretation of social phenomena. This criticism relates to Grabosky’s claim, therefore, that “[u]nderlying most regulatory failure, ironic or otherwise, is bad science” (Grabosky 1995, p. 356). The bad science, in this instance, relates to the reification of an abstract legal concept, or the positivist remaking of human trafficking as something that exists independently in the social world.

These criticisms appear related to Chuang’s argument, that the field of anti-trafficking is unique, because, “unlike in other fields, in which an advocacy movement spurs the creation of a new legal regime – the law preceded the social movement” (Chuang 2014, p. 613). While this point may be a little overstated, the concept of human trafficking has certainly been over-extended as a result of its legal construction and associated policymaking, to the point that it is now widely touted as a universal social problem covering all manner of social ills. Consequently,
a host of governments, international agencies, organizations, advocates, and scholars have pledged their commitment to seeking out and ending human trafficking. Given this combative a priori commitment, antitraffickers are prone to seeing, or attempting to see, social problems through the prism of this universalist point of view. For example, within Sidhartha’s related research he observes that

[al]though there seems to be considerable information available, one is unable to form a picture which reflects the reality of trafficking in women and children in India. (Siddhartha 2018, p. 20)

Taking a constructionist perspective, it hardly seems possible, or even desirable, to form a single picture aimed at reflecting “the reality of trafficking for women and children in [all of] India” Such an aim seems to forego the sociological and the development challenge of aiming to understand local perspectives on local social problems. Instead, Siddhartha’s statement above suggests an emphasis on retrofitting the accounts of exploitation and violence described by research participants, to fit the global trafficking discourse.

These criticisms parallel with broader critiques of traditional international development. Consider, for example, Easterly’s claim that international development is characterized by grand center-to-periphery schemes that are destined for failure due to their misguided lack of correspondence with local problems and local realities (Easterly 2006). Similarly, Escobar’s critiques of development bureaucrats seem particularly applicable. By constructing social life as a technical problem, technocrats position themselves as experts and seek to impose interventions aimed at remaking other societies according to their own model image, in accordance with “the structures and functions of modernity” (Escobar 2012, p. 52). Taking a more optimistic note, about the possibility of developing responsive social policy and regulation more broadly, these challenges may alternatively be interpreted as indicative of a gap between regulatory activity and the community (Braithwaite 1995).

Local Perspectives on Social Phenomena Constructed as Human Trafficking

As argued above, the discourse of human trafficking finds its basis in legal criteria that was founded in international criminal law and established for the purpose of addressing a range of social problems. These criteria aim to empower states, and their official representatives, to identify instances of human trafficking and, therefore, perpetrators and victims. These legal developments have normalized the discussion of human trafficking as a universal social problem that must be identified and addressed. Despite this broad consensus, or the doxic agreement on the reality of human trafficking, a host of social fields are invested in the open challenge of influencing the aims of related laws, policies and interventions. Such efforts reflect a host of competing agendas, as related, for example, to criminal justice, migration,
labor, border security, abolitionism, interpersonal violence, and the diverse political aims of governments, corporates, and nongovernment organizations.

It may be argued, however, that the wide-ranging contestations over human trafficking are often lacking in relevance to the social problems that are often labeled as such (or at least the primary concerns and perspectives of those who are most affected). Building on this argument, this chapter now transitions to focusing on some instructive examples of related research. The following studies, therefore, were undertaken by practitioner-researchers. Each of these commenced their research from within the discourse of human trafficking, only to later reject or critique this discourse as poorly corresponding with the perspectives, priorities, and concerns of their participants.

Sverre Molland was posted in South East Asia, with the United Nations Inter-Agency Project on Human Trafficking. Molland’s book was based on fieldwork undertaken during, and after his assignment in Laos, and is ironically entitled: The Perfect Business? Anti-Trafficking and the Sex Trade along the Mekong (2012). Written in his characteristic laconic style, Molland’s text provides insight into the challenges he and other anti-traffickers faced, in reconciling the UN’s discourse on human trafficking with local perspectives and social realities. Whereas Molland observed that the UN’s trafficking discourse promoted notions of supply and demand and a focus on powerful and international criminal networks, Molland encountered local informal networks and family businesses (see also Tripp and McMahon-Howard 2015; Keo 2011).

Seeking to make sense of the apparent gap between his field research and the expectations of his role, Molland developed various case studies that described his research participants’ experiences and pathways into bars and brothels. Molland then presented these to his colleagues and invited them to apply the trafficking framework to identify perpetrators and victims of human trafficking. Time and time again, however, the trafficking specialists struggled to achieve any consistency in their interpretation of the case studies. Despite the difficulties they encountered, Molland observes that they remained stubbornly committed to the aim of making a correct decision and to their belief that a correct answer did in fact exist. Molland finds similar limitations within much of the literature on human trafficking. Accordingly, Molland argues that much human trafficking related research “aims to be corrective in its critiques of the anti-trafficking sector, while at the same time implying underlying truths regarding trafficking” (Molland 2012, p. 35).

Borrowing from Gellner, Molland playfully questions whether human traffickers have navels. In doing so, he subversively questions whether contemporary social problems – sometimes labeled as human trafficking – are wholly new or derived from historical practices and precedents (Molland 2012, p. 36). Molland’s question aims to promote greater reflexivity about the longstanding social arrangements and cultural norms which underpin the various social phenomena that are being reinterpreted, early in the twenty-first century, via the discourse of human trafficking. Molland’s question is designed to challenge the objectivist commitments of trafficking scholars, policy makers and practitioners alike, and their related efforts to correctly impose trafficking discourse upon social life.
Denise Brennan has similarly sought to balance her academic responsibilities with her commitments to advocacy and social justice. Her text, *Life Interrupted*, is based on nearly a decade of work exploring the reintegrative experiences of trafficking victims in the USA (Brennan 2014). Despite the parameters of her research, and her engagement within the field of human trafficking, Brennan is at pains to locate the experiences of her study participants within broader patterns of migration and labor exploitation. Although Brennan starts with the framework of trafficking, her commitments lead her to finish with critiques of human trafficking discourse. For Brennan, those formally classified as victims of human trafficking “are on the extreme end of the more widespread phenomenon of everyday exploitation” (Brennan 2014, p. 41). Consequently, Brennan argues that the

media attention and fundraising [associated with human trafficking] is fantastically disproportionate to the small number of persons assisted as well as the vast number of migrant workers left to continue working in vulnerable and dangerous situations. (Brennan 2014, p. 5)

The technocratic character of human trafficking discourse is similarly decried by Dewey, whose text compares institutional responses to sex trafficking in Bosnia, Armenia, and India. Dewey undertook her research with the aim of contributing to the work of the International Organization for Migration (IOM). Yet for Dewey, the policy discussions that she encountered seemed to be occurring at great abstraction from the local realities of those she was interviewing. During such lengthy meetings and policy discussions, Dewey explained, “I would often find myself distracted as I recalled stories I had been told by semi-nude dancers about the insurmountable debt, violence, and abuse that informed nearly all of their decisions” (Dewey 2008, p. 29). For Dewey, the forces which impinged upon the lives of her participants extended well beyond the exploitation of pimps or criminal third parties. Consequently, for Dewey, the criminal justice emphasis upon human trafficking seemed a betrayal of her participants, and her broader feminist commitments.

Andrijasevic’s text, *Migration, Agency and Citizenship in Sex Trafficking*, may similarly be read as a critique of human trafficking, as based on her research with Eastern European women selling sex in Italy (Andrijasevic 2010). Andrijasevic acknowledges that many of the ideas in her book derive from her experiences working in migrant networks and within a women’s shelter. Accordingly, Andrijasevic’s response to the abstract discourse of human trafficking is to provide a meticulous description of the day-to-day experiences of her participants. Through these efforts, she demonstrates how, not merely pimps and human traffickers, but European immigration and labor policies more broadly, constrain the choices and opportunities available to her participants. Without minimizing or avoiding the criminal violence and exploitation experienced by her participants, Andrijasevic’s scholarship highlights the “role of immigration and employment regulations . . . in producing and sustaining the conditions that permit migrant’s exploitation in the sex sector” (Andrijasevic 2010, p. 3).
Each of these studies reflects the efforts of practitioner-researchers to push back against the discourse of human trafficking, drawing empirical support from the perspectives of their research participants. As articulated by Molland, the legally inspired and economistic interventions being imposed by the anti-traffickers risked “drawing attention away from the social world in which they are attempting to intervene” (Molland 2012, p. 231). Similarly, for Brennan, as for Dewey and Andrijasevic, human trafficking discourse failed to correspond with the primary concerns and problems of their study participants (e.g., gender inequality, violence, poverty, inadequate labor protection, and insecure residency). While each of these studies engaged with the discourse of human trafficking, they can each be read as a critique of trafficking discourse and its tendency to divert attention (and limited resources) away from the very social problems it proposes to address.

Constructing Victims of Trafficking at Large

Up to this point it has been argued that the discourse of human trafficking, as grounded in international criminal law, tends to produce a distortional effect when imposed on the construction of social problems. Following Bourdieu, however, this argument may be extended, given that “[t]he most brutal relations of force are always simultaneously symbolic relations” (Bourdieu 1998, p. 53). Accordingly, in the remainder of this chapter these same critiques are now applied to the Pillar of Victim Protection (UNODC 2009) and the symbolic violence that is imposed. The argument to be advanced, therefore, relates firstly to the vulnerability of various groups to being constructed – at large – as (potential) victims of human trafficking. Finally, in section “Constructing Individual Victims of Trafficking,” the argument is directed more narrowly to consider the vulnerability of those who are formally identified as individual victims of human trafficking.

A brief purview of human trafficking related literature indicates that some social categories of persons are more vulnerable than others to being described, en masse, as potential victims of human trafficking. The foremost example of such being those who are engaged in the sex-work industry, and especially women. Such collective constructions of victimhood, of course, engender a range of adverse effects. These variously relate to the infantilization of sex workers, or their rendering as fallen, passive, naive, traumatized, unaware of their exploitation, and perpetually in need of rescue (e.g., Hesford 2014; Kempadoo et al. 2005; Agustín 2007; Davidson and Layder 1994; Jeffrey and MacDonald 2006). Such narratives tend to overpower alternative explanations of vulnerability, as for example, related to the role of employment and migration policy (Andrijasevic 2010), and thereby contribute to the silencing of sex workers, or the disqualification of their voices.

A more recent example has emerged, however, of another group that has recently become vulnerable to being collectively constructed as (potential) victims of human trafficking. This group of potential human trafficking victims was proposed at a Parliamentary Inquiry into whether Australia should adopt a Modern Slavery Act.
Although the terms of reference for the inquiry were wide, as related to the “[t]he nature and extent of modern slavery . . . both in Australia and globally” (Joint Standing Committee 2017, p. xix), a surprising number of submissions related to orphans in the developing world. These submissions aimed to address the problems of orphanage tourism, excessive Australian financial support for orphanages abroad, and the damaging effects of institutional care on children. Such concerns are reflected, for example, in the testimony provided to the committee by an Australian who had previously worked in a Cambodian orphanage, before discovering that many of the children in her care were not actually orphans:

So why were these children living in an orphanage when they weren’t orphans? The short answer is that they were being used as commodities. . . . Millions of children have been taken from their families and imprisoned in orphanages where they are being exploited for the purposes of fundraising. That is trafficking, and therefore it is also a form of modern-day slavery. And the exploitation of children in orphanages does not just relate to the corrupt orphanages, like the one that I rescued children from, because children are harmed in all orphanages, in all forms of institutional care. . . . The evidence that you have heard in this inquiry has made it clear, children who are held in orphanages are modern day slaves. (Parliamentary Inquiry into Modern Slavery, 17 August 2017)

The term orphanage trafficking and the related notion of a paper orphan can be found in the research of van Doore, who provides legal argumentation “for the situation of paper orphans to be considered a form of child trafficking under international law” (van Doore 2016, p. 403). This legal argumentation appears reasonable. Evidence is provided to suggest that some have promoted orphanage tourism and harbored and exploited children for the purposes of financial gain. Yet based on very limited evidence related to failures in international institutional care, van Doore further claims that

orphans and orphanages have become a business in some developing nations. Like any business, the demand for the product, in this case orphans, has driven the market. (van Doore 2016, p. 383)

Venturing further again, van Doore asserts that the “problem of children being manufactured as orphans and used to generate profit in orphanages is global” (van Doore 2016, p. 381). While van Doore starts with legal argumentation, her claims become specious when she describes orphan trafficking as a business that has become a global problem. No evidence is provided that would justify these claims, or those advanced during the Inquiry, that most or all children within orphanages in developing world countries should be considered victims of trafficking or “modern-day slavery.” As a consequence of this coordinated effort to profile the issue of orphanage tourism at the Parliamentary Inquiry, an entire section (or 42 pages) of the Joint Standing Committee report was dedicated to the matter of “Orphanage Trafficking” (Joint Standing Committee 2017, pp. 225–267).

At the Australian Parliamentary Inquiry the discourse of trafficking was strategically advanced by well-meaning organizations towards their aims of reducing the
harmful effects of institutional care. Yet by deploying trafficking discourse to publically profile their concerns, these advocacy groups risked imposing the symbolic violence of trafficking discourse, and thereby displacing more balanced critiques of institutional care related to its historical origins (and the limited investment of governments in social welfare). Consequently, what is presently understood as an important (albeit often neglected) responsibility of the State and area of social welfare reform was almost reconstructed as a criminal justice matter. Thankfully, despite the lobbying of advocates, the Modern Slavery Act ultimately passed into law without reference to orphans and orphanages (Australian Federal Parliament 2018).

Constructing Individual Victims of Trafficking

Having demonstrated how certain groups are vulnerable to being recast as potential victims of human trafficking, focus is now given to some of the reflexive challenges involved in the policy and practice of protection and reintegration assistance. The following discussion aims to elaborate, therefore, on the apparent gap between local understandings of social problems and their potential solutions and the perspectives of experts. This discussion relates to Meeteren’s exploration of the low levels of self-identification among identified trafficking victims and the discrepancy between legal definitions and lived experience (this volume). In this discussion, however, primary emphasis is given to examining the prevailing models of protection and reintegration and the tensions between principles, rights ideals, and local socio-cultural norms.

As previously described, Gallagher’s text concerning international human trafficking law aims to describe the first decade of legislative and policy developments. Several sections are dedicated to considering the obligations upon States to provide victim protection and support, repatriation, and access to remedies (Gallagher 2010, pp. 276–368). Accordingly, Gallagher’s text considers the emergence of policy related to the aim of “reintegration” and purports that such an emphasis is crucial to avoiding “re-victimization” (Gallagher 2010, p. 352). Gallagher further claims that

\[
\text{[s]} \text{upported reintegration . . . [is] a right [that is] owed to trafficked persons by virtue of their status as victims of crime and victims of human rights violations (Ibid.).}
\]

At the time when trafficking discourse came to prominence, however, protection and development practitioners were already undertaking the practical work of protecting victims of human rights abuses. Such work was already founded on international law (UNCRC 1989; CEDAW 1979; ICCPR 1966) and well-developed bodies of professional and academic knowledge (e.g., social work, psychology, community, and international development). Of course, the establishment of new legal mechanisms, such as bi-lateral repatriation agreements, and the inflow of resources was welcomed. Yet despite such advantages, for many policymakers and practitioners the emergence of human trafficking-oriented victim protection policies was encountered
as something of a coup d’état. Such misgivings emerged within the field of child protection, for example, as evidenced within the UNICEF report that was euphemistically entitled, *Reversing the Trend: Child Trafficking in East and South East Asia* (UNICEF 2007). Lamenting the distortional effects of human trafficking and this new category of victimhood, concerns emerged about the disruption this (discoursal) trend was imposing on the provision of assistance and the work of strengthening protection systems for all categories of vulnerable children.

With the new discourse of human trafficking came new policies and guidelines, and a heightened emphasis upon identified victims. In response to the rising number of questions and concerns (UNIAP 2012), a range of handbooks, models, and guidelines were developed about victim reintegration. At their best, these aimed to promote understanding of the context-specific challenges, social arrangements, and cultural norms relevant to the provision of assistance (TAF 2005; Reimer et al. 2007; Derks 1998). Yet in the main, the policy advice primarily aimed to affirm a range of rights ideals, best practice principles, and universal domains of importance related to “reintegration,” which became shorthand for the provision of assistance itself (IOM 2007; Surtees 2010, 2013). Consequently, the policy literature has been criticized as lacking in reflexivity, given its tendency to “identify NGOs as directly coordinating the process of reintegration, or directly providing for its achievement” (Bearup 2016, p. 164).

This deficiency relates to the failure of related policies to differentiate between the practical or procedural work of “reintegration assistance,” and the local social and cultural processes which may facilitate reintegration, more substantively, within a receiving group or social institution. This tendency to conflate the procedural and substantive construction of reintegration risks giving precedence to abstract ideals, principles, and process-oriented indicators, whilst diverting attention away from the relevant social arrangements and cultural norms (Bearup 2016). Consequently, it is argued that the imposition of trafficking discourse has had adverse implications for the understanding of local social problems and their solutions.

Evidence for this claim can be derived from research aimed at understanding the problems of girls and young women in Cambodian shelters (Bolton et al. 2008), and in exploring the pathways of young women into NGO shelters (Bearup Forthcoming). In the first study, the research finds that “[w]hile the trafficking experience is itself disturbing and results in mental suffering, the ongoing social consequences . . . are equally (if not more) painful” (Bolton et al. 2008, p. 4). This finding was affirmed by related research undertaken with young women who were identified as former shelter residents and former victims of sex-trafficking or sexual violence. Despite their past experiences of sexual violence and exploitation, the women emphasized that their need for assistance was primarily derived from their experiences of discrimination and exclusion (Bearup Forthcoming). Rather than merely responding to instances of human trafficking or sexual violence, therefore, the shelters may alternatively be understood as providing a safety net for stigmatized girls and “broken women” in the Kingdom of Cambodia (Derks 2004).

Such complex local realities, related to changing gender norms and the clash of traditional and modern cultural ideals, make for a less compelling (donor) narrative
than the rhetoric of sex trafficking. This claim is not intended to minimize the participants’ experiences of sexual violence and exploitation, or the need for providing forensic and tertiary responses to sexual violence. Rather, the emphasis on the role of cultural norms in the experience of social ostracization aims to reframe their experiences. Such a reframing is necessary, given that the imposition of human trafficking discourse has over-emphasized the role of criminal individuals and groups at the expense of attention to socio-cultural norms. Developing strategies to address cultural norms, and the related social ostracization of sexualized or “broken” Cambodian young women, requires thinking that extends well beyond a criminal justice framework.

When considering the aims of victim protection and reintegration, it may be observed that the cultural and social norms related to reintegration do not merely concern the exclusion of “spoiled” or “bad” Khmer women, but also the inclusion and the social integration of “pure” or “good” Khmer women. This relates to the level of honor withheld or afforded within traditional, collectivist communities. This is because within traditional Cambodian communities there are specific cultural ideals and gender norms which define the correct performance of social roles within a traditional hierarchy, as related to the expression of honor (Ledgerwood 1990; Brickell 2011; Ebihara 1968; Jacobsen 2008). Accordingly, if the aim of protection assistance is to support a young woman to reintegrate into a traditional rural community, one can anticipate challenges for those with a spoiled reputation, or for those whose demeanor and social norms have significantly changed due to time spent away. This seems especially relevant for women who have spent time in social settings which are very different from those to which they hope to return (e.g., brothels and shelters).

Scholarly descriptions of Cambodian social arrangements and gendered cultural norms, as discussed above, are difficult to reconcile with the policy guidelines on reintegration. This is because the policy guidelines tend to promote abstract rights and ideals such as independence and empowerment as central to reintegrative success (e.g., Surtees 2013, p. 38). While such ideals may be desirable, or indeed relevant for young adults seeking to integrate within social groups found in urban locations and modern work places, it is difficult to imagine how such modern ideals could aid the achievement of reintegration within traditional collectivist Cambodian communities located in rural villages.

These critiques of protection and reintegration policies are similar, therefore, to the broader critiques of human trafficking discourse. Whereas the latter presumes to define and describe local social problems within the parameters of a legal framework and global project, the former presumes to know the solutions (as related to promoting economic independence and empowerment). Both the construction of human trafficking discourse and victim protection policy, therefore, tend to reflect a characteristic set of Western assumptions. Both fit within a traditional development framework which presumes to understand both the problems in the developing world and the related solutions. Both come with preestablished frameworks of interpretation, and both impose symbolic violence on the socio-cultural realities and the perspectives of locals.
Summary

This chapter has sought to reveal the symbolic violence that is often imposed when the discourse of human trafficking is used to identify, explain, and respond to social problems. This critique started by emphasizing the abstract legal foundations of contemporary human trafficking discourse, and its construction as a global problem and universal project. Next, research was presented as a means of demonstrating the disjuncture between the discourse of human trafficking and the local social problems that are sometimes labeled as such. Next, an example was provided demonstrating how advocacy groups in Australia have sought to deploy the discourse of human trafficking and exploit the opportunity afforded by a Parliamentary Inquiry to advance their efforts to end orphanage tourism. Finally, the victim protection and reintegration policies were criticized for promoting independence and empowerment at the expense of attention to the social norms related to social integration within rural collectivistic and traditional communities.

These criticisms are not intended to disparage the broader humanitarian work aimed at protecting vulnerable persons and groups. Rather, this chapter may be read as a defense of the praxis of protection and the work that was already underway before the discourse of human trafficking was imposed. Through sketching out these tensions, the aim has been to promote greater reflexivity concerning our own perspectives and frameworks of interpretation as researchers, policy makers and practitioners, in relation to the perspectives of those whom our programs, policies, and research are intended to serve. In closing, it seems appropriate to seek recourse in the maxim that “good intentions do not necessarily make for good interventions.” This remains sage advice, it seems, for those seeking to combat modern slavery and human trafficking and protect and reintegrate its victims, as well as scholars, practitioners, and others working at the intersection of related public policy, development, and the social problems of our day.

Cross-References

▶ Establishing the Constituent Elements of Trafficking in Persons: Conceptualizing “Transnationality” and “Involvement by an Organized Criminal Group”
▶ Human Trafficking and Migration: Examining the Issues from Gender and Policy Perspectives
▶ Mediated Representation of Human Trafficking: Issues, Context, and Consequence
▶ Self-Identification of Victimization of Labor Trafficking

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Self-Identification of Victimization of Labor Trafficking

Masja van Meeteren and Jing Hiah

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Abstract

Although labor exploitation has been criminalized as human trafficking, also known as labor trafficking, forced labor, or modern slavery, globally, many cases remain undetected. In part, this underreporting is arguably due to low levels of self-identification of victimization of labor trafficking. Low self-identification suggests that a discrepancy exists between legal definitions of labor trafficking victimhood and the lived experiences of work and employment by what are often labor migrants. This chapter discusses scholarly literature that identifies factors that obstruct self-identification among those subjected to labor exploitation. Also, a study is discussed that analyzed how some victims do arrive at self-identification. This chapter finds that labor trafficking often refers to situations in which migrants have consciously left their country of origin in search of work. Their

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work conditions may be valued as a temporary arrangement to achieve upward social mobility and considered from their home country’s work and income standards. Therefore, such migrants may perceive themselves as active agents of their destiny who make their own decisions in engaging in certain working conditions and not as passive victims of exploitation. Finally, two trajectories through which victims of labor exploitation do arrive at self-identification are discussed. On the first path, the victim gradually comes to self-identification. On the second path, a radical event in the personal life of victims triggers them to become aware of their victimhood. The insights provided in this chapter are valuable for the future combat of labor trafficking, in which victim self-identification plays an important role.

**Keywords**

Labor exploitation · Labor trafficking · Victimology · Self-identification · Labor migration · Victim identification

**Introduction**

In many European countries, legislation on human trafficking for labor exploitation mostly follows the terms of the Palermo protocol and the EU framework decision on trafficking in human beings. Labor exploitation criminalized as human trafficking – labor trafficking – is considered a severe violation of human rights, and as interfering with free market principles of fair competition (Jägers and Rijken 2014). Unlike sex trafficking, labor trafficking includes all types of forced labor that do not have a sexual component. Whereas labor trafficking once lagged far behind sex trafficking, concerning global attention, since its insertion to the Palermo protocol, its profile is now increasing as a significant social problem. As labor trafficking features high on national and international policy agendas, resources are increasingly devoted to its combat (Goodey 2008: 434).

Despite the increased policy attention, there is still relatively little research on labor trafficking (Cockbain et al. 2018; Joarder and Miller 2014). In addition, existing research in the field of human trafficking often concerns general overviews or critiques of the literature, or legal studies focusing on the question of how to define human trafficking. “Only a few researchers have conducted carefully designed empirical studies in this field” (Cockbain et al. 2018; Weitzer 2014: 8). Furthermore, by far the largest bulk of research has focused on sexual exploitation, leaving labor trafficking sidelined (Weitzer 2014: 7). As a result, our understanding of the lived experiences of victims of human trafficking is largely confined to experiences of sexual exploitation (Kaye et al. 2014).

The limited understanding of how labor trafficking is experienced is obviously problematic in itself but even more so considering the presumed scale of the crime. The International Labour Organization (ILO) estimates that worldwide, at any given time in 2016, 40.3 million people are in a situation of modern slavery, including 24.9 million in forced labor (including sexual exploitation). Scholars assert
that there is no solid evidence basis to claim that labor trafficking outnumbers sex trafficking, but “it is certainly plausible that the international market for all types of cheap labor combined (in agriculture, manufacturing, mining, domestic service, etc.) eclipses the market for sexual services and therefore that trafficking or forced labor would be more prevalent outside the commercial sex sector” (Weitzer 2014: 13; Kaye et al. 2014). Some scholars in fact argue that “human trafficking needs to be reframed as a labour migration issue” (e.g., Bélanger 2014: 88).

Despite the increased global attention, many victims of human trafficking are undetected, and this is perhaps even more so for victims of labor trafficking (Van der Leun and Van Schijndel 2012, 2016). Although identification procedures are leading to an increase in the recognition of victims, the actual number of victims is estimated to be much higher (Zhang 2012; Goodey 2008). A recent estimation using multiple systems estimation (MSE) performed by UNODC and the Dutch National Rapporteur indicates that estimated numbers are four to five times higher than the recorded numbers of detected victims in the Netherlands (UNODC and Dutch National Rapporteur 2017).

That many victims of labor trafficking remain undetected is partly because both the general public and professionals believe that labor trafficking is less severe than sex trafficking (Barrick et al. 2014). However, the available empirical research, though limited, demonstrates severe consequences for victims of labor trafficking. Some are misled about their working conditions, locked in enclosed premises, and subjected to physical violence (Weitzer 2014). Moreover, victims can experience psychological and physical problems similar to those facing victims of sexual exploitation (Turner-Moss et al. 2014). The idea that victimization of labor trafficking is not as damaging is further strengthened, and it is argued here, by a low self-identification of victimhood among those that would legally qualify as victims of labor trafficking. Moreover, the degree of self-identification is low across the entire spectrum of exploitative situations, even for those who have experienced extreme forms of violence, fraud, and compulsion (Petrunov 2014).

Self-identification of victimhood is essential to the combat of labor trafficking for three main reasons. First, if persons do not consider themselves as victims – in many cases even after they have been made aware that they do qualify as victims – it is difficult to create the support structures needed to help them. Second, in the prosecution of labor trafficking, alleged victims can play a crucial role by taking the witness stand. If potential victims fail to self-identify, they are less willing to cooperate in criminal investigations. Third, the lack of self-identification raises important questions regarding the suitability of the legal framework and whether it is adequately attuned to the lived experiences of those involved. For these three reasons, to effectively combat labor trafficking in the future, it is necessary to develop a better understanding of the social and cultural processes concerning self-identification of victimization of labor trafficking.

In this chapter, two questions are explored: (1) Why there is such a low self-identification of victimhood of labor trafficking; and (2) given the obstacles identified, how do some victims ultimately come to self-identify as victims? The first question is answered by discussing international scholarly literature in which
obstructions to self-identification are identified. Insights are also included from the literature on sexual exploitation as it involves a framework that harnesses a rich tradition of debating dominant victimization discourses, which benefits our understanding of self-identification of victimization in labor exploitation. The second question is answered by discussing the results of an academic study undertaken in the Netherlands (and published in Dutch), in which one of the authors was involved (see Tielbaard et al. 2016; Van Meeteren 2016). At the time of writing, this appeared to be the only study available that has explicitly analyzed how victims of labor trafficking arrived at self-identification with their victimhood (see, also, Cockbain et al. 2018).

**Explaining Low Self-Identification of Victimization of Labor Exploitation**

Self-identification of victimization is not only low among victims of labor trafficking. From the broader victimological literature, it appears that victim self-identification can also be low among other types of crime. This literature explains low rates of self-identification as a consequence of victims’ narrow definitions of victimization or because of psychological mechanisms such as denial or repression (Best 1999). An implicit assumption in such studies is that even though victims do not recognize their victimization, they should nonetheless be considered victims because they can be considered victims from a legal point of view. This legal perspective on victimhood is also visible in most of the literature that addresses the obstacles to self-identification of victimhood of human trafficking and labor exploitation. Problematic about comparing victimhood of labor trafficking is that those who engage in practices that legally could be considered a case of labor trafficking often consent to work in these circumstances. These different questions concerning victimhood and self-identification of victimization are related to what critical victimologists would describe as the politics of victimhood (e.g., Jacoby 2015): who is recognized as a victim is a contested issue and is telling of the different power relations between groups in society. For instance, in the case of trafficking victims, we focus on the role of the state in protecting victims and punishing offenders, but instead, we could question the state’s role in devising policies that lead to labor market vulnerabilities and exploitation of specific populations such as irregular labor migrants in the first place (Irregular migrant workers refer here to immigrants who are undocumented and carry out work “under the radar” in terms of employment rights and pay grade).

A first common explanation in the literature for low self-identification is that victims often have no knowledge of their rights, which makes it difficult for them to determine whether they are victims of labor trafficking (Dutch National Rapporteur 2009). Consequently, employees may claim that they are victims of labor trafficking only after being informed about their labor rights (Postma and Wijk 2012). Lack of knowledge about one’s rights is often exacerbated by their social position, which makes it difficult to improve their access to information about their labor rights. Low-skilled labor migrants, for example, often do not speak the native language,
have a limited social network mostly comprised of other labor migrants, and have little understanding of their rights. This explanation for the low self-identification of victims is the most hopeful one regarding offering possibilities to overcome barriers. It implies that if victims are better informed, they do come to recognize and identify with their victimhood. Self-identification might hence be improved by “enlightening” victims about their rights. Although this may seem promising as a problem-solving strategy, so far, sound empirical evidence that supports this line of thinking is unfortunately still lacking (Cockbain et al. 2018).

Second, migration background and the mindset that accompanies a migratory project may otherwise be a barrier to self-identification. People may accept exploitation, as a means to an end, or the desired outcome back in their country of origin (van Meeteren 2014). Alternatively, as the research by Bloch and McKay (2013) shows, migrants may perceive the (from a legal point of view) exploitative labor conditions as a necessary step in their upward labor market mobility. In other words, they see it as something that is inextricably intertwined with migration. It is something they knowingly accept as being part of the deal. Research by Barrick et al. (2014), for example, shows that “irregular migrant” workers often see exploitative circumstances as usual for illegal workers, and that is identified as a victim of trafficking does not always benefit migrants in realizing their migration plans. Moreover, labor conditions deemed as exploitative by outsiders may still be attractive to migrants as they offer possibilities to learn and receive training on specific skills that will contribute to their upward labor market mobility (e.g., Bloch and McKay 2013).

In addition, Parreñas (2011) study on Filipino female labor migrants in Japan convincingly demonstrates how the criminalization of Filipino hostess work as trafficking in Japan has resulted in the eradication of this work, thereby preventing migrant Filipino women from choosing one of the few pathways toward “economic mobility from their life of abject poverty” (Parreñas 2011: 335). Despite being employed in indentured labor, the Filipina hostesses had considerable agency in entering these relations, and many did not want to leave these arrangements. Moreover, even if they wanted to quit their jobs as hostesses, they could not do so without facing criminalization as undocumented workers. This paradoxical position is coined by Parreñas as indentured mobility and presents a nuanced view that acknowledges actors’ vulnerability to human rights violations but “simultaneously rejects the prevailing discourse on human trafficking that paints [labor migrants] as helpless victims in need of ‘rescue’” (Marmo and Chazal 2016; Parreñas 2011). Overall, these examples demonstrate that even though some migrants may be aware of their rights, they see and accept exploitative circumstances to be a regular component of migration processes. As such, they do not see themselves as victims but as active agents of their migration projects that include exploitation. These insights question whether a situation should be considered exploitation at all if the directly involved do not consider themselves to be exploited.

A third set of explanations for the lack of self-identification tend to emphasize that exploitation takes place within the setting of a relationship that involves power relationships governed by a “moral economy” that legitimizes those imbalances.
based on ethnic, hierarchical, religious, or political differences or the basis of perceived vulnerabilities (Datta and Bales 2013). These explanations react on dominant representations of human trafficking that suggest that workers/victims depend on employers/perpetrators in a one-way street, in which the workers/victims are deprived of any agency and in which the traffickers have a hegemonic power position. However, these explanations emphasize that this not be always the case. Although power imbalances are likely to exist between both parties, explanations that emphasize the relational aspect of trafficking situations also acknowledge that relationships involve different interdependencies. Analyzing Dutch legal case files on labor trafficking, Postma and Wijk (2012) write that in some “moral economies,” both the employer and the employee accept a hierarchical relationship that is much stronger than is generally accepted in the Netherlands.

This perspective is underlined by Staring (2012) and, later, Hiah and Staring (2013, 2016) in their respective research among young undocumented migrants and the Chinese catering industry that explain how people who could be regarded as victims of labor exploitation in the Netherlands do not see themselves as victims. Moreover, when they do identify with victimhood, they tend to see themselves as victims of migration policies or of not getting a work permit from the government. They do not typically identify with victimhood of human trafficking. Only in the exceptional circumstances in which informal labor standards are grossly exceeded do they feel severely disadvantaged. This implies that although some workers may recognize their labor circumstances as unlawful, they accept them because they are legitimized in the “moral economy” that governs their work. In other words, although they may recognize their position to be unlawful, they do not identify with the victimhood position that accompanies it or the idea that they are exploited. The normative framework used to interpret their situation is different from the normative framework that is used by institutions that are setup to help victims and prosecute the perpetrators.

Whereas the first set of obstructions to self-identification can be used as inspiration to develop interventions and policies, this is much more difficult to achieve for the second and third set of reasons. These raise questions concerning the appropriateness of related legal frameworks and their lack of correspondence with the lived experiences of those involved. A discrepancy exists, therefore, between perceptions of legal victimhood by enforcement agencies and support institutions and the perception of the situation that “victims” themselves have. This raises the question of whether a legal view does justice to the social reality in which it attempts to intervene. Scholars that adopt a social constructivist perspective on reality argue that a strictly legal perspective undervalues the lived experiences of actors and perhaps even, despite best intentions, patronizes the actors involved. Such scholars argue that trafficking should not be regarded as only something that happens to a person but as something that is experienced by a person (e.g., Yea 2012; Vijeyarasa 2012).

Reviewing this literature, it can be argued that labor trafficking should not be considered as one end of the binary between free labor, where employment arrangements are chosen out of free will, and, on the other hand, labor trafficking, where someone is deprived of any agency and had no choice on whether to work in a
particular situation. Instead, labor trafficking is best considered in the context of employment as a dynamic process, in which in-between positions exist between free work and unfree work. To capture this dynamic character, various authors have highlighted the different in-between positions between the two binary opposites. For instance, Skrivankova (2010) conceptualized trafficking within the “continuum of exploitation,” while Yea (2012) refers to “shades of gray.” These concepts move away from a binary conception of trafficking and capture the complex situational combinations that exist between decent work and forced labor and an individual’s work situation as it evolves (e.g., Strauss and McGrath 2017). Whereas it is often already difficult to legally establish social phenomena that constitute human trafficking, it should further be evident that for any person in an exploitative situation, their situation can be interpreted in multiple ways. In short, a strictly legal point of view does not do justice to the way that victims perceive their situation. At the same time, however, a complete relativist perspective risks labeling situations that are exploitative as noncriminal because they are not experienced as such by its victims.

Defining Labor Trafficking in the Netherlands

In the Netherlands, labor exploitation is criminalized as trafficking in human beings in Article 273f of the Dutch Criminal Code (Sr). Legal practice has shown that it is difficult to precisely determine labor exploitation as no clear guidelines are indicating where poor employment ends and trafficking begins (De Jonge van Ellemeet 2007). Nevertheless, Dutch courts have played a prominent role in further defining guidelines (Esser and Dettmeijer-Vermeulen 2016). From a legal point of view, it does not matter whether one self-identifies with victimhood or not. In 2009 the Supreme Court of the Netherlands ruled that Dutch standards are decisive, regardless of the experiences of the standards of those involved (Supreme Court, HR 27 October 2009, Lijn BI7097; BI7099 and NJ 2010/598; Rijken et al. 2013). However, like in many other parts of the world, detection and prosecution of labor trafficking are frustrated by a low degree of self-identification. Martens and Van den Brink (2013) observe that in the Dutch criminal investigation practice, it is difficult to get victims to report their victimhood and to testify against their traffickers because they often do not self-identify with their victimhood.

Two Trajectories to Self-Identification in the Netherlands

In this section, the findings of a study are discussed which explores the ideal-typical trajectories through which actors do self-identify with their victimhood (Tielbaard et al. 2016). This study drew on semi-structured interviews and focus groups with victims of labor trafficking and focus groups with professionals who work in the field. All participants in the study identified with their victimhood of labor trafficking as this was used as a selection criterion. It was indicated that although most of the study’s participants did not struggle with the label “victim,” some felt uncomfortable
with the word “victim” as it made them feel powerless. Moreover, it was argued that even though all of the study’s participants self-identified with their victimhood, the way they dealt with their victim role differed.

The study’s findings indicate that people who had been recruited by a human trafficker in their country of origin feel more victimized than people who had arranged their trip themselves. The latter group regarded the exploitation merely as a form of incidental lousy luck. They perceived themselves as victims, but their victimization was linked to that one event only. Victimization had not become their master status, as is often the case with victims who have been recruited. The explanation for this difference in how grave the victimization is perceived that the authors of the study provide is that the first group felt like they were intentionally harmed by an organization that was out to exploit them from the start. The second group, on the other hand, related the “bad luck” to an individual employer and not so much to an organization. In other words, in the first group, victims may have perceived themselves as targets of organized crime, whereas, in the second group, people felt victimized by an individual, and, according to the authors, this explains why they experience their victimhood differently.

Also, it was noted that the experiences of victimhood of labor trafficking varied according to their countries of origin. When compared with victims from South America, Asian victims reported their victimhood less quickly, were less likely to seek help, and less inclined to tell their relatives about the exploitation. Cultural views on victimization were found to be closely linked to views on gender roles as well. Tielbaard et al. (2016) suggest that gender probably played a role in the way victims openly discuss their victimization. Some participants in the study asserted that the idea that “real” men are not victims of exploitation was ubiquitous and that social pressure was often exerted on men to “not overreact.” Consequently, men were ashamed of their victimhood and less eager to express it than the female victims did.

The article discusses two ideal-type trajectories through which participants arrived at self-identification as victims of labor trafficking. The first involved a gradual increase in the victim’s awareness. At first, the working conditions were perceived as bearable. However, as victims received more information about their rights and the prevailing norms and values of the Dutch labor market and as the working conditions deteriorated, they gradually became more aware of the exploitative situation in which they found themselves. As a result, they no longer accepted the situation and sought help or left the workplace. What the authors strike as remarkable in this trajectory was that the process of self-identification, and reporting it or seeking help, did not necessarily take place simultaneously. They conclude that self-identification probably acted as a necessary precondition for being able to leave the trafficking situation. In some instances, victims indeed did leave. Sometimes, however, victims returned to confront their exploiters and subsequently gained full realization of their victimhood. The authors hence conclude that self-identification of victimhood and seeking justice, compensation, or reaching out for help is not necessarily the same thing. Although these processes may be linked, they probably carry clear obstructions as well as distinct mechanisms that trigger them.
The authors report that victims in the second trajectory had consistently worked under deplorable conditions. They did not see any alternatives and therefore felt they had no choice but to accept their situation as it was. Victims only became aware of their victimhood after a radical, far-reaching event in the (personal) life of the victim. This original event seemed to serve as a wake-up call for the victim. Examples of radical events that the authors mention are forced marriage, illness, or a death threat. In these moments, the victims realized that they could no longer accept the situation. In this process, the moment of self-identification did coincide with the moment when they started to look for help or with the instant left the work situation. Hence, in this trajectory self-identifying and taking action to leave the situation took place more or less simultaneously. It is, of course, possible that victims in this trajectory already felt that their employer treated them badly or even experienced that they were being exploited, but that this feeling had been suppressed unconsciously until the original event took place so that in their memory the self-identification and subsequent action coincided.

The authors argue that information gathering seemed to have played a smaller role in this trajectory than in the first. It was not the attainment of new information or legal knowledge but the original event that triggered their self-identification as a victim. Nevertheless, they indicate that it may be argued that in some instances the information received allowed some victims to know where they could turn to get help. Therefore, it is concluded that, although the provision of information only played a role in the first trajectory as a “trigger” for self-identification, in the second trajectory, it served as a precondition for being able to leave the exploitative situation.

The way that victims process information may further be influenced by their level of education. Tielbaard et al. (2016) suggest that victims with a higher level of education may process this information more efficiently, can make their conclusions, and then act accordingly. For less educated victims, the processing of information is suggested to be more difficult. For those with a lower level of education, the information does play a role after they have come to self-identification via a radical event (trajectory 2) or in combination with worsening working conditions (trajectory 1).

Discussion

Labor trafficking is an offence that does not take place at one moment in time but has a long-term character that can change in how it manifests itself along the way. There is no clear-cut victimization moment, as there is with robbery or assault. Moreover, the exploitative processes are often embedded in a relationship and in social interactions that are dynamic. This means that victimization of labor exploitation cannot easily be compared with the victimization of other crimes. Self-identification of victimhood can take place at various moments during or after the exploitative situation(s), or not at all. Self-identification may be crucial for the potential victim in order to try to leave the situation or seek (formal) help. All the more so because research shows that the victims identified by investigative services only make up a small fraction of the actual number of victims of labor exploitation (Goodey 2008;
Zhang 2012). Self-Identification is not the only avenue out of the exploitative situation, as potential victims may also be able to leave a labor situation they regard exploitative without also perceiving this as labor trafficking.

That labor trafficking should be considered along the lines of a continuum (Skrivankova 2010) is underlined by the findings of the study by Tielbaard et al. (2016) on how victims do arrive at self-identification. In this study, two trajectories are identified through which victims of labor exploitation arrive at self-identification. On the first path, the victim gradually comes to self-identification. This happens because the working conditions gradually deteriorate or because the victim receives more information about her/his rights as an (undocumented) employee on the Dutch labor market. Victims can also follow the second trajectory, in which a radical event in their personal lives causes them to become aware of their victimhood. In line with previous research, information provision emerges as a factor that can contribute to self-identification (trajectory 1) or as a precondition for being able to leave the situation and seek help (trajectory 2). Information about the rights of employees on the Dutch labor market can speed up or confirm the self-identification process for the victims in the first trajectory. In the second trajectory, information provision is not a “trigger” of self-identification, but it plays a role in finding support agencies after self-identification.

Future research would do well to systematically analyze why the gathering of information in itself is sufficient for some victims to come to self-identification, whereas for other victims a particular event is needed – and what role the level of education plays in this. The educational level could, for instance, play a role in the way actors perceive workplace rights and aspirations for a better future. Previous sociological research has shown that the appreciation of rights by migrants is among others dependent on educational level and class before their migration (e.g., Wong 2011). These are all possible avenues for further research.

The current body of knowledge discussed here provides support for the value of initiatives aimed at promoting information and awareness among vulnerable populations. Governments and NGOs play an essential role in providing relevant information to those engaged in precarious forms of employment or migration pathways. The research we have considered, moreover, demonstrates that it is essential to distinguish between the provision of information that can lead to self-identification as a victim and information that can lead to seeking help or reporting. For some victims, the barriers will remain too high to go to the police or an organization, while they might try to leave their exploitative situation, or struggle to improve it, if only they could identify with their victimhood. Providing information through the proactive efforts of people with the same national or cultural background as potential victims can lower the threshold to report their victimhood to the authorities. There may also be a role for authorities such as police or emergency services, to provide information about labor rights or rights for irregular migrants, for example, during regular inspections.

Furthermore, as discussed, it is crucial to make a clear distinction between self-identification and taking action by this self-identification, i.e., seeking help or reporting to the police. Tielbaard et al. (2016) have argued that with the occurrence of a significant event (trajectory 2), self-identification may coincide with turning to the
authorities, but this was not always the case with gradual awareness (trajectory 1). Sometimes self-identification occurred, but no action was taken. Self-identification is probably a necessary condition but comes about differently and has other obstacles than any follow-up action has. This lack of taking action after self-identification supports the observations of the literature review. For instance, the moral economy approach (Scott 1976; Hiah and Staring 2016) explains why for some workers, specific labor conditions that the legal context would frame as exploitative are morally acceptable because they are justified by ethnic, hierarchical, religious, or political differences or from interdependencies and vulnerabilities. Besides, migration background and mindset can play a role in explaining why actors can temporarily accept labor injustice because they perceive this as an avenue to upward social mobility or more simply that the labor conditions in the country of the settlement are better than in the country of origin. The importance of the migration background resonates with the findings of Tielbaard et al. (2016). They find that having an undocumented status, for example, acted as a barrier to approaching the police, but not to self-identification of victimhood. These insights draw up questions regarding the underlying mechanisms of migration and the redistribution of wealth and well-being. Alternatively, Anderson and Andrijasevic critically reflect: when people are being exploited in other countries, we call that poverty, but when they are exploited right before our nose, we call that trafficking (Anderson and Andrijasevic 2008: 138–142).

All in all, the two trajectories identified by Tielbaard et al. (2016) suggest that self-identification of labor trafficking victimization takes place in a complex context in which various sociocultural aspects play a role and in which the word victim carries significant symbolic power, which victims themselves often struggle with (see, e.g., Best 1999). Moreover, the scholarly literature discussed here underlines that to understand the low rate of self-identification of labor trafficking victimization, labor trafficking is probably best approached as something that is experienced by an actor and not so much as something that happens to one. For professionals, it is crucial to realize that there are clear obstructions to self-identification on the one hand and to cooperate with authorities or organizations on the other hand.

Finally, Best (1999) argues that identifying and labeling victims also have a symbolic social function. Improving the self-identification of victims answers the social need for justice. The aim is not only to provide potential victims with the right tools for self-identification but also to help them find alternative solutions to the official recognition as victims of labor trafficking. Solutions that aim for social justice but do not necessarily involve criminal justice. In other words, improving labor conditions, awareness of rights, and empowering people who engage in precarious work, without workers ending their labor situation by starting a criminal procedure (e.g. Hiah forthcoming; Shamir 2012). As ample research has shown, an emphasis on the dichotomy of victim and perpetrator does not always do justice to the social realities of labor exploitation (Hiah and Staring 2016; Parreñas 2011). Solutions that take this diversity in social realities into account will not only benefit those who are potential victims but may improve labor conditions for all vulnerable groups in the labor market.
Summary

With the criminalization of labor exploitation as human trafficking, more and more cases of labor trafficking come to light. However, many cases also remain undetected (i.e., “dark figure” of crime). This under-identification is, in part, due to the low levels of self-identification of victimization of labor trafficking. Low self-identification suggests that a discrepancy exists between legal definitions of labor trafficking victimhood and the lived experiences of work and employment by what are often labor migrants. For the future combat of labor trafficking, it is of vital importance to better understand the reasons for this low-self-identification. This chapter discusses scholarly literature that identifies factors that obstruct self-identification among those subjected to labor exploitation.

On the one hand, as with all forms of crime, low rates of self-identification can be a consequence of victims’ narrow definitions of victimization or because of psychological mechanisms such as denial or repression. On the other hand, some factors are specifically associated with what legally is defined as labor trafficking. Labor trafficking often refers to situations in which migrants have consciously left their country of origin in search of work. Their work conditions may be valued as a temporary arrangement to achieve socioeconomic mobility upward and considered from their home country’s work and income standards. Therefore, such migrants may perceive themselves as active agents of their destiny who make their own decisions in engaging in certain working conditions and not as passive victims of exploitation. The third set of explanations for the lack of self-identification emphasizes that exploitation takes place within the setting that involves power relationships governed by a “moral economy” that legitimizes those imbalances based on ethnic, hierarchical, religious, or political differences or on the basis of perceived vulnerabilities. In other words, exploitation may be legitimized or accepted and hence not recognized as exploitation by those involved. Two trajectories are discussed through which victims of labor exploitation do arrive at self-identification. On the first path, the victim gradually comes to self-identification. This happens because the working conditions gradually deteriorate or because the victim receives more information about her/his rights as an (undocumented) employee on the Dutch labor market. Victims can also follow the second trajectory, in which a radical event in their personal lives triggers them to become aware of their victimhood. Overall, it is suggested that self-identification of labor trafficking victimization takes place in a complex context in which various sociocultural aspects play a role and in which the word victim carries significant symbolic power.

Cross-References

▶ (Anti-)trafficking for Labor Exploitation in Romania: A Labor Perspective
▶ A Transnational Field Approach to the Study of Labor Trafficking
▶ Human Trafficking in Supply Chains and the Way Forward
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How to Effectively Approach and Calculate Restitution for a Victim of Human Trafficking

Benjamin Thomas Greer

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Abstract
 Victim restitution is often neglected, lacking the requisite thoughtfulness, planning, and proper mathematical calculation. While the victim is relieved, their abuser will answer for their crime; they frequently find themselves never truly made monetarily whole. Human trafficking and forced labor manifest itself in various forms; each contains central characteristic: unscrupulous exploitation of another person for one’s own profit. While restitution calculations vary depending on the jurisdiction, a guiding principle of judicial fairness should be the goal. Traditionally, law enforcement actions centered on the sexual exploitation trade/prostitution; thus most restitution statutes are designed to disgorge illegally gained profits. As prosecutors and courts expand their understanding of human

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trafficking to include forced labor, an examination of how to accurately calculate restitution should also garner scrutiny. California has crafted a flexible and forward-thinking restitution code section which provides the court mathematical options from which to choose. These options were designed to maximize recovery for all forms of trafficking.

**Keywords**

Restorative justice · Criminal justice · Criminal restitution · Victim compensation · Human rights · Forced labor

**Growing Focus of Human Trafficking for Forced Labor**

The International Labour Organization (ILO) defines forced labor as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” In its June 2010 Traf-fficking in Persons Report p. 5, the US Department of State reported, “More people are trafficked for forced labor than commercial sex,” and the ILO estimates that there are nine times the amount of trafficked victims subjugated into forced labor than the sex trade with profits in the billions. Textile manufacturing shops, domestic labor providers, construction sites, and agricultural employment roles are increasingly receiving scrutiny for their sources of labor. Although slavery and involuntary servitude have been outlawed for generations, State and Federal governments are modernizing their laws to specifically address this escalating pattern of forced labor exploitation.

On October 28, 2000, the Congress passed the Trafficking Victims Protection Act of 2000 (TVPA). In its Purpose and Findings Section 102 subsection (b), the TVPA states, “Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.” According to the US Department of State, there are over 12 million adults and children in forced labor, bonded labor, and forced prostitution worldwide. Federal statistical analysis reveals the largest concentrations of trafficked and exploited victims were located in California, Texas, Florida, Ohio, and New York. In the seminal report, *Hidden Slaves: Forced Labor in the United States* published in 2004, a team of researchers from the Free the Slaves and the Human Rights Center of the University of California, Berkeley, found over half of exploitative trafficking occurs from forced labor. In its 2016 TIP Report, with a newly honed focus on forced labor, the US Department of State reported jurisdictions around the world secured 717 successful forced labor prosecutions, with 17,465 identifiable victims. This increase in caseload demonstrates the urgency for the court to better understand the forced labor problem and its intricacies.

With the state’s extensive border, major shipping ports, and its powerful economy, California is an enticing and fertile ground for traffickers to exploit victims and sell their products. Understanding its role as a policy leader both domestically and
internationally coupled with being a major market destination for forced labor traffickers, California has aggressively updated their criminal and civil codes in an attempt to stem the tide of trafficking. The California State Legislature has amended three important sections of their laws giving victims effective legal redress. Two of the more important code sections the Legislature added are California Penal Code Sections 236.1 and 1202.4(q). Enacting Penal Code Section 236.1, California became the first state to specifically make human trafficking, not only a Federal crime, but also a State felony. A comprehensive approach to combatting human trafficking requires a critical analysis of not only the criminal actus reus but also appreciating the injury sustained by the victim. To complement the newly codified penal punishment, California legislators included a human trafficking-specific restitution methodology. Penal Code Section 1202.4(q) supplies the court multiple calculation options and directs trial court to utilize the formula most beneficial to the victim, maximizing their monetary recovery. California’s law reflects a nuanced understanding of all forms of trafficking, each requiring a different mathematical formula to fully restore the victim monetarily for their injury. Providing specific statutory guidance and flexibility for a specialized human trafficking restitution calculation is not a common practice.

Under California legal structure, one’s labor has long been understood as personal property, and without applying an insightful calculation to the value of one’s work, the true worth of an individual is offended. Human trafficking for forced labor is not only the theft of one’s time and energy but is also a fundamental attack on another’s human spirit, their freedom, and their right to self-determination. California courts have a rich and strong history of properly valuing stolen labor from its agricultural workers. Forced and stolen labor share similar injurious monetary characteristics; however, the method of extraction of the labor is different, and the calculation should reflect the difference. In Penal Code Section 1202.4(q), the California State Legislature codified a series of four calculations a trial court could apply to a case of human trafficking. In the code’s fourth option, the court has an extraordinary ability to select or create any method of calculation they deem just under the factual circumstances to “provide reparations to the victim.” Coupled with the directive and authority to maximize recovery for the victim, this option supplies the court with the tools to create a meaningful and insightful order, an order that is tailored for the specific crime, one which best addresses the victim’s injuries and one that uniquely addresses the type and kind of trafficking engaged.

Approaching the crime of trafficking holistically, the Legislature also included a civil right of action for trafficked victims. Victims are afforded the ability to seek civil damages regardless of the status of criminal restitution. Civil Code Section 52.5 authorizes all forms of traditionally recoverable damages (actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief), but it also provides for the recovery of attorney’s fees, costs, and treble damages or ten thousand dollars ($10,000), whichever is greater. The civil award amount is often based on the findings of the criminal court when setting criminal restitution. While Civil Code Section 52.5 may appear to be a monetarily superior method of recovery based on its expansive nature of enumerated
damages, Penal Code 1204.2(q) may prove to be the most efficient conduit for properly setting the value of victim’s stolen labor. There have been very few cases where the court has methodically and with great detail addressed criminal restitution. The current best example would be *Canal v. Dann* et al.

**Canal v. Dann**

In September of 2010, California achieved its first major conviction for forced labor trafficking. Mabelle de la Rosa Dann was sentenced to 5 years in prison and ordered to pay $123,740.34 in restitution for forced labor. Peña Canal worked for Dann for 15 hours a day, 7 days a week, caring for Dann’s three young children and cooking and cleaning for the household. Peña Canal was promised $600 per month, plus free room and board, in exchange for working 5 days per week during regular business hours. Dann had no intention of ever paying Peña Canal for her work, and her promises of reasonable work accommodations were false. Peña Canal moved to the United States in 2006, living with Dann, her three children, and the children’s grandmother in her Walnut Creek, California, apartment. She was immediately put to work as a full-time nanny, maid, and cook for the children. Peña Canal’s typical work day began at 6:00 a.m. when she cooked breakfast for the family, and ended around 9:00 p.m. when she finished washing the dishes. Peña Canal was not given her legally required rest breaks, bathroom breaks, and days off. Rather than pay Peña Canal her earned compensation, Dann told her that she owed Dann money and needed to continue to work for free to pay off this debt. At one point, Dann told Peña Canal that she had accumulated a total debt in excess of $13,000. Dann controlled every aspect of Peña Canal’s life, holding her visa, passport, and Peruvian identification card. Whenever Dann left the apartment, she took Peña Canal’s passport with her.

In order to set restitution, Peña Canal’s labor value was based upon the Federal Government’s valuation derived from Foreign Labor Certification program. Based on the evidence submitted, Peña Canal worked for 1 year, 9 months, and 1 day (641 days total), at a rate of 15-hour days without break, constituting 9,615 forced labor hours. The Federal District Court awarded Peña Canal $123,740.43. The court order did not specify what the hourly wage was, but calculated at a straight hourly wage, the court valued her work at $12.87 an hour. While the valuation may appear to be a reasonable hourly wage, this calculation fails to account for any overtime or holiday wage adjustment. When adjusted to include overtime and holiday time, the rate reduces to approximately $9.95 an hour.

**Need for a Nuanced Criminal Restitution Calculation Forced Labor**

In its 2010 report, the US Department of State posited the question, “What makes a good trafficking in person’s law?” Their answer – “explicit provisions ensuring identified victims have access to legal redress to obtain financial compensation for the trafficking crimes committed against them.” A key component in a criminal
disposition is the penal redress and interdict. According to a recent report by anti-slavery group Human Trafficking Legal Center (HTLC), although trafficking victims are entitled to restitution, US Federal courts only ordered perpetrators to pay restitution in 27% of human trafficking cases between 2013 and 2016. During the previous 3-year period, 2010–2013, only 36% of the cases included restitution orders; “This discouraging trend is disastrous for trafficking victims, who desperately need restitution funds to rebuild their lives,” said Martina Vandenberg, head of HTLC. “Congress has mandated that victims receive restitution. But courts still leave trafficking victims empty-handed,” said the report’s main author, Alexandra Levy.

Victim restitution is required by the California Constitution, Penal Code, and case law, and a fundamental tenet of restitution is that it should be “broadly and liberally construed,” so a victim may be made as monetarily whole as possible, and a sentence will be considered invalid if the court fails to specifically address a victim’s restitution (People v. Rowland (1997) 51 Cal.App.4th 1745; In Re Johnny M (2002) 100 Cal.App.4th 1128; People v. Mearns (2002) 97 Cal.App.4th 493; People v. Davito (1997) 56 Cal.App.4th 557). Restitution orders can be imposed for all crimes, including crimes containing pure economic losses, and the date for measuring the loss is generally the date of conversion (People v. Broussard (1993) 5 Cal.4th 1067; People v. Valdez (1994) 24 Cal.app.4th 1194). The desired effect of any order is to fully reimburse the victim for every determined economic loss incurred as a result of the defendant’s criminal conduct. A trial court is given a wide berth when defining the boundaries of the economic harm sustained by the victim. Restitution may even exceed the actual monetary loss caused by the defendant, provided the order is not arbitrarily or capriciously calculated (People v. Carbajal (1995) 10 Cal.4th 1114). If a reviewing court finds a factual and rational basis for restitution ordered, a challenge for abuse of discretion will likely fail. The fundamental principles of restitution described throughout this section provide ample room for a well-informed court to aggressively evaluate damages and formulate restitution.

The timing of the criminal restitution order plays a crucial role and should not be overlooked. Restitution is customarily and most appropriately addressed at the time of sentencing, where civil recovery often takes place years after the disposition of the criminal case. Addressing restitution at the time of sentencing is so important because it provides the court an opportunity to fully take into account the totality of circumstances of the underlying offense and the defendant’s remorse when setting its penal decree. It also provides an adversarial setting to ensure for an accurate computation of a value, in which efforts by the defendant to dispute restitution may illustrate lack of remorse for the crime. Constructing restitution during sentencing is also advantageous compared to civil recovery because the sentencing court continues to have personal jurisdiction over the defendant, leaving the court with the power to compel the defendant to complete restitution disclosure forms. Unlike recovery in a civil court, these forms demand complete and full disclosure of the defendant’s assets and liabilities. Providing false information on the form is an additional crime and could constitute perjury.

A criminal court’s primary focus is on the determination of the defendant’s guilt or innocence and is less concerned about the depth of due process in relation to restitution.
calculations. In fact, once a restitution order has been entered, it is extremely difficult to overturn or reduce. If challenged, the defendant bears the burden of establishing the amount as erroneous (People v. Thygesen, 69 Cal.App.4th 988; People v. Foster, 14 Cal.App.4th 939). This is a significant tactical shift from the state’s burden to prove criminal culpability beyond a reasonable doubt and restitution by a “preponderance of the evidence” (People v. Gemelli 161 Cal.App.4th 1539). In addition to the defendant shouldering the burden of proof in refuting the court ordered amount, the challenger’s due process rights do not provide for the ability to cross-examine the victim or persons who provided services to the victim as a result of the crime (People v. Arbuckle (1978) 22 Cal.3d 749; People v. Cain, 82 Cal.App.4th 81; People v. Birmingham (1990) 217 Cal.App.3d 180). Even the defendant’s inability to afford restitution fails to constitute “compelling and extraordinary” grounds to vacate an order. Additional benefits criminal restitution provides include constitutionally granted creditor protections. Under the California State Constitution, “all monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.” This would prevent a business defendant’s creditors from receiving asset priority in a post judgment bankruptcy proceeding. Conversely, a civil judgment may be subject to a lower abatement order, which could potentially leave the trafficked victim a judgment debtor. While a defendant convicted under the Federal TVPA may be subject to restitution, many states have taken the affirmative act of making restitution a mandatory component of the disposition process.

While the option of restitution and allowable methods of calculation vary, California has codified the most forward-thinking and flexible statute, mandating direct restitution, and/or statutory penalties. Understanding that human trafficking is a complex crime, and that a “one-size-fits-all” restitution calculation could potentially fail to make a trafficked victim whole, they presented the trial court with a series of optional formulas from which to choose. California Penal Code §1202.4 (q) states as follows:

Upon conviction for a violation of Section 236.1, . . . In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim’s labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim’s labor as guaranteed under California law, or the actual income derived by the defendant from the victim’s labor or services or any other appropriate means to provide reparations to the victim.

**Recovery for Forced Labor Varies Based on Causes of Action Asserted**

While criminal prosecution is the primary focus for many victim advocates, civil court remedies can provide unique legal features the victim may utilize tactically. In a criminal proceeding, the victim’s input may be sought by the prosecution, but definitive decision-making regarding plea agreements and/or sentencing is at the sole
discretion of the prosecutor. Plea arrangements and other terms of disposition (including probation or conditions of probation) may be in direct conflict with the victim’s wishes. Unlike a criminal case, where the state is the complaining party and is ultimately in control of legal strategy and tactics, in a civil case the victim is the master of their claim and controls the course of action. Having this control can be empowering for the victim providing a more personal mode of reprisal.

In a California civil action, the trafficked victim will have the opportunity to assert a myriad of claims from Civil Code Section 52.5 – Personal rights, generalized tort-based claims, quasi contract, or quantum meruit claim (a general principle of contract law whereby the plaintiff need not show a pre-agreed signed contract to recover damages but in the interest of justice the court will enter a judgment for the value of services rendered) – or any combination thereof. Each cause of action permits very different remedies with very different methods of calculating damages. A victim, along with counsel, would need to carefully assess the facts of their case and which remedies best advance their goals before choosing which claims to advance. While a quasi contract or quantum meruit claim may be easier to prove, they generally do not provide grounds for secondary or punitive damages. Navigating and assessing this labyrinth of claims and associated remedies are likely to frustrate and potentially confuse a seasoned attorney. When assessing which claims to advance, a plaintiff should find a specializing attorney that is familiar with the advantages and disadvantages of each course of action.

Two of the more common Federal sources of tort liability for forced labor can be found in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Fair Labor and Standards Act (FLSA). These laws generally mandate a worker get paid at least minimum wage and the correlating appropriate overtime wages. While these would provide some basic calculation for monetary recovery, a victim of human trafficking (i.e., slavery) and a basic human right violation should not be valued at the lowest allowable calculation under Federal or State law. First, if the trafficker was forced to lawfully hire an employee to replace the forced laborer, they would have been required to pay Federal or State minimum wage rates regardless. Hence, it provides very little downside for the perpetrator who is only required to pay what they would have been required to pay absent their unlawful acts. As such, allowing the trafficker to only be liable for a minimum standard of wages fails to have any deterrent effect. Second, it does not take into account the way in which labor was extracted and therefore fails to achieve any monetary castigation.

**Restitution Remains the Best Opportunity to Calculate the Value of Forced Labor**

The California State Legislature had the foresight to construct a criminal restitution code which provides the court an election of restitution formulas. Penal Code Section 1202.4(q) states as follows:

> Upon conviction for a violation of Section 236.1, the court **shall**, in addition to any other penalty or restitution, **order the defendant to pay restitution to the victim** in a case in
which a victim has suffered economic loss as a result of the defendant’s conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or another showing to the court. **In determining restitution** pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim’s labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim’s labor as guaranteed under California law, or the actual income derived by the defendant from the victim’s labor or services or any other appropriate means to provide reparations to the victim. [emphasis added]

As a general rule, when defendants are held liable for economic injuries, they are generally not subject to punitive damages due to the lack of, or difficulty in proving, the required element of scienter. Under this scenario, accurately calculating actual damages is paramount as the finder of fact does not have the option of secondary sources to make the victim monetarily whole. Especially in California, the impact of incorrectly calculating forced labor wages at the criminal phase could have a substantial and cascading effect on secondary civil damages. Since treble and punitive damage calculations are generally calculated as a multiplier of actual monetary damages, any miscalculation of the actual damage would exponentially poison secondary recovery (*Oliver v. Raymark Indus., Inc.*, 799 F.2d 95; *Palmer v. Ted Stevens Honda, Inc.*, 193 Cal.App.3d 530). For every dollar miscalculated, treble damages would be incorrect by three, and punitive damages could be misjudged by significantly more.

For example, in the case examined above, Peña Canal’s 12,530.04 h of forced labor were valued at less than $10 per hour, approximately $9.88 per base hour, totaling $123,740.34. Under Civil Code 52.5, her treble damages could be valued at approximately $371,221.02. If the court had applied a worker-friendly wage of $14.51 per base hour, Peña Canal’s restitution would have been valued around $181,810.88, making treble damages potentially worth approximately $545,432.64. In this case, a $4.63 per base hour differential mathematically manifests itself as a $58,070.54 difference in restitution recovery and $174,211.62 difference in trebled recovery. Because punitive damages are determined by the court and are applied as a multiplier based upon actual damages, their disparity would also correlate similarly. While these levels of restitution may be crippling to a defendant, the financial impact on the defendant is not the primary concern of the court. Rather, the focus should be on how to best apply the statute as directed by the Legislature and applied so to fully restore the victim to their rightful position.

**Fair Market Value Evaluation Is Not the Best Method of Calculating Restitution**

In order to understand how restitution could be more appropriately calculated, it is important to clarify and grasp the complexity of victimization imposed. What is central to human trafficking cases is the nonvoluntary, coercive character, which is
why it fundamentally differs from crimes that are often confused with it such as human smuggling. Human smuggling generally includes a willing immigrant who pays a smuggler to help gain clandestine entry into a country. Once smuggled, the transaction is complete, and the smuggled individual is free to leave. A trafficked victim on the other hand is often tricked or threatened into servitude, thereby controlled by fear and/or physical violence. This relationship continues until the trafficker fails to have any use for the victim. It could be said that a smuggled person is partially complicit in the illegal actions, whereas a trafficked victim is victimized from the initial encounter, wielding no power or influence in the trafficker/victim relationship. Human trafficking is a crime against a victim, whereas human smuggling is a crime vis-à-vis the state. Understanding this underlying dynamic is crucial when selecting a restitution formula.

As described on page 24 by the California Attorney General in her 2012 report entitled The State of Human Trafficking in California, traffickers often use force, fraud, or coercion – physical or psychological – to control their victim. Traffickers tactically exploit their victim’s fear of law enforcement to ensure their criminal enterprise remains covert. Victims are extremely reluctant to contact officials. Victims are generally aware they are in the United States illegally and are commonly led to believe they are subject to arrest and deportation. Trafficked victims often come from countries where law enforcement officers are brutal and corrupt. Their traffickers encourage, reinforce, and exploit these fears to maintain compliance.

In a trafficking relationship, where power and control are completely concentrated in one party and that party has been found to have criminal culpability, the trafficker should not be afforded the benefits of a restitution calculation built upon a false belief of a negotiation between two similarly empowered parties. The exchange between the trafficker and their victim does not constitute a normal fair arm’s length transaction between employer and employee because it was neither a free-willed exchange nor a mutual negotiation of terms. Allowing the trafficker to benefit from their extortion would reward the wrongful act. Applying a traditional fair market value calculation would not fully credit the victim for the manner and method of how the labor was extorted.

**Fair Market Value Computation Allows Trafficker to Benefit from Their Crime**

The criminal court system is too often asked to find the most efficient method to remediate abhorrent behavior, attempting to return the victim to the best available position – not whole. Analogous to other doctrines in law where a defendant is barred from asserting certain claims or defenses they have tactically manufactured, a trafficker ought to be foreclosed from benefit from a traditional fair market value calculation for forced or stolen labor. Fair market value is generally understood as a locally appraised calculation, one which consistently and rapidly fluctuates with time and geography. When trafficking victims, the defendant plays an integral role in this local economic computation. By supplying free or reduced valued labor into a given
market, the perpetrator is unilaterally altering the short-run supply curve in the labor supply and demand economic model. By forcing victims to work, the trafficker is artificially manipulating the supply chain, thereby artificially depressing the value of the labor in that market. The more free/reduced rate labor the trafficker supplies, the fewer job openings will exist, and lower-wage free workers are able to demand in order to secure lawful employment. In decreasing the prevailing labor wage, the practical effect is decreasing the monetary liability a defendant would face under a traditional fair market value calculation, and the trafficking kingpin is rewarded. When the trafficker is afforded a lower labor rate value, the desired deterrent effects of treble and punitive damages are neutered and fail to achieve their full desired effect. The less the deterrent monetary effect, the greater the likelihood an unscrupulous trafficker may consider such penalties as cost of doing business, potentially passing the amount of treble or punitive fines onto the end consumer, completely subverting the entire spirit of secondary damages. Restitution for trafficking needs to be fashioned in such a way that its imposition will fully reimburse the victim for their loss and cause the convicted to reconsider their illegal enterprise, altering their future course of conduct. Equity demands the trafficker be foreclosed from using the fair market value as a benchmark for restitution when the trafficker’s own actions helped to drive down the prevailing wage. If not, then taken to its ultimate conclusion, if a trafficker trafficked enough individuals into a geographic area, enough to saturate a specific labor market, the trafficker would fail to owe any restitution and potentially fail to have any civil monetary liability.

Continuing to administer a traditional fair market value formula not only provides the trafficker a potential discount on their monetary liability, but also fails in its deterrent effect. Permitting slave labor to be valued at an enhanced labor rate would serve to discourage a trafficker from benefiting on their crime.

California Penal Code Section 1202.4(q) Provides Equitable Calculations

The legislative intent outlined in Penal Code Section 1202.4(q) clearly gives the trial court an abundance of flexibility to fashion restitution from a myriad of calculations and commands the court to choose the recovery that best mitigates the injury. The legislature specifically chose the term “reparations” to describe the victim’s injuries – a word that includes not only monetary loss but the conduct and nature of the wrongdoing. A court should appreciate that a trafficked victim’s injury is not limited to the loss of labor wages but should also credit how the labor was extracted. While different forms of trafficking may benefit from different enumerated calculations, courts should not be afraid to construct their own nuanced framework. When shaping a restitution framework, the court should select a wage evaluation that compensates the victim’s former lack of bargaining influence in the forced labor relationship. Since the trafficker/victim relationship was wholly weighed in favor of the trafficker, it would stand that a restitution order should be created to overcome this disparity. The court should be guided by wages that have been negotiated by
workers with significant negotiating control and power – i.e., a collective bargaining wages. In the creation of a collective bargaining agreement, labor units have significant power and influence in the prevailing wage and contract terms. Unlike a fair market value calculation, where business interests and labor interests often collide, the primary goal of collective bargaining units is the most advantageous of terms possible to improve the wages and working conditions for their members. Obtaining information on the prevailing union wage is easily accessed and would not be so cumbersome as to grind to a halt the legal process.

For forms of labor that may not have an easily verifiable prevailing collective bargaining wage, the court should look to alternate forms of worker favorable valuations. In family law quantum meruit cases, caretakers with a family relationship to their patient can expect a premium rate for the care provided. The court’s rationale is that a patient would rather have a family member care for them; therefore the provided care holds a higher intrinsic value. This form of enhancement could also be a guiding example of how to value domestic servitude labor.

Conclusion

In a world where predators continue to disregard the human rights and physical well-being of others, the innocent and most vulnerable among us will continue to be at risk of subjugation. Legislatures and legal systems have begun to formulate and structure the necessary response to protect those who are trafficked. Victim restitution is often neglected, lacking the requisite thoughtfulness, planning, and proper mathematical calculation. Lawmakers should have the foresight and understanding to construct criminal restitution statutes designed to uniquely address human trafficking in all of its forms. Traditionally, law enforcement actions centered on the sexual exploitation trade/prostitution; thus most restitution statutes are designed to disgorge illegally gained profits. Defendants convicted of forced labor/human trafficking should not be afforded the luxury of an antiquated criminal restitution mentality and calculation. Traditional fair market value calculation could be abused and exploited by the perpetrator. California has created a flexible and forward-thinking restitution code, which provides the court mathematical options from which to choose. These options were designed to maximize recovery for all forms of trafficking. Lawmakers and prosecutors should provide a victim of forced labor favorable method of wage valuation, one that fully and accurately encompasses the entire scope of the human trafficking experience.

Cross-References

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▶ Labor Trafficking of Men in the Artisanal and Small-Scale Gold Mining Camps of Madre de Dios: A Reflection from the “Diaspora Networks” Perspective
Psychological Care and Support for the Survivors of Trafficking
Self-Identification of Victimization of Labor Trafficking
The Praxis of Protection: Working with – and Against – Human Trafficking Discourse
The Role of Women’s Nongovernmental Organizations in Bulgaria for More Effective Protection and Assistance to Victims of Human Trafficking
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**Statutes**

Cal. Civ. Code § 52.5.

Cal. Const. Art. 1, §28(b), states the following: It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.


18 USC §1593.

22 USC §7101(b)(3).

United States Constitution, Amendment XIII, Sec.1 [“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”].
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The Advent of a Legislation Proscribing Trafficking in India: A Prescriptive Package for Victims of Trafficking or a Mere Rhetoric?

Beulah Shekhar and Vijaya Somasundaram

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Abstract

With the highest number of victims of trafficking, India is a source, transit, and destination country for human trafficking. It is a serious cause for concern that the country has no comprehensive legislation to curb this crime. India has so far shown a commitment to prevent this type of victimization by being a signatory to international conventions including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). A penal law, the Suppression of Immoral Traffic in Women and Girls Act, enforced in 1958, was further amended as the Immoral Traffic (Prevention) Act of 1986 (ITPA). However, this law is severely

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limited in scope and is not victim friendly. Recently the Indian government has introduced the “Traf"cking of Persons (Prevention, Protection and Rehabilitation) Bill 2018” which claims to use a three-pronged strategy to tackle this type of victimization through prevention, protection, and rehabilitation of victims. However, as the bill is steered through parliament on its way to becoming a law, it faces severe criticism in the media, which termed it a failure, while civil society organizations including human rights groups continue to oppose it on numerous fronts. This chapter critically discusses the responses of stakeholders identifying the sources of their angst and the critical flaws in the bill in the light of the international antihuman trafficking discourse. This reveals how this issue if not addressed could defeat the bill’s very purpose of making any significant impact toward reducing human trafficking in this part of the world.

**Keywords**

Traf"cking · Victimization · Prevention · Protection · Rehabilitation

**Introduction**

South Asia, with India as its hub, is one of the fastest growing regions for human trafficking in the world (Bhalla 2017). Large populations of economically deprived rural women, young men, and children are lured into India’s towns and cities by traffickers on promises of employment and then sold into modern-day slavery. Such victims end up as domestic workers, are forced to work in small industries like textile workshops and farms, or are pushed into brothels where they are sexually exploited (Bhalla 2017). Due to porous borders, young girls and boys from Bangladesh and Nepal are being trafficked into India making it a destination country for sexual exploitation, forced labor, and domestic servitude. A large percentage of trafficked victims in India originated from the disadvantaged social strata – the lower castes, tribal communities, minorities, and women from excluded groups (Newsroom 24x7 desk 2015). Boys from Bihar are trafficked to work as forced labor in embroidery factories in Nepal, while girls from West Bengal are subjected to sex trafficking in small hotels, vehicles, huts, and private residences. There is a demand for women from small towns of North India and Western India for sex and labor trafficking (Bureau of Public Affairs, US Department of State 2014). Young men from Bangladesh, India, and Nepal have been sold to countries in the Middle East as forced labor, making India a source, destination, and transit point for human trafficking (United Nations Office on Drugs and Crime (UNODC) 2017; Kara 2010). In this chapter the unique nature of human trafficking in South Asia is described first, before bringing to light the lack of comprehensive legislature in the India. A bill has recently been tabled in the Indian Parliament by the Ministry of Women and Child Development with a view to address this lacuna. The bill is critically discussed in the context of human trafficking phenomena unique to this part of the world. In addition, the serious loopholes are pointed out by various stakeholders (primarily NGOs who are actively engaged in the prevention of trafficking) in the language and intent of
the bill (AAWAJ 2016; Arz 2016; Barasat Unnayan Prostuti 2016; Prayas 2016; Vahini 2016). In their view, unless these loopholes are addressed, the very purpose of the bill may be defeated.

Human Trafficking in South Asia

The human trafficking phenomena in South Asia have been fueled by the forces of globalization. The very forces that resulted in free flow of trade, raw materials, finance, and information also led to the increasing flow of human trafficking and contemporary slavery. “Globalization has helped to make present-day slaves easy to procure, easy to transport, and easy to exploit in an increasing number of industries.” Acquiring and maintaining human slaves is more profitable than ever before in history (Kara 2010). In India globalization reforms failed to trickle down to the lowest rungs of the socioeconomic ladder. There is bulk migration of rural masses throughout South Asia to urban centers in search of a share in the supposed fruits of economic prosperity (Kara 2010). This region is also characterized by problems of extreme gender bias and socioeconomic disenfranchisement of women and minority communities making them vulnerable targets for traffickers. Human trafficking has taken on different forms in accordance with these problems.

According to the 2016 UNODC Global Report on Trafficking in Persons, there is lack of quantitative information on the types of exploitation in South Asia. However the US Department of State’s 2009 Trafficking in Persons report has classified the different forms of trafficking in Asia (Chemonics International Inc., 2009). Forced labor is the most frequently reported form (United Nations Office on Drugs and Crime 2016) and is found in industries such as agriculture, domestic work, construction, mining, packaging, manufacturing, and prostitution specifically where there are large number of workers and little regulation. Unscrupulous employers take advantage of law enforcement gaps and victimize vulnerable workers internally or from abroad. Migrant workers are easy targets because they don’t speak the local language, have few friends and limited rights, and depend on their employers. Bonded labor is another form of trafficking that flourishes in many parts of India because of poverty and widespread caste-based discrimination predominantly affecting the lower-caste Dalits. Despite the fact that bonded labor is illegal, the laws are rarely enforced, particularly where the people who exploit those from more vulnerable groups belong to the ruling classes. In many instances the entire families have to work to pay off the debt taken by one of its members. Sometimes, the debt can be passed down to generations, and children can be held in debt bondage because of a loan their parents had taken decades ago.

Debt bondage as a form of trafficking in Asia has larger implications than bonded labor including abuse of contracts, inadequate local recruitment and employment laws, and imposition of exploitative and illegal costs/debts on laborers in the source country/state. It often occurs with complicity and/or support of labor agencies/employers in the destination country/state. Victims borrow
money to pay their traffickers for a promised job abroad. Once at their destination, passports are taken away, and they cannot leave until they pay off the debts they owe to their traffickers.

Anti-Slavery International in 2015 reported millions of brick kiln workers trapped into debt bondage in North India. Brick kiln workers were mainly internal migrants from poorer states in India and belonged to socially disadvantaged groups such as lower-caste Dalit and indigenous groups. Each year, labor contractors (or brokers) secure the employment of workers through the use of the payment of an advance or loan. In the brick kiln, the worker will labor against the advance that he has taken. While the verbal agreement is made with the male head of household, and it is the male head of the household who receives the advance payment and a weekly or fortnightly payment for expenses, the whole family is considered part of the agreement. Women and children therefore work long hours in the kilns against the loan or advance but are not recognized as workers in their own right and do not receive any payment directly. The remuneration for most activities in a brick kiln is on a piece-rate basis (paid per brick). Brick kiln workers do not receive a regular wage, since their earnings service the debt. Instead, they receive a weekly or fortnightly payment for food and other necessities which is added to their debt. At the end of the brick-making season, their earnings are calculated and adjusted against the amount of advance taken and total received for expenses. Workers usually have no idea until the end of the season how much they are entitled to receive or if they still owe the brick kiln owner. Although required under the law, there is often no employment records maintained, and there is no transparent and verifiable process of wage determination and wage settlement against advances. If the advance payment is not considered by the employer to have been cleared, the worker will be tied to return to the same brick kiln the following season. As they often take new loans to clear past debts, many workers remain in perpetual bondage (Anti-Slavery International 2015).

In Asia domestic workers are unorganized and vulnerable to physical/sexual/emotional abuse by their employers. Domestic servitude is culturally ingrained in the Indian psyche in that society views patronizing acts of charity to be associated with nobility. A desensitized public allows this form of victimization to continue unchecked (Fathima 2017). Trafficked children are often particularly vulnerable to this victimization. Typically the victims are promised employment but instead find themselves trapped in someone’s house, with no means of completion of their “contract” or any way out. Victims are made to perform domestic tasks, provide childcare, or carry out strenuous labor, often without pay and with little access to personal care, space, or choice. Often victims of domestic servitude are enslaved in the home of someone of similar ethnic background. Another common form is trafficking for forced marriage. In some North Indian states, falling sex ratio has resulted in increased trafficking of adolescent girls as brides from rural regions of the country (Dixit 2008, as cited in Somasundaram and Shekhar 2016) (see chapter ▶ 21, “Defining Child Trafficking for Labor Exploitation, Forced Child Labor, and Child Labor”).
Most of the Asian economies are dependent on cheap labor, and with added conditions of poverty, forced child labor is prevalent as another form of trafficking (see Chap. 24, “Dynamics of Child Labor Trafficking in Southeast Asia: India”). Children are employed because compared to adults they are easily controlled and unlikely to demand higher wages or better working conditions. In rural areas, schooling may not be an option. It may be too expensive and schools may be too far away (Anti-Slavery International 2017). Conditions of poverty and desperation drive families to sell a child into slavery. In Bihar in India, despondent victims are easy prey to slave traders who make job offers for a child in exchange of money as little as Rs. 1500–Rs. 2000 in addition to monthly remittances the job is supposed to provide. For a family subsisting on a meager income of Rs. 30 per day, it is an offer they cannot refuse. Paltry sums of remittances made regularly by slave owners become further enticements for more families to sell their children. In regions mired in armed conflicts, forced child labor extends to recruiting children as child soldiers. In India boys from the region of Kashmir are forced by insurgent separatists and terrorist groups to fight against the Indian government.

Trafficking incidents in Asia also fall in the category of sex trafficking. Commercial sex trade is a chief destination for trafficked girls and children (Dixit 2008). Children are trafficked to places, forced into prostitution either on the streets or in establishments, and used in pornography and sex shows to satisfy sexual gratification of pedophiles. Child sex tourism is an extension of this form of trafficking in Asia with vulnerable children falling prey to international sex tourists. CST occurs in multiple venues, from brothels in red-light districts to beaches or five-star hotels and in urban, rural, or coastal settings. It can occur over a long period of time, for example, where there is a long “grooming” process, during which a child sex offender befriends a vulnerable child and obtains his or her trust before exploiting the child sexually. In other cases, the child sex tourist purchases sexual services directly from a third party that are holding the child in a position of exploitation and who then makes the child available to the tourist (ECPAT International 2008).

Among the countries in South and Southeast Asia, Cambodia, Indonesia, Nepal, the Philippines, and Thailand have comprehensive anti-trafficking legislation, while Bangladesh, India, and Vietnam do not. While the countries continue to strengthen legislations to combat the problem, they are severely impeded by weaknesses in the judiciary and regulatory mechanisms. Corruption among law enforcement, government officials, employers, and recruiting agents continues to hinder anti-trafficking efforts (Chemonics International Inc., 2009). Poverty, female gender, lack of policy and enforcement, age, migration, displacement and conflict, ethnicity, culture, ignorance of trafficking methods, and caste status have been identified as key social determinants that facilitate trafficking of women and children in Southeast Asia (Perry and McEwing 2013).

In most of these countries, the laws do not offer protections for male victims (see Chap. 34, “The Human Trafficking of Men: The Forgotten Few”). Additionally, trafficking victims are sometimes treated like criminals, imprisoned, deported, or detained for prolonged periods without access to adequate support services,
including psychosocial counseling and legal assistance. Trafficking victims from ethnic minorities or from neighboring countries are often ineligible for assistance since they lack proper identification documents and citizenship rights. Failures of the law enforcement systems result in the absence of real risk in the business of trafficking.

Toward a Comprehensive Law on Anti-trafficking in India

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. Article 23 of the Constitution specifically prohibits “traffic in human beings and other similar forms of forced labor.” Article 24 further prohibits employment of children below 14 years of age in factories, mines, or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are Article 14 relating to equality before law; Article 15 that deals with prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth; Article 21 pertaining to protection of life and personal liberty; and Article 22 concerning protection from arrest and detention except under certain conditions.

The commitment to address the problem of trafficking in human beings is also reflected in various laws/legislations and policy documents of the Government of India. There are two strands of criminal law in India that deal with this problem. Classified under a general criminal law is the Indian Penal Code which contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offenses like kidnapping, abduction, buying or selling a person for slavery/labor, buying or selling a minor for prostitution, importing/procuring a minor girl, rape, etc. Under special and local laws, besides the Immoral Traffic (Prevention) Act, 1956 (ITPA), which is the main legislative tool for preventing and combating trafficking in human beings, there are several laws that have consequences on acts related to trafficking such as the Juvenile Justice (Care and Protection of Children) Act, 2015. One of its major concerns is the protection of missing children who are at risk of being trafficked. The Bonded Labor System (Abolition) Act, 1976 (BLSAA); the Contract Labor (Regulation and Abolition) Act, 1970; the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Children (Pledging of Labor) Act, 1933; and the Child Labor (Prohibition and Regulation) Act, 1986, are the several special laws which deal with forced labor and child labor. The Indian Contract Act, 1872, deals with offer, consideration, consent, and acceptance related to an agreement or contract. The Prevention of Begging Act, 1952, criminalizes persons who employ or cause another to beg. The Passports Act, 1967, and the Foreigners Act, 1946, deal with the movement of citizens in and out of India.

The Indian criminal law has closely followed and incorporated developments unfolding in the international legal arena in dealing with trafficking (Kotiswaran 2018a). The ITPA was passed following India’s ratification of the 1949 UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the
Prostitution of Others. The IPC Section 370 was introduced to mirror the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons.

The ITPA’s prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers, and profiteers of the trade but not the sale of sex itself, and in no way does it define “trafficking” per se in human beings. This ambiguity gave power and discretion to the police to use the IPC sections indiscriminately against sex workers. In response sex workers mobilized themselves and reframed prostitution as sex work, a legitimate form of productive labor. However traditional conservative political forces within the Indian government sought to protect the “dignity” of Indian women and children by opposing sex work, a position taken by the National Commission of Women with the support of neo-abolitionist, (Radical feminists who are opposed to prostitution are often called neo-abolitionists in an analogy with slavery abolitionists of the nineteenth century.) anti-trafficking, and other radical feminist NGOs. Since the 1990s, the Indian government began to subscribe to a crime control paradigm of trafficking (Kotiswaran 2018a).

The neo-abolitionist groups began taking the PIL (public interest litigation) route to amend the ITPA. Landmark judgments were pronounced by the judiciary such as in the 1990 case of Vishal Jeet v. Union of India and the 1997 case of Gaurav Jain v. Union of India. In the former case, on the directions given by the Supreme Court, the Government constituted a Central Advisory Committee on Child Prostitution in 1994. Subsequently, the State Advisory Committees were also set up by state governments. The outcome of the latter case was constitution of a Committee on Prostitution, Child Prostitutes and Children of Prostitutes to look into the problems of commercial sexual exploitation and trafficking of women and children and of children of trafficked victims so as to evolve suitable schemes in consonance with the directions given by the Apex Court. The raid-rescue-rehabilitation legislative model became entrenched in the system. Raid and rescue operations are the main government interventions to address sex trafficking. These operations involve law enforcement officers forming a raid and rescue team which enters an identified brothel unannounced and removes underage girls, and women, by force. The victims, identified using decoys, are interviewed, provided with healthcare services, and shifted to government-authorized safe houses. However the 2003 National Human Rights Commission (NHRC) reported this approach to be steeped in corruption with police resorting to bribes, extortion, sexual coercion, and complicity with traffickers (Magar 2012).

The Ministry of Women and Child Development (MWCD) undertook a study in collaboration with UNICEF on rescue and rehabilitation of child victims trafficked for commercial sexual exploitation. The report of this study was released to the public in 2005. A protocol for pre-rescue, rescue, and post-rescue operations of child victims of trafficking for commercial sexual exploitation was formulated. This protocol contained guidelines for state governments and a strategy for rescue team members for pre-rescue, rescue, and post-rescue operations concerning children who were victims of trafficking and were sexually being exploited for commercial reasons.
In 2015 one of the PILs filed in 2004 (Prajwala v. the Union of India, 2015) resulted in the National Legal Services Authority formulating a committee comprising of neo-abolitionist NGOs and judges that submitted a report recommending the formulation of an anti-trafficking legislation. The Supreme Court disposed of the petition directing the MWCD to draft a new bill.

On May 31, 2016, the ministry released a draft of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill which was portrayed as the country’s first ever antihuman-trafficking law. Its main purposes were to unify existing anti-trafficking laws and increase the definition to cover labor trafficking and not just sex trafficking, as earlier legislations like the Immoral Trafficking (Prevention) Act of 1956 did. Crucially, the bill promised to treat survivors of trafficking as victims in need of assistance and to make rehabilitation a right for those who are rescued. However, the bill faced severe criticism from civil society organizations that led to four subsequent revisions. The major outcry was against the restrictive outlook of the bill toward the range of trafficking offenses. The current revised version expands the definition of trafficking to include purposes such as bonded labor, begging, bearing a child, pretext of marriage, using as human shield, and child soldiers (Express News Service 2016). On July 18, 2018, the bill was tabled in the parliament (PRS Legislative Research 2018).

The Trafficking in Persons Bill continues in the tradition of the raid-rescue-rehabilitation model espoused by the neo-abolitionist groups. Scholars, activists, workers’ rights groups, and other civil society organizations continue to raise their voices against critical ambiguities in the bill. They argue firstly that the issue of trafficking does not exist in a vacuum and is closely interlinked with socioeconomic realities of migration and labor (International Justice Mission 2016; International Labour Organisation 1930; National Human Rights Commission 2016). Secondly whereas the bill is rooted in the raid-rescue-rehabilitation model, recent research and the experience of stakeholders on the field in the past two decades strongly indicate the failure of this very model (see chapter ▶ 46, “The Failing International Legal Framework on Migrant Smuggling and Human Trafficking”). Thirdly the bill pays scant regard to the problem of bonded labor and other changing forms of labor and may eventually even harm the victims. This paper critically outlines each issue raised by these groups and the sources for their angst in the context of the international anti-trafficking discourse.

The Carceral Nature of the Trafficking in Persons Bill

India is a signatory to international conventions such as the Convention on Rights of the Child (1989); Convention on Elimination of All Forms of Discrimination Against Women (1979); UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000); and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). Since the
United Nations Transnational Organized Crime Convention, 2000, and its protocols, the international anti-trafficking efforts have included a wide range of initiatives in the area of prevention, protection, and prosecution. The last two decades have led to an accumulation of research and knowledge about what actually constitutes effective anti-trafficking measures. There is clear evidence on the negative impact of anti-trafficking legislation and initiative on the human rights of working-class migrants and sex workers (Pattanaik and Sullivan 2018). The formulation of the sustainable development goals (SDGs) and more specifically SDG target 8.7 on the eradication of trafficking, forced labor, and modern slavery by 2030 has shifted trafficking onto the development trajectory. Experts now acknowledge the elasticity of the concept of trafficking or “exploitation creep” (Chuang 2014) and have moved away from understanding trafficking as mere sex work (see ▶ Chap. 18, “The Challenge of Addressing Both Forced Labor and Sexual Exploitation”). There is now more focus on precarious work and extreme exploitation in the labor markets (Kotiswaran 2018b). India’s approach to trafficking as mentioned in the previous section has taken the neo-abolitionist route with excessive focus on sex work, and the Trafficking of Persons Bill follows the raid-rescue-rehabilitation model that is associated with this exceptionalism.

The problem with the raid-rescue-rehabilitation strategy is its assumption that every sex worker picked up during such raid-rescue operations is a trafficked victim. Violent police force along with Antihuman Trafficking Units and neo-abolitionist NGOs has victimized sex workers under the guise of rescue. Research has shown that this strategy rarely addresses the issue of trafficking but instead results in large-scale human rights violations with victims falling trap to debt bondage and other exploitative practices. Research based on experience and victim narratives indicates that strategies operated from outside are ineffective and that community-based initiative with sex workers organizing themselves to tackle the violence and abuse in their lives is a better alternative (Pai et al. 2018).

While the bill makes rehabilitation a right and provisions for cross-border repatriation of victims in case they come from countries like Nepal and Bangladesh, its language is extremely unclear in terms of how rehabilitation will occur and who will be responsible for administering it. The current framework is restrictive in terms of reintegrating victims into society. It also fails in some other areas as well such as the victims’ needs to access mainstream healthcare facilities and the needs of victims from red-light areas (Sriram 2017). Many advocates consider the model of the bill to be coercive with little community involvement (The Telegraph 2017).

In a series of articles in the *Economic and Political Weekly* journal online, a group of academicians, activists, journalists, and social workers draw attention to several glaring discrepancies in the bill. According to them, the bill is highly punitive without much regard for substantive and procedural safeguards integral to criminal law systems. Creation of offenses unrelated to trafficking, ambiguous language, and disproportionate sentencing shifts the burden of proof and creates absolute liability offenses that are constitutionally suspect. They argue that the bill creates offenses that are cognizable, non-bailable, and punishable with severe sentencing including life imprisonment (Kotiswaran 2018b).
Ambiguity in the Bill’s Language

Several NGOs point out that the crime of trafficking has not been defined in the bill. While Section 370 of Indian Penal Code defines trafficking, it does not cover many aspects of trafficking like other forms of trafficking. It is suggested that the definition as provided in the UN protocol is sufficiently comprehensive and should be adopted. The use of the word “Prevention” in the bill title is a misnomer as the issue of prevention has not actually been dealt with in its text. There is a need to link the existing governmental programs to ensure that the most vulnerable are empowered through education and provided skills for their survival and duly integrated into mainstream society to lower the chances of re-trafficking (Global Village Foundation 2016).

In focus groups discussions held by the MWCD in several Indian cities, NGOs and activists argued that while the bill has been titled as Trafficking in Persons, there is no cataloguing and classification of different types of trafficking. In a few section/s there is reference to “commercial sexual exploitation” and “trafficking for labor,” but the emerging areas of trafficking such as medical trafficking, trafficking for adoption purposes, trafficking for surrogacy, and organ trafficking do not find any mention in the bill. Unless there is an encompassing definition that includes all forms of trafficking, both existing and newly emerging, the trafficking bill remains incomplete. The bill makes no explicit mention of victims trafficked for child prostitution and child labor and offers neither stringent nor exemplary penalties for the related crimes. There is a need for better recognition of the issue concerning children who are victims and/or are witnesses and are particularly, vulnerable. They require special protection, adequate assistance, and support that are appropriate to their age, gender, level of maturity, and special needs so as to prevent further hardships and physiological trauma.

Civil society organizations and human rights experts point out to several glaring discrepancies in the different sections of the bill. As mentioned earlier, the raid-rescue-rehabilitation method with protection, rehabilitation homes, and reintegration forms the framework of victim support. It ignores the current lacunae in support to trafficking victims. Stakeholders on the field have learned through experience that unless the factors that led to trafficking in the first place are resolved, it is dangerous to reintegrate the victims back to the exploitative environment. Research has also indicated that protective homes under ITPA have been ineffective and actually facilitate abuse and suicide by victims undermining their very purpose (Deccan Chronicle 2018; Magar 2012).

The bill inflates institutional bureaucracy by creating a maze of agencies, including anti-trafficking officers, units, committees, and a bureau at the district, state, and national levels with lack of clarity in roles and responsibilities (Tandon 2018). While the bill prescribes setting up district anti-trafficking committees, there are no roles assigned in the committee to the police or to individuals responsible for prevention and rehabilitation and no definition of the term “social worker” which means that prevention and rescue aspects are unlikely to be addressed. The functions of the envisaged committee are not defined in the bill. While a section in the bill refers to
producing the victim after rescue before the member secretary of the district committee, the activities prior to the rescue of the victims or pre-rescue provisions/procedures adopted are completely absent. Lack of a structured protocol for rescued victims seems to be a major lacuna in the bill that needs to be addressed and adequately attended to in order to prevent instances of re-trafficking and re-rescuing the trafficked. The bill is unclear about who are the designated persons who can produce the victim before such district committees. The bill states that any public servant or any social worker or public-spirited person is eligible which is ambiguous and may have serious implications as the intentions of such people are unknown. Anybody, including the trafficker, can claim to be a public-spirited person. There is also no clarity whether the protection homes referred to in the bill are same as given in other Acts, such as the Juvenile Justice Act and ITP Act. There is mention of specialized schemes for women victims of sex trafficking, but there is no mention about any scheme for victims of other forms of trafficking and victims other than women such as men, children, and transgender persons. The needs of children of socially disadvantaged groups such as scheduled castes and tribes who are one of the most vulnerable groups targeted by traffickers find no mention in the bill.

One of the most important requirements for effective conviction of the trafficker is the evidence given by the victim. Often, the witness is intimidated or threatened by the trafficker to desist from giving evidence. To prevent this, it is necessary to give adequate protection and support to the witness, so that she/he is economically comfortable in secure and safe surroundings. The entire issue of witness protection which is crucial for the security of the witness and for successful conviction of the trafficker is missing in the bill.

Failure to Consolidate Existing Laws

The Indian legal response to trafficking is scattered across a plethora of laws as indicated earlier with confusing and inconsistent objectives. While the IPC and ITPA criminalize trafficking offenses through a moralistic lens, the Juvenile Justice (Care and Protection) Act and the various special labor laws lean toward a welfare-oriented approach in dealing with the offenses (Tandon 2018). When the Supreme Court directed the MWCD to set up a committee and draft a new bill addressing this problem, it was expected that the committee would come up with a single comprehensive legislative framework that integrated those existing laws; however, this has not happened. The bill on the other hand makes incorrect assumptions that existing laws do not recognize the trafficking of persons for physical and other forms of exploitation or provide stringent penalties. The bill talks of new aggravated forms of trafficking such as trafficking for forced and bonded labor, begging, and marriage which according to the National Crime Records Bureau (NCRB) reports are already being prosecuted. The bill directs the central government to constitute a special agency for investigation of offenses under the provisions of the Act. This can lead to conflict of interests as this is already the responsibility of the police. There is also no mention as to the reporting authority for such an agency.
Failure to Address Root Causes and the Realities of Migration and Bonded Labor

The Global Alliance Against Traffic in Women (GAATW), a global network of 84 women’s rights, migrant rights, and labor rights organizations in Asia, Europe, Africa, and the Americas, has criticized the bill as being anti-migration in the guise of anti-trafficking. It points out that the right to migrate is well established in international law including the Universal Declaration of Human Rights and a number of conventions ratified by India. “People, regardless of the availability of regular pathways for migration, need to, and have a right to migrate, whether out of a well-founded fear of persecution, poverty, or the inability to survive or prosper in the place of origin” (Pattanaik and Sullivan 2018). The Trafficking in Persons Bill has a separate category of offense called aggravated trafficking – “by encouraging or abetting any person to migrate illegally into India or Indians to some other countries” – with a minimum punishment of 10 years. Two glaring discrepancies in this statement are the conflation of human trafficking with smuggling while ignoring the realities of migration and a disregard for the United Nations member states’ endeavor to avoid the use of the word “illegal” in reference to migrants as it could lead to criminalization or stigmatization of migrants denying them basic human rights. Underlying this approach is the attempt by some countries including India to limit human rights protection enshrined in international law for undocumented migrants with a view to enforce harsh border regimes and criminalization. The bill thus comes in conflict with the Global Compact for Migration even as it is under discussions. It can be an effective response to trafficking only if the state adopts a rights-based approach and ensures that it is backed by effective and rights-protective labor and migration policies as trafficking does not exist in a vacuum (Pattanaik and Sullivan 2018).

Organizations working for the rights of bonded labor and other socially disadvantaged groups have pointed out that the bill is silent on bonded labor or forced labor. The bill’s initial clause states “A bill to prevent trafficking of persons, especially women and children and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic and social environment for the victims.…” indicating a focus on women and children as main victims of trafficking and precludes men as victims. Furthermore, the bill categorically states in its “Statement of Object and Reasons” that trafficking occurs due to poverty, illiteracy, and lack of livelihood opportunities. While focusing on economic factors, it fails to consider social factors like the caste system that lie at the roots of the bonded labor system. Research indicates that India has strong indigenous labor laws on bonded contract and interstate migratory labor (Bonded Labor System (Abolition) Act, 1976, or BLSA) which would have been a powerful response to labor exploitation and trafficking. These laws however remain sparingly used and largely unenforced (Kotiswaran, How Did We Get Here? Or a Short History of the 2018 Trafficking Bill, 2018 (a)). Besides, another serious concern is the overlap between the various existing legislations (ITPA, IPC 270, BLSA) and the bill. It is not clear which legislation is to be used for which crime.
Political Will and Alternate Paradigms

In the global fight against human trafficking, it would be well within the interests of the international community particularly in South Asia to take cognizance of the visible lacunae in India’s Trafficking of Persons Bill as exhaustively described above. A strong political will is required by the Indian government to take a broader view than the current neo-abolitionist rhetoric (Magar 2012; Pattanaik and Sullivan 2018; Kotiwaran 2018a). A major paradigm shift is required. There is a need to adopt a welfare-based model instead of the existing rescue and rehabilitation one (Bruxvoort 2016) and a need to focus on community-based rehabilitation instead of institutionalized care and rehabilitation (Kotiswaran 2018a).

The legal framework provided by the BLSA is based on a comprehensive understanding of the Indian reality of bonded labor taking into account the traditional socioeconomic contexts. In majority of bonded labor cases in India, the person voluntarily takes up bonded labor in exchange for loans from creditors. This goes against the definition of forced labor as defined by the International Labor Organization (International Labour Organization 1930). The Indian Supreme Court has provided a broad interpretation of forced labor to include economic compulsion and not just physical or legal compulsion. In its judgment in People’s Union for Democratic Rights v Union of India (1982), it held that though bonded laborers seem to get into bonded service willingly, they are doing so under the force of their dire economic conditions. The BLSA though concerned with criminal offenses is more focused on economic and social welfare of bonded laborers with provisions for rehabilitation and mechanisms that lead toward ensuring decent conditions of work for victims so that they do not relapse to further bondage. The Act is also more generic than the Trafficking Bill, which seeks to expand the ambit of ITPA and IPC Sec 370 that deal with prostitution, sexual exploitation, and child labor to all forms of trafficking. BLSA can also be applied to corporate companies, laborers falling under the Contract Labor Act, and interstate migrant workmen (Prasad 2018).

Toward a Prescriptive Package for Victims of Trafficking

Even as it advocates the rescue-rehabilitation model, the bill’s claim of addressing the victims’ needs is suspect. The process of rescue and rehabilitation should have a victim-friendly approach to make the victims feel safe which is missing from the bill. They need to be treated with respect and dignity and not as criminals. The issue of victim protection is very important in the post-rescue stage, as they are often the prime witness in the case. There is also the possibility of the victim being harassed and tortured by the traffickers and humiliated by the community when repatriated. This could, in turn, hamper the process of rehabilitation and reintegration. Enhanced approachability and safe spaces accessible at 24/7 at the local level are necessary to ensure this does not happen. The government should appoint trained social workers at police stations, courts, and rehabilitation homes for
counseling, information, and guidance. State departments and agencies cannot be replaced by NGOs as the major intervention agency when it comes to rescue and rehabilitation. This is because NGOs in India are largely unregulated with no way to ensure accountability and transparency in their functioning (Shekhar and Williams 2014). Therefore, the government should set up interdepartmental coordination structures to facilitate and monitor the process of rescue and rehabilitation at the district level and advisory bodies at central and state levels to monitor trafficking and identify blocks in the implementation of ITPA and other provisions, rescue, rehabilitation, and reintroduction of victims. Training organizations at central and state levels should focus on sensitization, dissemination of knowledge, and training of frontline personnel from the police, judiciary, and women and child welfare departments. The objective being an anti-trafficking response is well girded in the correct legal framework and with sound understanding of issues related to rescue, rehabilitation, and reintroduction. The training institutions could take the help of field-based organizations to achieve this purpose. Government socioeconomic, educational, and welfare schemes meant for the mainstream population should be made available to the rescued persons both in the institutional and reintroduction phase, including efforts to access citizenship rights (Global Village Foundation 2016; HAQ 2016; Center for Child and Law 2016; North East Network 2016).

Suitable legislation for victim protection and support should be introduced in the law. As pointed out by Shekhar (2015), there is urgent need for a victim policy and enforceable victim rights for crime victims in India. In order to be successfully reintegrated, every victim rescued from trafficking has short- and long-term needs that must be addressed. While ensuring access to safety and shelter in the short term, ensuring a stable livelihood in the long term becomes imperative.

There is a need to come up with a common minimum package of rehabilitation, as there are gaps in current rehabilitation process, i.e., from rescue to repatriation and beyond. The program has to include issues such as the development of alternatives to repatriation as a method of rehabilitation.

**Conclusion**

India is strategically located in South Asia’s human trafficking network, functioning as source, destination, and transit point for trafficking. Porous borders between neighboring countries, globalization that has failed to reach the vast population of socioeconomically disadvantaged groups triggering exodus from rural to urban areas, and socioeconomic disenfranchisement of women and minority communities have facilitated the flow of human trafficking and contemporary slavery in South Asia. Forced labor, bonded labor, debt bondage, domestic servitude, forced marriage, forced child labor, sex trafficking, and child sex tourism are the multitude forms of trafficking prevalent in the region. Most of the South Asian countries have evolved comprehensive anti-trafficking legislation to tackle the problem. India has
maintained a commitment to address this problem by being a signatory to international conventions including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and United Nations Transnational Organized Crime Convention, 2000. However its legislative response has been scattered across a plethora of laws that are conflicting and inconsistent. A new bill titled “Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018,” tabled in the parliament this year is a proposal to unify the existing legal framework into a single comprehensive piece of legislation on antihuman trafficking. The intentions of the bill are in a three-pronged strategy of prevention, protection, and rehabilitation. The actual language and scope of the bill conveys a belief that the problem of trafficking can be solved by stringent punishments alone without addressing the root causes and socioeconomic realities, a belief that could possibly undermine the human rights of the very victims it seeks to protect. The bill also continues in the tradition of the raid-rescue-rehabilitation model that has slowly been entrenched in the government response to trafficking backed by powerful neo-abolitionist NGO groups. The international discourse on human trafficking has long since shifted to a developmental viewpoint, and research now has deemed this model a failure and the carceral approach ineffective in anti-trafficking measures. The MWCD, the authority vested with the responsibility for drafting the bill, has sculpted it entirely from one of the laws, the Immoral Trafficking Prevention Act or ITPA, instead of consolidating the various existing laws that dealt with human trafficking. In doing so, the bill fails to take into account the innovative regulatory mechanisms offered by the labor laws of the country.

What is required is a progressive legislation that places the victim at its center and allows for community-led initiatives of rehabilitation and reintegration. International efforts toward achieving the SDGs and specifically target 8.7 have taken a development trajectory, and the Trafficking of Persons Bill reveals a dissonance within the Indian government with the MWCD taking a neo-abolitionist approach in presenting a highly carceral solution to a deep-rooted socioeconomic problem. The bill is a punitive overkill. In view of the international implications especially those for countries that share borders with India, it is imperative for a strong paradigm shift by the lawmakers of the country, a shift away from a protectionist and criminalist approach toward a rights-oriented development approach and ensuring that this is reflected in the bill before it finally becomes a law.

Cross-References

▶ Child/Forced/Servile Marriages ⇄ Human Trafficking
▶ Defining Child Trafficking for Labor Exploitation, Forced Child Labor, and Child Labor
▶ The Human Trafficking of Men: The Forgotten Few
▶ The Challenge of Addressing Both Forced Labor and Sexual Exploitation
▶ The Failing International Legal Framework on Migrant Smuggling and Human Trafficking
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Corporate Criminal Liability on Human Trafficking

Stefan Schumann

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Abstract

In many cases of human trafficking, corporations are involved in one way or another. Corporate criminal liability is especially discussed in case of forced labor. Therefore, the paper discusses the interrelation of forced labor and human trafficking. It highlights the chances of, challenges for, and limits to establishing corporate criminal liability especially in transnational cases. The role of CSR and international labor standards will be analyzed. Finally, alternative enforcement strategies are discussed.

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Involvement of Corporations in Human Trafficking

Corporations’ Involvement from Service Providers to Beneficiaries

In many cases of trafficking in human beings, corporations are involved in one way or another. Therefore, the discussion on corporate criminal liability is at the heart of fighting human trafficking.

Given the three elements defining trafficking in human beings – the act, the means, and the purpose –,

Article 3 [a] UNTOC Protocol II (Hereinafter Called “UN Palermo Protocol”)

“Trafficking in persons” shall mean

- the [act of] recruitment, transportation, transfer, harbouring or receipt of persons,
- by means of 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, including, 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;

(correction, listing, and accentuation by the author.)

...corporations mainly came into focus as service providers and were rarely seen as perpetrators in the early years of fighting human trafficking. This traditional perspective is connected primarily to the observation of sexual exploitation being the main purpose of human trafficking as described by the UNODC Global Report (UNODC 2014). In those cases, corporations, by their agents (see section “Corporate Criminal Liability for Forced Labor and Practices Similar to Slavery – Legal Challenges, and Unsolved Questions”), might be involved in the transportation of victims of human trafficking, e.g., travel agencies or transportation companies such as airlines, railroad, or bus companies. They also might, intentionally or negligently, contribute to harbor victims, e.g., hotel companies or property management companies (Sullivan et al. 2018).

Coherently with a slight shift of focus – from the purpose of sexual exploitation toward the purpose of forced labor – in research on and politics against THB, the debate on corporate criminal liability more and more turns toward corporations which intentionally or negligently profit from human trafficking. In times of the globally shared economy, this increasing debate focuses not only on transnational but on
domestic forced labor in major companies (Cockbain and Brayley-Morris 2017). Furthermore, it is disputed whether or not (and how, if ever) corporations can be held responsible for exploitation of workers in the supply chain (Planitzer et al. 2018; IHRB 2016; Ezell 2016).

Human Trafficking, Forced Labor, and Slavery: Conceptual Observations

Alongside with this shift toward a discussion of corporate liability for forced labor, and practices similar to slavery, a variety of questions on the scope and applicability of the concept of human trafficking arise. Hence, commonalities, as well as differences, between the definitions of human trafficking, forced labor, and slavery will be discussed in this part of the paper, seeking for clarification of how and when the labor exploitation by corporations falls into the scope of human trafficking.

In doing so, this chapter follows a twofold approach focusing both the international legal instruments and domestic approaches. Whereas the international legal instruments drew the public attention to the need to fight human trafficking, those instruments need to be transposed and brought into effect by domestic laws, law enforcement, judiciaries, and supported by civil societies’ organizations. There is no transnational penal law being directly applicable against corporations and individuals.

While basically all international instruments against human trafficking use the definition of human trafficking as set by the UN Palermo Protocol in 2000, those instruments vary both in depth and in their legal nature. Their nature ranges from purely international state parties’ obligations (UN Palermo Protocol 2000; Council of Europe Convention 2005) to supranational European Union law having primacy over contradicting domestic laws but still being in need for transposition by the EU member states (EU Directive 2011). However, for the purpose of this chapter, it is important to realize that the younger these instruments are, and the more regional their focus is (ranging from a global perspective of the UN Palermo Protocol 2001 over the CoE Convention 2005 to the EU Directive 2011), the more in-depth and detailed their content is.

This chapter follows a comparable approach. Primarily, it focuses the global perspective of the UN Palermo Protocol where this protocol provides answers for the questions raised. The paper refers to the more detailed transnational instruments of the CoE and the EU where those provide additional content, not covered by the global UN instrument. Given the need for domestic transposition, it follows that domestic examples will be used. Those are chosen, first, from European states who fall into the scope of all these international and European transnational instruments. Besides those, second, examples from the United States will be used for two reasons: On the one hand, the United States is not only a main destination country for transnational human trafficking but also a major player in the international fight against human trafficking. And, the US domestic legal order often is used (or tried to be used) to tackle also severe human rights violations abroad (see section “Corporate Criminal Liability for Forced Labor, and Practices Similar to Slavery – Contextual Measures, and “Side-Door Enforcement”).
Different Approaches to Corporate Criminal Liability

The concept of corporate criminal liability has not at all been recognized and accepted worldwide in the past. Rather it is spreading more and more over the last decades. Depending on the particular domestic legal order, it might or might not include potential liability for forced labor and/or human trafficking.

The Anglo-American legal tradition in modern times has already established a long-lasting tradition of corporate criminal liability in many of American and other common law countries. In the U.S. federal system it goes back to the famous *Hudson River Railroad* case from 1909, where the U.S. Supreme Court stated (U.S.SC 1909):

We see no reason why a corporation cannot be imputed with the knowledge of unlawful conduct by its agents acting within the scope of their designated authority, which actions accrue to the profit of the corporation. It is well established that corporations may, as a corporate entity, be held responsible for damages in a torts action. In these cases, liability is not imputed to the corporation because it itself participated in the tortuous conduct, but because the tortuous conduct was done for the benefit of the corporation.

U.S. federal law applies the broadest and most encompassing model of corporate criminal liability among the existing models to cope with corporate criminal liability, the *respondeat superior doctrine* (a variation of the vicarious liability doctrine).

**Respondeat Superior Doctrine – A Corporation is Liable for the Deeds of Its Agents, Employees, and Even Independent Contractors at Times**

This liability applies regardless of the agent’s rank in the hierarchy of the corporation and the type of infringement as long as,

- the agent acted in the course and within the scope of his employment,
- having the authority to act for the corporation with respect to the corporate business that was conducted criminally, and,
- the agent acted, at least in part, with the intent to advance the business interests of the corporation.

(Laufer 1992; Lederman 2017; Nanda 2011)

It is reported that, only occasionally, the Courts add a third precondition: The criminal acts were authorized, tolerated, or ratified by corporate management [Lederman 2017, e.g., referring to *State v. Christy Pontiac-GMC, Inc.*, 354 N.W.2d 17, 20 (Minn. 1984); and *State v. Wohlsol, Inc.*, 670 N.W.2d 292, 297 (Minn. Ct. App. 2003)]. When doing so the U.S. model approaches the recent (continental) European model to a certain extent.

For countries belonging to the civil law traditions, it is rather new to establish criminal liability of legal entities. It was the English Lord Chancellor, Edward, First Baron Thurlow who, more than 200 years ago, embossed the (still quoted)
position of denying the possibility for corporate criminal liability by stating: “Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?” (quoted by Coffee, Jr. 1981). It was the increasing effort to protect the financial interests of the European Union, i.e., by fighting public corruption, by the Second Protocol on the protection of the financial interests of the EU (European Union 1997) which finally initiated the outspread of rules on corporate criminal liability throughout many European states. Also (especially but not solely developed) Asian and African states implemented various models of corporate criminal liability (Pieth and Ivory 2011). The emerging European model on corporate (criminal) liability is applied to human trafficking by Art. 5 EU Directive 2011. It will be described in more detail in the next section. For now, one should keep in mind that there are different models of corporate criminal liability applied. This needs to be taken into account when questioning the actual impact of international obligations on a domestic level. Hence, the political plea for a concept of legally binding corporate liability for forced labor and practices similar to slavery faces various challenges. Those arise from legal as well as from factual observations.

The Trafficking Element of the Act
Labor exploitation not necessarily comes along with a change of place of the victim but might take place where the victim has been living before and still does so while being exploited. Hence, when someone analyzes the applicability of the human trafficking definition in such a situation, one might ask whether or not the trafficking act requires some kind of movement, might it be the change of place of the victim or the handover of powers over the victim from one perpetrator to another.

Trafficking in Human Beings Both as a Transnational and a Domestic Phenomenon
The UN Palermo Protocol applies where an offense of trafficking in human beings is transnational in nature and involves an organized criminal group (UN Palermo Protocol Art. 4).

Yet, it became broadly accepted that although trafficking in human beings in practice often is a transnational crime due to a slope of economic living conditions or personal security between a destination country and the source country, human trafficking is not necessarily a transnational crime by nature.

ECHR, Decision of 03/30/2017, Chowdury and Others v. Greece, Application No. 21884/15 – Intrastate Human Trafficking, and Forced Labor
The applicants – 42 Bangladeshi nationals – were recruited in Athens and other parts of Greece between the end of 2012 and early 2013, without a Greek work permit, to work at the main strawberry farm in Manolada/Greece. The Court held that there had been a violation of Article 4 § 2 (prohibition of...
forced labor) of the European Convention on Human Rights by Greece, finding that the applicants had not received effective protection from the Greek State. The Court noted, in particular, that the applicants’ situation was one of human trafficking and forced labor, and specified that exploitation through labor was one aspect of trafficking in human beings.

THB might also concern a domestic case, with or without transnational aspects. Even the UN Palermo Protocol’s definition of trafficking in human beings does not include the transnational aspect as discussed before. Rather, transnational aspects determine the scope of application of this transnational convention. Indeed, a transnational element is no precondition to the human trafficking offense as a concept; trafficking may also occur intrastate. Neither the European Union Directive 2011/36/JHA on preventing and combating trafficking in human beings and protecting its victims, replacing the EU Framework decision of 2002, nor the Council of Europe Convention of 2005 on Action against Trafficking in Human Beings (CoE CETS No. 197) provides for a transnational element of trafficking as a precondition to their applicability.

**Trafficking as Gaining and Changing Control Over a Person**

Only a few of the various forms of the trafficking act – transportation, transfer, or receipt of persons – indicate either a spatial element of movement or a change in control from one perpetrator to another. It might be questioned whether these elements shall dominate the interpretation of all possible acts of trafficking or not. In contrast, particularly the act of recruitment by using one of the penalized means for the purpose of exploitation might indicate that human trafficking does not need an element of spatial movement of the victim or handover of control from one perpetrator to another. Rather gaining control over a person by illegal means for exploitative purposes could be seen as “recruitment.” Such broader understanding of human trafficking might be seen as more effective. However, the means of “giving or receiving of payments to achieve the consent of a person having control over another person” indicate that trafficking in human beings requires the actual or intended change of control over a person. In any case, human trafficking is an offense overlapping with various other criminal offenses, ranging from forced prostitution to slavery.

**Trafficking and Exploitation: Criminalization of Use of Services of Victims of Trafficking in Human Beings**

Other than the UN Palermo Protocol, the CoE Convention 2005 differentiates between the offense of human trafficking and the profiting from human trafficking more clearly. Besides the trafficking offense, demanded for by Art. 4 and 18 of the CoE Convention 2005, Art. 19 explicitly and separately recommends the criminalization of the use of services of a victim.
Article 19 Council of Europe Convention 2005 – Criminalisation of the Use of Services of a Victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 19 CoE Convention 2005 establishes a recommendation, but no strict obligation to be followed. So does Art. 18 § 4 of the EU Directive 2011.


In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence [of trafficking in human beings as] referred to in Article 2.

(Insertion by the author.)

The criminalization of the intentional use of services of a victim of trafficking in human beings is deemed to be an important measure of preventing and combating human trafficking by fighting the demand side (on the “3P” paradigm of combating human trafficking – prevention, protection, prosecution – see Bruckmüller and Schumann 2012). The criminalization of intentional use definitely would contribute to the fight against labor exploitation, including the establishment of corporate’s liability. However, the nonexistence of such explicit rules does not exclude criminal liability in case of abuse of victims of human trafficking, as it will be explained in the following section.

Overlapping Elements of Human Trafficking and Exploitation by Forced Labor

Especially when it comes to forced labor, those offenders who actually exploit the victim by abusing their position of vulnerability rooted in poverty often, if not typically, will also commit one of the acts of trafficking: recruitment, transportation, transfer, harboring, or receipt of the person. The common determiner of those acts is rather not the change of place but the gain of control over another person by using the illegal means (Follmar-Otto 2009). That is why trafficking in human beings is often described as being a “contemporary manifestation of slavery” (US Trafficking Victims Protection Act 2000, Sec. 102[a]; see further CoE 2005b; Winterdyk/Perrin/Reichel 2012) which is true in a general perspective. Hence, the
use of illegal means in order to exploit somebody by forced labor or services, slavery, or practices similar to slavery will often go alongside with human trafficking. But this is not imperatively the case: Trafficking in human beings consists of the criminalization of the process of acquiring a person for the purpose of exploitation, whereas slavery focuses on the treatment of a person (Siller 2006). It might seem to be contradictory to where the concept of human trafficking started (the fight against sexual exploitation and slavery); however, the more differentiated approaches nowadays cannot be ignored. Yet, even where perpetrators of forced labor do not commit a trafficking act themselves, they might be held liable for inciting, aiding, or abetting the trafficking offender.

**Trafficking in Human Beings and the Liability for Inciting, Aiding, and Abetting**
According to the international instruments, it is not only the trafficking itself which shall constitute a criminal offense. Rather, participating as an accomplice in an offense of trafficking in human beings, or organizing or directing other persons to commit such an offense, shall be criminalized too in accordance with the basic principles of the state party’s domestic legal order (UN Palermo Protocol Art. 5 § 2). Likewise, Art. 21 § 1 CoE Convention 2005 does so. Article 3 of the EU Directive 2011 demands for a criminalization of inciting, aiding, and abetting to commit an offense of trafficking in human beings. Depending on the particular circumstances, the declaration of willingness to make use of services of presumed trafficking victims might be considered as inciting or abetting to trafficking in human beings. In those situations, the requirements for mens rea (intent) according to the domestic basic legal principles of criminal law can play a decisive role for both individual and corporate liability.

**Differentiated Domestic Approaches Fighting Human Trafficking and Forced Labor**
When it comes to the domestic level, where international and transnational agreements need to be transposed and enforced by domestic judicial systems, various countries decided to follow a differentiated approach. They implemented specific offenses for forced labor and slavery besides human trafficking. For example, the UK Modern Slavery Act 2015 states the offense of *slavery, servitude, and forced or compulsory labor* in Sec. 1, whereas *human trafficking* is covered by Sec. 2. The German Penal Code differentiates even more detailed. It includes *human trafficking* (Sec. 232), *forced prostitution* (Sec. 232a), *forced labor* (Sec. 232b), *labor exploitation* (Sec. 233), and *exploitation by means of deprivation of liberty* (Sec. 233a). Those approaches can contribute to a clear understanding of what the international treaties aim to fight against.

**Corporate Criminal Liability for Forced Labor and Practices Similar to Slavery: Legal Challenges and Unsolved Questions**
As discussed before, corporations play a major role especially when it comes to labor exploitation of victims of human trafficking. Yet, at the times of establishing
the UN Palermo Protocol, regular business corporations typically were neither perceived as potential perpetrators committing the offence of trafficking in human beings, nor were they explicitly targeted as beneficiaries of cases of human trafficking. Rather the UN Palermo Protocol focuses on organized criminal groups (Art. 4 leg cit.).

International legal instruments (including those mentioned before) and international courts (like the International Criminal Court in The Hague, Netherlands) so far have not provided for any directly applicable corporate criminal liability; neither in general nor specifically for trafficking in human beings. Although the possibility of international criminal liability of legal entities is repeatedly discussed (for proposals during the preparation and negotiation of the Rome Statute Bassiouni 1998; Clapham 2000; Chiomenti 2006; with a focus on economic crimes Roksandić Vidlička 2017; Soyer 2018), it has not been established by now. Rather, corporate criminal liability is broadly established by domestic laws. However, often these domestic rules transpose international or supranational obligations.

International Obligations to Establish Corporate (Criminal) Liability for Human Trafficking
As explained before, the UN Palermo Protocol as the primary international convention does not contain any particular regulation on corporate criminal liability.

Obligations to Establish Corporate Liability, Might It be of Criminal, Civil, or Administrative Nature
Since the time of the global UN Palermo Protocol, various other international instruments explicitly demanded for the possibility of corporate criminal liability for human trafficking. Among them, it is demanded for in Art. 22 CoE Convention of 2005 and Art. 5 of the EU Directive 2011.

**Article 22 Council of Europe Convention 2005 – Corporate Liability**
(1) Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
   a. a power of representation of the legal person;
   b. an authority to take decisions on behalf of the legal person;
   c. an authority to exercise control within the legal person.
(2) Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a

(continued)
criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

(3) Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

(4) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

This regulation on corporate liability refers to all offenses established in accordance with the Convention. It includes not only the trafficking offense itself but also the use of services of victims of human trafficking as cited above (Art. 19 CoE Convention 2005). While individual liability shall be established as criminal liability, according to the Convention, it remains subject to legal principles of each particular state party whether the liability of a legal person shall be of criminal, civil, or administrative nature.

Likewise, Article 22 § 1 CoE Convention 2005, the EU Directive 2011 demands for the possibility to hold legal persons liable.


(1) Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person;
(b) an authority to take decisions on behalf of the legal person; or
(c) an authority to exercise control within the legal person.

(2) Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

In short, corporations shall be held liable, first, in case of trafficking in human beings committed by their leading personnel for the benefit of the corporation (Art. 5 § 1 EU Directive 2011) and, second, where a lack of supervision or control over the persons under the corporation’s authority has made possible the commission of a human trafficking offense for the benefit of the corporation (Art. 5 § 2 EU Directive 2011).
Sanctions, Confiscation

As said before, neither the CoE Convention 2005 nor the EU Directive 2011 strictly demands for criminal liability of corporations. Only the EU Directive 2011 provides for more detailed requirements which need to be transposed into European Union member states’ domestic laws.


*Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:*

(a) exclusion from entitlement to public benefits or aid;
(b) temporary or permanent disqualification from the practice of commercial activities;
(c) placing under judicial supervision;
(d) judicial winding-up;
(e) temporary or permanent closure of establishments which have been used for committing the offence.

*(Accentuation by the author.)*

Effective, proportionate, and dissuasive sanctions shall include fines, might they formally be of criminal nature or not. Additional sanctions up to a judicial winding-up can be provided for but are not obligatory to be implemented to domestic laws.

The nature of a sanction is decisive for substantive limits and requirements (e.g., the principle of non-retroactivity especially in states of civil law tradition) and for procedural requirements guaranteeing the fair trial rights. The fair trial principle provides for specific requirements in criminal proceedings. The European Court of Human Rights, established as a dispute settlement and enforcement tool of the CoE Convention on Human Rights (ECHR), and therefore not being an institution of the European Union, established three criteria to assess whether a charge is “criminal” in the meaning of Art. 6 ECHR. The latter obliges the Convention parties to guarantee a fair trial in principle and provides for certain specific obligations. The recognition of legal persons in international human rights instruments is often disputed. Not all international instruments do so. Nonetheless, there is a tendency toward full recognition of legal entities under human rights law, especially in the ECHR regime (van Kempen 2011).

The three criteria of a “criminal” charge set out in the European Court of Human Rights’ case of *Engel and Others v. the Netherlands* (ECHR 1976) are, first, the classification of a charge in domestic laws; second, the very nature of the offense; and, third, the degree of severity of the penalty that the person concerned risks
incurring. All three criteria are disputed in case of corporate liability. Especially, when it comes to the nature of offense, one might ask whether the actual offense committed by a natural person related to the corporation or the corporation’s lack of preventive structural measures and supervision to ensure compliance with legal obligations should be decisive.

Besides the fine, the actual impact of liability is also determined by measures of confiscation of instrumentalities and, especially, proceeds of crime. This is of utmost importance, since the concept of confiscation, including non-conviction-based and extended confiscation, has been broadened and strengthened over the last decades (Rui and Sieber 2015; Schumann 2018). Again, it is the EU Directive 2011 which explicitly demands for those measures.


Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 [Offences concerning trafficking in human beings] and 3 [Incitement, aiding and abetting, and attempt of a THB offence].

Noteworthy, Art. 7 EU Directive 2011 on confiscation does not refer to Art. 18 § 4 leg cit. The latter, as described before, recommends to take measures to establish as a criminal offense the use of services which are the objects of sexual, organ, or labor exploitation, with the knowledge that the person is a victim of an offense of trafficking in human beings. However, this does not necessarily exclude confiscation measures in cases of intentional use of services of victims of human trafficking for two reasons. First, domestic laws can go further than international obligations demand for. Second, as explained before, under certain circumstances the (intended) use of services might be evaluated as inciting or abetting human trafficking. Again, the domestic basic legal principles of criminal law play a decisive role for individual and corporate liability on human trafficking and forced labor.

Forced Labor or Practices Similar to Slavery: Which Standard Shall Be Applied?

In shared economy, cases of presumed human trafficking will be linked to states from various regions of the world. So, how should the purpose element of human trafficking – namely, forced labor or practices similar to slavery – be defined? For instance, the German Penal Code in Sec. 232 § 1 on trafficking in human beings describes labor exploitation as “employment for reasons of ruthless aiming for profit under working conditions which are in obvious disparity to other employees of
the same or comparable work (exploitative employment).” (Translation by the author.) This might be quite easy to determine in intrastate or transnational cases where Germany is the destination country. But it is far more difficult in cases of human trafficking and forced labor in a transnational supply chain. In those cases, does the local labor, etc. standards in the country of origin of products or services apply or those standards being applicable in the country of destination? What is the role of corporate social responsibility (CSR) standards in criminal justice?

It is indisputable that the basic transnational human rights standards such as the 1926 Slavery Convention, or the prohibition of slavery by Art. 4 ECHR, although it is binding to and needs to be ensured by the state parties, should be taken into account when determining minimum labor standards. However, this provides only for basic definitorily elements and needs to be further elaborated. International standards, often being soft laws, might contribute to the establishment of a labor standard which cannot be willfully disobeyed without the risk of exploitative employment conditions. Among these standards are those of the International Labour Organization as well as the OECD Guidelines for Multinational Enterprises (OECD 2011).

**OECD Guidelines for Multinational Enterprises (2011) – V. Employment and Industrial Relations**

4. a) Observe standards of employment and industrial relations **not less favourable** than those observed by comparable employers in the host country.
   b) **When multinational enterprises operate in developing countries**, where comparable employers may not exist, **provide the best possible wages, benefits and conditions of work**, within the framework of government policies. These should be related to the economic position of the enterprise, but should be **at least adequate to satisfy the basic needs** of the workers and their families.
   c) **Take adequate steps to ensure occupational health and safety** in their operations.

(Accentuation by the author.)

The OECD Guidelines refer in general to the standards of the host country. Where those do not exist, the guidelines refer for the best possible conditions within the framework of government policies and to the economic position of the respective multinational enterprise. They demand for at least adequate standards to satisfy the basic needs of the workers and their families. Hence, the significant breach of local minimum standards can typically be taken as one constituting factor of exploitative employment. However, these rules remain somehow vague and can only be seen as a piece of the puzzle when it comes to actually determining those employment standards, where a violation could trigger corporate criminal liability.
Territorial and/or Extraterritorial Jurisdiction

Another problem of criminal liability for human trafficking and/or forced labor in the supply chain abroad is the scope of domestic jurisdiction. It is international common sense that domestic jurisdiction applies over offenses committed wholly or partly within the state’s own territory (principle of territoriality) or in case the offender is a national of the state (principle of active personality). Besides that, there is a widely recognized possibility for extraterritorial jurisdiction to be claimed for an offense committed against the state’s own nationals, or a person who is a habitual resident in the state’s territory (principle of protection or passive personality). Yet, there is no generally (rather only partially) accepted rule for universal jurisdiction or acting jurisdiction in case of lack of effective jurisdiction abroad. Likewise, the European Court of Human Rights in J. and Others v. Austria in 2017 (ECHR 2017) held that the states are not required under Article 4 (prohibition of forced labor) of the European Convention on Human Rights to provide for universal jurisdiction over trafficking offenses committed abroad. Contrastingly, the US Congress in the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, approved by the US Court of Appeals for the Eleventh Circuit in United States v. Baston, 818 F.3d 651, 669–70 (11th Cir. 2016), expanded extraterritorial jurisdiction for human trafficking committed outside the United States to foreign traffickers present in the United States. This extraterritorial expansion, however, is disputed (Fish 2017).


(1) Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:
   (a) the offence is committed in whole or in part within their territory; or
   (b) the offender is one of their nationals.

(2) A Member State shall inform the [European] Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 [Offences concerning trafficking in human beings] and 3 [Incitement, aiding and abetting, and attempt] committed outside its territory, inter alia, where:
   (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
   (b) the offence is committed for the benefit of a legal person established in its territory; or
   (c) the offender is an habitual resident in its territory.

(3) For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

(continued)
(a) the acts are a criminal offence at the place where they were performed; or
(b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

(Accentuation by the author.)

When it comes to corporate criminal liability, the principles of jurisdiction in domestic laws have to be applied similarly. It might sound easy, but proves to be difficult: If the concept of corporate criminal liability, basically, is based on an offense committed by an agent of a corporation, this act will determine jurisdiction. But, if corporate criminal liability requires a momentum of negligence or even intentional non-compliance by the company’s management, this could be seen as an additional or alternative determiner. Likewise, jurisdiction based on nationality might be argued with regard to the corporation’s “citizenship.” This becomes even more complex in case of multinational enterprises consisting of many affiliated corporations. As an alternative approach, Art. 11 § 2 lit. c EU Directive 2011 acknowledges the establishment of jurisdiction of a state where the offense is committed for the benefit of a legal person established in its territory.

Preliminary Conclusions

The chances and challenges of corporate criminal liability for human trafficking have been subject to an emerging discussion over the last years. Given the role of corporate actors in the globalized and the domestic economy, corporate criminal liability for human trafficking and forced labor certainly can be expected to combat human trafficking and labor exploitation (on the relationship of corporate and individual criminal liability see Schumann 2019; Schumann and Knierim 2016). When it comes to the question of liability for forced labor in the supply chain, the most urgent issue is the determination of the applicable standard of working conditions. International basic standards can be considered to provide for minimum conditions which need to be met. Higher standards can be derived from the standards in the host country. The paper did highlight the possibilities for the application of corporate criminal liability for human trafficking and forced labor but also the conceptual challenges to it – ranging from the definition of human trafficking to extraterritorial jurisdiction and conceptual questions of domestic penal laws. Therefore, in the last part of this chapter, alternatives both to criminal liability and to the difficulties deriving from the definition of human trafficking will be discussed.
Corporate Criminal Liability for Forced Labor and Practices Similar to Slavery: Contextual Measures and “Side-Door Enforcement”

Corporate Criminal and Civil Liability

The discussion on corporate liability for human trafficking and forced labor (might the corporation be directly involved or might it happen in the supply chain) focuses not solely on criminal liability but also on civil liability (a.o. Planitzer and Katona 2017). For example, the US Trafficking Victims Protection Act (TVPRA) from 2000, as adapted by the Trafficking Victims Protection Reauthorization Act 2003, establishes not only human trafficking and forced labor as federal crimes but provides in Section 1595 civil remedies for victims of those offenses.

Section 1595 Trafficking Victims Protection Act – Civil Remedy

(a) An individual who is a victim of a violation of this chapter [chapter 77 – peonage, slavery, and trafficking in persons may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b) (1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a “criminal action” includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under this section unless it is commenced not later than the later of—

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

The claim for corporate civil liability in case of human trafficking and/or forced labor in the supply chain abroad might face similar challenges such as the establishment of corporate criminal liability. For example, in the U.S. Supreme Court case of Kiobel v. Royal Dutch Petroleum Co. (U.S.SC 2013) (not a human trafficking case) the foreign plaintiffs claimed compensation for a violation of customary international law abroad by a non-US but Dutch enterprise under the U.S. Alien Tort Claims Act. In this decision, the Supreme Court revoked three decades of case law while stating that the “presumption against extraterritorial application” (when legislation gives no clear contrary mandate)
applies to claims under the ATCA. Therefore, the Court dismissed the compensation claim in its criticized (Grear and Weston 2015) decision.

“Side-Door” Enforcement

It is suggested that situations of human trafficking and/or forced labor might also be tackled by applying other legal instruments, such as the U.S. Foreign Corrupt Practices Act (FCPA) of 1977 (human rights first 2015). Under the FCPA, civil as well as criminal liability can be established for payments made to officials of foreign governments or foreign state-owned companies to, directly or indirectly, gain an improper business advantage or to secure or maintain business, regardless of whether there was actual knowledge of wrongdoing or purposeful avoidance of such knowledge by a US parent company. The improper business advantage might include poor working conditions, establishing forced labor, or practices similar to slavery, as well as it might include the acceptance of making use of services of victims of human trafficking.

Summary and Final Remarks

In many cases of human trafficking, corporations are involved in one way or another. Corporate criminal liability is especially discussed in case of forced labor. Therefore, this paper discussed the interrelation of forced labor and human trafficking. It highlighted the chances of, challenges for, and limits to establishing corporate criminal liability especially in transnational cases. The role of CSR and international labor standards were analyzed. Finally, alternative enforcement strategies were discussed. In conclusion, it can be stated that corporate criminal liability certainly can play an important role for combating and preventing human trafficking and forced labor. However, rooting back to fight against sexual exploitation and slavery, the concept of human trafficking aims to tackle practices which facilitate the actual exploitation. Hence, corporate criminal liability for human trafficking should not be seen as an all-in-one solution but as part of a broader concept which includes other offenses such as slavery or forced labor but also noncriminal measures, ranging from civil liability to soft law regimes facilitating corporations’ social responsibility.

Cross-References

▶ Establishing the Constituent Elements of Trafficking in Persons: Conceptualizing “Transnationality” and “Involvement by an Organized Criminal Group”
European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking

Human Trafficking in Supply Chains and the Way Forward

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Measuring Trafficking in Persons Better: Problems and Prospects

Jan Van Dijk

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Abstract

Statistics on recorded victims of human trafficking are regularly published by both the United Nations (UNODC) and the European Commission. The latest available global count is 24,500 in 2016. Within the European Union, 11,000 victims were recorded in that year. The author argues that these numbers represent no more than “the variable tip of the iceberg.” Levels and trends in numbers of identified victims reflect the detection efforts of law enforcement and other institutions involved in identifying victims of human trafficking rather than the true numbers of victims. Over the past 10 years, initiatives have been taken to produce estimates of the real numbers of such victims. Using the results of population surveys conducted in 48 countries across the world, the ILO has, in partnership with the Walk Free

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Foundation, produced a global estimate of 24.9 million victims of forced labor/human trafficking at any given time in 2016. The author discusses the limitations of the survey-based approach, especially those of the regional and national estimates for Western countries. He then presents some results of the alternative approach of Multiple Systems Estimation which estimates the hidden numbers by extrapolating from multisource databases of identified or presumed victims. In the final paragraph the author reviews the advantages and limitations of both approaches to estimate the hidden figures of trafficking in persons.

Keywords
Human trafficking statistics · Identified victims · Presumed victims · Victimization surveys · Multiple Systems Estimation

Why Collecting Statistics on Human Trafficking?

Statistics on the extent and nature of human trafficking are an important tool in the fight against human trafficking. They can be used to raise awareness of the size and gravity of this criminal phenomenon, help governments and nongovernmental organizations to develop facts-based policies against it, and, last but not least, monitor progress with their implementation. International statistics on human trafficking have the additional advantage of putting national data in an international comparative perspective.

Although international crime statistics are notoriously difficult to collect, several treaties on action against human trafficking have made the collection of international statistics a treaty obligation. The United Nations Palermo Protocol against Human Trafficking (2002) obliges parties to collect and share information on trends in organized crime, including human trafficking. More specifically, the UN’s General Assembly mandated the United Nations Office on Drugs and Crime (UNODC) in Vienna to collect information from the member states for a periodical Global Report on Trafficking in Persons (General Assembly resolution 64/293).

Likewise, GRETA, the monitoring body of the Council of Europe concerning the Convention on Action against Trafficking in Human Beings of 2005 considers “that for the purpose of preparing, monitoring and evaluating anti-trafficking policies and measures, the authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on identified or otherwise registered victims (…).”

For member states of the European Union, the Directive on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU) is a legally binding instrument. Its article 19 emphasizes that member states must establish National Rapporteurs or Equivalent Mechanisms which assess trends in human trafficking including by collecting statistics in cooperation with relevant civil society organizations. According to article 20 of the said directive, the national rapporteurs or equivalents are bound to share their data with the Anti-Trafficking Coordinator of the EU.
In 2016, the United Nations adopted its 2030 Agenda for Sustainable Development. Unlike the previous Millennium Declaration, which was almost solely focused on economic development, this new program acknowledges crime prevention and the rule of law as principal development goals in their own right. Goal 16 reads: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” Under this goal, the Elimination of Human Trafficking/Forced Labor is defined as Target 16.2. Trafficking in persons is also explicitly addressed in Target 5.2 on “the elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.” In addition, Goal 8 deals with the need of decent work conditions for all. Under this Goal, Target 8.7 calls on governments to “take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms.” To monitor progress with the implementation of the Sustainable Development Goals (SDGs), the UN’s member states have agreed on a wide set of statistical indicators. As the key indicator to monitor implementation of Target 16.2, the UN Statistical Commission’s Interagency and Expert Group on SDG Indicators (IAEG-SDGs) recommends: “Number of victims of human trafficking per 100,000 population, by sex, age and form of exploitation.” The institution made responsible for collecting data on this indicator is the Vienna-based United Nations Office on Drugs and Crime (UNODC) (https://unstats.un.org/sdgs/metadata/files/Metadata-16-02-02.pdf). As key indicator of Target 8.7 has been chosen: “The proportion and number of children aged 5–17 years engaged in child labor, by sex and age.” In short, the member states of the United Nations have agreed to systematically collect statistical data on the number of victims of trafficking by sex, age, and form of exploitation and, more specifically, on the numbers of child victims of forced labor.

The Problems with Official Statistics on Victims of Trafficking

The main focus of work on human trafficking statistics is on the measurement or estimation of the numbers of victims of these crimes. Within this category, a distinction can be made between statistics of officially recorded victims and statistics on the estimated real numbers. Statistics of victims recorded by dedicated institutions are regularly collected and published by the United Nations Office on Drugs and Crime (UNODC 2018), the International Organization of Migration, and, in Europe, by the European Commission (Eurostat 2015; European Commission 2018).

It is not immediately obvious about which aspects of human trafficking statistics ought to be collected. The international legal instruments just mentioned call first of all for statistics on the numbers of victims of this crime. From a strictly legal perspective, only persons subjected to trafficking experiences for which the traffickers have been irrevocably convicted in court can be counted as known victims. Statistics on victims mentioned in trafficking in human beings (THB) cases tried by
courts qualify as the purest source of information on victims of THB. An example of such count is the number of victims identified in court trials reported by the National Rapporteur on THB of Sweden to Eurostat (Eurostat 2015; European Commission 2018). In most countries, however, such statistics are not available since their court statistics are very much offender-focused. Even when court statistics on the numbers of victims of trafficking would be available, these would exclude victims known to the police whose cases have never been solved or never brought before a court. In theory, statistics of victims known to the police would seem the preferred alternative option. Police statistics on recorded crimes are often exclusively offender-focused as well and do not include information on the numbers of victims either. Such administrative statistics are often exclusively offender-centered as well. In other words, for the collection of statistics on victims of THB, we cannot, in most countries, rely on either existing court or police statistics on such crimes because these often provide no or only fragmentary information on the victims involved.

At first sight, then, the collection of national statistics on victims of THB seems a near impossible mission. The task is made even more daunting when such statistics must be harmonized across countries as required by UNODC, the European Commission, and the UN’s Sustainable Development Goals. In the USA, the Federal Bureau of Statistics has struggled for decades to produce roughly comparable statistics on at least a minimum set of the most common crimes (the Uniform Crime Reports). In Europe, even statistics on the most common types of crime such as robbery, theft, or burglary are still far from being fully comparable due to varying legal definitions, reporting patterns, and recording practices (Van Dijk et al. 2014). Such problems of comparability of crime statistics are no less severe with those concerning a newly defined, complex crime as human trafficking.

On the upside, the collection of statistics on known victims of human trafficking is facilitated by two special circumstances. First, THB is one of the rare types of crime for which an international legal definition has been adopted, namely the definition given in the Palermo Protocol on Trafficking in Human Beings, adopted in 2000 by the United Nations. According to the latest count, 173 countries have ratified this Protocol and 158 countries have wholly, or partially, adopted the Protocol’s definition of human trafficking in their national criminal codes. Such harmonization is a rare feat in the domain of criminal law. Second, international and national laws on human trafficking tend to have a special focus on the protection of the victims of such crimes. For this reason, an increasing number of countries have set up special, multi-institutional arrangements for the identification and referral of presumed victims of trafficking as defined in the Palermo Protocol. In Europe, North America, and Asia, the establishment of such National Referral Mechanisms has been actively promoted by the Organization of Security and Economic Cooperation in Europe (OSCE/ODHIR 2004). The Council of Europe Convention on Action against Trafficking in Human Beings of 2005 (Warsaw Convention) obliges parties to introduce “appropriate mechanisms for the identification and referral of THB victims.” Since the Warsaw convention is legally binding for all 47 member states of the Council of Europe, except Russia – which has not ratified this treaty yet – almost all European countries collect statistics on the number
of persons who have been formally identified as victims or presumed victims of THB by the police, relevant NGOs, and other involved organizations. An inter-institutional mechanism to identify and refer victims of THB also forms part of the United Nations Model Law on Trafficking in Persons (UNODC 2009). Therefore, an increasing number of non-European countries have developed the capacity to produce multisource statistics on victims of human trafficking identified by dedicated institutions as well.

The fact that many countries collect statistics on numbers of formally identified and/or presumed victims as defined in the Palermo protocol bodes well for the production of internationally comparable statistics on human trafficking. However, the availability of such statistics at the national level still does far from assure that these statistics are comparable across countries. Although the Palermo definition helpfully describes the key elements of the offence of human trafficking, national laws and case law on trafficking are still far from fully harmonized. Comparability is further compromised by the fact that neither the OSCE Guidelines, the Council of Europe Convention, the EU Directive of 2011 nor the UN model law provides clear guidance on the nature of the proposed identification mechanism or so-called National Referral Mechanism. In the absence of an international standard for identifying THB victims, statistics on THB victims reflect the highly diverse identification mechanisms designed and implemented in each and every individual country.

European Victim Statistics Revisited

The statistics collected in the framework of the European Union are in case in point. An EU-funded study of Van Dijk et al. (2014) shows a stunning variation in what the concept of an identified or presumed victim actually means within the institutional contexts of various EU countries. Some examples suffice to convey the scope of this variation. In the Eurostat 2015 report, Sweden, as just mentioned, reported exclusively on victims involved in trafficking cases irrevocably adjudicated in a Swedish court. At the other extreme, the Netherlands reported on all persons encountered by state institutions or dedicated NGOs showing “any sign of having been trafficked.” The UK collects data on both persons identified as presumed victims of trafficking and on those conclusively identified as victims by the authorities. In earlier reports to Eurostat, the UK reported on the number of persons conclusively identified as victims by the authorities. In later reports to the EU, the UK, like the Netherlands, switched to the much higher numbers of presumed victims. As we will see below, in reports to UNODC, the UK once again opted to report on the smaller number of definitely identified victims (UNODC 2018). France has to date not established a formal identification mechanism for victims of human trafficking of any sort. The French statistics sent to Eurostat are obtained from police administrations of recorded crimes and include cases of illegal pimping and other related offences. Although France has not provided metadata on its reported numbers of victims, the numbers included in the 2018 reports of the European Commission and UNODC
still seem to reflect numbers of crimes recorded by the police for a broader category of crimes than human trafficking alone. The recorded victims reported on by Germany relate to victims of human trafficking recorded by the police. These statistics exclude victims which have been recorded by NGOs only.

Considering the vast differences in the meaning of the concept of an identified or presumed victim, the EU statistics on identified victims can, in our view not in any straightforward way, be compared with each other. They can only be meaningfully understood on a country by country basis by making full use of the metadata provided in the reports concerning each country’s unique legal and institutional context. Such statistics do not meet the agreed standards for international statistics.

Differences in identification mechanisms impact not just on the numbers of victims identified but also on the types of victims. The European statistics show huge variation in the proportions of the victims in terms of types of exploitation, age, and gender. In some countries, for example, very few male victims of trafficking for labor exploitation are identified. These differences do not necessarily imply that victimization of males by forced labor is rare. They are as likely to reflect that detection efforts in these countries remain strongly focused on trafficking for sexual exploitation. In other words, both the numbers and the type of victims identified per country are heavily influenced by the scope and focus of the national identification mechanisms and practices in place.

**Global Statistics**

So far, the European Union has failed to collect comparable statistics on human trafficking. As is to be expected at the global level, UNODC has not fared much better. The statistics on numbers of identified victims provided to UNODC by countries across the world vary within an even broader range than those of European countries. Unlike the Warsaw Convention and EU Directive, the Palermo Protocol itself contains no provision on the need to establish victim identification mechanisms. At this juncture, only a minority of non-European countries seem to have introduced such mechanisms. By way of example, neither Canada nor the USA has done so, at least not at the federal level. Although the number of national agencies collecting victim data has increased over the years at the global level, not much is known about the way these statistics are collected. In the absence of metadata on this issue, it is very difficult to determine the meaning of the statistics on identified victims presented in the Global Reports on Trafficking in Persons of UNODC. The UNODC questionnaire asks member states to report on persons “identified as victims of trafficking in persons by State Authorities.” This definition excludes persons identified as presumed victims by dedicated NGOs in the framework of National Referral Mechanisms. The statistics sent in by the UK duly comply with this instruction. However, several other Western countries, including the Netherlands, seem to have reported on all persons identified as presumed victims by any institution including NGOs. Even the guiding definition in the questionnaire seems to be interpreted in different ways.
Regional Numbers at the Global Level

Having made these caveats about their comparability, the following figures provide an overview of the latest available numbers of identified THB victims published by the UNODC and the European Commission, respectively. First, we will present the numbers of recorded victims in the main world regions by gender and age in 2016.

Figure 1 shows that by far the highest numbers of THB victims are identified in Western and Central Europe and North America (predominantly the USA). As a consequence, the global statistics on identified victims are somewhat dominated by the results from these Western nations. Although the number of countries participating in the survey shows a small increase, some countries are still conspicuously missing or have provided only partial data. These include several major countries including India, Pakistan, China, and France.

Figure 2 shows the breakdown of the total numbers of recorded victims in 2016 according to gender and age.

The breakdowns show that in 2016, 54% of identified victims were adult women and 27% were minors, mainly girls (22%). Since the first counts in 2004, the percentage of adult women among the victims has gone down from 74% to 54%. This trend is explained by the growing number of registered victims for nonsexual exploitation. While also in 2016 a majority of trafficking victims are subjected to sexual exploitation, other forms of exploitation are more often detected than before. The numbers of identified victims of (trafficking for) forced labor – a broad category which includes, for example, exploitative practices in manufacturing, cleaning, construction, agriculture, catering, restaurants, textile production, and domestic work – has increased steadily in

Fig. 1  Total number of recorded victims of THB per global region in 2016 or most recent year available, by gender and age (UNODC 2018)
recent years. Some 34% of the victims detected in 2016 were trafficked for forced labor. The number of registered victims of trafficking for exploitation that is neither sexual nor forced labor, such as trafficking of children for armed combat, or for involvement in petty crime or forced begging, is also increasing (7% in 2016).

There are considerable regional differences with regard to the registration of various forms of exploitation. While trafficking for sexual exploitation is the main form detected in Europe, North and Central America, and East Asia, forced labor is the main form in Southern, East, and West Africa and the countries of the Middle East. In North Africa, other forms of exploitation, such as exploitative child begging, were more frequently detected than other forms. The gender ratio is less skewed in regions where more cases of labor exploitation or forced begging are detected. As explained, these differences might reflect both variation in the actual occurrence or simply in detection capacities and efforts.

**National Numbers**

The UN’s Global Report on Trafficking in Persons itself does not present THB statistics of individual countries. Figure 3, derived from the dataset of UNODC, shows the total number of victims, adult, and children, in 2016 from a sample of countries across the world.

The national numbers of recorded victims show a strikingly high degree of variation. By far, the highest numbers, for both adult and child victims, are reported by the USA, some West European countries (notably the UK, Germany, the Netherlands, and Rumania), and Nigeria. By comparison, the absolute numbers registered in Algeria, Australia, Canada, Japan, South Africa, and Sweden for both adults and minors are extraordinarily low. The comparatively low numbers of the latter countries suggest fundamental insufficiencies in their methods of identifying victims of THB. As noted, some of them even lack nationwide identification mechanisms altogether and solely rely on police administrations.
The numbers of some countries also show great instability over time. The numbers of victims reported by the USA, for example, have gone up from 500 in 2012 to 2000 in 2013 and subsequently jumped to 5582 in 2016. In contrast, the number reported by Belarus went down from 362 in 2010 to 184 in 2016. The numbers of recorded victims in the Netherlands remain comparatively elevated but have between 2014 and 2017 dropped by 40%.

This lack of stability over time could, in theory, reflect changes in actual numbers, for example, because more or fewer “big” cases with many victims were detected. However, the evidence suggests that they are more likely to reflect sudden changes in identification and/or recording mechanisms. In Belorussia, for example, the government stopped reporting on trafficking for the purpose of forced labor (mainly in Russia). The latest UNODC report provides several examples of increases in the number of detected victims in a country after the introduction of new institutions or anti-trafficking programs (UNODC 2018). Decreases seem sometimes driven, as has been the case in the Netherlands, by a significant fall in detection efforts by law enforcement agencies due to restructuring or to the rise of other priorities such as irregular migration and terrorism crowding out resources.

**European Numbers in Focus**

In recent years, the European Commission has, as mentioned, been mandated to collect statistics on victims of THB from all EU member states and associated countries. The EU asks its member states to report on all victims identified by state agencies or relevant NGOs and to distinguish between formally identified and presumed victims. The total number of registered victims of human trafficking...
in the EU was 11,385 in 2016. Although the coverage of the survey has increased somewhat over the years, there still are many missing values in the figures.

Figure 4 shows the absolute numbers of victims in 2015 and 2016, as published by the Commission in 2018. These are, at the point of writing (December 2018), the most up-to-date EU statistics on recorded victims of THB.

A comparison with the EU rates with those reported on by the same countries in 2016 to the UNODC reveals many differences. Some of these can be explained by the different definitions of an identified victim employed by UNODC and Eurostat, respectively. As explained, the UK and Sweden have reported to UNODC on persons irrevocably identified as THB victims by the authorities. To Eurostat, they appear to have reported on presumed victims instead. Other differences, however, are less easy to understand.

Figure 4 shows, once again, huge variation in the numbers of identified victims among European countries. The mean rate per 1000,000 inhabitants is 22. The highest rates per capita were reported by the Netherlands (72), Hungary (54), and the UK (51). Many European countries show rates below 10, including Spain (5), Germany (6), and Poland (5). The distributions according to type of exploitation and gender show large variations across the EU member states too.
Evaluation

Among criminologists, an emerging consensus exists that statistics on police-recorded crimes are unfit for comparing true prevalence of this social phenomenon across countries (Van Dijk 2008). Such statistics mainly reflect the varying capacity of police forces to detect and register various types of crime. For example, most formerly communist countries tend to record much lower rates of common crime than Scandinavian countries although their levels of crime are similar. Our review of the UNODC and Eurostat statistics on recorded victims of trafficking in persons suggest that, unsurprisingly, this is also the case with trafficking in persons, a complex type of crime requiring special detection and identification efforts. A multivariate analysis by the econometrist Young showed that the numbers of identified victims of countries are correlated with the resources for law enforcement available per capita (Young Cho 2013). This correlation would most probably be even stronger if the dependent variable would have been the resources available for fighting human trafficking and identifying victims. In other words, countries seem to identify and record victims to the extent that they make or do not make serious efforts to do so.

To complicate matters even further, it should be born in mind that the numbers of victims recorded by typical countries of origin such as Eastern European countries or a country like Nigeria are to a large extent dependent on primary identification and recording of their nationals by institutions in destination countries. Statistics from such countries of origin do not faithfully reflect detection efforts by their own national law enforcement agencies. The repatriation of identified victims back to their home countries also means that the total count of identified victims is inflated by double counting of a large proportion of all victims. Within the European Union, the total number of identified victims of 11,000 in 2016 might be inflated by 30% or more because of double counting of victims primarily identified in Western Europe and subsequently identified again in their home country such as Rumania or Bulgaria upon repatriation.

The fact that statistics on recorded victims of human trafficking say very little about their true numbers does not mean they provide no useful information. Both global and European statistics on detected victims highlight which types of exploitation come to the attention of the authorities in various countries or regions. They also give important insights in the cross-national flows of detected victims of trafficking. This information tells destination countries from which countries the victims they identify have been recruited. Last but not least, these statistics can be used to calculate which proportions of identified victims subsequently receive assistance, residence permits, or compensation as the relevant international treaties prescribe. These proportions are performance measures and benchmarks for the institutions involved. They can also be used to identify gaps between numbers of identified victims and numbers of successful prosecutions of traffickers (Greta 2015; UNODC 2018). In many countries, notably in Africa and Asia, but also in some European countries, the latter gaps are so huge that they suggest near impunity for traffickers. Although many victims of trafficking are identified, few of them will ever see their traffickers brought to justice.
In conclusion, statistics on identified victims of THB show only the varying part of the phenomenon which is detected by the authorities, and however useful for other purposes this may be, such statistics cannot be used as comparative measures of the volume and trends of THB. Even if their comparability would be improved, statistics on identified victims per country will always just show the variable tips of the icebergs made visible by the authorities or NGOs. For both scientific and policy purposes such metrics are not nearly good enough to understand what is really happening on the ground.

**Estimating the True Numbers**

Insiders such as the Dutch Rapporteur on Human Trafficking agree that to monitor trends in human trafficking for policy purposes, statistics must be collected on the numbers of THB victims regardless of their identification by the authorities (De Vries and Dettmeijer-Vermeulen 2015). A first pioneering attempt to supplement officially registered numbers of victims with data from informal sources was made by UNODC in 2003. Information was collected on incidents of THB reported in public sources, including public media. Many of these incidents had not been recorded by the authorities. This innovative project yielded a tentative, first ever global ranking of countries according to the numbers of victims reported on in public sources, differentiating between source, transit, and destination countries (Kangaspunta 2003). Countries where few or no victims had ever been officially identified were put on the map of human trafficking flows for the first time in history on the basis of estimated true numbers. A case in point was Australia. This country featured among the top ten destination countries in the UNODC report, while its government at the time denied any significant existence of human trafficking on its territory. Although this ranking exercise was groundbreaking, it attracted the criticism that also media reports often simply reflect cases detected by the authorities and may thus also mainly reflect governmental detection efforts rather than true prevalence.

In 2005, the ILO published a global estimate of victims of forced labor, including sexual exploitation based on an innovative methodological approach (ILO 2005). This estimate was, like the UNODC study, based on counts of cases of victims of forced labor reported in governmental and/or media reports. By comparing the cases found by two independently operating teams of analysts, the count was extrapolated to a total estimate with the statistical technique of Capture-Recapture. The results showed a minimum global estimate of 12.3 million victims of forced labor at any point in time during the period 1995–2004. One of the criticisms leveled at this study was that independent analyses of available reports by separate teams do not exclude a possible high degree of dependence between the reports themselves, thereby flaunting a requirement for a CapRecap extrapolation (Van der Heijden et al. 2015).

Around the turn of the century, many Western countries introduced large scale population surveys on recent experiences with victimization by common types of
crime. In addition, a standardized victimization survey, the International Crime Victims Survey (ICVS), had been conducted in over 40 different countries. Building on these experiences, a bespoke survey on victimization by trafficking was pilot tested by the ILO in a few countries. In 2012, the ILO improved on its methodology by combining an estimate of recorded cases based on capture-recapture methodology with the results of a small number of standardized survey studies among populations of returned migrants in developing countries about experiences of exploitation abroad. The 2012 results produced an estimate of 20.9 million victims at any point in time covering the period 2002–2011 (ILO 2012). In 2014 and 2015, dedicated victimization surveys among population groups at risk of being trafficked, identified through respondent-driven sampling techniques, were pilot tested in the USA (Zhang and Cai 2015). These surveys suggested that 30% of Hispanic migrant workers recruited at pickup places in California had been exposed to exploitative practices that would qualify as forced labor under American law and jurisprudence when detected.

A major subsequent breakthrough at the international level was the commissioning by the Australian NGO Walk Free of standardized surveys among representative, probabilistic samples of national populations as part of the World Poll of Gallup International (Walk Free Foundation 2018). The survey program was expanded in 2016 to a total of 54 surveys in 48 countries. The key screener question used in these surveys was “Have you or has anyone in your immediate family, ever been forced to work by an employer or a recruiter?” Respondents responding positively to this opening question were subsequently questioned about the nature of the force used against them, to determine whether their work conditions amounted to a case of forced labor/modern slavery according to the ILO definition. Extrapolating from the results of these surveys, the global number of people experiencing forced labor at any time in 2016 was estimated at 24.9 million, excluding cases of forced marriage (Walk Free 2018).

For Europe and Central Asia, the estimated total of victims amounted to 3.6 million at any given time or 3.9 for every 1000 inhabitants (Walk Free, 2018). Of these, an estimated 1.3 million victims had been exploited on the territory of the European Union. It is worth noticing that this estimated true volume for the EU is more than ten times larger than the 11,000 identified victims per year reported by the European Commission for 2016. It is also worth noting that a much larger part of the estimated victims in the EU were victims of labor exploitation than that of the recorded victims. Compared to the ILO/WF estimates, the identified victims recorded by the European Commission appear to be, as expected, to be just “the tip of the iceberg.” Especially many victims of labor exploitation appear to remain largely under the radar in the official counts.

**Evaluation**

In recent years, considerable progress has been made in the estimation of the true volume of forced labor/trafficking in human beings through the application of
population survey methodologies. There remains, however, much room for improve-
ment. First, the surveys in their current form seem to have been successful in
estimating the prevalence of trafficking for labor exploitation only. They have
been unable to detect a credible amount of cases of sexual exploitation. Second,
the surveys have so far almost exclusively been conducted in non-Western countries.
In Europe, surveys were only conducted in three countries in Central Europe. No
surveys were conducted in North America at all. The extrapolation from the results
of these three surveys to estimates for individual countries within North America and
Europe has been done through risk modeling. More precisely, it was done through a
multilevel regression using the prevalence of proven THB risk factors such as
socioeconomic vulnerability and weak governance as factors to predict the numbers
of victims of labor exploitation in countries where no surveys had been executed.
Estimates of the prevalence of sexual exploitation were consequently made by
applying the ratios between forced labor and sexual exploitation found in the global
dataset of the International Organization for Migration. An ongoing debate on these
extrapolations between the main authors and external reviewers can be found at the
website of Coalition 8.7 (http://delta87.org/2018/12/benefits-limitations-modelling-
risk-modern-slavery).

A major asset of Walk Free’s survey-based methodology is that in all 48 countries
a standard definition of forced labor/human trafficking was used. The use of a
uniform definition in the questionnaire has obviously advanced the comparability
of the estimates. The downside of this approach is that the estimates are dependent
on the operational definition used in the questionnaire designed by the research team.
Governments could rightly question whether this definition is legally correct from
their national perspective. In the survey at issue the definition seems heavily
influenced by the ILO definition of forced labor dating from the 1930 ILO Conven-
tion. In the screener question cited above, the concepts of “force used” against the
victim and his/her “inability to leave” the workplace are crucial elements of the
definition. However, from the perspective of the Palermo protocol, it cannot be
safely assumed that all victims of human trafficking will during an interview self-
define as having been “forced to work.” This will not be the case, for example, if the
exploiters have abused their position of vulnerability rather than used physical force
against them. The screener about their “impossibility to leave” may also be too
narrow. A recent ruling from the European Court of Human Rights has explicitly
rejected the notion that trafficking in human beings presupposes the victim’s impos-
sibility to leave the workplace (Chowdury and Others versus Greece, ECHR 2017).
Another problem with the questionnaire is that little attention is given to the
economic exploitation suffered by the victims. Especially in a European context
where the concept of forced labor/human trafficking is increasingly interpreted by
law and/or jurisprudence as a severe form of economic exploitation. This implies
that the financial gains of the trafficker by not paying a reasonable salary are a
defining element of the offence. In this respect the ILO-informed set of questions
may prove to be too limiting. When a new round of surveys is conducted in Europe,
the questionnaire might have to be tailored to better reflect current legal notions of
criminal exploitation in the region.
The Way Ahead: Bespoke Surveys and Multiple Systems Estimation

The time seems ripe for further efforts to estimate the true prevalence of victimization by human trafficking. Plans have been made by UNODC, ILO, and the foundation Walk Free to conduct a new series of population surveys on experiences with THB in order to produce better, and country-specific, estimates of the real numbers of victims. An important breakthrough in this respect is the adoption in October 2018 by the International Conference of Labour Statisticians of Guidelines on the Measurement of Forced Labour.

An important limitation of the Gallup World Poll is its sample sizes of 1000 per country. With such small samples, changes over time between the rates of individual countries will rarely reach statistical significance. As said the fact, that respondents seem to be reluctant to talk to interviewers about sexual exploitation also remains a problem. A special challenge in the years ahead poses the estimation of human trafficking through survey-research in Western countries. It is far from certain that the Gallup World Poll’s random samples will prove to be an effective instrument to estimate the prevalence of human trafficking. Exploitative practices in the Western world are heavily concentrated among vulnerable groups such as migrant workers, especially those with an irregular status. These groups will largely be missed with random sampling among the total population. A better model is the bespoke surveys conducted in the USA among migrant workers using respondent driven sampling techniques (Zhang and Chai 2015). Whether such complicated and expensive surveys will be conducted at a large enough scale anytime soon, remains to be seen.

Fortunately, an alternative method to estimate the true numbers of THB victims was recently successfully piloted in the UK and the Netherlands. In countries with functioning National Referral Mechanisms victims of THB are often identified by several governmental agencies such as the police, immigration and labor inspectorates, as well as by NGOs. While the possibility of the same victims being recorded by two or more organizations was initially regarded as problematic, the recording of the same victims on more than one list offers opportunities for estimating the true numbers through statistical modeling. The technical terms for such modeling are Capture-Recapture analysis and the more advanced version of Multiple Systems Estimation/MSE (Van Dijk and van der Heijden 2016). The statistical modeling produces an estimate of those victims which have not appeared on any of the lists from police, NGOs, or other institutions considering the distribution of the recorded victims over these lists. These extrapolation techniques have earlier been widely used to estimate the true volumes of elusive populations like heroin injectors, victims of domestic violence, or casualties during civil wars by comparing persons recorded by hospitals, law enforcement of assistance agencies.

In the UK, the true volume of victims as estimated through MSE, using data from inter alia the police, labor inspectors, and NGOs was found to be four times higher than the number of identified victims (Bales et al. 2015). In the Netherlands, the true number was estimated as 6500, or five times the official number (van Dijk et al. 2018). The Dutch estimate differentiates between gender, age (minor/adult), Dutch
Discussion

A strength of the MSE approach is that it relies on the lists used by relevant institutions in a country and therefore does not impose self-made definitions of the phenomenon. An obvious limitation is that comparability of the results across countries is not strictly assured when the official definitions used are not harmonized. Further harmonization of official definitions remains a priority when applying MSE.

The MSE-based estimates done so far tend to be considerably higher than the officially recorded numbers but lower than the survey-based estimates. These discrepancies require further reflection and scrutiny. MSE-based estimates can be regarded as the numbers that would be recorded by currently existing National Referral Mechanisms if all agencies involved would maximize their identification efforts. These estimates may still miss the types of cases that are totally hidden from the authorities and/or fall outside their current legal or operational mandates. There might therefore still exist a more deeply hidden part of the “iceberg” than that revealed by MSE.

Alternatively, the much higher survey-based estimates might be somewhat inflated by “false positives” caused by misperceptions or memory problems of the lay persons participating in such surveys as respondents. Estimates of ordinary violent or property crime based on populations surveys have been found to be somewhat inflated for methodological reasons that are hard to bring under control. For this reason, most experts agree that the results of such surveys must be seen as useful complements of official figures but not necessarily as incontestable estimates of the true levels of crime. Police figures provide unique information on the nature the most serious forms of crime. Survey-based estimates give reliable information on trends over time in the volume of common crime. Each of these types of statistics serve their own important purposes (Lynch and Addington 2006). In the case of human trafficking statistics three alternative counts are now becoming available that can supplement each other. If figures of officially identified victims decrease over time, this result can be checked against the findings of surveys and MSE studies. If the latter do not confirm the decrease, it is likely to be an artifact of deteriorated recording.

Further Multiple Systems Estimations are currently ongoing in some other European countries. A United Nations Manual on how to apply MSE to lists of identified national/non-Dutch national, and type of exploitation (sexual/nonsexual) of the victims. The estimations show that victims of nonsexual exploitation (forced labor) and child victims are significantly less likely to be identified by Dutch institutions than other categories. More recently, MSE-based estimates have been made using multisource datasets from Rumania, Ireland, and Serbia (UNODC/Research Briefs 2018). In all these countries, child victims were found to be the least likely to detected. Further MSE studies carried out in Australia and the USA have produced results similar to those found in Europe (Lyneham et al. 2019; Chan et al. 2019).
victims of human trafficking is in the making. If, as planned by UNODC and the Walk Free Foundation, more countries across the world are assisted to apply MSE using their multiagency databases on identified victims, more results from this alternative method of estimating the prevalence of victimization by different types of THB will become available.

Tackling human trafficking and forced labor seems set to remain a political priority in many parts of the world. As said, action against these crimes has been incorporated in the newly adopted Sustainable Development Goals of the United Nations. Agreement has also been reached on “the numbers of victims of human trafficking disaggregated by sex, age, and type of exploitation” as indicator to measure progress in achieving this SDG. Governments and international organizations, as well as international foundations such as Walk Free, seem ready to continue investing in the production of more reliable and more comparable statistics on THB victims. Improvements are to be expected in the collection of recorded numbers of victims using digitalized information systems. Better estimates of the hidden figures are likely to become available through extensive and repeated survey research among national and high-risk populations, as well as through Multiple Systems Estimation. When creatively used, these newly produced metrics will put the global fight against human trafficking on a stronger evidential footing and allow more rigorous monitoring of its successes, setbacks, and failures.

Cross-References

▶ Ethical Considerations for Studying Human Trafficking
▶ Measuring the Nature and Prevalence of Human Trafficking
▶ “No More Interviews Please”: Experiences of Trafficking Survivors in Nepal
▶ Using Law Enforcement Data in Trafficking Research

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Using Criminal Routines and Techniques to Predict and Prevent the Sexual Exploitation of Eastern-European Women in Western Europe

Jorn van Rij and Ruth McAlister

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Abstract

People involved in the trafficking and sexual exploitation of women tend to operate within an organized network. These networks can differ in complexity and size and the different ways they operate. The Internet has become an important way to solicit the victims and bring them in contact with potential customers. Besides the Internet, other technological means are also deployed to avoid detection. In order to be efficient in their investigations, law enforcement agencies need to be aware of changes in networks, existing cooperation between organized crime structures and networks, and methods used by criminals. This chapter provides insight in the changes in modus operandi and will advise on how to adapt their operations accordingly to be more effective.

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Introduction

It has been almost 400 years since the notorious pirate and king of Salé, Jan Janszoon – who after his conversion to Islam became known as Moerad Raïs – scavenged the coasts of Northern and Western Europe looking for European Christian slaves who he could sell off in Algiers. Most of the women and young men captured on these raids were sold as sex slaves and taken all over the Ottoman Empire never to see their home again. In order to avoid detection, Raïs cleverly applied different techniques as sailing under different flags and establishing an alliance with the Dutch Republic thus saving him from the gallows on more than one occasion (Tinniswood 2011). It is estimated that Raïs enslaved thousands of innocent men, women, and children, condemning them to a life of misery and hardship. In current times, Raïs would, without a doubt, be categorized as a human trafficker; and even though times have changed, many men, women, and children are still being forced into a life of slavery.

Since the decay of the Ottoman Empire after the First World War, we see a huge leap forward toward gender equality and fundamental human rights which both aim to abolish slavery. This however doesn’t mean kidnapping, trafficking, and slavery no longer exist, rather it has evolved into other types of exploitation with the use of different methods. Not only did the nature, extent, and applied modus operandi change, the victims also changed. While Raïs targeted Western European Christians living unprotected near the coasts, new victims for sexual exploitation tend to come from the so-called source countries which are relatively poor, have a low level of living standards, and, on a more personal level, vulnerability caused by interpersonal problems which forces people to leave the country. Reviewing the nationality of victims of Trafficking in Human Beings (THB) and sexual exploitation in Western-European destination countries, a substantial part of these victims are from so-called Eastern-European source countries (Europol 2016). One thing, however, has remained the same since the times of Raïs; just like him, modern day traffickers still take advantage of the different vulnerabilities of victims and profit from them while abusing countries’ legal and social systems. These systems frequently lack knowledge of crime, and because of this, a lack of control gives the traffickers the possibility to exploit their victims. By using modern day technology and techniques, traffickers continue to be able to effectively avoid detection and maximize their profits. Through their use of these which facilitate crimes and avoid detection, crime structures themselves have also evolved. They changed from Moloch pyramid-like structures into highly flexible networks, each with its own specialization and, within each network, a limited number of criminal experts who work together to commit crimes (Van Rij 2014).
In light of these changes in the way organized crime operations are structured and their increased use of technology, this chapter outlines how law enforcement agencies (LEAs) can use these changes to their advantage by adopting predictive policing.

**Human Trafficking: A Short Background**

Human trafficking, defined by Latonero (2011) as a form of modern day slavery, has attracted significant concern in both public and political arenas in recent years. It is the harsh reality of our modern landscape and referred to as the “the dark side of globalisation” (Lee 2011: 1). While the trafficking of human beings is far from a new form of criminal activity, with tales of slavery going back to imperial Rome (Walker and Hunt 2009), it was in the 1990s that growing evidence of exploitation, particularly of women and girls crossing borders to find work, alarmed the international community. Surtee’s (2008) work partially blames this on the fall of the Berlin Wall which opened the borders between East and West Germany, which allowed for trafficking from Southern and Eastern Europe to markedly increase. Recent statistics underline this concern with females making up 80% of victims of trafficking, with 69% trafficked for the purpose of sexual exploitation (Eurostat 2015). Sex trafficking comes in a variety of different forms, including forcing victims into prostitution and compelling victims to commit sex acts for pornographic purposes (Sarkar 2015).

THB is a fast growing phenomenon, affecting all parts of the world (Shelley 2010). The most commonly used definition of human trafficking is the broad one set out by The United Nations Convention Against Transnational Organized Crime and adopted by the UN General Assembly in Palermo, Italy in 2000, and with it two supplementary protocols on the smuggling of migrants and trafficking in persons – the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the smuggling of Migrants by Land, Sea and Air (Lee 2011). Commonly referred to as the Palermo Protocol, it specifically identifies three main elements of the trafficking process, namely recruitment, transportation, and control.

The adoption of the Palermo Protocol recognized for the first time the crime of trafficking in human beings prior to exploitation, and that an individual could be considered a victim if they had to endure at least one of the actions mentioned above by the means stated (Europol 2016).

** Trafficking Routes and Statistics**

Trafficking can manifest itself both within and between countries with fraud, force, threat, and deception lying at the heart of trafficking as mentioned earlier (Goodey 2008; Bekteshi et al. 2012). Not all cases of THB involve cross-border migration but
most do, with Winterdyk and Reichel (2010) in their work stating that no country appears to be immune regardless of social, economic, or political consequences.

There is some consensus in the literature that disparities in economic and social conditions are key to explaining the direction and flow of trafficking. In terms of “push” factors, traffickers and victims often share the same national and cultural background and will encourage victims to engage in unsafe initiatives based on promises of a better life (Europol 2016), and similar to other migratory flows, trafficking takes place from poorer countries to more prosperous ones (Lee 2011). While Burke (2013), in general, concurs with the contention that most victims originate in poorer nations and are trafficked to wealthier ones, this is not always the rule. Regardless of the specific country within Western European Union (EU) Member States, Europol (2016) illustrates that traffickers will rely on the “pull” factors of these richer destination countries to emphasize plentiful employment opportunities, higher salaries, and good working conditions. In relation to trafficking for the purposes of sexual exploitation, there is anecdotal evidence to suggest that the “business” is more profitable if operated in richer countries (US Dept. of State 2014).

It has been highlighted for some time that poverty stricken countries in Eastern Europe is one of the fastest growing regions for trafficked people, as well as key transit areas (Malarek 2004; NCA 2013). In an economy with limited employment opportunities, lack of education, and human deprivation, there are many incentives for men and women to turn to traffickers to achieve their migration objectives and for others to facilitate this criminal industry. As such, it is clear to see why the literature sees the causes of THB to be rooted in a global economy where human lives are nothing more than commodities. What is less clear from reviewing a variety of academic and grey literature is how many people fall victim to THB each year and consequently how many victims there are worldwide.

The most recent Trafficking in Persons Report (US Dept of State 2017) estimates that over 20 million trafficking victims exist globally and particularly draws attention to hidden risks workers may encounter when seeking employment, and calls for increased transparency in global supply chains. The International Labour Organization (ILO 2017) estimates that there were 24.9 million victims of forced labor (including those enslaved within the sex industry). The Global Slavery Index (GSI 2016) however places the number of enslaved people around the world much higher at 45.8 million.

At a European level, Eurostat have attempted to fill the void in terms of producing statistics that may be comparable amongst EU Member States. The first working paper on the trafficking of human beings was produced in 2013, while the updated version containing data for the period 2010–2012 was published in 2015 (Eurostat 2015). This report reveals that for the period 2010–2012, there were a total of 30,146 registered victims reported by the 28 EU Member States (Eurostat 2015: 22) with the overwhelming majority being women and children trafficked for the purpose of sexual exploitation (95%). Evidence from Europol (2014a, b) also identified increased evidence in Europe of intra-EU trafficking, with the majority of THB victims (71%) registered in Europol’s database being EU citizens with identifiable routes between source countries in the East to destination countries in the West.
This data illustrates that THB is a fast growing criminal activity with consequences impacting on all parts of the world (Shelley 2010), influencing the lives of many and requiring a proactive effective deployment of LEAs. Essentially, the trade in human beings has become a global business, reaping huge profits for traffickers and organized crime syndicates and causing serious problems for national and international governments, including the European Union. While THB can be at times a one-off crime, it is also more commonly perceived as falling within the umbrella of Organized Crimes (OC) as per the Palermo protocol. As such, greater understanding of this crime, through how organized crime groups (OCGs) operate and function will allow for more effective preventative measures to be adopted by LEAs. As this chapter will explore later, the Internet is a useful tool in the trafficking process, therefore providing a window to enhance this understanding.

Organized Criminal Gangs, Digital Technology, and the Trafficking Process

Information communication technology has revolutionized the lives of many people throughout the world. However, this technology is also exploited by criminals who now have the expertise and knowledge to remain distant from crimes they commit by using the anonymity of the Internet and different IT applications.

The literature reveals that digital technology offers abundant opportunities for victims to be recruited, transported, and exploited online. As social networking sites and online classified sites expanded, they became fertile sites for traffickers to communicate with and recruit victims. In particular, Craigslist which from 2007 has been criticized for its role in facilitating prostitution and sexual exploitation via its Adult Services sections (Latonero 2011). Meanwhile, Hughes (2014) notes that traffickers place bogus advertisements on employment sites in both source and destination countries, claiming to offer young women jobs in a variety of services, such as waitresses or nannies, carers, models or dancers, and present themselves as boyfriends. After a short time, the traffickers would force victims into prostitution (Sykiotou 2007) where they could be further exploited. Essentially, the Internet is being used by OCGs involved in THB to expand and conduct their operations, providing the anonymity they need to avoid detection. This is also acknowledged by the most recent Trafficking in Persons report:

New technologies are facilitating the online sexual exploitation of children, including the live-streaming of sexual abuse of children using web cameras or cell phones, often for profit. Mobile devices also provide new and evolving means by which offenders sexually abuse children as apps are being used to target, recruit, and coerce children to engage in sexual activity. Experts believe tens of thousands of children globally are sexually exploited online, and the number appears to be growing. The victims may be boys or girls, ranging from very young children to adolescents, and hailing from all ethnic and socio-economic backgrounds. (US Department of State Trafficking in Persons Report 2017)

Additionally, Mendel and Sharapov (2014) highlight the relative anonymity that digital technology affords criminal gangs. They are able to send communications
over the Internet using proxy servers, ToR, a virtual private network (VPN),
multihoming, using pseudonyms, and registering websites abroad to mask their
identities (EUROPOL 2014b). At the same time, criminals make use of the
different types of hardware like PGP-phones, equipped with advanced encryption
software, i.e., Loki. At the same time, there is the use of seemingly untraceable
messaging apps with message self-destruct options as Wickr, to communicate and
delete digital footprints. This has enabled criminals to remain distant from the
crimes they commit with reduced risk. Shelley (2011) acknowledges that these
enhanced communications have facilitated the growth of THB, with Dixon (2013: 39)
also stating that “traffickers look for newer technologies to stay a step ahead of law
enforcement.” This is also evident in an earlier report by the Vienna Forum to Fight
THB (UNODC 2008) in which it is acknowledged that traffickers are becoming avid
technology users, mostly however to avoid police interception and communication
detection which may compound law enforcement intelligence gathering and
operations.

Furthermore, the EU strategy towards the Eradication of Trafficking in Human
Beings (2012–2016) states that the Internet offers numerous possibilities to recruit
victims through employment options that are easily accessible via search engines
(European Commission 2012). Although traditional channels and methods for
trafficking remain in place, the use of online technologies by traffickers does
present opportunities to exploit many more victims by the click of a mouse
anywhere in the world, and in relation to sex trafficking allows victims to be
exploited on a much larger scale (EUROPOL 2014b). Sarkar’s (2015) work on sex
trafficking which contains interview data from traffickers supports this contention,
revealing that the perpetrators rely on, and use the Internet similar to that of a
formal business, put simply, to advertise their services and attract clients. This
evolving criminal digital “business model” resonates with findings from Europol
(2016) which documents that one of the most concerning aspects of trafficking in
human beings is the degree of professionalism adopted by organized criminal
gangs which is akin to a corporate business with perpetrators extremely competent
in the recruitment and marketing of “goods” and “services” online.

The majority of scholars are reasonably nuanced when commenting on
whether technology has actually increased the numbers of victims being traf-
icked (UNODC 2008; Latonero 2011). This mostly comes down to issues in
estimating the number of trafficking victims due to the myriad methodological
difficulties mentioned earlier; as such, technology is instead predicted to play a
role in the process, but whether it has increased the flow is simply too difficult to
say without robust evidence. Two areas, however, where there appears to be
some level of consensus is that the Internet being used as both a recruitment
ground for victims and for advertisements for soliciting clients (Surtees 2008;
Walker and Hunt 2009; Latonero 2011; Hughes 2014; Nichols and Heil 2015;
Sarkar 2015).

There are different crime networks and structures active within THB, one exam-
ple which will be elaborated upon later on are Outlaw Motorcycle Gangs or OMGs
(Sapens et al. 2016). However, this type of crime is not specific for just these types
of organizations structured in this way. Different organized crime groups, ranging from small local criminal networks to worldwide operating crime structures, are involved in THB and the sexual exploitation of women. A shared factor is the frequent presence of a transnational component as many of the victims are part of a European prostitution carrousel. This and the use of the Internet are the two ways on which LEAs can become more successful in tackling these crime networks and seek to work from a more preventive perspective.

**Law Enforcement Agencies’ Responses**

One of the ways LEAs could approach this new way of thinking in fighting sexual exploitation is by adapting a method of predictive policing by using crime mapping and geo-visualization of victimization on the basis of applied criminal modus operandi (MO) as routine behavior (Van Rij 2014).

While generally, there is a common consensus in the academic literature that suggests sex trafficking in the twenty-first century does have a technical element to it (Kotrla 2010; Surtees 2008; Latonero 2012, 2015; Kennedy 2012; Sarkar 2015). It is also pertinent to remember that although digital technologies are frequently used by perpetrators of trafficking, the underlying crime of trafficking in human beings remains the same: a trafficker tricks, coerces, or exploits the vulnerabilities of a victim to compel the victim to work, provide services, and engage in commercial sex acts.

Applying tested behavioral routines constitute the basis on which sexual exploitation within THB is organized. One of the ways these routines are visible is in the online soliciting of victims. As mentioned previously, trafficking is a serious criminal threat and the methods used by OCNs differ significantly depending on specific cultural, ethnic, and social elements. One common element, however, is that a majority of the victims of THB are women who are being trafficked with the purpose of sexual exploitation (Europol 2017). This exploitation is partly possible and made easier by the Internet as traffickers are able to unanimously offer their “goods” using online advertisement. The websites hosting these ads are visited by an enormous amount of punters daily who, again in complete anonymity, can find and select women who they want to buy sexual services off. This way of modern soliciting and curb-crawling is especially the case in those countries with either a nonregulated prostitution policy or a THB police which is repressive toward punters as in both situations regulated and controlled prostitution is absent which forces prostitution underground, where it becomes part of crime in all its aspects.

Reviewing European countries’ prostitution policies (Matthews 2008; Økland Jahnsen and Wagenaar 2017) and approaches to combat THB and prostitution demography, it is evident that a majority of the nonindigenous women working in prostitution in Western European countries and which can be identified as (possible) victims of THB originate from Eastern Europe, mostly Bulgaria, Romania, and Hungary (Comensha 2016 and Nationaal Rapporteur 2017).
Reviewing the conditions in which prostitution takes place within Western European countries, a specific situation called the prostitution carrousel can be identified and therefore made visible. As mentioned before, the prostitution carrousel exists out of travels made by (possible) victims of THB, and in its existence provides insight in how different organized crime groups cooperate on a facilitating level.

These routes lead to interesting questions on the nature, extent, and consequences of the exploitation of these women. At the same time, it provides information on routes and crime connections, and in turn this is a huge source of useful information for LEAs to work in designing more effective ways to combat THB.

As an example, the identified internal routes for Hungarian women and women from the Hungarian minority population of Romania are (Van Rij 2014) (Fig. 1). Jolanda de Boer, the previous THB public prosecutor for Amsterdam, states that the Roma borough of Huszártelep near Nyiregyháza is currently the main source for Hungarian female victims working in Amsterdam (docu: De aanklagers 2016). Amsterdam has between 4000 and 7000 women working in prostitution, and they do so in 400 windows divided in day and night shifts (docu: De aanklagers 2016). Half of these women come from Hungary and a significant part of them from Nyiregyháza. Another well-documented example is the Roma area of Madesjda near the city of Sliven, Bulgaria from which one third of all Bulgarian prostitutes working in the Netherlands derive from. In this specific case, one hotel in the region is looked at with special interest as all Bulgarian victims declare, at some moment in time, to have either worked out of or passed through this hotel. Not only the location in this specific case is of interest, but also the ethnic background of both victims and perpetrators as many of them belong to Eastern European Turkish minorities or to the heavily marginalized Roma.

The prostitution carrousel includes cooperation to facilitate THB and sexual exploitation and it starts within source countries. This facilitation is structured by and based upon local crime networks working independent from each other, only working together when this is required. This modus operandi (MO) is continued in transit and destination countries. When connecting these different local connections and the routes travelled, a European or even worldwide carrousel becomes visible. While assessing the routes that shape these carrousels, many victims give testimony of their travels and their victimization processes. Within these victim statements, many similarities in routes, i.e., visiting different countries and residing in specific cities or more specific locations within cities and boroughs, can be detected. The identification and retrieval of this information could help with the detection and identification of both perpetration and victimization. It also provides insight in applied MO which can be used by LEAs to slow down criminal expansion. This is also the case when looking at the persons/groups involved in the applied MO and the persons involved in the exploitation, like handlers and other people responsible for facilitating the crimes.
Fig. 1  Migration Patterns by Hungarian and Romanian Women
Trafficking and Organized Crime Groups

Since the year 2000, the United Nations Convention against Transnational Organized Crime has provided an internationally shared definition of an organized criminal group as “a group of three or more persons existing over a period of time acting in concert with the aim of committing crimes for financial or material benefit” (UNOTC 2000). However, this definition does not adequately describe the complex and flexible nature of modern organized crime network (SOCTA 2017).

In general, there are five types of organized crime groups (Albanese 2012: 233):

1. Rigid hierarchy: single boss with strong internal discipline within several divisions.
2. Devolved hierarchy: regional structures, each with its own hierarchy and degree of autonomy.
3. Hierarchical conglomerate: a loose or umbrella association of otherwise separated organized crime groups.
4. Core criminal group: a horizontal structure of core individuals who describe themselves as working for the same organization.
5. Organized criminal network: individuals engage in criminal activity in shifting alliances, not necessarily affiliated with any crime group, but according to skills they possess to carry out the illicit activity.

Albanese (2004: 4) further elaborates that

Organised crime is a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand. Its continuing existence is maintained through the use of force, threats, monopoly control…

This definition, however, is set out to address all different types of cooperation and structures, some more successful than others. A simple but striking example is the way in which OMGs are structured and how they can be identified as multiple types of organized crime groups. OMGs apply a network structure within a structured network cooperative approach. This way of applying a network structure within a network cooperative approach is illustrated by the way how OMGs are structured. OMGs exist out of different groups, so-called chapters. Each OMG has one leading chapter with a daily “management” which commonly exists out of a President, a Vice-President (VP), a Treasurer, and a Sergeant at Arms (SA). Other chapters affiliated with or which is part of the OMG brand will each have its own executive committee that is responsible for the specific chapter. Even though the brand of the OMG seems to be a structured organization on its own, the independent position and the existence of an executive committee per chapter make it difficult to prove a legal dependency and a central command structure. Therefore, each chapter can be seen as a network on its own and as such not seen as part of a larger structure.

This new way of organizing crimes proves difficult to fight and to prosecute, as the legal conditions for an organization are not easily met. The one thing that remains
by which these structures can be identified and dismantled one at a time is the way these seemingly independent networks operate on the basis of used methods that are based upon successful routines.

Since LEAs have become more successful in dismantling organized crime structures and disrupting their operations, criminals have become more inventive to avoid detection and adapted new ways of cooperation on committing serious organized crimes (Felson 2011). These groups of people working on committing serious crimes have slowly changed their MO by using the advantages which modern day technology has to offer. This is supplemented by the use of the anonymity of the Internet. By doing so, they have given themselves more freedom and possibilities to conduct their businesses.

Within these networks, however, some level of internal organization is still present which consists of the fact that the people involved are working closely together under predetermined conditions and discussed roles. This identification of structures within networks is important in order to reconstruct cooperation and relations in criminal investigation procedures. Next to this internal structuration, these networks also have an external level of structure, which exists out of the members of a network having regular contact with other organized crime networks (OCNs) to conduct their business. These contacts exist out of, among others, arranging transport and housing but also arranging workspace and permits for victims. Eventually, this cooperation also establishes the trade in victims in order to meet customer demand and limit the possibility of detection by establishing a working “prostitution carrousel” (Van Rij 2014). A prostitution carrousel is the continuous movement of prostitutes over different areas, cities, and countries. By doing so, traffickers limit the possibility of detection by LEAs, but it also limits the possibility for prostitutes to gain autonomy engaging in relationships with coworkers, clients, etc. And, last but not least, new faces bring in money as customers like change in supply.

In order to do so, there are five layers of organization visible within these inter- and intranetwork relationships, which run far beyond national borders. These layers, from low (local) to high (international), are as follows:

1. Handlers: Frequently men with a lower criminal status who are given menial tasks, responsible for on-street affairs, i.e., pick-up and bringing the women to their workplaces or clients, but also providing them with food, condoms, and other required materials.
2. Pimps/Caretakers: Frequently men, but on occasion also women who are running a local unit; usually this exists out of several locations from which the victims work out of. These pimps are responsible for up to ten girls at any certain moment in time and arrange accommodation, advertisement, etc.
3. Local-based “bosses”: These persons are responsible for supervising several units, and who are in charge of distributing the women over the units. These persons are responsible for boroughs or even cities.
4. Intermediates: Persons or groups operating on a national level who are responsible for arranging contact between local-based “bosses” in order to facilitate trade and sale of women between cities.
5. **Kingpins**: They oversee international transport and are responsible for entrapping or purchasing women internationally. They frequently operate out of a source country.

In case of the trafficking of women from East to Western Europe with the aim to sexually exploit them, this schematically looks like (This figure is based upon ongoing research into the international structures of organized crime groups involved in the sexual exploitation of Eastern-European women and information out of the analysis of police reports, observations, and interviews with men and women involved in the sexual exploitation of women in source (Hungary, Romania, Moldova, and Georgia), transit (Germany and Austria), and destination (Netherlands, Belgium, Ireland, and the United Kingdom) countries):

This figure visualizes the complexity and existence of different types of organizational structures present and networks involved in the sexual exploitation of women (Fig. 2), and it offers possibilities to conduct more efficient research into the actual exploitation while tackling the organization as a whole rather than tackling a handler or a pimp at a time.

**Organized Crime Groups and Organized Crime Networks Modus Operandi**

While assessing the modus operandi, the use and influence of the Internet in the soliciting of victims, and the way members of OCG and OCN maintain contact with clients, colleagues, and competitors, there is one common ground which can be identified. This being the routines on which these contacts and relationships are structured. Routine activities theory (Felson 2002) uses the bases of rational choice to reason that the potential for predatory crimes is inevitable and constant and closely related to three variables which, as will be discussed later on, are applicable on THB and sexual exploitation. These variables are: (i) a motivated offender; (ii) a “suitable target,” which is characterized by four attributes, knowingly value, inertia, visibility, and accessibility; and (iii) the absence of capable guardians (Felson 1986). This absence is closely related to social control as Felson’s interpretation of guardianship focuses on close (inter) personal relations rather than the presence of LEAs (Felson 1998/2011).

Criminals are everywhere where money is to be made and there are not many types of crime which are so lucrative, with a limited chance of detection and relatively low punishment as THB. This is because of the wide range of possibilities and ways to exploit victims and the fact they can be “sold off” and “used” over and over which keeps generating a steady stream of income. This is a certainty and one of the ways to earn money and use this money to climb up the criminal ladder getting involved in the trafficking of narcotics or weapons, which have a larger and quicker profit. Because of this, many local-based crime groups join forces to make exploitation possible, limit competition and risks, and maximize profits (Shelley 2010). Many of these groups work locally but due to the international character of THB, they also have connections with other crime groups on a local, nationwide, and
As mentioned before, the prostitution carrousel is one example of the necessity of this type of cooperation and mutual dependency and gives insight in different crime structures involved within the sexual exploitation of women. These crime structures vary from local low-level opportunistic criminals to highly advanced mafia-like crime networks.

Looking at the second element in Felson’s theory, a suitable target, it is noted that while examining victimization, similarities in background and situations can be identified. Victims of THB and sexual exploitation have low self-esteem; background of abuse, frequently within the family; difficulties with interpersonal relationships; and learning difficulties (Klatt et al. 2014). This third element also covered the absence of guardians due to bad relationships present in most trafficking cases involving women who are being trafficked to be sexually exploited. All of this can be combined with a low SocialEconomic Status (SES) that make the women even more vulnerable for exploitation by traffickers as there is also an economic drive for
money to support themselves or dependent loved ones, frequently small children or parents. The situation of Prostituting Utilizing Partners, or PUPS, who lure the women into a trap of love and dependency by applying methods like grooming and deception will not be addressed separately as this usually is the first step of the trafficking and exploitation process which takes place in source countries (Arsovska 2011). Although this specific method is based on the process of courtship and uses everyday routines in behavior focused on partner selection, it is of less interest as detection with the help of the Internet at this stage is not yet possible.

From Theory to Practice
The need for a system of predictive policing and using the modus operandi of organized crime against themselves is evidenced by the increasing quantity of data obtainable by THB units. The TRACE project noted that “An unprecedented volume of data can be captured, stored and processed for a multitude of purposes, including for the benefit of communities and individuals. Big data analytics software can scan for specific keywords and behaviours that could indicate unlawful activity, behaviours and locations of traffickers or those they have trafficked” (TRACE, D4.1, p. 66). Specifically, regarding crime analysis, the use of data can help and foster crime prediction. It can determine where crime is likely to occur and where suspects and victims are likely to be located (UN 2017). There is thus potential for LEAs working in the anti-THB domain to benefit from the positive impact that predictive policing is having.

In addition to data that the police have in their system, there is ample data on the web that could help with fighting THB. The crime is becoming more recognized and new cases are increasingly being uncovered, thus providing LEAs with new data as data are generated through every transaction (McCue 2015).

However, data is of little use unless you can work out what to do with it. Moreover, its use is reliant on technical, funding, and personnel capabilities, which allow units within LEAs to integrate technology into their modus operandi. This is also true of anti-THB units. In a society where information and communications technologies are ubiquitous and where the details of our lives are increasingly posted for all to see, law enforcement and intelligence agencies have unprecedented access to valuable information. However, they also have an unprecedented amount of irrelevant and unimportant information that must be sifted through to make any findings (Hildebrandt 2008). There is a need for the use of automation that makes this scenario manageable (Hildebrandt 2008). Automation holds the promise of efficiency, as machines can process data much quicker than a human can, and learn faster than humans (Ericsson and Simon 1984). Moreover, there is a common understanding that automation also contributes to the predictability and consistency of outcomes (Stranieri and Zeleznikow 2012).

It is recognized that only “few initiatives have attempted to use big data” in the context of THB police work. Some stakeholders are making use of available technologies, e.g., The US-based Polaris Project, a nonprofit organization that works to combat and prevent THB, which uses data analytics to run its hotline. In 2012, Palantir, a Silicon Valley startup, created software that streamlined Polaris’ network of resources into a single dashboard for call specialists to use, that informs them of
what areas require a response (Sneed 2015). The dashboard aggregates data according to geographical location while culling other relevant information such as age, immigration status, language needs, and shelter requirements to assist a specialist deliver assistance specific to a trafficked persons’ situation (Sneed 2015).

Being active online either using the surface, deep, or dark web, one’s presence always leaves a footprint and several footprints, a trail. By identifying these footprints and trails and following up on them, criminal networks can be identified, cooperation between organizations described, and operations mapped.

In order to work toward such a system of predictive policing on the basis of geo-visualizations for crime mapping, authors suggest six essential steps in order to assess the possibilities and effects. These steps are:

Step 1: Identification of victims in destination countries (information from victims and police on background, experiences, and travels).
This step needs the help of local LEAs or related organizations. By conducting interviews with identified and possible victims, the involvement of local people, their identity, and applied modus operandi can be identified. Victims are a main source of information, but it is difficult to retrieve this data and use the little information available within investigations. By applying different ways of interview techniques by selected officers, e.g., young female officers conducting an interview with a young female victim of forced prostitution within a living room lay out interview setting. This way information can be more successfully retrieved. This information needs to be stored and used for comparison and verification in other investigations on local, national, and European level, and by doing so insight can be achieved in crime structures and network.

Step 2: Hot spot detection in Eastern European source countries (e.g., Huszártelep / Nyiregyháza, Hungary and Madesja/Sliven, Bulgaria).
As mentioned before, criminals make use of tested routines to operate and stay under the radar. In specific countries, this is easier due to corruption or absence of local authorities to uphold the law. On the basis of the information provided by the victims in destination countries, hot spots in source and transit countries can be identified. As a followup, these hot spots can be investigated and possible victims identified before they leave the country.

Step 3: Profiling and identification of possible victims by cyber-ethnographic observations in hot spot region via the Internet.
The Internet has become an important way for criminals to attract men who are willing to pay for sexual services. The ways in how and through which websites this is happening needs to be researched. In case the Internet is used to advertise the women, a database should be set up in which characteristics of the women are described together with pictures used and the texts used within the ads. Similarities in, e.g., textual errors due to the use of Google translate are reoccurring in the texts of different ads, while at the same time the background of pictures can be used to verify if women are working at the same location or, at least, have been at a specific house. This can be seen as proof of existing cooperation and relations between persons.
Step 4: Monitor and provide insight in movement (transit type and countries) and other changes. Once travels are detected in source countries, this needs to be monitored; and after the borders are crossed, it is necessary to seek cooperation on a European level. As most of the crime networks will be using a similar modus operandi, the women once again will be solicited via ads on the Internet. The specific websites used need to be identified and, after this, an identification on the basis of the predetermined characteristics out of the source countries can be used by means of web crawler variables.

Step 5: Create a system on the basis of geo-visualization of recognizable patterns on a European level as a way to map crime on the basis of digital footprints. When a positive identification has been made, future movements need to be monitored. While doing so, relations and cooperations between local and (inter)national crime contacts can be identified. On a local level, dependency between handlers and pimps and local bosses can be identified, as are contacts between different organizations. On a national level, the contacts between different local bosses can be identified and the criminal structure they are in charge of. On an international level, identification can be made possible of bosses and intermediates by gaining insight in existing relations and moments of contact. Once these intermediates are identified, they can be investigated to identify the kingpins.

Step 6: Assess the possibility of the use of predictive policing. In those cases where reactive way of policing has proven its worth, it is time to apply the knowledge and evidence gathered to predict future movement, once victimization is detected in either source, transit, or destination countries. Once the routes and networks involved are known, it is easier to rescue the women with calculated actions and investigations. This, however, requires cooperation between different LEAs.

Although several of these steps are being used apart from each other in different ways by different LEAs and institutions in different countries, cooperation let alone agreed upon application of such a system involving each of the six steps is still missing (For a possible pilot setup using the different steps see: https://www.cepoleuropa.eu/sites/default/files/41-jorn-van-rij.pdf.).

**Conclusion**

Criminals involved in the trafficking and sexual exploitation of Eastern-European women are running ahead of governmental institutions as they are continuously improving their modus operandi with the help of modern IT applications to facilitate their operations and avoid detection. Despite existing international connections and the anonymity of the Internet, there is a need for local connections between different OCGs and OCNs in order to facilitate their operations. These local connections are
sooner and better identifiable than the existing international cooperation, which in turn can be made visible, and investigations made more effective when there is a “new” awareness within LEAs to adapt the way they investigate and research THB. They need to change the way information is gathered and used. Intelligence is the concept from which information should be combined and used to identify criminal patterns on the basis of local structures and routine activities within existing criminal relationships and the modus operandi applied by OCGs. Research and analysis should lead to new insights and backgrounds on the modus operandi and this data should be shared more easily both nationally and internationally. Only then, LEAs would be able to adapt a predictive style of policing building upon an approach of digital detection using insight and knowledge of changes in criminal modus operandi, operations, and structures. Crime mapping to give insight into existing relations between OCGs and OCN can help identify groups and persons involved from handler to kingpin, and by doing so can become more successful in the fight against THB for the purpose of sexual exploitation.

Summary

Human trafficking and the sexual exploitation of women is a crime which often has a transnational element. This transnational element gives organized crime groups, responsible for the sexual exploitation of vulnerable women through prostitution, possibilities to conduct their businesses. Legal gaps and limited cooperation and information sharing gives them a cover, which they use to continue their operations. In order to remain hidden, organized crime groups apply different ways in which they operate. Usually they work from local structures, using facilitators and brokers to get in contact with other organizations. However, these networks are highly flexible and able to adapt quickly if needed. Detection is extra difficult due to the situation increasingly happening online. Law Enforcement Agencies need to better understand changes in these cooperative structures and become more digitalized themselves, by using, for example, web crawlers and to develop new ways of data processing. Additionally, they could employ the methods utilized by criminals to remain undetected, as these methods and means have one important flaw. It always leaves a trail. By identifying these trails and following up on them, criminal networks can be identified, cooperation between organizations better understood, and operations mapped and eventually efficiently tackled using the digital evidence left behind. This chapter has suggested that to achieve such a system of predictive policing, using geo-visualization for crime mapping, six essential steps could be adopted by LEAs. This new way of identifying victimization and criminal activities in the field of human trafficking will ask for new insights, willingness, and structural cooperation in the area of intelligence gathering and sharing. This is a bold step; however, it also offers one solution to enhance anti-trafficking efforts, therefore ameliorating THB for the purposes of sexual exploitation.


Using Law Enforcement Data in Trafficking Research

Ella Cockbain, Kate Bowers, and Liam Vernon

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Abstract

Law enforcement data are a promising and largely untapped resource for academic research into human trafficking. Better use of such data can help inform and expand an evidence-based approach to counter-trafficking policy and practice. Authored by academics and a senior law enforcement practitioner, this chapter provides rare and important insights into the theoretical, practical, legal, and ethical considerations around using law enforcement data in human trafficking research. Its discussions should prove useful to researchers, practitioners, and policy-makers interested in understanding and tackling human trafficking more effectively. The chapter begins

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J. Winterdyk, J. Jones (eds.), The Palgrave International Handbook of Human Trafficking, https://doi.org/10.1007/978-3-319-63058-8_100
with a critical appraisal of the human trafficking literature, highlighting particular
gaps, imbalances, and weaknesses. The stage is then set to explore the utility and
applications of a long-neglected but empirically rich source of data on human
trafficking: those that law enforcement agencies generate and/or hold. The limita-
tions of law enforcement data are made explicit, and their benefits are explored,
with reference to relevant human trafficking studies and innovative research into
other crimes. Key considerations are addressed around the actual process of using
law enforcement data, drawing on the authors’ experiences as researchers and a
research enabler and a data provider. This chapter is informed in particular by four
recent human trafficking studies in which the authors were involved, all of which
used sensitive and hard-to-access law enforcement data. These innovative studies
spanned both small- and large-scale datasets; qualitative, quantitative, and mixed-
method enquiries; internal and international trafficking movements; and some of
the main variants of human trafficking: sex trafficking, trafficking for domestic
servitude, and labor trafficking across diverse licit and illicit labor markets.

Keywords
Human trafficking · Modern slavery · Evidence-based policy · Evidence-based
policing · Crime prevention · Labor trafficking · Sex trafficking · Domestic
servitude · Child sexual exploitation · Forced labor · Labor exploitation ·
Trafficking data · Trafficking research methods · Law enforcement data ·
Trafficking investigations · Trafficking prosecutions

The Trafficking Evidence Base: Weak Designs, Hard-to-Access
Data, and Skews in Focus

Human trafficking research, data, and statistics often have a bad reputation. Despite
considerable investment in legislation, policy-making, and interventions to counter
trafficking, the research base remains notoriously scant (see, e.g., Cockbain et al.
2018; Efrat 2016; Farrell 2014; Goodey 2008; Van Der Laan et al. 2011). The
trafficking literature is fragmented and underdeveloped: among the numerous crit-
icisms are the predominance of weak research designs, poor-quality data, insufficient
methodological clarity, questionable assumptions, emotive or politicized rhetoric,
ill-founded inferences, and conclusions not properly grounded in the findings
(Andrees and van der Linden 2005; Aronowitz 2001, 2009; Cockbain et al. 2018;
Di Nicola 2007; Feingold 2010; Goodey 2008; Kelly 2002, 2005; Laczko and
Gozdziak 2005; Lehti and Aromaa 2006; Tylldum 2010; Tylldum and Brunovskis
2005). There are also thematic skews, whereby the dominant focus is on victims,
international movements, and sexual exploitation: offenders, internal (domestic)
trafficking, and other exploitation types (e.g., labor or domestic servitude) are
comparatively neglected (Andrees and van der Linden 2005; Kleemans 2011;
Laczko and Gozdziak 2005; Winterdyk and Reichel 2010).

Such criticisms obviously do not mean there is no good research on trafficking
but rather that robust, rigorous, and high-quality empirical studies are the exception
rather than the rule. Many of the general shortcomings in the literature could be addressed through concerted efforts to improve the basic standards of how trafficking research is designed, conducted, and reported (Cockbain et al. 2018). Yet, data access remains a more fundamental barrier to the development of the knowledge base.

Research data can take two forms: primary (new data generated specifically for the study in question) or secondary (existing data collected for other reasons). Primary data are used heavily in trafficking research but overwhelmingly in one particular format: qualitative research interviews. With some key exceptions (e.g., Oram et al. 2012; TNS OBOP and the British Embassy Warsaw 2010; Turner-Moss et al. 2014; Zimmerman et al. 2006), there is limited evidence of other approaches to primary data collection, such as experiments, surveys, or evaluations. Qualitative research interviews have some clear strengths, including the ability to unpick different perspectives on complex issues in a nuanced and context-sensitive manner. They have limitations too, though, such as the costliness of generating data, difficulties accessing relevant participants, and reliance on convenience samples. The resultant studies tend to be small-scale, localized, and purely exploratory or descriptive: such designs simply do not support more explanatory, hypothesis-driven research or generalization to other contexts.

There are also many large-scale, top-down analyses that employ secondary data to address questions around the “scale,” “costs,” and “nature” of human trafficking, for example. Yet, such publications are often more promising in theory than in reality. Here, the knowledge production process is dominated by official agencies who are the “owners” of these large-scale datasets, who may not have the necessary interest in training, skills, or capacity for rigorous, sophisticated research (see, e.g., Cockbain et al. 2018). Outputs from such agencies rarely go further than presenting basic statistics, generally in the aggregate form: raw individual- or incident-level data are rarely made publically available for use by independent researchers. The validity and utility of various statistics generated by top-down enquiries into trafficking have repeatedly been called into question (Feingold 2010; Goodey 2008; Gozdziak and Collett 2005; Kelly 2002, 2005; Laczko 2005; Laczko and Grammena 2003; Tyldum 2010; Tyldum and Brunovskis 2005). Nevertheless, statistics of dubious provenance are widely and uncritically reported and repeated, leading to the risk that inaccurate information might undermine responses (Tyldum and Brunovskis 2005).

Although long underexploited by academic researchers, secondary data on trafficking have considerable and largely untapped potential to expand, diversify, and strengthen the trafficking evidence base. This chapter deals with one particularly promising and often neglected source of secondary data: data generated and/or held by law enforcement agencies (hereafter “law enforcement data”). Please note that law enforcement is a broad term, encompassing regional and national police forces, specialist agencies, prosecutors, the courts, international police organizations, private security contractors, and many more.

Although undoubtedly still marginal, recent years have seen an expansion in academic trafficking research that has used law enforcement data (e.g. Bjelland
2017; Brayley et al. 2011; Campana 2016; Cockbain 2018; Cockbain et al. 2011; Cockbain and Brayley-Morris 2017; Cockbain and Wortley 2015; Denton 2016; Farrell et al. 2012, 2014; Farrell and Pfeffer 2014; Gadd et al. 2017; Gavra and Tudor 2015; Kleemans 2015; Kragten-Heerdink et al. 2017; Mancuso 2014; Savona et al. 2014; Tamas et al. 2013). The specific sources employed in such studies have included intelligence logs and enquiries, arrest warrants, detailed investigative case files, legal databases, indictments, and other court case files.

Of course, human trafficking is not just a crime and criminal justice issue. It is a complex social phenomenon that has many dimensions including public health, economics, human geography, history, politics, and international relations. Just as law enforcement agencies cannot tackle trafficking alone, so too their data are just part of a wider puzzle – albeit an important part.

Limitations of Law Enforcement Data

Before proceeding, the limitations of law enforcement data should be made clear. First, such data by definition exclude the “dark figure” of crime: offenses, offenders, and victims that are not captured in official records. The dark figure of human trafficking may be particularly pronounced, since it is a clandestine activity that plays out in the margins of society. Additionally, even those victims who self-identify as such may be unwilling to report trafficking for reasons such as social or physical isolation; psychological or physical confinement; fear or mistrust of authorities; language barriers; threats or violence; fear of recriminations against themselves or their families; worries over their immigration status; and/or their own involvement in stigmatized or criminal activity (Aronowitz 2009; Cockbain 2018; Cockbain and Brayley-Morris 2017; Farrell and Pfeffer 2014; Helfferich et al. 2011; Hopper and Hidalgo 2006; Laczko 2005; Raymond and Hughes 2001). Using a method known as Multiple Systems Estimation (capture-recapture), Silverman (2014) estimated the dark figure of trafficking in the UK to be around 7,000–10,000 victims in 2013, in addition to 2,744 known to the authorities.

Second, law enforcement data may be subject to institutional bias (Andrees and van der Linden 2005; Tyldum and Brunovskis 2005), in the sense that cases that come to the authorities’ attention and are officially recorded may differ from those that do not. For example, victims who have certain demographic characteristics or who are exploited in certain sectors may be systematically less likely to be identified by the authorities. Institutional bias is important since it can affect the generalizability of findings, but it can be hard to establish the extent and nature of such bias in law enforcement (and other) samples. The reason why is that many of those groups most relevant to trafficking research (targets, victims, offenders, facilitators, consumers of trafficked labor, etc.) constitute what are known as “hidden populations” (Tyldum and Brunovskis 2005): groups for which the size, boundaries, and characteristics are unknown. Consequently, there is rarely a clear baseline against which to compare official data.
Third, law enforcement data are not a perfect mirror of crime problems or law enforcement responses but rather socially constructed datasets. They are shaped by criminal justice agencies’ goals, processes, pressures, and norms and are susceptible to human error and other biases (Bjelland and Dahl 2017; Maxfield and Babbie 2011; Noaks and Wincup 2004). In addition, trafficking seems to be something that is largely found when actively sought: law enforcement statistics may therefore be especially sensitive to fluctuations in, for example, awareness, skills, capacity, funding, and prioritization (Aronowitz 2009; Cockbain 2018; Dandurand 2017; International Organization for Migration 2001; Kelly 2002; Kragten-Heerdink et al. 2017; Laczko and Gramegna 2003).

These limitations are consequential and should be borne in mind when framing, designing, conducting, and interpreting research. Nevertheless, they are not grounds in themselves to rule out this important source of empirical data on trafficking. Of course, there will always be those that dismiss any academic researchers who dirty their hands with law enforcement data as “administrative criminologists” – i.e., the authorities’ lackeys. Such attitudes are naive, reductionist, and myopic and belie a poor grasp of how useful law enforcement data can be in informing crime analysis and intervention (for more on this contentious topic, see Mayhew 2016). When conducting virtually any research involving external agencies – be it as a research commissioner, data provider, collaborator and so forth – academics ought to make conscious efforts to maintain their independence and intellectual integrity. The same principle of course holds true when working with law enforcement and their data, and this theme will be explored further in subsequent sections.

**Law Enforcement Data: A Goldmine for Trafficking Research**

This section engages with the benefits of using law enforcement data in trafficking research: such data have considerable and underexploited potential to inform diverse empirical studies. First, there can be a whole host of practical and ethical advantages to using pre-existing data. From a practical perspective, working with secondary data can avoid duplicating data collection efforts, reduce the costs involved, sometimes (but not always) speed up the research process, and increase the reach, thereby enabling large-scale studies of hard-to-reach groups. From an ethical perspective, using “unobtrusive methods” (Webb et al. 1966) where possible and appropriate can reduce reliance on vulnerable groups (e.g., victims and offenders) and minimize the risk of side effects such as inconvenience, disruption, participation-related distress (Legerski and Bunnell 2010), and “research fatigue” (Clark 2008; De Angelis 2012).

Second, such data are often unparalleled in the information they contain about offenders and the crime commission process. These data can be particularly relevant to situational research, i.e., enquiries that focus on the “who,” “what,” “where,” “when,” and “how” of crime, rather than the “why.” These data are also invaluable in helping redress one of the most longstanding and pronounced skews in the trafficking literature: the comparative neglect of offenders and offending (Kleemans 2011; Laczko and Gozdziak 2005; Parmentier 2010).
Third, law enforcement data can support large-scale quantitative analyses. There is a particularly pronounced gap in the trafficking literature around high-quality, rigorous statistical analyses of trafficking issues using larger datasets (Andrees and van der Linden 2005; Cockbain et al. 2018; Tyldum and Brunovskis 2005). Law enforcement records are one obvious source of data for more sophisticated quantitative research, which could greatly advance the evidence base on trafficking. Research using inferential statistics, for example, has much to offer in helping tease out the relationships between variables and explain patterns observed in the data. Although many official publications include statistics on trafficking, these are typically (and understandably) administrative summaries as opposed to scientific research (Cockbain et al. 2018). For example, they tend to report on a series of variables at aggregate level (e.g., total number of victims of a given gender, age group, country of origin, etc.) without considering the possible interplay between these variables. To date, there have been just a handful of academic studies that have used law enforcement data to scrutinize the distribution and characteristics of trafficking cases at local or national level (Denton 2016; Farrell et al. 2012; Gadd et al. 2017; Kragten-Heerdink et al. 2017; Tamas et al. 2013; Cockbain and Bowers forthcoming).

Fourth, law enforcement data can support detailed, bottom-up analyses of particular trafficking problems. Such microlevel, empirical enquiries are a vital counterbalance to large-scale studies. Trafficking is a process crime rather than a one-off criminal event, and its distribution across numerous locations, times, and people can create analytical challenges. As with other complex and organized crimes (Bullock et al. 2010), many trafficking-related research questions may be better addressed through analysis of detailed investigative case files than aggregate crime records. Notably, most of the limited academic research on trafficking that uses law enforcement data has been at the microlevel. Such work has favored a case-study-based approach to exploring areas like business models, the crime commission process, and the structure of victim and offender networks (Brayley et al. 2011; Campana 2016; Cockbain 2018; Cockbain et al. 2011; Cockbain and Brayley-Morris 2017; Cockbain and Wortley 2015; Gavra and Tudor 2015; Jokinen et al. 2013; Kleemans 2015; Mancuso 2014; Savona et al. 2014). Through the careful, nuanced examination of empirical data, such studies have helped to expose common myths and stereotypes about trafficking.

Fifth, law enforcement data are invaluable for research into criminal justice practices and their effectiveness (Bjelland and Dahl 2017). The typical application of law enforcement data thus far has been to understanding trafficking problems, leaving responses comparatively neglected. The most obvious exception here is research in the USA into the challenges of investigating and prosecuting trafficking (Farrell et al. 2012, 2014; Farrell and Pfeffer 2014). Despite heavy investment in counter-trafficking, there are strikingly few evaluations of interventions (Cockbain et al. 2018; Van Der Laan et al. 2011). Secondary law enforcement data are a valuable source for evaluations of what is effective in preventing trafficking, protecting victims, and pursuing traffickers. Since trafficking is a complex, real-world problem, it can be helpful here to think not just in terms of “what works?” but how it works
Considerations When Using Law Enforcement Data

This section deals with considerations when using law enforcement data. It is written specifically within the context of human trafficking research and focuses firmly on the research process, rather than research methods. There is little prior research on which to draw here: in line with the conventions of social science scholarship, published studies tend to present a stylized, sanitized account that downplay or overlook issues encountered along the way (Kennedy 2015). Yet, understanding, anticipating, and responding to the messy realities of the research process are vital to the success of such research – and even to whether it happens in the first place. This section draws on the authors’ own experiences either as academics (first and second authors) or as a research enabler and data provider within law enforcement (third author). It is particularly informed by experiences across four recent trafficking studies, the key characteristics of which are summarized in Table 1. The National Crime Agency (the organization to which the third author belongs) was a data provider in two of the studies (case studies A and B) and a research enabler in the other two (case studies C and D), helping identify relevant cases for inclusion and facilitating introductions to relevant police personnel. The considerations raised here are not intended as an exhaustive or prescriptive list but simply a selection of issues that may well prove useful and relevant to future researchers and their law enforcement collaborators.

Initial Design and Contact

The choice of topic and research question(s) is fundamental to any study. When seeking access to law enforcement data that are not publically available, the chances of success may well be greater if a proposed study addresses an issue seen to be timely, relevant, and meeting a gap in the knowledge base. The trouble with trafficking is that the same issue might be perceived by researchers as uncharted territory and by officers as well-understood already, since law enforcement agencies often produce restricted internal analyses, the existence of which can be hard to establish from outside let alone their contents. There are also many aspects of human trafficking that are genuinely poorly understood but may not be seen as worthy of support, for example, because of their limited scale and impacts (perceived or actual).

Identifying law enforcement agencies that could be suitable research enablers, gatekeepers, and/or data providers and initiating early contact can help ensure that their views are listened to at the design phase. All the case studies from Table 1 involved early consultation with potential gatekeepers and data providers. The thematic focus of the research in case studies C and D was particularly influenced
**Table 1** Overview of trafficking research case studies (Please note the summary only covers those aspects of the project relating to secondary law enforcement data. Some projects had additional components that are not covered here)

<table>
<thead>
<tr>
<th>Case study</th>
<th>Research question(s)</th>
<th>Datasets</th>
<th>Data provider(s)</th>
<th>Method(s)</th>
<th>Key publication(s)</th>
<th>Key findings</th>
<th>Implications and applications</th>
</tr>
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<tr>
<td>A</td>
<td>Can the characteristics of trafficking cases reliably predict exploitation type: sexual exploitation, domestic servitude, or other labor?</td>
<td>Anonymized victim database from the UK’s National Referral Mechanism (NRM). Dataset contains topline data on 6,858 suspected victims identified to the authorities 2009–2014, of whom around 40% were officially assessed as having been trafficked</td>
<td>National Crime Agency</td>
<td>Exploratory data analysis and logistic regression analysis, with exploitation type as outcome variable and case characteristics as independent variables</td>
<td>Cockbain and Bowers <em>(forthcoming)</em></td>
<td>Variables such as victims’ gender, age, region of origin, source of referral, and region of identification were significant predictors of trafficking type. The overall models (sex vs. labor and labor vs. domestic servitude) were not only significant but had a good fit, and correctly predicted the majority of cases</td>
<td>The results highlight the need for a more nuanced approach to analysis and intervention that is sensitive to variation between trafficking types and regions. A one-size-fits-all approach historically developed around sex trafficking is unlikely to be effective. The limitations of the current database identified through the analysis (e.g., missing data, ambiguous categorization, clustering of cases) have been highlighted and fed into the Home Office’s review and restructuring of the NRM. They have also helped inform the development of National Policing’s...</td>
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<td></td>
<td>What is the geospatial distribution of labor trafficking cases affecting the UK and involving European victims? What are the characteristics of the victims, offenders, and crime commission process?</td>
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<td>B</td>
<td>Detailed case files for 453 victims of labor trafficking in the UK in 2012 and 2013. The sample comprised the full set of officially recognized labor trafficking victims who came from the European Economic Area (EEA) and were trafficked to, within, and/or from the UK; together they accounted for about 80% of overall confirmed labor trafficking cases in the UK over this period (access to the National Crime Agency Geographical information systems (GIS) techniques for retrospective mapping of distribution of trafficking locations. Descriptive statistical analyses of various characteristics of the individuals, places, and processes involved, with inferential analyses as appropriate. Prospective crime mapping too if time and data permit</td>
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<td>Geographical information systems (GIS) techniques for retrospective mapping of distribution of trafficking locations. Descriptive statistical analyses of various characteristics of the individuals, places, and processes involved, with inferential analyses as appropriate. Prospective crime mapping too if time and data permit</td>
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<td></td>
<td>Research by Cockbain and Bowers still ongoing</td>
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| | Research still underway but preliminary findings include that a wide range of industries affected (both licit and illicit); large proportion of victims exploited across multiple sectors; victims and offenders typically the same nationality; apparent concentration of particular demographic groups in particular regions and industries, possibly reflecting general distribution of Preliminary results highlight the diversity and complexity of labor trafficking: it is not a homogenous issue, and interventions may need to be targeted accordingly. Various findings have obvious implications for the Home Office’s restructuring of the NRM and development of the National Policing data tool that have been fed in accordingly, e.g., the need for improved data collection around

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<td>remaining 20% of cases – non-EEA cases held by UK Visas and Immigration – was sought but not granted</td>
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<td>these diasporas; apparent preference for adult and male victims; victims overwhelmingly recruited via deception rather than coercion or abduction; victims typically entered the UK willingly and through legal channels; physical confinement of victims rare, with control mechanisms more commonly including promises, threats, violence, social isolation, and economic manipulation; numerous and substantial barriers to intervention identified</td>
<td>victim demographics and geographical locations to help support finer targeting of prevention, disruption, detection, etc. The tendency to enter the UK legally and willingly raises questions about the efficacy of interventions at border when dealing with EU victims. The various preliminary results have been used to inform training for national and international law enforcement agencies (e.g., CEPOL) around labor trafficking. This study has generated substantial interest among national and international stakeholders and further findings expected to be impactful</td>
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What situational factors and processes contribute to the trafficking of British children within the UK for sexual exploitation and impede official responses?

Extensive investigative case files (including transcripts of interviews with victims and suspects, results of digital forensic analyses, case summaries, and criminal records) and court records from six of the earliest and largest investigations of this nature. The six cases together featured 55 offenders (defendants) and 43 victims (complainants)

Five police forces and Her Majesty’s Courts and Tribunal Service

Case-study-based design with a mixed-methods approach. Specific methods included social network analysis and both qualitative and quantitative content analysis

Cockbain (2013b, 2018); Cockbain and Wortley (2015)

There were remarkable similarities between and within the six cases. This was a complex crime involving sprawling networks of victims and offenders and extending well beyond the core activity investigated. Victims had obvious vulnerabilities, but despite widespread concerns about their credibility as witnesses, eventual conviction rates were average or better. The trafficking appeared largely casual and opportunistic, and offenders seemed to operate with a sense of impunity; some victims actively participated in recruiting and

The results help debunk myths and challenge stereotypes, highlighting, for example, the fallacy of idealized constructions of victimhood and notions of highly organized and sophisticated gangs. The findings highlight the need for improved protection (rather than relying on reactive enforcement alone) and emphasize the need for more collaborative, connected, and innovative responses. The possibility of social contagion bears particular consideration. Indeed, the work has helped stimulated network-based interventions in two police forces in

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<td>Grooming their peers and facilitating abuses</td>
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<td>The trafficking appeared largely routinized and heavily entrenched in everyday activities and associations. Overall, the structures, processes, and dynamics of both offender and victim networks appeared to promote, provoke, facilitate, spread, and sustain trafficking activity and complicate criminal justice responses. Taken as a whole, the results gave strong grounds to believe that this form of trafficking may be socially contagious</td>
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<td>How are victims trafficked in the UK’s casual construction industry by Irish Traveller offending groups recruited, exploited, and controlled?</td>
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<td>Investigative case files from three major investigations, together involving 15 offenders (defendants) and 19 victims (complainants). Smaller selection of investigative data used than in the internal child sex trafficking study above. Key sources were case summaries, demographic information on victims and offenders, and offenders’ criminal records</td>
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<td>Strong consistencies within and between the three cases in terms of recruitment, exploitation, and control methods. Victims were all vulnerable adult males, with multiple issues: unemployment, homelessness, and/or substance abuse. Recruited at locations rich in vulnerable targets and enticed by promise of all-inclusive package of pay, accommodation, food etc. No victims were physically confined; instead they were manipulated through diverse control mechanisms including withholding earnings, bullying and emotional abuse, and the provision of security and structure. The results challenge stereotypes around trafficking, its victims, and what “normal” responses are. They highlight numerous issues that are very challenging but also stimulate new avenues for intervention, including through targeted prevention, disruption, and detection. The written outputs have since been used for tactical briefings and to support decision-making around similar cases identified through the NRM</td>
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<td>Victims lived and worked in hazardous and inhumane conditions, e.g., working 10–12 h/day with no breaks and being underfed. There was evidence that this form of trafficking could be very lucrative. Offenders’ generalist criminal histories indicated an opportunist pattern of offending, of which trafficking was just one part</td>
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by such consultation: the eventual research responded to a clearly articulated need to expand the evidence base on these particular subsets of trafficking, which were identified as growing priorities but very poorly understood. An appreciation of agencies’ time scales, priorities, resource demands, and available data may lead to very valid amendments to initial ideas. Early consultation can help incorporate law enforcement agencies’ experiential knowledge: a valuable and often overlooked resource. It can also increase a contact or an organization’s sense of involvement, potentially leading to greater commitment in the long run. Having demonstrable support for a proposal can also be critical to the success of funding applications, as happened with case studies A and B.

From a researcher’s perspective, managing early engagement means striking a careful balance between, on the one hand, pragmatism and flexibility and, on the other, assertiveness and commitment to the work’s integrity, intellectual rigor, and independence. It is important that outside pressures do not shape the design of a study in a way that could compromise its fundamental aims, the rationale behind it, its methodological robustness, and the validity of its findings. The first and second authors have found thus far that many possible tensions or conflicts of interest can be avoided by being candid from the start about one’s plans, thinking carefully and critically about all aspects of the design, meticulously and transparently documenting the methods and data (and the decisions and assumptions underpinning them), and generally being open to suggestions without following them slavishly. Where outside agencies are involved in the identification and selection of cases for research, it is particularly vital to have clear, explicit, and well-justified inclusion criteria to minimize the potential for selection bias from either side.

Although good contacts with law enforcement agencies are clearly a valuable resource, they are not necessarily critical to using law enforcement data. We found that accessing court-held data in the UK for case study C was relatively straightforward, since Her Majesty’s Courts and Tribunal Service has a standardized application process in place for researchers. Securing access to data held by police forces or the National Crime Agency has proved more complicated and relied heavily on establishing good contacts and conducting negotiations with each agency on a one-to-one basis: this is likely due at least partially to the fragmentation of the UK policing system.

The National Crime Agency’s Modern Slavery and Human Trafficking Unit (previously the UK Human Trafficking Centre) receives many requests for research engagement each year, but relatively few have been supported. A key reason for this is that it can be challenging and resource-intensive to differentiate between those requests that are of clear practical and strategic value to the agency and those that have little such relevance. To open doors, it can therefore be useful to network broadly and draw upon the support and contacts of colleagues, supervisors, and other non-law enforcement agencies. A request that is directed to a named individual (rather than a generic agency address) and comes via a shared acquaintance may be treated more favorably. Introductions to relevant police forces on case studies C and D certainly helped smooth the process of data access. The development of formalized networks of academics and agencies interested in trafficking research could help better embed relationships and open up data access opportunities: one such example
is the UK Modern Slavery Police Transformation Unit’s organization of a series of academic roundtables designed to promote police-relevant research, encourage partnerships, and support dissemination.

**Understanding Resourcing**

Law enforcement agencies may directly commission academic research, which carries obvious direct costs. Academics completing such commissions may experience particular pressures to conform to certain expectations and requests or find agencies to be resistant to certain findings that are seen as detrimental or otherwise unwanted. Such unfortunate realities have been documented elsewhere in the literature on applied police research (see, e.g., Cockbain and Knutsson 2015a), but the first and second authors have thankfully not experienced them in their trafficking research, or at least not thus far.

None of the case studies featured here were directly commissioned and funded by law enforcement agencies. Although they were theoretically “free,” they nevertheless incurred costs to the agencies in terms of resources that could have been used elsewhere: “opportunity costs.” Examples include time spent by agency staff reading and commenting on proposals or final publications; securing internal approvals; completing data-sharing agreements; locating and extracting data; arranging access to buildings, computer systems, etc.; and providing background information or answering questions. There may also be tangible direct costs, such as those associated with vetting researchers.

Researchers may not be aware from the outset of the processes and procedures it can take to secure approval for support within a law enforcement agency. Even granting a seemingly simple request might require a whole host of legal and bureaucratic obstacles to first be cleared. Where a project is grander in ambition and requires access to extensive sensitive data, law enforcement cooperation can entail a significant medium-term commitment. During the data collection phase for case study B, for example, the first author spent several months inside the National Crime Agency going through thousands of pages of original files to extract the necessary data.

Negotiating data access can also be very resource-intensive for researchers, involving numerous phone calls, emails, and visits and considerable time spent arranging and waiting for ethical approvals, legal agreements governing data sharing, and security clearance. Data collection and analysis may then involve further costs associated with extracting information in situ (e.g., accommodation costs if a secure site in question is outside commuting distance) or simply due to the time needed to process the data. In case study C, for example, the investigative case files were extensive and empirically rich but also very lengthy: with each case numbering 4,000–6,000 pages of documentation and six such cases to process, a large proportion of the grant time went into processing raw data and extracting relevant information. Even dealing with much more concise data, such as the database of suspected victims in case study A, can involve more resources than expected. Working with administrative data that were not originally collected for research
purposes meant much time had to be spent on preprocessing the data (cleaning, recoding etc.) to get them in a useable format for analysis – and even then the volume of missing data restricted what analyses were possible (for further discussion of similar challenges in a different context, see Cockbain et al. 2016).

In light of the resourcing challenges discussed here, open dialogue between researchers and law enforcement partners may be helpful in ensuring clarity, setting and managing expectations, and supporting effective planning and allocation of resources from both sides. Additionally, it might help to spend time identifying possible and likely sources of costs (financial or other) at the design stage and factor them in wherever possible to the research funding and timelines. Depending on the particulars of a given funder and call, it may be possible to offset law enforcement agencies’ costs in this manner too, which could help remove economic barriers to supporting research.

**Securing Organizational Support**

To ensure projects requiring law enforcement support and data provision are maximally resilient, it helps to secure buy-in at organizational rather than just individual level. Without organizational support, projects can lose impetus or become derailed if a key contact (in police terms, a “single point of contact”) moves position or leaves the agency. Over the lifetime of case study B, the leadership of the National Crime Agency’s trafficking unit has changed multiple times: without organizational support, the project would likely have floundered.

Persuading busy law enforcement agencies to commit to a research project requires the anticipated benefits to outweigh the anticipated costs. While the onus is first and foremost on the academic to communicate the benefits of their proposed research, their law enforcement contacts will then need to persuade other internal stakeholders – and possibly external ones too – to support the work. Part of the challenge there may be making a case for why independent, academic research is needed as opposed to an internal piece of analysis using the same data: especially in times of funding cuts, agencies have much to gain from academics’ research experience, analytical skills, capacity, independence, and fresh perspectives. Being able to identify clear links to policy, strategic or tactical objectives can also help promote a case for support. One unfortunate and largely unavoidable issue relates to long time frames from applications for funding (at which point a provisional commitment may be sought) to the initiation of projects: operational priorities can change rapidly, and the enthusiasm for a given project may no longer be there a year later. Of course, the opposite can be true: the increased prioritization of labor trafficking by the time case study B began meant the researchers were granted access to far more data than had been provisionally agreed.

Among the barriers to overcome in securing support are the off-putting “ivory towers” stereotypes of academia, perceptions of research as a distraction from “real policing,” and general suspicions of outside researchers (for similar points in different contexts, see Canter 2004; Fleming 2010; Foster and Bailey 2010; Kennedy 2015; Perez and Shtull 2002; Sheptycki 2004). The authors have experienced difficulties
from the outside (as researchers) and the inside (as a would-be partner) when faced with law enforcement personnel who categorically dismiss research and actively obstruct attempts at collaboration. In their experiences at least, these individuals have fortunately been in the minority, and they have dealt with many forward-thinking professionals who recognized the value of research in informing policy and practice.

With the growing prioritization of human trafficking nationally and internationally, law enforcement agencies face increased scrutiny and pressure. Greater participation in research offers law enforcement agencies the opportunity to play a more active role in shaping the research agenda and contributing to the knowledge production process. Growing interest in evidence-based approaches to crime prevention may also stimulate increased opportunities for academic-law enforcement collaborations, especially if more inclusive perspectives are taken on what types of evaluation can generate valid evidence on “what works” (for more, see, e.g., Bullock and Tilley 2009; Cockbain and Knutsson 2015b; Kennedy 2015; Sparrow 2011; Tilley 2006).

Dealing with Sensitive and Restricted Data

Trafficking is by nature a sensitive topic, involving as it does illegal and taboo activity and vulnerable populations. Trafficking and exploitation (known collectively as “modern slavery”) are also increasingly politicized in the UK, which is something of a double-edged sword: on the one hand, it can add weight to arguments for supporting research projects and make law enforcement agencies more open to collaboration; on the other, it can fuel concerns about the risk of reputational harm associated with sharing data externally. A sudden surge in media attention around so-called “Asian sex gangs” and associated criticism of police handling of such cases (Cockbain 2013a), for example, made data access negotiations on case study C harder and more time-consuming.

When working with law enforcement data, it is important to understand and comply with relevant data protection legislation. In the UK, the treatment of personal data (data from which an individual may be identified) is currently governed by the European Union (EU) General Data Protection Regulation. It is entirely possible to conduct research using large-scale, aggregate law enforcement datasets that do not contain personal data, as happened in case study A. Nevertheless, most if not all of the datasets used in case studies B, C, and D contained sensitive personal data. Although anonymizing these data before providing them to the researchers might theoretically have been possible, it would have been hugely expensive given the volume of the data. When dealing with complex cases involving multiple people and places, simply redacting out names severely limits the analytical utility of the data. Alternative approaches, such as recoding geospatial data to a higher level of abstraction or assigning all individuals and places unique identifiers are, however, far more resource-intensive and prone to human error.

There are obvious situations then in which non-anonymized data are preferable or even necessary. It is important therefore to be aware of exemptions under which personal information can be shared. At the time of the case studies, the most relevant
exemption was “the prevention or detection of crime” under the Data Protection Act 1998. Where research can ultimately contribute to counter-trafficking and public protection, law enforcement agencies were within their legal rights to share such data. Under the new General Data Protection Regulation, personal data originally collected for a relevant task or function can be further processed for scientific research without first needing to establish a separate lawful basis (Information Commissioner’s Office 2018). When using personal data from law enforcement sources in research, the people involved (e.g., victims and offenders) would not generally be aware that they are being studied nor would they have given consent. While this situation is common in crime research, from an ethical perspective it means extra care should be taken to protect unwitting participants’ anonymity and confidentiality.

Although academics are generally used to managing ethical review processes (including data protection registration and risk assessments), they may well have less experience working with data that are protectively marked: i.e., subject to official government security markings. In the UK, many law enforcement data on trafficking are protectively marked, meaning that researchers may need to undergo appropriate security clearance and training. The vetting process can be time-consuming (several months at a minimum) and should be properly built into the project timelines.

Regardless of whether data are protectively marked or “just” sensitive, it is vital to appropriate provisions in place for the secure transfer, storage, or disposal of data. The authors have previously sought advice on data handling from, among others, university and law enforcement information security and legal departments. Various provisions have then been agreed and executed to protect the data. At University College London (UCL), the opening of a secure research data laboratory has proved valuable for the management of data from the UK labor trafficking project. Accredited by London’s Metropolitan Police Service to Police Assured Secure Facility level, this facility is one of only three university-based security research laboratories in the world. It opens up new possibilities for the use of sensitive datasets by researchers from UCL and other institutions.

Securing access to a hard-to-reach dataset on trafficking can offer very exciting and unprecedented opportunities for research. The process from getting provisional agreement to support a project to actually accessing and extracting the necessary research data can be long, convoluted, and, at times, rather nerve-wracking. When the data finally become accessible, the authors have found it is worth prioritizing securing those data above virtually any other commitments at the time: what is available today may not be so available in a few months’ time.

A final consideration here is that law enforcement data may contain harrowing and distressing material. Researchers’ responses and resilience are likely influenced by both individual and environmental factors. They and their host organizations can help by ensuring protective strategies are in place as needed. The first author has found working with large-scale aggregate datasets to be unproblematic in this respect (e.g., case study A), whereas on case studies B and C processing extremely voluminous raw data comprised of individual accounts of abuse proved emotionally, mentally, and physically draining at times: not so much because of the unique horrors of any particular incident but the cumulative effect of hundreds upon
hundreds of pages of misery. Although luckily such negative effects have been short-lived, this author is now more alert to these issues and would encourage researchers working with such data to identify self-care strategies that work for them and exercise them as needed.

Managing Dissemination

The final area to consider is the dissemination process. Timelines to dissemination and types of output will vary between research projects. Generally speaking, the academic publication process is not particularly well aligned with the “need it now” culture of law enforcement. Law enforcement agencies can greatly appreciate the dissemination of findings through other channels, such as restricted internal reports, practitioner-focused conference presentations, or training or even informal updates—all of which can be produced ahead of a final academic outputs and may be far better tailored to their needs. All four case studies have involved various outputs of this nature. Such steps can help ensure research is seen as mutually beneficial and not just a one-way process that strains law enforcement resources without giving much back (see also Cockbain 2015; Madensen and Sousa 2015; Maxfield and Babbie 2014).

From an academic perspective, peer-reviewed journal articles generally remain the gold standard, and it is important for career development to be able to publish in this manner. It is important to minimize the risks that using restricted law enforcement data hinders publication: as with the timelines issue this requires openness, respect, and understanding on both sides. The authors’ experience on trafficking projects has been very positive in this respect. As a safeguard, however, they now deliberately build an agreed approach to managing the publication process into any data-sharing agreements. On case studies A and B, for example, it was agreed that academics would share drafts of formal outputs based on research using restricted data ahead of time and law enforcement data providers in turn have a set period within which to respond. This system gives data providers the opportunity to raise concerns in the highly unlikely event of factual errors or risks to national security and to request that they be addressed. It does not, to be clear, allow them to edit unwanted results and undermine the integrity of the research.

Conclusion

Law enforcement data have considerable and largely unmet potential to improve understanding of and responses to human trafficking. Such data have some key limitations that should be considered in designing, conducting, and interpreting research. These limitations are far outweighed by the benefits, for example, that law enforcement data can be a valuable source for both top-down, large-scale statistical analyses and nuanced, bottom-up enquiries; underpin evaluations, a particularly neglected area in trafficking research; and help redress the longstanding neglect of offenders and the offending process in the literature. Working with law enforcement data can be challenging in practice, and it is vital to maintain
independence and integrity throughout the research process. Based on the authors’ experiences on both sides of the academia-law enforcement divide, key areas to consider include initial design and contact, appreciating resource issues, gaining organizational support, dealing with sensitive and restricted data, and managing dissemination. It is hoped that this chapter will stimulate increased interest in law enforcement data as a source for academic research on human trafficking.

Cross-References

▶ Ethical Considerations for Studying Human Trafﬁcking
▶ Measuring the Nature and Prevalence of Human Trafﬁcking
▶ Measuring Trafﬁcking in Persons Better: Problems and Prospects
▶ “No More Interviews Please”: Experiences of Trafﬁcking Survivors in Nepal

Acknowledgments The following agencies’ invaluable contributions to the research in the case studies are gratefully acknowledged: Bedfordshire Constabulary; Derbyshire Constabulary; Gloucestershire Constabulary; Greater Manchester Police; Hampshire Constabulary; Lancashire Constabulary; South Yorkshire Police; West Mercia Police; Her Majesty’s Courts and Tribunal Service; and the National Crime Agency. We are also grateful to our section editor, Masja van Meeteren, for her insightful comments on an earlier draft. Our final thanks go to the studies’ funders: the Engineering and Physical Research Council (EPSRC) and the Economic and Social Research Council (ESRC). This chapter was written under Ella Cockbain's ESRC Future Research Leaders Fellowship (grant reference: ES/K008463/1).

References


Combating Human Trafficking for the Purpose of Organ Removal: Lessons Learned from Prosecuting Criminal Cases

Frederike Ambagtsheer

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Abstract

 Trafficking in human beings for the purpose of organ removal (THBOR) is a new and neglected form of human trafficking about which limited knowledge and awareness exists. A growing body of research suggests that the crime is proliferating globally. Nonetheless, the number of convictions remains considerably low. This chapter presents the experiences of police and prosecution in investigating and prosecuting two cases that involved (elements of) THBOR: the Netcare Case and the Medicus Clinic Case. The overarching objective is to draw lessons from police and prosecutors’ experiences and to offer possible explanations for why convictions of THBOR remain almost nonexistent. In both cases, police and prosecutors experienced numerous challenges, among

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J. Winterdyk, J. Jones (eds.), The Palgrave International Handbook of Human Trafficking, https://doi.org/10.1007/978-3-319-63058-8_99
which the length of the investigations, lack of experience prosecuting THBOR, lack of knowledge and awareness of THBOR, lack of resources, evidentiary issues, and legal loopholes. Lessons learned in the fight against THBOR also include reluctance to prosecute transplant professionals and other complicit officials. Indicators and reporting mechanisms for transplant professionals may be effective tools to improve nonlegislative responses to THBOR. Medical professionals and law enforcement should collaborate in the combat against THBOR. Despite these strategies, the challenges to investigation and prosecution of THBOR are likely to remain significant. Criminal prosecution should not be thought of as the primary tool for addressing all forms of organ trade but should be focused exclusively on excessive exploitation. Initiatives that boost organ supply, reduce harm, and enhance victim protection should be emphasized regardless of the success or failure of the prosecution of THBOR.

Keywords
Trafﬁcking in human beings for organ removal · Organ trade · Organized crime · Prosecution · Criminal justice · Law enforcement

Introduction

Trafﬁcking in human beings for the purpose of organ removal (THBOR) is a new and neglected form of human trafﬁcking about which limited knowledge and awareness exists. The 2000 United Nations Trafﬁcking in Persons Protocol (hereafter Palermo Protocol) was the first international instrument to criminalize the act, deﬁning organ removal as a form of trafﬁcking in human beings (THB) and exploitation alongside sexual exploitation and forced labor (United Nations 2000). More than 100 member states have reported to have included “organ removal” in their THB legislation (UNODC 2016).

Nevertheless, a growing number of reports reveal that the crime is proliferating globally. Although reliable data about the scope is lacking, the WHO has estimated that 5–10% of all organ transplantations take place illegally each year (Shimazono 2007). Organ trade is fueled by a worldwide organ scarcity. With the aging of populations and growth in diabetes and vascular diseases, the number of people with organ failure is growing exponentially. Of all organs, kidneys are highest in demand (Shafran et al. 2014). At the end of 2016, 191,874 patients were registered on kidney transplant wait lists worldwide (GODT 2017). However, only 62,333 (32%) received a deceased or living kidney transplant that year. Average wait times for kidneys are 3–5 years, and annual mortality rates are estimated to lie between 15% and 30% (Commission of the European Communities 2007).

Between 1971 and 2013, 6002 patients were reported to have traveled to another country for transplantation, mostly for living unrelated kidney transplantations. Of these, 1238 (21%) were reported to have paid for their organ transplants. Some patients have been reported to pay up to $300,000 for a transplantation. Patients made payments to hospitals, brokers, private companies, and donors (Ambagtsheer 1734 F. Ambagtsheer
et al. 2016; Greenberg 2013; Khalaf et al. 2004). Of most others it is unknown how they obtained the organs. The majority who return from transplantations broadly suffer from grave medical complications such as infectious diseases and graft rejection (Anker and Feeley 2012). The most commonly reported purchased organs are kidneys (Shimazono 2007).

While organ trade (defined as the sale and purchase of organs for financial or material gain) differs from THBOR, it can become THBOR when organs are removed through the acts and means as defined in the Palermo Protocol (De Jong 2017; Territo and Matteson 2011).

Organ trade patterns evolve around a group of “demand” or “departure” countries and “organ selling hotspots” (destination countries). While Taiwan and South Korea are the most commonly reported departure countries (Kwon et al. 2011; Tsai et al. 2011), large numbers of patients are also known to have traveled from the UK (Cronin et al. 2011), the USA (Merion et al. 2008), and Canada (Gill et al. 2011). Common destination countries are India (Budiani-Saberi et al. 2014), Pakistan (Yousaf and Purkayastha 2015), Egypt (Columb 2016), and the Philippines (Yea 2010). These countries are renowned for their “kidney bazaars,” where large groups of impoverished kidney sellers report detrimental outcomes in health, finances, and overall well-being after selling a kidney on the black market (Tong et al. 2012). The most popular destination country is China, which is known for procuring organs from executed prisoners (Gutmann 2014; Matas and Kilgour 2009; Sharif et al. 2014). Those who sell kidneys on the black market generally receive next to nothing in return for their kidneys (Lundin 2012; Scheper-Hughes 2004; Tong et al. 2012). Middlemen such as brokers, doctors, recruiters, and corrupt police officers reap most of the profits (De Jong 2017; Pascalev et al. 2016). According to the Global Financial Integrity, organ trade is one of the world’s most profitable crimes, featuring in scale and profit alongside the illicit trade in drugs, wildlife, and weapons with an estimated annual profit of $1.2 billion (Haken 2011).

Iran is the only country that has legalized kidney sales through a government-regulated living kidney donation procurement program (Mahdavi-Mazdeh 2012). People who wish to donate can refer to a government institution which matches them to a prospective recipient. Middlemen and brokers, it is claimed, remain uninvolved (Ghods and Savaj 2006). The program grants donors a free 1-year health insurance, exemption from Iran’s 2-year mandatory military service, and a financial gift of 1 mln. Tomans (approximately $4000 in buying power) (Fry-Revere 2014). Donors also receive payments from their recipients. This reward is considered a private matter that is not interfered with (Simforoosh 2007). The Iranian model is based on the premise that regulating organ sales may be less harmful than strictly prohibiting them. Iran also claims to be the only country with a successful transplant program and no kidney transplant wait list (Fry-Revere 2014). The “Iranian model” has received critique for failing to eliminate the harms to kidney vendors (Koplin 2014; Zargooshi 2008; Capron et al. 2014). However, the reported harms are less severe than those reported on black markets (Fry-Revere et al. 2018; Tong et al. 2012).

Despite prohibition, the number of organ trade convictions, and convictions involving THBOR in particular, remains considerably low. As of 2018, 12 convicted
cases involving organ trade were reported to the Case Law Database of the United Nations Office on Drugs and Crime (UNODC). Only one of these included a THBOR conviction (UNODC 2018). A study by the Organization for Security and Co-operation in Europe (OSCE) reported 11 additional organ trade cases. However, not all of these cases led to convictions. For unknown reasons, several cases involved the withdrawal or amendment of charges and/or the halting of pre-trial proceedings. Only three cases led to THBOR convictions (OSCE 2013).

Thus, far fewer cases have been identified and prosecuted than would be expected based on estimates of the problem. However, in the absence of research of criminal cases, knowledge about the (possible) challenges that police and prosecutors face in investigating and prosecuting these cases remains nonexistent. This chapter describes the experiences of police and prosecution in investigating and prosecuting two criminal cases that involved (elements of) THBOR: the Netcare Case and the Medicus Clinic Case (This contribution is based on Ambagtsheer and Weimar 2016, pp. 91–116. Findings were also drawn from the PhD thesis, based on the HOTT project, by De Jong (2017).). This contribution draws from previously published research conducted under the auspices of “the HOTT project”: an EU-funded project on “Combating trafficking in persons for the purpose of organ removal” (Ambagtsheer and Weimar 2016; De Jong 2017) (The HOTT project received financial support from the Prevention of and Fight Against Crime Programme of the European Commission – Directorate General Home Affairs between 2012 and 2015 (Grant No. 4000002186).). The research constituted a qualitative study of two organ trafficking networks that were prosecuted in South Africa, Israel, and Kosovo. In these countries, 37 interviews were held with 49 police officers, prosecutors, defense lawyers, transplant professionals, government officials, patients, and other stakeholders. In addition, case materials were collected and analyzed, including indictments, judgments, and statements from victim and witnesses.

First, a description of each case is given. Then, the law enforcement response to each case is presented, focusing in particular on the challenges that police and prosecutors experienced in the investigation and prosecution of the cases. The chapter ends with a discussion and presents recommendations on future directions in deterring and controlling THBOR. The overarching objective is to draw lessons from police and prosecutors’ experiences and to offer possible explanations for why convictions of THBOR remain almost nonexistent.

The Netcare Case, South Africa

Case Description

In 2001, an Israeli kidney broker (I.P.) proposed a transplant scheme to a private hospital group in South Africa (Netcare Ltd.) The proposal involved transplanting Israeli citizens at Netcare’s hospitals in Cape Town, Johannesburg, and Durban. I.P. owned a company (UDG) which recruited the kidney donors and recipients. Between 2001 and 2003, hundreds of Israeli patients traveled for kidney
transplantations from Israel to South Africa. The prospective kidney recipients paid UDG up to $120,000 for a kidney transplant. Perry appointed recruiters to find kidney donors. Initially, the kidney donors were recruited in Israel. Yet subsequently, the recruiters sourced Brazilian and Romanian donors because their kidneys could be obtained at a much lower cost. While the Israeli donors received approximately $20,000, the Brazilian donors were given between $3,000 and $8,000 for their kidneys (Ambagtsheer 2017; De Jong 2017; Scheper-Hughes 2011).

Later, a second broker, S.M., joined the scheme, who also supplied recipients and donors. In addition, J.K., a nephrologist working at St. Augustine’s Hospital in Durban, agreed with I.P. to be the only referring nephrologist for the Israeli transplant operations. Numerous potential donors and recipients were cross-matched against each other by the South African National Blood Bank until a match was found. Local recruiters took care of practical tasks such as accompanying donors and patients and assisting the donors with passports, visas, travel bookings, and blood tests. Translators were hired to provide translation services between the Israeli kidney recipients, local Netcare staff, and various other actors. Netcare’s transplant coordinators helped organize and facilitate the Israeli transplant operations. Netcare’s surgeons performed the transplants.

A ministerial policy required all organ transplants between non-related and foreign recipients and donors to obtain prior approval from the Ministerial Advisory Committee. Netcare however did not follow this procedure for the Israeli transplant scheme. Instead, the donors and patients signed papers that stated that they were related to each other.

The recipients paid I.P., who then paid Netcare, who in turn distributed the money to the various involved actors. J.K. received payments directly from I.P. (UDG) into his Canadian bank account. The donors were paid in cash, usually after the operation. The recipients were able to claim most of their transplant costs at their national health insurance companies. Until 2008 it was common practice for health insurance companies in Israel to compensate transplants performed abroad, regardless of their (il)legitimacy (Ambagtsheer 2017; De Jong 2017; Orr 2014).

Trafficking in Human Beings for the Purpose of Organ Removal

Although the Netcare Case was not prosecuted as a THB case, the case involved THB elements. De Jong explains how, first of all, the donors and recipients were recruited, transported, and harbored in South Africa. The donors were initially housed in hotels and later in apartments on the Durban seafront. Coercion, deception, and fraud were also present: after donors agreed to sell their kidney, there was no going back. Some donors’ passports were taken upon arrival in South Africa. Donors and recipients signed fraudulent documents that stated that the transplants were performed altruistically between relatives. In addition, the operation’s nature, the length, and possible postoperative complications were misrepresented or not explained at all, as a result of which, many did not fully understand the (risks of the) donation procedure. Considering that all donors were impoverished due to debts, and
received far less than what patients paid, they were abused in their position of vulnerability. Most donors did not or were not able to seek aftercare upon return home. Many of them suffered from serious complications after their kidney donations. Also, the Israeli recipients reported posttransplant complaints upon return in Israel (De Jong 2017).

**Legal Framework and Law Enforcement Response**

The criminal investigation was initiated after a whistle-blower informed the police about the illegal transplantations at St. Augustine’s Hospital in Durban. Although illegal kidney transplants were also found to take place in other hospital across South Africa, the investigation focused exclusively on the transplants that were performed in Durban. The investigation at St. Augustine’s uncovered 109 illegal kidney transplantations.

South Africa has a hybrid legal system, formed by the mixing of a number of distinct legal traditions: a civil law system inherited from the Dutch, a common law system inherited from the British, and a customary law system inherited from Indigenous Africans. Thus, it has multiple sources of law, including a constitution, legislation, judicial precedent, customary law, and international law (Barratt and Snyman 2018).

However, at the time when the criminal activities took place, South Africa did not have an anti-THB law. The Prevention and Combating of Trafficking in Persons Act, which defines THB in accordance with the Palermo Protocol, didn’t come into force until 2013. Consequently, charges were filed under other acts, namely, the 1983 Human Tissue Act and the 1998 Prevention of Organised Crime Act. The suspects were charged with fraud; forgery; uttering; unlawful acquisition, use, or supply of tissue, blood, or gamete (minors); use or possession of proceeds from unlawful activities; and illegal receipt of payments.

Police and prosecutors strived to convict those “at the top” of the scheme: an arrest warrant for I.P. was filed with Interpol to extradite him to South Africa. Netcare (represented by its CEO) was charged for performing transplants between unrelated donors and patients without seeking prior ministerial approval, for performing two organ donations among minors (two donors were under 21 years of age), and for receiving illegal payments as a result of these transplantations. Four transplant surgeons and two transplant coordinators were arrested (and released on bail) and charged. Finally, J.K., a recipient, a local organ broker, and a translator were arrested and charged with offenses under the Human Tissue Act, mainly for facilitating and receiving illegal payments from the Israeli kidney transplants. Many of the “lower-level” suspects became witnesses who provided evidence against the accused (Ambagtsheer 2017).

**Challenges to the Investigation and Prosecution**

Because South Africa did not have an anti-THB law, Netcare was not regarded, investigated, or prosecuted as a trafficking case, despite the presence of THB elements (De Jong 2017). Police and prosecutors did not have experience with
prosecuting THB cases and, consequently, were not familiar with the constituencies underlying the legal definition of trafficking. For instance, one investigator stated: “[…] none of them came here under duress. They weren’t forced to come here for the operation. It’s one thing to kidnap somebody, bring them over the border, take their kidney out and then take them back across the border. That would clearly be… […] I don’t think human trafficking would have covered anything that would have solved this particular case, because the people came of their own free will” (in De Jong 2017, p. 114).

In the absence of an anti-THB framework, police and prosecution relied on outdated laws that contained loopholes and had minor penalties (fines only). The 1983 Human Tissue Act, for example, only targeted persons or organizations that received financial remuneration for an organ. Organ purchase was not prohibited. Despite evidence that illegal transplantations also took place in Johannesburg and Cape Town, the police lacked the capacity to conduct a nationwide investigation. As mentioned, the investigation therefore exclusively focused on the activities in St. Augustine’s Hospital in Durban. Due to technical issues however, an undercover investigation in this hospital (e.g., telephone taps) collapsed, hampering the collection of evidence. Despite indications that “everyone knew what was going on,” suspects denied knowledge of the transplantations being illegal, making it difficult for police and prosecutors to prove otherwise.

Another obstacle was that it took 4 years to establish international legal collaboration with Israel. According to the investigators and prosecutors, this was the major cause of the long delay of the case proceedings. Because of the delay, the four surgeons and two transplant coordinators applied for a permanent stay of prosecution. They stated that due to the case’s constant adjournment for further investigation, their rights to a fair prosecution and a fair trial had been violated. In 2012 the Durban High Court ruled that there had been an “inordinate delay” in the investigation and granted the six defendants a permanent stay of prosecution, meaning that the legal process has been permanently halted (De Jong 2017).

There were also issues with extraditing I.P. from Germany. I.P. was arrested in Germany and imprisoned for 8 months, awaiting his extradition to South Africa. Germany decided not to extradite him however, because of the absence of a treaty regulating mutual legal assistance in criminal matters between Germany and South Africa. I.P. was investigated for tax fraud by the Israeli tax authorities but cleared because at the time brokering overseas transplants using paid donors was not illegal in Israel.

The remaining accused entered into plea agreements with the state: Netcare and the state settled on a fine of approx. 4 mln. rand (the equivalent of approx. $380,000 at that time). J.K. entered into an admission of guilt with the state and was ordered to pay a fine of 150,000 rand. The local organ broker also entered into a plea agreement, pleading guilty to charges under the Human Tissue Act (for receiving payments). One recipient was charged with fraud and violations of South Africa’s Human Tissue Act and pleaded guilty.

Although South Africa is the first (and until now only) country to have reached a guilty plea from a hospital for facilitating illegal kidney transplants, police and prosecutors did not succeed in getting the most important figures – the transplant
surgeons, transplant coordinators, and I.P. – convicted for their alleged involvement in arranging and performing the illegal transplants.

The Medicus Case, Kosovo

Case Description

In 2005, the owner of the Medicus Clinic in Pristina, Kosovo, (L.D.) attended a Urology Congress in Istanbul, Turkey, where he discussed the need to make kidney transplants available for Kosovar citizens. The Kosovo Health Law prohibits kidney transplantations due to lack of medical infrastructure and resources. L.D. was given the contact details of a Turkish surgeon (Y.S.). Y.S. is known for having conducted a few thousand illegal kidney transplantations, for which he has been arrested several times (and subsequently released) in Turkey (Sanal 2004, 2011).

Subsequently, L.D., his son A.D. (the director of the Medicus Clinic), Y.S., and an Israeli organ broker (M.H.) started planning the performing of kidney transplants at the Medicus Clinic. In doing so, they tapped into an existing network of brokers that had been performing illegal kidney transplantations in hospitals and clinics across Eastern and Central Europe (OSCE 2013).

Although L.D. claims to have applied for a license at the Ministry of Health to conduct kidney transplants at Medicus, the clinic was not found to have received such a license.

From March until November 2008, 24 donors were flown to Kosovo to have their kidneys removed. The donors were recruited in Israel, Turkey, Moldova, Russia, Ukraine, Kazakhstan, and Belarus. Most were between 20 and 30 years old. Donors identified and contacted the brokers via internet searches or newspaper advertisements. Logistic arrangements (e.g., hotel, meals, plane, and tickets) were performed by M.H. and other brokers. After undergoing blood tests, donors were flown to Pristina via Istanbul. At the immigration office, they presented letters of invitation stating that they came for medical checkups at the Medicus Clinic. They were then picked up and brought to the Medicus Clinic. Donors were promised up to $30,000 for their kidney and were matched to 24 recipients, leading to 48 surgeries. Most recipients came from Israel; a few came from Ukraine, Turkey, Poland, Canada, and Germany. Of five recipients the nationality is unknown. Most were over 50 years old. Patients paid up to $108,000, either in cash at the clinic or by bank wires (Ambagtsheer and Weimar 2016).

Trafficking in Human Beings for the Purpose of Organ Removal

The Medicus Case was recognized and prosecuted as a THB case (Ambagtsheer 2017; De Jong 2017). L.D., A.D., Y.S., and M.H. were found to have recruited, transported, transferred, and harbored donors in the Medicus Clinic for the purpose of exploitation by the removal of their kidneys and the transplantation of their
kidneys into recipients. The donors were proven to be victims of abuse of their position of vulnerability because of their dire financial circumstances and because they were not given opportunity to decline the surgery despite their second thoughts. Some donors were also considered the victims of coercion, fraud, and deception. For example, they were deceived into thinking that kidney transplantation was legal. The surgery was presented to them as a routine medical procedure without risk after which they could resume a healthy life without restrictions. They were not given sufficient time to make a final and conscious voluntary decision to donate their kidney. They would go into the operation room almost immediately upon arrival, after signing false declarations in the local language that were not explained to them and which they did not speak or understand. They signed so-called Deeds of Donation stating that they were donating their kidney for altruistic reasons or to a relative, which in all cases was false. After already 4–5 days, the donors were discharged and returned to their home country. Some were only partially compensated and two donors received nothing at all. These donors would later contacted by the brokers, urged to find other “donors,” and assured that they would receive the money owed to them, and even more, should they cooperate with this proposal (De Jong 2017).

Legal Framework and Law Enforcement Response

The illegal activities were uncovered in November 2008. Suspicions arose among the Border Police and the Kosovo Police (hereafter KP) at Pristina airport regarding the foreign citizens who claimed to enter the country for heart treatments at the Medicus Clinic. The KP stopped and questioned a donor at the airport and discovered the incision where the kidney had been removed. The donor confirmed that his kidney had been removed at the clinic and that the recipient was still there. On the same day, KP searched the Medicus Clinic and seized the anesthesiology logs, medical reports, and lab reports. L.D., A.D., and M.H. were arrested. Y.S. fled the country.

The case was subsequently handed over from the KP to the United Nations Interim Administration Mission (UNMIK) and then to the EU Law Mission (EULEX). Kosovo has a civil law system. Following the end of the war in June 1999, Kosovo was placed under an international protectorate, pursuant to UN Security Council Resolution 1244. UNMIK assumed full competencies in the legislative, executive, and judicial branches of government. After Kosovo’s Declaration of Independence in 2008, EULEX was deployed to assist Kosovo authorities in the rule of law area, taking over many of UNMIK’s competencies. EULEX retains limited executive powers, in particular to investigate, prosecute, and adjudicate serious and sensitive crimes in cooperation with the Kosovo justice institutions.

In 2013 the EULEX Special Prosecutor charged L.D., A.D., and the lead anesthesiologist (S.H.) at Medicus for THBOR and organized crime. They and four other medical doctors (mainly anesthesiologists) were also charged with unlawful exercise of medical activity, abusing official position or authority, grievous bodily harm, fraud, and falsifying (official) documents. Interpol Arrest Warrants were issued
against M.H. and Y.S. for the same charges. Although there were other suspects (namely, Israeli brokers and one Israeli doctor), they were not charged by EULEX.

**Challenges to Investigation and Prosecution**

Numerous challenges were experienced in the investigation and prosecution of the Medicus Case. First of all, the case handover from UNMIK to EULEX was problematic, leading to some suspects being released from custody. In addition, the alleged nexus between the owners of the clinic and the political elite, as well as the rampant corruption in the country, made it difficult for KP and EULEX to initiate a robust and independent investigation. Issues also arose across agencies. For instance, there were delays in the issuing of an Interpol Arrest Warrants through Interpol. Another complication was that a search warrant had not been issued by a pre-trial judge during the police operations at the clinic. This meant that, eventually, all evidence seized at the clinic during the police raid would later be declared inadmissible by the Court. As a result, the number of proven transplants was reduced from 24 to 7 (although this did not affect the final punishment).

According to prosecution, the assistance provided by the local court administration in Kosovo to organize expert and forensic testimony, video link witnesses, key translations, and court hearings was “extremely difficult in a very challenging environment.” Furthermore, receiving international legal assistance was often problematic because Kosovo was not recognized as a sovereign state by a number of countries, such as Russia and Moldova. Requests for legal assistance had to be processed through UNMIK, but this was a slow and cumbersome process. There were also extradition issues of suspects from Turkey because Turkey does not extradite its nationals. Important witnesses, including Medicus staff and the Israeli recipients, were reluctant to testify against the accused. Of the 24 donor-victims that were identified, only 7 testified during trial. For the remaining 17 transplants, the Appeals Court found that, due to the inadmissibility of evidence, there was insufficient proof that these transplants took place.

The Medicus Case is the first and (until the time of writing) only prosecuted case involving a group of medical doctors and brokers who have been found guilty of organized crime in conjunction with THBOR. In 2013 the Basic Court of Pristina established that the kidney transplants were illegal. In addition, L.D. and A.D. were found guilty of trafficking in persons and organized crime and sentenced to 8 and 7 years imprisonment, respectively, plus a €10,000 fine. The other accused (including L.D.) were found guilty of unlawful exercise of medical activity. The charges abusing official position, grievous bodily harm, fraud, and falsifying documents were rejected. They received 3-year and 1-year imprisonment. Two defendants were acquitted.

Since 2013, there have been a number of appeals and acquittals. In 2016 the Supreme Court ordered a retrial for the sentencing of L.D. and S.H. In May 2018 the Basic Court confirmed their earlier convictions, sentencing L.D. to 7 years and 6 months in prison and fined 8,000 euros, while S.H. was jailed for a year (Balkaninsight 2018). Many others, however, remain fugitives, including Y.S. M.H. was indicted in Israel along with six others for brokering illegal transplants in a
number of countries, including Kosovo. In the absence of evidence of exploitation of donors however, the Israeli prosecutors decided on indicting suspects with organ brokering (prison sentence of max. 3 years), instead of THBOR. The six suspects currently await sentencing.

Discussion: Issues and Directions in Controlling THBOR

Various lessons can be learned from the investigation and prosecution of cases involving organ trade and THBOR. First of all, it is worth noting that many of the reported obstacles reflect challenges in the investigation and prosecution of THB cases more generally. For instance, lengthy investigations, lack of resources, and a lack of experience, knowledge, and awareness of trafficking among law enforcement have also been identified in the investigation and prosecution of labor and sex trafficking cases (Clawson et al. 2008; Farrell et al. 2014; Newton et al. 2008).

Second, THB is a relatively newly defined crime which creates challenges for prosecutors because the elements of the crime that are needed to establish a case are unclear until tested in court (Farrell et al. 2014). Moreover, the human trafficking elements are known to be vague, ambiguous, and open-ended (Columb 2015; Efrat 2016). In response to an uncertain legal environment, prosecutors charge individuals engaged in THB with offenses under other statutes (e.g., promoting prostitution, fraud, rape, kidnapping) where the legal elements of the crime are more established and prosecutors believe there is a greater chance of a conviction (Newton et al. 2008). With only four THBOR convictions having been reported worldwide, it can be predicted that these responses are particularly likely to be true for THBOR cases.

Confusion and conflation exist in interpretations regarding the intricate differences between organ trade, organ trafficking, and THBOR (Columb et al. 2017). As the Kosovar and Israeli indictments in the Medicus Case have shown, charges can differ between countries even when they are related to the same case.

Notably, the THBOR definition was formulated at a time when there was little knowledge or understanding of THBOR. Thus, the low incidence of reported THBOR prosecutions may not only be the result of a lack of knowledge and experience among police and prosecutors. It is also likely that not all cases fulfill the required elements of the THBOR definition. Police and prosecutors have pointed out that organ brokers use sophisticated, passive recruitment tactics, which makes it difficult to prove coercion or exploitation. Furthermore, researchers find that kidney sellers only present “degrees” of trafficking, meaning that they don’t fully conform to the profile of a human trafficking victim. Sellers often actively seek recruiters and brokers as a means to achieve economic gain. Some become recruiters or brokers after selling a kidney. Exploitation, if established at all, is generally mild and not excessive (De Jong 2017). As a result, kidney sellers are rarely recognized as trafficking victims, nor do they recognize themselves as victims (Yea 2010). Some have been prosecuted for selling kidneys (UNODC 2018) or are treated as illegal migrants (Columb 2016; Yousaf and Purkayastha 2015).
In their responses to an uncertain legal environment and the difficulty to prove THBOR, prosecutors charge suspects with other (less severe) offenses, as illustrated by the aforementioned Israeli indictment. Due to legal loopholes and the nonexistence of trafficking legislation in South Africa, law enforcement had no choice but to charge offenses that were not related to human trafficking, with minor penalties as a result.

Institutional and environmental challenges have in particular been found in Kosovo, where a postwar legal vacuum, rampant corruption, and a delicate political situation hampered cross-agency collaboration in the prosecution of Medicus. The poor case handover from UNMIK to EULEX and the lack of a search warrant (leading to an illegal search of the premises) were illustrative thereof.

Some of the reported challenges can be regarded as THBOR-specific. It has been stated that the fight against THBOR “is compounded by a reluctance to acknowledge the existence of the crime or a lack of political will to combat it” (Holmes et al. 2016). This is particularly true for cases that involve complicit medical staff. Scheper-Hughes has noted that, in her research, “[f]rom the outset I was stymied by unwritten codes of professional loyalty and secrecy and by the impunity enjoyed by a professional medical elite” (Scheper-Hughes 2004). According to Yousaf and Purkayastha, the organ trade’s connections to the transplant industry make it the most “hidden form of human trafficking” (Yousaf and Purkayastha 2015). Holmes et al. point out that “there is a reluctance to prosecute senior medical professionals and other complicit officials” (Holmes et al. 2016). In the Netcare Case, almost all of the accused transplant surgeons and transplant coordinators received a permanent stay of prosecution. Some medical suspects involved in Medicus did not receive punishment. Israeli prosecutors have indicated that the indicted Israeli doctor who helped facilitate transplants in Kosovo will likely not receive a punishment.

In South Africa, the illegal activities continued for several years, despite medical staff knowing about it. In the absence of reporting mechanisms and indicators that can be used to recognize illegal transplant activities at an early stage, the illegal transplants weren’t uncovered until 2–3 years after the activities began, after presumably hundreds of transplants had already taken place (Ambagtsheer et al. 2016). Thus, it can be argued that many of the issues encountered by police and prosecutors in the investigation and prosecution of organ trade and THBOR are preventable, for instance, by removing legal loopholes, by establishing anti-trafficking laws, and by raising knowledge and awareness about THBOR among law enforcement and medical staff. Under the HOTT project, THBOR indicators have been developed which can help identify suspicious transplant activity already at an early stage in hospitals, airports, hotels, and other locations (De Jong and Ambagtsheer 2016).

Transplant professionals in particular are increasingly recognized to play a role in the monitoring and in the curtailment of organ trade and THBOR. Proposed strategies include the reporting of suspicious transplant activities to international registries and/or to law enforcement (Caulfield et al. 2016; Danovitch et al. 2013; Domínguez-Gil et al. 2017). According to Capron et al. “professional societies need to undertake programs to make physicians and nurses aware that their responsibility to protect their professions’ reputation includes identifying members of their professions who depart from professional ethics” (Capron et al. 2016). A potentially effective method
can be to encourage medical professionals to anonymously report suspicions to law enforcement (Capron et al. 2016). Appropriate authorities could be the same institutions that receive information from sex trafficking, domestic violence, and child abuse. Information can include the names of hospitals, clinics, cities, hospital staff, and other individuals who are involved in potentially illegal transplant activities. After analyzing the reported information, the reporting center can submit the information to the national police, who in turn contacts the police forces or liaison officers of the transplant destination country. This national–international reporting method would allow for the information to reach the appropriate authorities and would strengthen the cross-border collaboration and enforcement of the crime (Ambagtsheer et al. 2015; Domínguez-Gil et al. 2018; Martin et al. 2016).

Notably, the empirical research body suggests that the organ trade operates alongside a continuum of which the activities can vary in scale and severity. It is unlikely that the criminal cases that have been studied represent the trade as a whole (Ambagtsheer 2017; De Jong 2017). Furthermore, the limits of a criminal justice response must also be considered. Although criminal prosecution is important insofar as it represents society’s intolerance for particular crimes and may act as a deterrent for future offenses, punishment does little to alleviate the conditions that produce organ trade and trafficking (Columb et al. 2017). In addition, considering the poor enforcement to even the most exploitative forms of organ trade, a punitive response against all commercial dealings in organs may place an unrealistic burden on the criminal justice system. Law enforcers’ decisions over which activities to prioritize are often based on chances of securing successful convictions. Prohibition may not then always be accompanied by rigorous enforcement when the police face both the challenges of international investigations and difficulties in proving that an organ was illegally bought (Manzano et al. 2014). Already in its 1980 Report on Decriminalization, the Council of Europe acknowledged that the social costs of criminalizing some activities can outweigh the benefits (European Committee on Crime Problems 1980).

Hence, it may be more effective to bring only excessive exploitation caused by trafficking in persons into the realm of the criminal justice system. Notably, signatories to international anti-THB legislation are already under an obligation to prosecute, prevent, and protect people from human trafficking, including THBOR (Bosma and Rijken 2016). Less harmful cases, in turn, could perhaps better be approached through alternative policies. One example is a trial or pilot of the Iranian model to boost donation and reduce black market abuses and exploitation (Harris and Erin 2002; Hilhorst and Van Dijk 2007; Matas 2006).

This chapter has illustrated that much room for improvement remains in prosecutorial responses to THBOR. Although strategies for improving responses to THBOR exist, the challenges to investigation and prosecution of THBOR are likely to remain significant. Criminal prosecution should not be thought of as the primary tool for addressing all forms of organ trade but should be focused exclusively on excessive exploitation. Initiatives that boost organ supply, reduce harm, and enhance victim protection should be emphasized regardless of the success or failure of the prosecution of THBOR.
Conclusion

This chapter presents the experiences of police and prosecution in investigating and prosecuting two criminal cases that involved (elements of) THBOR: the Netcare Case and the Medicus Clinic Case. The overarching objective is to draw lessons from police and prosecutors’ experiences and to offer possible explanations for why convictions of THBOR remain almost nonexistent.

Cross-References

- Criminal Justice System Responses to Human Trafficking
- The Investigation and Prosecution of Traffickers: Challenges and Opportunities
- Trafficking of Human Beings for Organ (Cells and Tissue) Removal

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A Transnational Field Approach to the Study of Labor Trafficking

Masja van Meeteren and Sanne Bannink

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Abstract

Labor trafficking has increasingly become a subject of policy and research due to the rise in cross-border mobility and globalization. Whereas labor trafficking is generally approached through a criminal justice frame of transnational organized crime, in this chapter, a broader transnational social field approach is advocated. It is argued that this does more justice to the complex interconnectedness of contemporary reality and allows us to understand better how vulnerability on which human trafficking feeds is created. It is argued that a transnational field approach to labor trafficking allows us to understand better the different forms in which labor trafficking comes and the different ways in which transnational space plays a role in these. The Netherlands is used as an empirical illustration. It is illustrative of how transnational space plays a different role in three types of labor trafficking. For each type, three phases in the labor trafficking process are scrutinized: recruitment, transportation, and the phase of work. It is concluded that it would be helpful to approach labor trafficking not solely from a criminal justice perspective of transnational organized crime but to also include more

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locally rooted approaches from a labor migration perspective, including a trans-
national field approach.

Keywords
Labor exploitation · Transnational organized crime · Transnational space ·
Transnational social field · Transnational crime · Human trafficking · Labor
migration

Introduction

As globalization continues to facilitate many legal processes, criminal actors may
also exploit globalization for illegitimate purposes. With the advent of globalization,
transnational crime has been on the rise, usually framing it as an adverse effect of
globalization (Marmo and Chazal 2016). The first evidence of the concept “trans-
national crime” being used is in the 1970s when the United Nations (UN) started to
use the term to refer to the increase in criminal activities that transcend national
jurisdictions. In 1995, transnational crime was defined as “offences whose inception,
prevention and/or direct or indirect effects involved more than one country.” UN
between 18 types of transnational crimes, human trafficking being one of them. The
label transnational crime is hence not only used to provide a definition for types of
crimes that traverse borders but has since then also been rather specific, referring to
particular types of crime, including human trafficking (Marmo and Chazal 2016),
with the result that, in policy terms, human trafficking has been framed as a form of
transnational crime.

Although transnational crime entered the discourse of criminology in the 1970s,
scholars only started to seriously research it in the 1990s (Felsen and Kalaitzidis
2005). The end of the Cold War and the emergence from communism of new states
in Eastern Europe gave way to concerns over nation-states’ vulnerability to trans-
national criminal activity. The first scholarly definition of transnational crime was
offered by Bossard (1990: 5, cited in Felsen and Kalaitzidis 2005) as “an activity that
is considered a criminal offense by at least two countries.”

At the same time, there is little consensus over the definition of transnational
crime. Transnational crimes are different from international crimes, which involve
crimes against humanity, such as genocide, and may or may not involve multiple
countries. International crimes often have a political or religious motive, whereas
transnational crimes are characterized by motives of personal gain and profit
(Albanese 2012). Many scholars highlight the organized nature and equate transna-
tional crime with transnational organized crime. Albanese (2012: 3), for example,
asserts that “transnational crime is a form of organized crime given its multinational
aims and the extent of organization required for success.” “Transnational organized
crime” is also the term mostly used by the United Nations.

Since 2000, the punishment of human trafficking has been regulated internation-
ally and laid down in the Palermo Protocol of the United Nations. The Palermo
Protocol is part of the United Nations Convention Against Transnational Organized Crime (UNTOC). The Protocol represented an enormous step forward in international cooperation against transnational crime. Simultaneously, it received criticism as it used the term “transnational organized crime” instead of “transnational crime.” This potentially limits the frame in approaching transnational crime by practitioners and researchers (Marmo and Chazal 2016).

Furthermore, whereas human trafficking used to concern trafficking of women for sexual exploitation mainly, with the Palermo Protocol, the definition of human trafficking was widened to include other kinds of exploitation. This widening arose from the internationally growing unrest of what is usually referred to as “modern slavery.” As a result, the concept of human trafficking now includes a multitude of situations that were not previously seen as human trafficking, including labor exploitation. Furthermore, this multitude of forms of exploitation has been criminalized as part of the UNTOC. As scholars have pointed out, not all human trafficking cases necessarily involve organized crime, and this is probably even less so in cases of labor trafficking.

Moreover, transnationality is not part of the constituent elements of the offense (cross-ref to Siller and Van Doore). Not all cases of human trafficking are therefore necessarily transnational, and this is, perhaps, also even less so for cases of labor trafficking. The fact that they are criminalized under that heading does not necessarily mean that transnational space plays an essential role in these “new” phenomena.

This chapter explores how transnational space plays a role in one of these relatively “new” forms of human trafficking: labor trafficking. By doing so, labor trafficking in the Netherlands is used as an illustration. The Protocol’s definition was incorporated by the Dutch legislature in 2005 into article 273f of the Criminal Code and is a literal translation of the Protocol’s text.

**Transnational Space**

As the role of transnational space in labor trafficking is explored, it is essential to explain how transnational space is defined and discuss the literature on which it builds. This section aims to outline this theoretical framework. A theoretical model that is often used to explain transnational human trafficking is the economic push and pull model. The idea is that potential victims who live in “source countries” or “sending countries” are pushed toward “destination countries” because of bad socioeconomic conditions in the source countries. The “destination countries,” on the other hand, pull victims with luring economic opportunities and a relatively high standard of living. “Transit countries” are those countries that encounter trafficking situations because of its geographical position and are used for transportation routes between source and destination countries. Following this model, the Netherlands is usually seen as a typical “destination country” in human trafficking.

However, such a view of transnational space involved in human trafficking, that classifies countries in source, destination or transit countries, is increasingly challenged
for being overly simplistic and not doing justice to the more complex reality of trafficking situations (Kragten-Heerdink et al. 2018). After all, even though the word “trafficking” seems to imply movement, border crossing is not a requirement under the definition of the UN Palermo Protocol. Others, therefore, differentiate between “country of recruitment” and “country of exploitation” and state that trafficking situations can also occur in the country of recruitment. Kragten-Heerdink et al. (2018: 5–6) introduced a model that identifies four different routes of human trafficking based on where the actions of the process of human trafficking take place. Also, they analyzed 768 human trafficking cases identified by the Dutch Public Prosecution Service (2008–2012) and categorized each case according to this model. Unfortunately for this chapter, they do not single out cases of labor exploitation, but they did differentiate between sexual and nonsexual exploitation and identified 104 cases of nonsexual exploitation. As this work represents a first step in improving the understanding of the role of transnational space in labor trafficking cases, the results are briefly outlined below.

The first route is referred to as “arrived cross-border trafficking.” In such cases, the Netherlands is involved as the country of exploitation and victims are recruited abroad. This concerned 73 nonsexual cases. The second route concerns “departed cross-border trafficking.” The Netherlands is involved as a country of recruitment in such cases. This concerned four cases of nonsexual exploitation. In all these cases, recruitment took place in the Netherlands, but the exploitation occurred in a neighboring country. The authors, therefore, label these cases “departed near-domestic trafficking” instead of “departed cross-border trafficking.” The third route is referred to as “domestic trafficking.” In such cases, the Netherlands is involved both as the country of recruitment and the country of exploitation. No cross-border movement takes place in this trafficking route, and it concerned 22 cases of nonsexual trafficking. The fourth route pertains to cases of “traversed cross-border trafficking.” With this human trafficking route, the Netherlands is only involved as a country of transit. Kragten-Heerdink et al. (2018) did not identify any nonsexual trafficking cases of this kind.

This model represents a significant improvement to the traditional push and pull model, recognizing that one country is not solely a “destination country” but that it can be involved in multiple actions in the process of human trafficking and that the actions that occur on its soil may differ in each trafficking case. However, doing so, it conceives of transnational space mainly as a geographical space in which people can move or not move. It asks the question within the borders of which nation-state human trafficking processes take place. Such a nation-state view of societies has increasingly received critique from scholars of migration studies (Levitt and Glick-Schiller 2004). In this chapter, a broader definition of transnational space is used, conceptualizing transnational space as a social space. Borrowing from transnational migration studies, a social field approach to the study of transnational labor exploitation is explored. This provides the opportunity to capture better the complex interconnectedness of contemporary reality than a nation-state container view of societies does.

This chapter aligns with distinguished scholars of transnational migration studies and defines a social field as “a set of multiple interlocking networks of social
relationships through which ideas, practices and resources are unequally exchanged, organized and transformed” (Levitt and Glick-Schiller 2004: 1009). This conceptualization of the social field finds its roots in the work of Bourdieu. Bourdieu used the concept of social field to draw attention to how social relationships are structured by power. A social field is comprised of people who struggle for social position within the field. Its boundaries are fluid, and national boundaries are not necessarily contiguous with the boundaries of social fields. National social fields are those that stay within national boundaries, while transnational social fields connect actors through direct and indirect relations across borders (Levitt and Glick-Schiller 2004).

The concept of transnational social fields represents a useful tool for conceptualizing the social relations and interactions linking those involved in labor trafficking. It provides the opportunity to see the actions involved in the process of labor trafficking not only of those who move but also of those who do not move but are part of transnational social fields. The maintenance of meaningful social relationships across borders plays an important role and are essential to consider when examining labor trafficking.

Furthermore, when those involved in human trafficking are socially linked to multiple settings, they deal with the regulatory powers and the hegemonic culture of more than one nation-state. Moreover, it is not only the power of the state as expressed through laws and the actions of its criminal justice apparatus; power in transnational social fields pervades and permeates all social relations (Foucault 1980). People in transnational social fields experience multiple loci and layers of power and can strategically take advantage of the way power is structured in their advantage. Vice versa, the way transnational social fields are structured makes some people relatively powerless. Also, navigating a social field is “learned” through experience in “playing” it, and this experience makes it possible to obtain a better position.

In exploring how transnational space plays a role in labor trafficking, this chapter conceives of transnational space as a transnational social field. It should have become clear that in doing so, it poses a fundamentally different question than the question of where actions in the human trafficking process are located. It is explored how transnational space plays a role by discussing the different roles it plays in three types of labor trafficking, which are discussed next. For each type, three phases in the labor trafficking process are examined – (1) the recruitment, (2) the transportation, and (3) the phase of work – while recognizing that labor trafficking does not necessarily need to comprise all three phases.

**Transnational Organized Crime Networks**

The first way in which transnational space can play a role is the most obvious one that is well known in the literature. It concerns organized crime networks that operate across transnational space. The crime network controls all three phases of the human trafficking process from recruitment to transportation to the work situation. Recruitment generally takes place in a different country than the country where the actual
work takes place, and the recruiters take advantage of the wage differentials between these countries.

In many cases, victims do not have a substantial economic position, and they would like to generate a better income for themselves or their families. They do not usually know much about rules and regulations concerning working abroad, which makes them vulnerable to recruitment under pretenses. Traffickers can use the victims’ dreams of making more money to provide for their family. False anecdotes are told, portraying a false truth of the available work. This is often reinforced with stories victims learn about through word of mouth, or that they see on social media. The criminal organization generally initiates the recruitment process and has the purpose of employing the victim in the Netherlands under exploitative circumstances while benefitting financially from this process.

After recruitment, the criminal network also arranges for transportation to the country in which the victims will be forced to work. If needed, victims will be smuggled across borders, or the traffickers arrange for false identification. To “control” their victims, traffickers create dependency, for example, through debt bondage related to the transportation costs. When someone owes a debt to someone, this person is in the difficult position of having to repay this debt. This debt bondage or the use of “fees” is a common tool used by transnational organized crime networks. Victims have to pay for several services, “service fees,” creating a debt to their traffickers (Europol 2016). Victims are highly dependent on the criminal network as they control everything. The traffickers use the vulnerability and the desperation of the victims to force them to work to repay the so-called debts that have been created. When the trafficker has earned enough money, and the victim supposedly has paid off its debt, it is possible in some cases for the victims to leave (Europol 2016). The victims have not earned any money and return home ashamed and empty-handed.

This criminal network is based on criminal collaboration, and there is a certain degree of professionalism. There are transnational networks present in different countries recruiting, transporting, and employing victims all over Europe. These types of networks adapt quickly to different circumstances and can vary in size (Europol 2016; Leman and Janssens 2015). They are often footloose networks with a clearly defined distribution in jobs (Bruckert et al. 2002). In many cases, the networks make use of freelance recruiters and chauffeurs. These freelancers can work for different networks (Farrell et al. 2010; Shelley 2010), and social media plays an essential role in establishing this. Traffickers advertise via these channels to recruit freelancers and to provide information. By using social media, these networks can adapt quickly to different circumstances (Europol 2016). The networks can vary in size, and victims can also be exchanged from one trafficker to another (Europol 2016; Shelley 2010).

In such cases, where criminal networks operate across transnational space, all three phases of the trafficking process are controlled by them. The network occupies essential positions in the transnational social field and has learned to navigate the field well. In doing so, it can control the whole process of labor trafficking from recruitment to transportation to the work situation. Its victims, on the other hand,
have limited to no experience in the field, often not well aware of the forces that structure it. The traffickers strategically use the power differentials in the transnational social field to their advantage. Labor trafficking, in this case, is a form of transnational organized crime which can be considered the modern extension of organized crime in the globalized era (Albanese 2012). The transnational criminal network is often mentioned in the international literature on human trafficking, yet it is not a form of labor trafficking that is seen very often in the Dutch context (Van Meeteren and Van der Leun 2018).

**Vulnerability Inherent in Migration**

In the previous category, recruitment and transportation were facilitated across transnational space by third parties. The second category is characterized by the independence of the victims in the first two phases: recruitment and travel. They can navigate transnational space on their own without needing assistance from third parties who possibly take advantage of them. However, the employer can take advantage of specific vulnerabilities that find root in the migratory background of the victims. Victims, for example, depend on their employer because they do not speak Dutch and are unfamiliar with Dutch employment rules. They do not have a good social network in the Netherlands to turn to for help. Additionally, the victim can also be in a vulnerable situation as she/he may have borrowed money to finance the migration project.

Dutch professionals who operate in the field of labor exploitation see that this form of labor exploitation is more common among origin country groups that have long established migration patterns. They hypothesize that a more extended stay has an emancipating effect. For example, Polish labor migrants used to migrate to the Netherlands with a recruitment agency or a middleman. However, over time they have learned what the best ways are to go, so they go independently.

The rise of the Internet and the use of social media are vital in understanding how this category can arrange for the migratory trip independently. Nowadays it is easy to find work online because it facilitates immediate contact between employer and employee. Different types of websites, ones that are more resume based and ones that are more vacancy based, exist that directly mediate transnational labor supply and demand. Social media and technology contribute to this; even in rural areas, people have cell phones which makes it easy to get in contact with future employers but also with future exploitative employers. It is also a place where prospective migrants can find each other and arrange for collaborative transportation or find bus tickets.

The victims in this category are better positioned in the transnational field through the informal institutions that have emerged as a result of long-lasting labor migration. They, therefore, do not have to depend on others to help navigate them, but they can operate by themselves. It is not transnational space that plays a role in their exploitation but their background as international migrants, as it creates and sustains vulnerabilities. It is not their position in a transnational social field that makes them
vulnerable but their position in the national social field of the Netherlands that does. Employers are better positioned in Dutch society, and they can make use of migrants who are less well-positioned. Employers may try to sustain that by limiting workers’ access to information and social contacts in the Netherlands. In many other cases, employers knowingly use their employees’ absence of a legal resident status.

This category includes victims that were not recruited but arrived on their initiative. Also, it includes victims who are recruited in the Netherlands. The latter, for example, happens a lot in places where migrant workers share a house in a bungalow park or at a campsite. Places, where many people from the same country of origin live together, are active recruitment sites. Such places tend to be occupied by migrant workers. Those who are temporarily out of work, not happy with their current work conditions, or not satisfied with the payment they currently receive are easy targets to be lured into a job under pretenses (Willemsen 2010). In such cases, it is not vulnerabilities in transnational space that play a role but vulnerabilities related to their position as international migrants, unfamiliar with the rules and rights of the national context in which they work.

Transnational Networks

The third category differs from the previous category in that victims do depend on others to navigate transnational space. Moreover, it is different from the first category as it is not characterized by an all-in package but by a chain of different actors who provide for a part of the trafficking process and who operate more or less independently. The difference between this category and the first one is the lack of a criminal network that controls all the elements of the human trafficking process. Also, not necessarily all actors in the chain are actively involved in the trafficking process or aware of their facilitation. This category can be subdivided into two subcategories, A and B. In case of A, the actors involved in recruitment and travel are professionals, and in case of B the actors involved in recruitment and travel are informal social networks.

In the case of A, the actors involved in the recruitment and transportation phase are generally professional middlemen, recruitment agencies, or smugglers. Professional intermediaries can work for a recruitment agency or work as an independent contractor. They can recruit employees via advertisements, on the streets, or via acquaintances. In other cases, professional, legitimate recruitment agencies operate as a link between the employer and employee. Such recruitment agencies often attempt to act in the employees’ best interest and unconsciously facilitate exploitation. These agencies make travel arrangements for employees and/or mediate in seeking employment and are usually characterized by legitimate business structures (Leman and Janssens 2015; Levenkron 2007).

When the journey or part of the journey involves illegal border crossings, victims often make use of human smuggling agents. Victims have to pay for these services, and in many cases, the costs involved are quite high. In the market of human smuggling, legitimate business people operate that charge a fee for their services
but also cheat by raising the costs along the way or rob the people they transfer across borders. In some cases, human smuggling networks and human trafficking networks are intertwined in criminal networks; in such cases, they fall under the first category. However, in many cases, they unconsciously facilitate a human trafficking process.

Regardless of the type of professionals that services are bought from, victims pay large sums of money for the services that go-betweens, recruitment agencies, or human smugglers provide. In some cases, victims take out loans in order to pay for these services. Victims will have to work in order to earn back the money that they invested in their migratory projects, which makes them vulnerable. However, unlike in the first category, where dependency is created vis-à-vis the criminal network, it is not a criminal network that controls them but the situation they are in that makes them vulnerable, having accumulated debt with different actors in the transnational field.

While the professionals operate in a transnational social field they know well, victims have no or hardly any knowledge of how to navigate it. However, although the professionals strategically use this advantage to make large sums of money off international migrants, to be qualified as traffickers, they would knowingly have to do this to get victims in a forced labor situation. The latter is not always the case, let alone challenging to prove.

In the case of B, where the actors involved in recruitment and travel are informal social networks, it is also not a transnational crime network that controls the victims’ situation but the situation they are in that makes them entrapped. Recruitment and transportation for this subcategory are arranged by informal social networks that are not criminal. These social networks are comprised of friends, acquaintances, and family members. Like in the other subcategory, some people in the informal social network may benefit from making their arrangements regarding recruitment and transportation. However, with informal social networks, this is often not the case. The services that friends or family members provide are usually not part of a clear strategy or long-term plan but rather a single event. Employers, for example, ask their employees if they know someone who also wants to work for them. Some cases are known in which victims are recruited through their social networks by people who are themselves in an exploitative situation (Bogaerts et al. 2010). These persons become sort of intermediaries (Postma and Van Wijk 2012). It is unknown mainly why victims willingly recruit new victims for their employers, but there is likely to be some form of gain in it for them, financial or otherwise, for example, a shared emotional burden.

Probably in most other cases in the Netherlands, informal transnational social networks do not consciously lure migrants into trafficking situations, but they unconsciously contribute to it. In the migration literature, the positive outcome of transnational social networks regarding increased social mobility is usually emphasized. However, scholars increasingly also point at the adverse effects of social networks (Cranford 2005). It is often argued that migrants who work on the margins of society try to make ends meet by taking advantage of newcomers or those who occupy even lower positions on the social hierarchy (Mahler 1995).
With subcategory 3A and 3B, transnational space plays a similar role in that there are others – professionals in 3A and informal social networks in 3B – that assist victims in navigating the transnational social field with recruitment and transportation. While doing so, they take advantage of them or at least ask a price for their services, possibly creating a situation of dependency. This results in a situation that is difficult to get out of for victims. Transnational space plays a role in that it works to the disadvantage of victims in recruitment and transportation. Due to the debts and obligations these two phases create, employers may also use those vulnerabilities created in these two phases in the third phase of actual work. This is in addition to the vulnerabilities that victims already have as international migrants in a new country.

Every actor in the transnational or national social field takes advantage of the victims in their way as they are better positioned than the victim, though not necessarily with the intent of creating a labor trafficking situation. As such, it is the situation victims are in that controls them, but there is not a criminal network that has consciously created this situation. Every party has strategically taken advantage of the victims as they occupy a stronger position in the transnational social field (mediators) or the national social field (employer). Together they have created a situation in which victims have become entrapped.

<table>
<thead>
<tr>
<th>Transnational organized crime networks</th>
<th>Vulnerabilities inherent in migration</th>
<th>Transnational networks</th>
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<tbody>
<tr>
<td>Recruitment</td>
<td>Crime network has a power advantage</td>
<td>No recruitment, individual agency</td>
</tr>
<tr>
<td>Transportation</td>
<td>Crime network has a power advantage</td>
<td>Victims have enough power to arrange themselves</td>
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<tr>
<td>Work</td>
<td>Forced labor arranged by a crime network</td>
<td>Forced labor result of vulnerability inherent in migration</td>
</tr>
<tr>
<td>Trafficking</td>
<td>All-in package</td>
<td>The result of vulnerability inherent in migration</td>
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**Conclusion**

According to Albanese (2012: 1), transnational crime is “a law violation that involved more than one country in its planning, execution or impact.” He further asserts that “their multinational nature and cross-border impact distinguish transnational crimes.” It has been illustrated that not all cases of labor trafficking merit the
label of “transnational crime,” regardless of definition. The downside of such a view on transnational crime is that it takes nation-states and their criminal justice systems as a focus point. A transnational field approach, on the other hand, takes how the crime manifests itself as a starting point. In other words, it does not take the fact that more than one country is involved in its combat as a starting point, but it takes the social phenomenon itself as a focus. Doing so, adopting a (transnational) social field approach to the study of labor exploitation allows us to understand better how vulnerability is created in a globalized world. It provides us with the opportunity to see how traffickers operate in markets that are “inherently tied to social inequalities associated with the negative impact of globalization” (Marmo and Chazal 2016: 94).

The UN has done an excellent job in calling for international attention for human trafficking with the 2000 Palermo Protocol. Perhaps by framing the issue as a matter of transnational organized crime, it has managed to get the massive attention that it currently gets and would otherwise not have been able to receive. At the same time, the arguments presented here demonstrate that the Protocol is focused on combatting labor trafficking cases of the first type. By calling attention to “transnational organized crime,” it discursively leaves out the combat of the other types. Moreover, it illustrates that definitions of crime “are often presented as neutral and value-free categories” which they are not (Marmo and Chazal 2016: 13). In the case of human trafficking, it masks politics that are not concerned about human rights but rather is imposed by the necessity to combat border security and organized crime (Marmo and Chazal 2016).

In line with the underlying politics, relationship with the traffickers and victim conditions was labeled as a process of agency stripping, where “in the first few years of the Protocol’s life, the victim conditions and relationship with the traffickers have been described, with the victim being physical, psychologically and possibly sexually abused” (Marmo and Chazal 2016: 99). By now it is known that the reality is far more fragmented and that many more subtle forms of force are used. The Protocol has artificially separated victims and offenders as two separate and different categories. However, over the years, UN reports indicate that many offenders were victims themselves, in what is referred to as a “cycle of abuse” when the status of the victim overlaps with that of the offender (Marmo and Chazal 2016: 99).

With such a complex and multifaceted phenomenon as labor trafficking, it was not the purpose of this chapter to argue whether or not labor trafficking is in its essence transnational or not. Instead, the aim was to show how a transnational field approach to labor trafficking allows us to understand better the different forms in which labor trafficking comes and the different ways in which transnational space plays a role in structuring power relations within the field. This better allows us to understand the different ways in which transnationalism may play a role in this type of crime. Besides, it allows us to see the cases in which it does not play a role or at least not in the way that is generally thought of when discussing transnational organized crime. Furthermore, there are also cases where victims nor perpetrators have a migratory background, and there is no movement across borders. These were not discussed here as the role of transnational space could a priori be dismissed. There have, for example, been cases where native Dutch residents with mental
disability were forced to work in exploitative circumstances. It stands to reason that
the framing of their harm as transnational organized crime does not do justice to their
situation. All in all, not only are manifestations of labor trafficking not always
transnational when they are, transnational space can play a variety of roles, with
transnational organized crime being one out of several manifestations.

Adopting a transnational field approach will equally demonstrate solutions to the
problem. It would be helpful to approach labor trafficking not solely from the
perspective of transnational criminal justice but also to include more locally rooted
approaches from a labor migration perspective. With increasing globalization and
the rise of people who know how to navigate the Internet, potential labor migrants
increasingly know how to arrange for their migration themselves. So it is likely that
this group is only going to grow larger. This means that research on strengthening
the position of labor migrants and facilitating integration also has the potential to prevent
future exploitation and therefore deserves more attention in policy-making.

Cross-References

▶ Establishing the Constituent Elements of Trafficking in Persons: Conceptualizing
“Transnationality” and “Involvement by an Organized Criminal Group”
▶ Human Trafficking in Supply Chains and the Way Forward
▶ Individual Criminal Responsibility Beyond the State: Human Trafficking as Both
a Transnational and an International Crime
▶ Is It Time to Open a Conversation About a New United Nations Treaty to Fight
Human Trafficking That Focuses on Victim Protection and Human Rights?
▶ Protection of Migrants Against Labor Exploitation in the Regulation of Migration
in the EU

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Individual Criminal Responsibility
Beyond the State: Human Trafficking
as Both a Transnational and an
International Crime

Nandor Knust and Kerttuli Lingenfelter

Abstract
The individual criminal responsibility of the perpetrator has become the focus of both national and international efforts to combat human trafficking and slavery. While states have recognized human trafficking as a criminal offense at the domestic level, they have also increasingly participated in bilateral, regional, and international regimes for cooperation in the investigation and prosecution of the perpetrators. This chapter provides an overview of the crime of human trafficking and the various transnational and international criminal justice
sanction regimes that are investigating, prosecuting, and sanctioning the crime of human trafficking.

The chapter first presents the international criminal nature of human trafficking and the ways in which states have engaged in legislative efforts to enhance the recognition of human trafficking as a crime. Then the chapter introduces current forms of regional and international cooperation. It also describes the possibilities and limitations involved in holding perpetrators of human trafficking criminally liable in the context of international criminal law to address the possibility of investigating and prosecuting human trafficking as an international core crime in situations where states are unwilling or unable to meet their obligation of holding perpetrators liable. This will be followed by an examination of the “regionalization” of (international) criminal justice systems and the “potential” inclusion of this crime within the regional context of criminal justice systems in Africa, America, and Europe. Subsequently the role of the United Nations and its sanction regimes in the fight against human trafficking will be discussed. The chapter closes with a brief outlook.

**Keywords**
Criminal law · Transnational crimes · International Criminal Court · Enslavement · Human trafficking

**The Crime of Human Trafficking**

Human trafficking, albeit also an issue of labor, migration, and human rights, has most keenly been framed as an issue of criminal law (Allain 2009; Gallagher 2017; Hathaway 2008). This shift in focus is reflected in the most central legal instruments. The Council of Europe defines human trafficking not only as a serious violation of “fundamental human rights and human dignity” but also as a “serious criminal offence” (Council of Europe 2002). The overarching aim of the UN Traficking Protocol is the strengthening of the criminal justice response to human trafficking. The achievement of this aim is enabled by providing common measures to be taken at the domestic level. The Protocol lays down the first definition of human trafficking, and it also sets out measures facilitating the cooperation during the investigation and prosecution of human trafficking. The international definitions of human trafficking that follow the Protocol abide by this criminal paradigm.

Human rights courts have endorsed this approach by pronouncing a positive obligation to criminalize human trafficking under the prohibition of slavery (Stoyanova 2014). The Community Court of Justice of the Economic Community of West African States (ECOWAS) found the Republic of Niger in violation of the prohibition of slavery; the judiciary recognized the status of a slave but did not denounce it by initiating a criminal proceeding or sentencing the perpetrator. The ECOWAS Court found that the “the national judge, when having to rule on a matter relating to the state of persons ... should deal with this slavery case of its own volition and initiate the punishment procedure” (Mme Hadijatou Mani Koraou v.
The Republic of Niger 2008, paras 81–82). So, to the extent that human trafficking amounts to slavery, the human rights obligation of states to bring about criminal proceedings applies to slavery.

The European Court of Human Rights (ECtHR) has taken the same approach as the ECOWAS Court and later extended the obligation to investigate, prosecute, and punish slavery to cases of human trafficking as such, laying down that: “In order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking. The Court observes that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers . . .” (Rantsev v. Cyprus and Russia 2010, para 285). The Inter-American Court of Human Rights recently confirmed, in a similar manner, this aspect of the obligation of states to realize the human right to be free from slavery and the obligation to punish human traffickers for the crime of human trafficking (Workers of the Hacienda Brasil Verde v Brazil 2016). In other words, there is no doubt that there is an international legal duty to penalize, prosecute, and punish those responsible for human trafficking.

National Dimension and Criminality

Since the adoption of the UN Trafficking Protocol, states have urgently and increasingly been encouraged to adopt the definition of human trafficking into their criminal codes. According to the definition of the Palermo Protocol, the crime of human trafficking has three elements, which can be inferred to be the act, the means, and the purpose. Thus, in accordance with the principles of criminal law, each element must be proven for a person to be found guilty of human trafficking. The vagueness of this definition has, however, allowed states some flexibility in interpreting and implementing the law (Gallagher 2017). Because the criminalization of human trafficking remains the responsibility of each state, the definition of the crime varies according to each domestic criminal legislation (Allain 2015). Furthermore, states retain the primary obligation to prosecute human trafficking within their own domestic criminal justice systems.

Beyond its links to organized criminal traffic in goods such as arms and drugs, there are other compelling reasons to perceive human trafficking as a criminal offense rather than, for instance, only a human rights violation (see ▶ Chap. 79, “European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking,” by Stoyanova). Human trafficking is most often committed by private actors, whether individually or as part of an organized gang or group, and is aimed at exploiting the victim for private (financial) gain. While state corruption may play a part in human trafficking (Kendall 2011), the act itself may nevertheless be attributed to an individual rather than to the state. Human trafficking is, in many cases, a horizontal crime (Piotrowicz 2009). “Horizontal crime” means that the crime is perpetrated by one person against another without
any act or omission by the state. Because human rights law is designed to hold states accountable, it may be unable to address the harm done by individuals to other individuals. This is why states often choose to use criminal law to limit the harm done by human traffickers. Indeed, while this chapter will investigate the international obligations attached to human trafficking, prompted by the cross-border activities or outcomes of the actions of some human traffickers, it is important to point out that these obligations apply only if states are unwilling or unable to practice their primary responsibility to establish direct individual criminal responsibility for human trafficking and prosecute the crime domestically.

Trafficking is not only a regular crime, but it has progressively gained recognition as one of the most serious crimes to the international community (Moran 2014; Obokata 2005; Pocar 2007; Tavakoli 2009). Human trafficking, in addition to being a crime in many national jurisdictions, has been defined as a transnational crime by the UN as well as by multiple regional organizations. Transnational criminal law, a “functional rather than normative descriptor” for a system regulating crimes that transcend national borders (Boister 2003, p. 954), aims to enhance cooperation between states during law enforcement. The Palermo Protocol, like many of the international agreements on human trafficking, is known as an international suppression convention (Boister 2017). As such, the key goals of the Protocol are the harmonization of the criminal definitions of human trafficking and the enhancement of transnational cooperation during criminal processes. Further Protocol obligations include mutual legal assistance in investigations, prosecutions, and judicial proceedings for the offense of human trafficking.

The following sections of this chapter provide an overview of the crime of human trafficking and the various transnational and international criminal justice sanction regimes set up for investigating, prosecuting, and punishing the crime of human trafficking. By tradition, transnational crimes and transnational criminal law have been considered separate from the core crimes under the jurisdiction of international criminal tribunals. This division has begun to attract criticism because the actors engaged in these crimes are intertwined and the definitions provided in transnational criminal law and international criminal law increasingly overlap (van der Wilt 2016). After introducing current forms of regional and international cooperation, the chapter describes the possibilities and limitations involved in holding perpetrators of human trafficking criminally liable in the context of international criminal law. This will be followed by an examination of the “regionalization” of (international) criminal justice systems in order to fully examine this multifaceted crime in an evolving international context.

**Cooperation Regimes**

Most states have some form of cooperation between national investigation and prosecution authorities. The UN Protocol states the enhancement of cooperation as one of its principal aims. It has laid the grounds for mutual legal assistance and granting extradition even absent a pre-existing mutual legal assistance treaty. Other central Protocol obligations include criminalization (Art. 5) and mutual legal
assistance in investigations, prosecutions, and judicial proceedings for such offenses (Art. 10 and 11(6)).

Mutual legal assistance has been carried out differently in different regions. Beyond the minimum standard of cooperation provided for by the Protocol, some states have opted to set up and participate in more extensive cooperation regimes to efficiently realize their obligations to prevent and combat human trafficking. Some cooperation is carried out through facilitating actors, such as Interpol, whereas other forms include bilateral and multilateral agreements, sometimes even establishing region-wide regimes. The most elaborate of these regimes is that of the Council of Europe (COE). The implementation of the COE Convention on Action Against Trafficking in Human Beings (2005), including the prosecution of human traffickers, is monitored by an independent monitoring mechanism, the Group of Experts on Action Against Trafficking in Human Beings (GRETA).

In Asia, both the UN and Association of Southeast Asian Nations (ASEAN) set up regimes to facilitate coordinated action to ensure the criminalization of trafficking and the prosecution of perpetrators (Emmers et al. 2006; Yusran 2018). Furthermore, the South Asian Association for Regional Cooperation (SAARC) has adopted its own Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, whose objective is both the criminalization of trafficking and the promotion of cooperation through extradition and prosecution (Article VII), as well as mutual legal assistance (Article VI). In Africa, ECOWAS and the Economic Community of Central African States (ECCAS) have adopted a Declaration on the Fight against Trafficking.

The most crucial element in the aforementioned cooperation regimes systems is the criminalization of the offense, often following the model laid down by the trafficking Protocol. Furthermore, the instruments of soft law, like the ECCAS Declaration on the Fight against Trafficking which merely “calls upon” and “invites” states to ratify instruments, aim to enhance and promote cooperation, whereas hard law instruments mandate it. Of the forms of cooperation established by many international trafficking instruments, the most central are mutual legal assistance, prosecution, and/or extradition. These forms of cooperation are hard law, i.e., mandatory, to some states and soft law to others, depending on the treaties ratified by the state in question.

**International Regimes**

As said, trafficking is not just an ordinary crime which, at times, has transnational aspects but has progressively been recognized by scholars as also one of the most serious crimes that threatens the international community. The UN Security Council, for instance, in Resolution 2331 (2016), recognizes that “the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes as well as other crimes” also apply alongside the UN Protocol. Impunity is identified as characteristic of and exacerbated by conflict, crisis, and post-conflict situations and linked to particularly serious forms of exploitation observed during the course of human trafficking in conflict and post-conflict...
phases (UN Special Rapporteur on trafficking in persons, especially women and children 2017, p. 6). The point herein is that human trafficking, being a domestic crime and at times a transnational crime, may even, on occasion, amount to an international crime.

Whereas international human rights law obliges states to implement their commitment to their citizens’ right to be free from all forms of slavery, servitude, and forced labor (ICCPR, Art. 8), international criminal law tribunals operate as a supplement to domestic criminal law enforcement. When states themselves fail to hold individual perpetrators of international crimes to account, international criminal law allows for an international tribunal to take over the process; by surpassing the sovereignty of a state, international criminal tribunals can create individual criminal responsibility. To do so, the crimes in question must fall within the jurisdiction of the international criminal tribunals. This jurisdiction covers only the four “core crimes” (crimes against humanity, war crimes, genocide, and the crime of aggression). The statutes of the ICC, ICTY, and ICTR serve as a representation of modern international criminal law.

Recently, many scholars have considered the possibility of raising human trafficking to an international core crime (Aston 2016; van der Wilt 2014; Siller 2016; Pocar 2007; Obokata 2005; Moran 2014; Kim 2011; Tavakoli 2009). Whether or not all cases of human trafficking could be captured by the jurisdiction of the ICC as the crime against humanity of enslavement consequently hinges on two different questions. First, should the Rome Statute be interpreted in light of its purpose of serving as a response to the gravest crimes or as a criminal provision in line with stricter principles of interpretation? Academics are divided on this issue. On the one hand, human trafficking can be seen as a shocking crime to a degree that some consider it unrealistic for it not to fall within the definition of enslavement (Aston 2016; Moran 2014; Kim 2011). According to this view, the purpose of international criminal law demands that if a crime is grave, widespread, and systematic, the definition of the crime must be seen as adaptable enough to give way to the purpose of international criminal tribunals: to end the impunity of the perpetrators of such crimes. On the other hand, the principle of legality demands that criminal laws be read strictly. In other words, due to their different criminal definitions, not all cases of human trafficking can amount to crimes of slavery or enslavement (Allain 2010; van der Wilt 2014). The second question asks what other conditions each case of human trafficking must meet to be considered not only enslavement but a crime against humanity with its own contextual requirements? The following section will explore this question.

The Rome Statute

The jurisdiction of the International Criminal Court “shall be limited to the most serious crimes of concern to the international community as a whole” (Rome Statute, Art. 5). The Rome Statute of the ICC defines genocide, crimes against humanity (CaH), war crimes, and the crime of aggression as “core crimes” (Rome Statute, Art. 5). Thus,
to have jurisdiction over human trafficking requires the subsumption of human trafficking under one of these core crimes. Of these, the CaH of enslavement refers to human trafficking (Rome Statute, Art. 7(1)(c)). Article 7(2)(c) specifies that enslavement “means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.” The Elements of Crimes of the Rome Statute sets forth the elements of the crime against humanity of enslavement as follows:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending, or bartering such a person or persons or by imposing on them a similar deprivation of liberty.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In footnote 11 of the Elements of Crimes, the document further pinpoints that in this context:

[i] t is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

However, for this provision to apply to human trafficking, a case of human trafficking would first have to meet a set of other requirements.

**General Requirements for ICC Jurisdiction**

For the ICC to prosecute someone for trafficking in persons, the Court must first establish its jurisdiction in compliance with the conditions laid down in the Rome Statute. The Court’s territorial jurisdiction is limited to the territories of the State Parties. Pursuant to a specific agreement or UN involvement, it may also exercise its powers and functions on the territory of any other state (Article 4). As for time, the Court has jurisdiction only over crimes committed after the entry into force of the Rome Statute (Art. 11).

Once jurisdiction has been established, the case must be deemed admissible. The case must be of sufficient gravity (Rome Statute, Art. 17(d)), and the state under jurisdiction of the Court has to be “unwilling or unable genuinely to carry out the investigation or prosecution” (Rome Statute, Art. 17(a) and (b)). To establish unwillingness, the Court shall examine whether proceedings are being carried out for the purpose of shielding a person from individual criminal liability, whether there have been unjustified delays in the proceeding, whether a lack of independence or
impartiality can be observed, or whether the proceedings are in any other way inconsistent with an intent to bring a defendant to justice. Inability, on the other hand, shall be determined by the Court by considering whether the state in question is able to carry out its proceedings; if the state is unable to obtain the accused, necessary evidence, and testimony due to a collapse or unavailability of its national judicial system, the case may be admissible.

**Human Trafficking as a Crime Against Humanity**

For a set of acts to amount to a crime against humanity, they must meet not only the general requirements of jurisdiction and admissibility in an international criminal tribunal but also certain other recognized requirements. These acts must constitute an attack against a civilian population, encompassing mistreatment of the civilian population (Sadat 2017), and involve multiple commissions of acts referred to in the Rome Statute (Rome Statute, Art. 7(2)(a)). Crimes against humanity also demand a contextual element, namely, that the actions be part of a pattern of misconduct. The offenses must constitute a serious attack on human dignity or a grave humiliation or degradation of at least one person (Cassese 2013, pp. 90–92).

Beyond gravity, the attack must be committed pursuant to or in furtherance of a state or organizational policy (Pocar 2007). The offenses committed in furtherance of a state or organizational policy may not be individual instances but must be part of a widespread or systematic practice (Cassese 2013; Schabas 2008). To meet the condition of widespread practice requires a multiplicity of victims.

ICTY case law holds that there are four elements that can be used to determine the systematic nature of the crimes at issue: (1) a political objective (a plan pursuant to which the act is perpetrated or an ideology to destroy, persecute, or weaken a community), (2) the perpetration of a large-scale criminal act or continuous commissions of inhumane acts against civilians, (3) the preparation and use of significant public or private resources, and (4) the implication of high-level authorities in the definition and establishment of the methodological plan (Prosecutor v. Blaskic 2000, paras 203–204). Future interpretations of the ICC on this matter, on the limits of “organizational policy,” and on “widespread or systematic attack” will impact the definition of human trafficking as a crime against humanity.

Alas, in accordance with Art. 40 of the Roman Statute, the crime must be committed with intent and knowledge; the perpetrator must have had intent to both engage in the specific conduct and to participate in the widespread and/or systematic conduct with the policy consequence in mind.

**Enslavement**

The inclusion of human trafficking as a form of enslavement was debated during the drafting of the Rome Statute (Oosterveld 2004). The intent to recognize and prosecute human trafficking is clearly indicated in the travaux préparatoires to the Rome Statute (Robinson 2001). According to the Chairman of the Drafting Committee, the example in Article 7 of trafficking as a form of enslavement is of “essential
significance” because it “precludes a perpetrator from claiming that he has not ‘enslaved’ because he has not literally ‘put the person to work’” (Bassiouni 2011). Although human trafficking was adopted into the Statute under the term enslavement, some scholars have been confident that the ICC would not limit the crime of enslavement to the practice of traditional forms of slavery (Cassese 2002).

On one hand, the Rome Statute was designed as a last resort to provide accountability when perpetrators of heinous crimes would otherwise go free. Because of estimated low levels of actual charges for human trafficking, some argue that the ICC was created for situations such as this. On the other hand, the Rome Statute’s definition of enslavement mimics the definition of slavery. If the provision is to be interpreted in light of that definition, according to principles of strict interpretation, human trafficking and enslavement may overlap but cannot be considered synonymous (van der Wilt 2014). In that case, only human trafficking in which the exploitation amounts to slavery (i.e., powers attaching to the right of ownership are exercised) would fall within the definition of enslavement.

The Kunarac Case
In the 2001 Kunarac case, the ICTY Trial Chamber interpreted the meaning of enslavement as a crime against humanity. The Chamber reiterated the Slavery Convention’s definition but stated that the crime against humanity of enslavement could be “broader than the traditional and sometimes apparently distinct definitions of slavery, the slave trade and servitude or forced or compulsory labor found in other areas of international law” (Prosecutor v. Kunarac, Kovač and Vuković 2001, para 541). Furthermore, the ICTY Appeals Chamber distinguishes between various contemporary forms of slavery and chattel slavery by noting that in contemporary forms of slavery, the victim’s juridical personality is destructed but not as greatly as in cases of chattel slavery (Prosecutor v. Kunarac, Kovač and Vuković 2002, para 117). The Appeals Chamber of the ICTY observed that “the law does not know of a ‘right of ownership over a person’. Article I(1) of the 1926 Slavery Convention speaks more guardedly ‘of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ That language is to be preferred” (Prosecutor v. Kunarac, Kovač and Vuković 2002, para 118).

The ICTY’s definition confirmed the means element of trafficking in the UN Protocol. Its approach strengthens the conviction taken in the Rome Statute by accepting and concluding that indications of enslavement:

- include elements of control and ownership; the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim’s position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. (Prosecutor v. Kunarac, Kovač and Vuković 2001, para 542)

Human rights courts, such as the ECtHR and the ECOWAS Community Court, have followed the ICTY’s lead. However, they lack the jurisdiction to assess whether
something amounts to a crime against humanity (Mme Hadijatou Mani Korâou v. The Republic of Niger 2008). Case law from international criminal tribunals is scarce. Nevertheless, enslavement case law and the language of the Rome Statute indicate that human trafficking in some cases may fall within the material jurisdiction of international criminal tribunals.

Other Provisions in Article 7 of the Rome Statute
The possibility of establishing human trafficking as a crime against humanity under another act listed in Article 7 is a possibility that has not been excluded. This may become necessary if the practice in question does not coincide with the elements of enslavement. Human trafficking may, for example, fulfill the elements of deportation or forcible transfer of population, meaning “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law” (Art. 7(2)(d)). The elements of forcible transfer are:

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another state or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.

In this context, the Elements of Crimes document specifies that “forcibly” may be force or coercion rather than physical force, “such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.” Thus, even though they do not capture the element of exploitation inherent to human trafficking, the means and act of human trafficking may be brought to an international criminal tribunal also under this title. However, not all types of forcible transfer will be human trafficking, since the crime lacks the element of exploitative purpose.

Article 7(1)(e) on imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law could also catch forms of human trafficking, as could torture, defined in Article 7(2)(e) as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused.” Victims of trafficking are also routinely put under the threat of violence, rape, battery, and extreme cruelty (US Government interagency working group 2000, p. 25). They are often confined and forced to work long periods of time, subject to both severe physical and mental violence, which may, as the UN Special Rapporteur on Torture has identified, “amount to torture or at least cruel, inhuman and degrading treatment or punishment” (UN General Assembly 2008, para 53). The individual criminal liability of those committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity (Article 7(g)) may also come into play in cases of human trafficking.
Beyond the key acts amounting to crimes against humanity, Article 7(1)(k) leaves some flexibility as to cases which do not specifically fall under any of the previous provisions. Actions that take place in the context of human trafficking amount to the “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” (Rome Statute, Art. 7(1)(k)).

Why It Matters

The Rome Statute refers to human trafficking in the context of the crimes against humanity of enslavement and sexual slavery and the war crime of sexual slavery. However, indications of severe forms of trafficking in conflict and post-conflict situations beg the question of what this means in practice. The lack of a consensus about the meaning of the most widely recognized definition of human trafficking (Chuang 2014) adds a level of complexity.

If human trafficking does indeed meet the requirements of a crime against humanity and/or a war crime, it will constitute a basis for individual criminal liability in the context of the only permanent international criminal tribunal. The importance of such is the establishment of individual criminal liability even in the absence of states practicing their primary responsibility under international law to prosecute the most heinous crimes. Although most states have criminalized offenses covering most or all forms of trafficking, some still remain without such legislation. In a setting where impunity for human trafficking is persistent, the ICC jurisdiction may cover states which do not have their own legislation on human trafficking or those which do but do not genuinely implement it.

The “Regionalization” of (International) Criminal Justice and the Inclusion of Human Trafficking Within the American, African, and European Context

A new trend is evident in the holistic debate on international criminal justice sensu stricto. As the ICC is a court of last resort, it can therefore – based on its very limited resources – only focus on a small number of situations and cases. The extension of the jurisdiction of the ICC to crimes other than the four core crimes is an ongoing debate at the political but also the academic level. (See for the debate about the extension of the core crimes to economic crimes: Roksandić Vidlička (2017).) Another approach to the dilemma of the strict limitation of ICC jurisdiction to the core crimes is the creation of specialized tribunals also focusing on specific “international” crimes that do not fall under the core crimes. A different response is the “regionalization” of International Criminal Justice. Within the different regional approaches, to combat transnational crimes is integrated within a plurality of regional mechanisms beside the regional human rights organizations.

In addition to these strictly international criminal courts where judges and prosecutors do not come from the countries concerned, there are so-called mixed
or hybrid criminal courts, which may also have their seat in the very countries where the massive and ongoing violations of international humanitarian law were committed.

Examples for the first generation of such mixed or hybrid internationalized criminal systems can be found in East Timor, Sierra Leone, Lebanon Tribunal (STL), and Cambodia Tribunal. The difference to strictly international criminal tribunals is the fact that both local and international judges and national and international prosecutors work within those courts. In this first generation of internationalized criminal justice systems, the crime of human trafficking did not play a significant role.

But, it assumed greater prominence in the next generation of internationalized criminal justice systems. These new models of international, internationalized, or transnational criminal law in a broader sense encompass so-called internationalized branches of the national judiciary. Both Guatemala and Honduras established such models of internationalized sub-institutions of the justice sector. In Guatemala, a bilateral treaty between the state of Guatemala and the United Nations established the Comisión Internacional contra la Impunidad de Guatemala (CICIG); in Honduras, the Misión de Apoyo contra la Corrupción y la Impunidad en Honduras (MACCIH) is based on a bilateral agreement between that country and the Organization of American States.

As for the fight against human trafficking, there are first signs of progress in the CICIG regarding the creation of criminal responsibility. The CICIG was created on 12 December 2006 by a bilateral treaty between the United Nations and Guatemala as an independent body to support the Public Prosecutor’s Office (Procuraduría General de la Nación), the National Civilian Police (Policía Nacional Civil), and other state institutions in investigating sensitive and difficult cases. The aim of CICIG is to strengthen national judicial institutions to investigate and prosecute illegal groups and organized crime. (The CICIG’s mandate comprises three principal objectives: (1) CICIG shall investigate the existence of illicit security forces and clandestine organizations that commit crimes that affect the fundamental human rights of the citizens of Guatemala. One major focus is on the identification of the structure of the illegal groups, the link of state officials and systems of organized crime, modes of operation, and sources of financing. (2) CICIG supports the Guatemalan institutions, with focus on the work of the Attorney General to investigate and prosecute individuals involved in the illegal groups. In addition, CICIG provides recommendations to the Guatemalan Government regarding new policies and procedures directed at the eradication of these groups and supports the state’s capacity to protect the basic human rights of its citizens. (3) CICIG provides assistance to the Public Prosecutor’s Office (Procuraduría General de la Nación) and National Civilian Police (Policía Nacional Civil) to guarantee sustainability in the fight against organized crime after the closure of CICIG’s mandate.)

The CICG paid a certain amount of attention to the crime of human trafficking. One of the CICIG cases was the so-called migration case. An official press release stated that “on 12 January 2018, the High Risk Court A, chaired by Judge Yazmin Barrios, ruled on the aforementioned case declaring 39 people responsible for participating in a passport forgery network. Among those sentenced are former
officals of the General Directorate of Migration (DGM) and the National Registry of Persons (RENAP), lawyers, human traffickers (coyotes) and users of the criminal structure, including Igor Vladimirovich Bitkov, Irina Vacheslavovna Bitkova and Anastasia Bitkova” (https://www.cicig.org/casos/com-035-20180329-caso-migracion-version-ingles/). The press release continued stating that “[b]y investigating this type of criminal organizations, Guatemala prevents the activity of human trafficking networks, which are responsible for human rights violations in the region, and prevents its territory from being used as a refuge for foreign criminals” (https://www.cicig.org/casos/com-035-20180329-caso-migracion-version-ingles/). CICIG investigated also 38 human trafficking processes in the form of “illegal adoption” which were grouped together in 5 main cases: Primavera Case, Muyus Case, Rosalinda Rivera Case, Adoption Network Case, and Pontaza Case (CICIG 2012). Those cases focused on the clarification of the existence of organized networks involved in this variety of human trafficking in form of “illegal adoption” (CICIG 2012). This shift in the investigation and prosecution of human trafficking cases by an internationalized criminal justice system shows the immense threat that human trafficking poses to the social complex of the Guatemalan society and the region as a whole. It also points to the link between human trafficking networks and a wide range of additional human rights violations.

Similar developments concerning the “regionalization” of (international) criminal justice can be observed on the African continent. A noteworthy example are the Chambres Africaines Extraordinaires (CAE) and the Cour Pénale Spéciale (CPS) of the Central African Republic. Aside from these two institutions and the large number of “African” cases in front of the International Criminal Court (Democratic Republic of Congo, Uganda, Kenya, Côte d’Ivoire, Sudan, etc.), a variety of new models of internationalized and hybrid criminal justice are discussed and implemented within the sub-Saharan African context. Even if the abovementioned institutions had no direct impact on the definition and application of human trafficking as an international or transnational crime, all these impulses were key for the debate of a special chamber within the African Human Rights system on the subject of direct individual criminal responsibility for international and transnational crimes. This discussion led to the so-called Malabo Protocol. In 2014, the African Union adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (the Malabo Protocol). The Malabo Protocol aims at the inclusion of criminal jurisdiction within the remit of the proposed African Court of Justice and Human Rights (ACJHR). Unlike the International Criminal Court, this extension of the African Human Rights system is not limited to the four core crimes (genocide, crimes against humanity, war crimes, and the crime of aggression); moreover, the jurisdiction includes a variety of additional crimes (as listed in Art. 28 A Malabo Protocol), such as the crime of trafficking in persons (Art. 28 J Malabo Protocol).

Art. 28 J Malabo Protocol defines the trafficking in persons as follows:

Trafficjcking in persons
For the purposes of this Statute:
1. “Trafficjcking in persons” means 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.

2. Exploitation shall include 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;

3. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (1) of this article shall be irrelevant where any of the means set forth in subparagraph (1) have been used.

Thus, the definition of the crime follows for the most part the definition of international treaties. The inclusion of trafficking in persons within the jurisdiction of a potential regional court/chamber of criminal justice sends a strong message about the fight against human trafficking on the African continent. However, the primary impact of including this crime is not the effect of this potential regional criminal court on the region – it is on the complementary nature of the court (Mnine-Silungwe 2016). The principle of complementarity provides that the legal systems of national states have supremacy over the regional African criminal justice system. This means that the investigation and prosecution of the crimes mentioned in Art. 28A Malabo Protocol lies primarily with the national states.

As stated above, Art. 28 J Malabo Protocol was not “redefined” as a penal provision and therefore does not provide the necessary elements of crime (Mnine-Silungwe 2016). Even Art. 43 A Malabo Protocol provides a general “punishment provision.” The lack of a clear mens rea provision leaves the definition of an international or transnational crime of human trafficking a bit blurred (Mnine-Silungwe 2016). As a result, the structure of the crime of trafficking in persons as defined in the Malabo Protocol cannot simply be copied and pasted into national legal systems; moreover, it has to be modified with clearly defined elements, such as actus reus, mens rea, and a penalty (Mnine-Silungwe 2016). Still, the inclusion of trafficking in persons into the jurisdiction of a potential regional criminal justice system is one more step toward the establishment of a functional international, transnational, and national system for the creation of individual criminal responsibility for human trafficking.

The Kosovo Relocated Specialist Judicial Institution (KRSJI) is another new model for the regionalization of criminal justice in the European context. This institution is composed of the Kosovo Specialist Chambers and Specialist Prosecutor Office. The KRSJI was established by amending Kosovo’s constitution by Law Law on the Specialist Chambers and the Specialist Prosecutor’s Office (Law No.05/L-053). However, its jurisdiction is not a traditional international criminal jurisdiction, because this institution is part of the Kosovan legal system. Art. 1 (2) Law No.05/L-053 requires KRSJI’s prosecution to focus on cross-border and international crimes that occurred during and after the conflict in Kosovo. In doing so, the institution should follow the “Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011” and the investigations of the Special Investigative Task Force (“SITF”) of the Special Prosecution Office of the Republic of Kosovo (“SPRK”). The KRSJI is distinct in that the judiciary consists only of international judges and the institution itself is located outside of The Hague. These new
institutions of the KRSJI were triggered by a report of the Special Rapporteur for the Council of Europe (CoE) Committee on Legal Affairs and Human Rights on “Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo” (“Marty-Report”). Even if the report focuses mainly on trafficking in human organs, the link to human trafficking for organ removal will be an essential point for evaluation. (See Chap. 98, ▶ Combating Human Trafficking for the Purpose of Organ Removal: Lessons Learned from Prosecuting Criminal Cases in this volume.)

The OSCE-Report “Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings” clarifies:

Persons trafficked for organ removal are victims of a heinous crime. They are victims of a form of trafficking that is relatively unknown, and which has rarely been investigated and addressed, even within the well-established anti-trafficking community. Yet, human trafficking for organ removal is provided for in all major international and regional, and many national, legal frameworks and policies addressing trafficking in human beings. (OSCE, Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings, p.47)

Therefore, the work of the KRSJI will be essential in developing the crime of human trafficking with regard to creating individual criminal responsibility directly under public international law.

As these new developments in the “regionalization” of (international) criminal justice illustrate, the crime of human trafficking is becoming more and more important in the holistic system of international criminal justice, which in turn will influence the regional and national legal systems in a sustainable way in their fight against human trafficking.

The United Nations Security Council and the Crime of Human Trafficking

Besides the abovementioned systems of “criminal justice,” which focus on the traditional concept of criminal law, there is another sanction system responding to the “international” or “transnational” crime of human trafficking: the UN Security Council and its sanction system. (See for a detailed analysis of this approach concerning terrorism financing: Sieber and Vogel (2015).) To debate this different mechanism, which targets individuals involved in serious crimes, the abovementioned definition of “international crime” needs to be redefined. In this context the notion of international crime is not only limited to the core crimes but includes crimes that manifest a threat to international peace and security within the meaning of the United Nations system. Even if it is highlighted that “[c]ontrary to the assumption that sanctions are punitive, many regimes are designed to support governments and regions working towards peaceful transition” (https://www.un.org/sc/suborg/en/sanctions/information), the sanctions focus on individuals and impose severe restrictions and limitations on affected individuals. Sanctions

In the case of Libya, a Security Council Committee was established pursuant to Resolution 1970 (2011) to supervise the relevant sanctions measures (arms embargo, asset freeze, travel ban) and to undertake the tasks set out by the Security Council in paragraph 24 of the same Resolution. The mandate of the Committee was extended by a plurality of additional resolutions.

The Committee comprises all 15 members of the Security Council, makes its decision by consensus, and is supported by a Panel of Experts. (The Committee is mandated to (1) monitor implementation of the sanctions measures; (2) designate those individuals subject to the travel ban and asset freeze measures and to consider requests for exemptions to those measures; (3) establish such guidelines as may be necessary to facilitate the implementation of the sanctions measures; (4) report within 30 days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee; (5) encourage a dialogue between the Committee and interested member states, in particular those in the region, including by inviting representatives of such states to meet with the Committee to discuss implementation of the measures; (6) seek from all states whatever information it may consider useful regarding the actions taken by them to implement effectively the sanctions measures; (7) examine and take appropriate action on information regarding alleged violations or non-compliance with the measures; and (8) designate vessels for some or all of the measures in relation to attempts to illicitly export petroleum, including crude oil and refined petroleum products.) The Committee is mandated to consider designating individuals (or entities) based on the following criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Relevant resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals and entities involved in or complicit in ordering, controlling, or otherwise directing the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering, or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities</td>
<td>Paragraph 22 (a) of Resolution 1970 (2011)</td>
</tr>
<tr>
<td>Individuals acting for or on behalf of or at the direction of individuals or entities identified above</td>
<td>Paragraph 22 (b) of Resolution 1970 (2011)</td>
</tr>
<tr>
<td>Individuals or entities having violated or assisted in the evasion of the provisions of Resolution 1970 (2011), particularly the arms embargo, or to have assisted others in doing so</td>
<td>Paragraph 23 of Resolution 1973 (2011) and paragraph 11 (e) of Resolution 2213 (2015)</td>
</tr>
</tbody>
</table>

(continued)
<table>
<thead>
<tr>
<th>Criteria</th>
<th>Relevant resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the context of illicit exports of petroleum from Libya or attempts thereof, the Committee may designate vessels for some or all of the measures in paragraph 10 of Resolution 2146 (2014), on a case-by-case basis, for a period of 90 days, which may be renewed by the Committee</td>
<td>Paragraph 11 of Resolution 2146 (2014), as updated by paragraph 2 of Resolution 2362 (2017)</td>
</tr>
<tr>
<td>Planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law or acts that constitute human rights abuses, in Libya</td>
<td>Paragraph 4 (a) of Resolution 2174 (2014) and paragraph 11 (a) of Resolution 2213 (2015)</td>
</tr>
<tr>
<td>Attacks against any air, land, or sea port in Libya or against a Libyan state institution or installation, including oil facilities, or against any foreign mission in Libya</td>
<td>Paragraph 4 (b) of Resolution 2174 (2014) and paragraph 11 (b) of Resolution 2213 (2015)</td>
</tr>
<tr>
<td>Providing support for armed groups or criminal networks through the illicit exploitation of crude oil or any other natural resources in Libya</td>
<td>Paragraph 4 (c) of Resolution 2174 (2014) and paragraph 11 (c) of Resolution 2213 (2015)</td>
</tr>
<tr>
<td>Acting for or on behalf of or at the direction of a listed individual or entity</td>
<td>Paragraph 4 (c) of Resolution 2174 (2014) and paragraph 11 (f) of Resolution 2213 (2015)</td>
</tr>
<tr>
<td>Threatening or coercing Libyan state financial institutions and the Libyan National Oil Company or engaging in any action that may lead to or result in the misappropriation of Libyan state funds</td>
<td>Paragraph 11 (d) of Resolution 2213 (2015)</td>
</tr>
<tr>
<td>Planning, directing, sponsoring, or participating in attacks against United Nations personnel, including members of the Panel of Experts</td>
<td>Paragraph 11 of Resolution 2362 (2017)</td>
</tr>
</tbody>
</table>


As the list above shows, serious human rights violations fall under the criteria for a potential listing with this UN Committee. On 7 June 2018, the Committee listed six leaders of human trafficking networks and other players involved in this criminal endeavor as subject to global asset freezes and travel bans. An analysis of the reason for the sanctioning of these six individuals reveals that the cause for the listing by the UN Sanctions Regime were human rights violations in the form of human trafficking. Even if these sanctions – such as asset freezes and travel bans – are not the outcome of a “traditional” criminal procedure, the responses by the international community in the form of an UN Sanction Committee clearly demonstrate that the crime of “human trafficking” manifests a threat to international peace and security and is increasingly becoming an international/transnational crime, directly resulting in the creation of individual (criminal) responsibility and sanctions.

Human trafficking has received a high level of attention at the transnational, regional, and international levels of criminal justice. Although these obligations apply only if and when states do not fulfil their primary responsibility to establish
direct individual responsibility of the perpetrators of human trafficking, these international means of creating responsibility are of essential importance to overcome (national) impunity. Furthermore, they highlight the paradigmatic way in which human trafficking has come to be viewed as, first and foremost, a crime.

**Conclusion**

This chapter demonstrates the high level of attention the crime of human trafficking has received at the transnational, regional, and international levels of criminal justice. However, even though most states have criminalized most human trafficking offenses, the willingness to apply this power effectively at the national level is patently absent.

This chapter presents new models of transnational and international regimes designed to overcome (national) impunity. These new regimes operate as complements to the criminal justice systems of sovereign national states. They apply only if national states are unwilling or unable to practice their primary responsibility under international law to prosecute these crimes, fighting impunity by establishing direct individual criminal responsibility for human trafficking.

**Cross-References**

▶ Protection of Migrants Against Labor Exploitation in the Regulation of Migration in the EU

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Labor Trafficking of Men in the Artisanal and Small-Scale Gold Mining Camps of Madre de Dios: A Reflection from the “Diaspora Networks” Perspective

Dolores Cortés-McPherson

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Abstract

Defined as “labor intensive, low tech mineral exploration processing,” the artisanal and small-scale gold mining is expanding worldwide due to the increase in the price of gold and the demand for the mineral. The industry creates jobs for the poor contributing to the alleviation of poverty in some developing countries, but the lack or regularization of the sector has occasioned environmental and social problems, human trafficking among them. In this industry trafficking situations have traditionally been perceived as exploitation or as violations of worker’s rights, while policies have targeted sexual trafficking of women, leaving vulnerable miners unprotected. That is the case of Madre de Dios, a gold enclave in the Peruvian Amazon that has become an emblematic case study of a modern gold rush. Peru has an extensive legal framework to fight human trafficking; however, this country follows a state-centric, security-based approach, focused on sexual exploitation of women trafficked by criminal networks. This chapter compiles

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fieldwork research to conclude that the trafficking dynamics in Peru can be described as a domestic phenomenon, part of an affective economy of local diasporas. Thus, it is argued, the focus of the state’s human trafficking strategy needs to adjust to this reality and move beyond the security approach.

**Keywords**

Labor trafficking · Men · ASGM · Amazon

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**Introduction**

The cover of the emblematic book on modern slavery, Kevin Bales’ (2000) *Disposable people*, depicts an image of the Serra Pelada’s gold mine in Brazil, one of the largest and most violent open pits in history. The picture, taken by the Brazilian photographer Sebastião Salgado in 1986, captures a confrontation between a *garimpeiro* (digger) in rags and a policeman in a muddy hill. Surrounded by many other miners that stare at the scene with awe, a policeman aims his rifle at one of the *garimpeiros* who grabs it by the barrel in a defiant gesture. The scene is explicit in its portrayal of the working conditions of these men. While explaining what he saw in the Serra Pelada’s mine, the photographer describes a form of human trafficking.

Swept along by the winds that carry the hint of fortune, men come to the gold mine of Serra Pelada. No one is taken there by force, yet once they arrive, all become slaves of the dream of gold and the need to stay alive. Once inside, it becomes impossible to leave. ... Every time a section finds gold, the men who carry up the loads of mud and earth have, by law, the right to pick one of the sacks they brought out. And inside they may find fortune and freedom. So their lives are a delirious sequence of climbs down into the vast hold and climbs out to the edge of the mine, bearing a sack of earth and the hope of gold. (Salgado 1992)

Bales devotes a chapter to the slavery-like conditions of men in the Brazilian gold mine in his book. The publication is quoted by most scholars within the human trafficking literature to this day, yet the subject of male trafficking for labor exploitation in the extractive industries remains underdeveloped by the academia. If during the last decade, human trafficking has triggered an extensive body work within scholarly circles, the overwhelming focus has been placed on international trafficking of women for sexual exploitation at the expense of other types of trafficking (Andrees and Linden 2005; Cockbain et al. 2018; Laczko and Gozdziak 2005), a trend that might start to change to adjust to the changes in the phenomenon. According to the latest report of the United Nations Office on Drugs and Crime (UNODC), during the last decade, almost half of the human trafficking cases identified were cases of forced labor (four out of ten), in 63% of those, the victim was a man. The crime is also increasingly perceived as a domestic problem instead of an international one, 42% of victims were trafficked inside their own countries (UNODC 2017).

Many scholars had already reflected on this trend. Steele (2013) approaches the subject of labor trafficking of men in South African gold mines to highlight the fine
line that separates poor working conditions from trafficking. To her, most trafficking situations are seen as exploitation. That is, it is assumed that the acceptance of abusive and hazardous work conditions due to the lack of viable alternative options, including long working hours without adequate pay and safety equipment, might amount to a violation of worker’s rights but not necessarily to trafficking in persons, a perception that has shaded many trafficking situations. As she notes, “if an employer exploits the worker’s lack of alternatives, this could constitute abuse of power or a position of vulnerability, thereby fulfilling all three conditions (activity/means/exploitation) of the crime. The line between poor working conditions and trafficking is therefore far from clear and, thus, remains open to further inquiry” (Steele 2013).

Labor trafficking has also been interpreted as part of global production networks (GPN). Using the case of the sugarcane in Brazil, McGrath (2013) refers to the GPN framework to argue that the “dynamics of production networks” reproduce unfree and degrading labor. The global value chain theoretical framework analyzes the impact of economic globalization on labor standards and the role that consumers play in the process (Crane, LeBaron, Allain, & Behbahani 2017). To them, the fact that labor may be “voluntary” at the point of entry does not mean that the labor relation is free. This framework questions the notion of consent and “voluntariness” to understand the processes by which workers enter into severely exploitative arrangements (Barrientos et al. 2013; LeBaron and Howard 2015; Phillips 2016). In this line, Arhin (2016) argues that many workers enter trafficking situations following family and friends, imbedded in cultural and socioeconomic dynamics that she calls ethno-diaspora networks of “shared ethnicities of groups that have in common ethnic and national traits, identities, and affinities” (Sheffer 2003; Arhin 2016). Traffickers rely on diasporas for the recruitment, transportation, and exploitation of the victims whose interactions are often based on an “affective economy of co-ethnic identification” and relations of trust (Arhin 2016).

Within the artisanal and small-scale mining (ASM) literature and for the case of India, Samaddar (2018) explains the presence of informal labor in the mining sector as part of the capitalist system and the vulnerability of what he calls “transit labor” or mobile migrant workforce. That noted, the literature on ASM, mostly focused on African and Asian countries, has been concerned about the use of child labor, what has been interpreted as part of the logic of subsistence livelihoods of families whose members, including children, resort to the activity due to poverty (Hilson 2008; Maconachie and Hilson 2016). Considered a hazardous work, mining implies extreme health risks to children who “are torn from their habitual living environment and forced to live under extreme conditions in mining camps” (ILO 2015), unable to integrate in society and follow an education (Hilson 2008). The International Labor Organization (ILO) estimates that 168 million children are victims of child labor, 85 million of which are performing hazardous tasks (ILO 2017). A concern that Brysk (2012, p. 80) echoes in her work on contemporary slavery noting that it deserves closer attention.

The purpose of this chapter is to contribute to this literature by further exploring the link between irregular artisanal and small-scale gold mining (ASGM) and labor trafficking. In particular it focuses on some of the reasons that explain the exposure
of the ASGM workforce to slavery-like conditions in mining camps. Fifteen years after the birth of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking Protocol), ratified by 171 states, exploitation of men in mining camps is rampant due to the expansion of ASGM worldwide. To analyze this phenomenon, the research takes the case of the gold enclave of Madre de Dios in the Peruvian Amazon where between 30,000 and 50,000 people have migrated to participate in a modern gold fever. For years, different institutions have reported on the perversiveness of sexual trafficking of girls and women in mining camps and on the existence of child labor and forced labor of men in the mining operations (Barrantes 2014; CHS 2012; El Comercio 2017; Mujica 2014; Novak and Namias 2009; Peru Support Group 2012; Salazar and Castro n.d.; Sanz 2015; Shahinian 2011; Verité 2013).

As many other countries, Peru signed and ratified the Trafficking Protocol, to introduce this crime in its penal code in 2007, with sanctions up to 25 years of jail. It also has a comprehensive National Plan of Action in place. Despite that, by 2018 there were just two sentences related to labor trafficking in the country, none of those in Madre de Dios. In a similar fashion to the Brazilian workers of Serra Pelada two decades before, Peruvian miners are not recruited by force in Madre de Dios, yet, once in the mine, leaving becomes impossible for many. As in the Brazilian case, human trafficking dynamics are not part to transnational criminal networks but a domestic phenomenon, part of a lucrative industry where the formal, informal, and illegal intertwine (Durand 2013) and where the domestic economy interacts with the global one. The increasing demand of gold worldwide and the easiness to launder this mineral into the international supply chain make the resolution of this problem all more difficult. Security-based policies, such as the one established by the Peruvian government to fight human trafficking, tackle just part of a complex problem. In this context, it is suggested here that, in many situations, trafficking relates to domestic economic practices (Mujica and Cavagnoud 2011) in which workers are not recruited by criminal bands but enrolled by friends and family members in what is perceived to be seasonal work. As Arhin puts it, it follows a pattern of diaspora’s networks (Arhin 2016) that initially see the activity (mining) as seasonal, complementary source of income and are willing to take the risk that the job might imply.

This chapter uses the definition of human trafficking as set forth in the Article 3 of the Trafficking Protocol. This definition includes forced labor as part of human trafficking, and in this chapter, these two concepts are often used interchangeably. The document uses primary and secondary data, including field work interviews in Lima and Madre de Dios carried out between 2013 and 2018. The chapter is also enriched through the participation of the author in processes leading to policy development from 2003 and 2012 as a regional focal point in the Andes of the UN Migration Agency, formerly known as the International Organization for Migration (IOM). The document is structured as follows. The above presentation will be complemented with a description of ASGM dynamics in Madre de Dios, to present evidence of trafficking for labor exploitation of men in this gold economic enclave. This section will also expose the steps given by the Peruvian government to fight this crime. A brief account of the theoretical debate around the concept of human trafficking and specifically, to the idea of labor exploitation and forced labor, will
frame the document’s academic standpoint, setting the conceptual stage for the empirical part that will be developed in the fourth part of the paper.

The Dynamics of the Irregular Gold Economy and Labor Trafficking in the MDD Gold Mining Camps: An Overview

The global production of gold doubled during the last 50 years to fulfill the demand for jewelry, electronics, and financial instruments. The price of this mineral increased 417% between 2003 and 2011, prompting the expansion of artisanal and small-scale gold mining (ASGM), an industry that sources 20% of the mineral global output, an estimate of 400 tons (Seccatore et al. 2014). Defined as “labor intensive, low tech mineral exploration processing” (Hilson 2011), the ASM employs an estimated 14–30 million people contributing to the alleviation of poverty in some developing countries (Buxton 2013; Hilson and McQuilken 2014; Labonne 2014). However, the lack or regularization of the sector has occasioned the unruly expansion of mining camps.

Peru is the largest producer of gold in Latin America and fifth (just after China, Australia, Russia, and the United States) in the world (World Gold Council 2016) with a registered volume of 166 tons in 2016. It became a middle-income country as a result of a macroeconomic model that successfully focused on the export of its natural resources reducing poverty from 54,3% to 25,8% (INEI 2015). In parallel to the growth of large-scale mining (LSM), an informal economy flourished associated with the ASGM, an industry that produced 28% of the gold output in Peru in 2011 (Torres Cuzcano 2015). ASGM employs 150,000 miners and provides work for 500,000, but the lack of regulation of this sector has created serious environmental and social problems. In 20 years, 3000 tons of mercury were poured into the Amazon (Defensoría del Pueblo 2014), and 15 natural protected areas were compromised. River courses were reversed, impacting 25% of the wetlands (WWF 2013), and 62,500 hectares were deforested by 2016 (MAAP 2016). This sector has also been associated with transnational crime and drug trafficking networks, among other illegal economies (Ambrus 2016; GIATOC 2016; Verité 2016).

Irregular gold mining takes place in the 25 regions of Peru, but Madre de Dios has concentrated 80% of this production, an estimated 20 tons per year (Pachas 2012). In the year 2010, an Executive Order (No 012-2010) was enacted to regularize gold mining in Madre de Dios; 2 years later, a nationwide extraordinary regulatory process was put in place. Although this strategy was designed as a comprehensive policy to tackle all stages of the supply chain, most efforts were placed on formalizing miners and on eradicating illegal sites located in protected areas and water courses. As of early 2019, just two miners had been able to formalize themselves in Madre de Dios. Meanwhile, military interventions to destroy machinery had not been able to prevent the expansion of illegal operations. Peruvian authorities referred to human trafficking as a fundamental reason for the regularization of ASM, in line with the Special Rapporteur on Contemporary Forms of Slavery (Shahinian 2011) who visited the area in 2011 to recommend formalization as a means to counteract
labor exploitation and human trafficking. Unfortunately, and with the exception of the clause 4.3 of the 029 Executive Act of 2014, the extensive legal framework to regulate the industry does not include any specific measure to fight human trafficking. The clause 4.3. is a general statement aiming at improved coordination between the Police and the Judiciary when intervening nightclubs, progressive eradication of child labor, and the need for rescue centers for victims.

### Scoping Labor Trafficking

According to an investigation of the International Labor Organization (ILO) and the Walk Free Foundation, there are 40 million people victims of modern slavery today, 25 of them in forced labor situations (ILO and Walk Free Foundation 2017), whereas ILO’s latest statistics estimate that 168 million children are exploited in different industries, 85 of them performing hazardous tasks (ILO 2017). In its 2018 report, the US Department of Labor included Peru as one of the three (The other two countries were Burkina Faso and the Democratic Republic of the Congo) countries where gold was produced using child and forced labor (U. S. Department of Labor 2018), and the NGO Verité (2016) found evidence of widespread vulnerability of miners and indicators of forced labor within the Peruvian ASGM workforce. In the year 2011, the United Nations Special Rapporteur on Contemporary Forms of Slavery visited Peru and MDD to warn on the need to protect the safety of ASGM workers, many of them in slavery-like situations (Shahinian 2011). For years, international humanitarian organizations and NGOs have documented on human trafficking cases associated with the Madre de Dios’ gold rush (Barrantes 2014; CHS 2012; El Comercio 2017; Mujica 2014; Novak and Namias 2009; Peru Support Group 2012; Salazar and Castro, n.d.; Sanz 2015; Shahinian 2011; Verité 2013).

There is no solid data to measure the extent of trafficking in Peru, but statistics of the Peruvian law enforcement agencies can give a picture of the problem. By the year 2016, 40 cases were convicted out of the 259 revised by the Attorney General’s Office. The Police made 764 interventions, and the Public Ministry received 1,144 trafficking-related complaints the same year. Between 2009 and 2014, the National Observatory of Crime registered 3,911 cases, 14% out of which were labor trafficking related, leading to just two sentences. Madre de Dios, with a population of 120,000 inhabitants, ranks third in the number of human trafficking complaints in Peru, just after Lima and Loreto. The Peruvian authorities are aware of the violence and human rights violations taking place in the Madre de Dios mining camps. During the military intervention to eradicate illegal in 2016 and 2017, law enforcement officials rescued 481 women victims of sex trafficking. No intervention associated with men’s exploitation in mining sites was ever made (Salazar and Castro 2018). For years, the US Department of State warned on the existence of labor trafficking in the Peruvian ASGM in its Trafficking in Persons Report (U.S. Department of State 2018). In February 2017, the Peruvian government signed a memorandum of understanding (MOU) with the US Embassy to reduce illegal gold mining and associated crimes, including human trafficking. The same year, the
United States committed US$ 5 million to fight child trafficking in Peru (U. S. Embassy in Peru 2017).

Some Indicators

In addition to law enforcement statistics, during the last decade, there has been a surge of investigations that have provided fieldwork-based evidence on forced labor of male in the ASGM of MDD. In 2009, IOM published the first research on the subject. IOM commissioned this work to Novak and Namias (2009) who infiltrated local researchers in the mining camps. If in 2009 entering mining sites had to be conducted with caution, today, research is extremely dangerous in sites such as La Pampa, a buffering zone of 20 km to protect the delicate ecosystem of the natural reserve of Tambopata. IOM’s document provided testimonies illustrating some of the trafficking dynamics, for example, how miners were deceived and threatened if they complained. Workers were recruited under the promise to get paid after 3 months of work. Here is what actually happened to some workers:

We arrived, the patron Don Quispe (boss) told us that they will pay us after every 90 days of work, and that for each 30 days, they will pay S/500 (US$ 148) so, after 90 days, we would had received S/1,500 (US$ 444). We were excited. We had never thought of earning so much money and for that reason we were very happy. We started working. After the 90 days, when we asked for our payment, the chacal (The term chacal, translated as a jackal or wolf, is used to refer to middlemen in charge of operations that are known for their aggressive behavior.) told us that the patron was coming over during the weekend. With that hope, we continued working. When the patron came we asked him to pay us, he said that he was going to pay the following week. Two weeks after the agreed 90 days had passed, we started to complain and demand our payment. Every time that we went to ask for our money, the chacal threw us away, and if we insisted, he threatened with beating us up. (Novak and Namias 2009)

This investigation was followed by others contributing to shed light on the dynamics and scope of the problem (Barrantes 2014; CHS 2012; El Comercio 2017; Mujica 2014; Peru Support Group 2012; Salazar and Castro n.d.; Sanz; Shahinian 2011; Verité 2013). In 2014, the ILO in Peru commissioned an investigation to detect situations of forced labor in the ASGM of MDD to (Sanz 2015). This researcher applied a survey in 17 localities in the neighboring region of Cusco, where most of the workforce is recruited. The trafficking process is divided into three elements: the activity (recruitment, transportation, harboring, or receiving), the means (threats, coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or giving or receiving payments or benefits to achieve the consent of a person having control over another person), and the purpose (exploitation). It starts the moment the victim is recruited and finishes with its exploitation for somebody’s profit. For the case study, exploitation takes place while performing tasks such as logging, hauling, mercury’s amalgamation, digging in sand and silt, and recovering and processing ore from waste rock, to mention some.

As for the means, the ILO has created indicators to measure how workers are forced and kept into exploitation. They have been categorized in the following
groups: (1) deception about the nature and condition of the work, (2) confiscation of identity papers or travel documents, (3) physical violence, (4) forced overtime, (5) limited freedom of movement or communication, and (6) withholding or delay of wages or no freedom to resign in accordance with legal requirements. (Sanz 2015) found evidence of most of ILO’s forced labor indicators in MDD as shown in the chart below.

<table>
<thead>
<tr>
<th>Forced labor indicators in the ASGM in Madre de Dios</th>
<th>25% felt deceived about the job and the working conditions. In the case of children, relatives took them to work in exchange for money</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deception about the nature and condition of the work</td>
<td>31% worked every day/12% 24 hours per day/8% over 84 hours per week</td>
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<td></td>
<td>83% was exposed to hazards such as: cuts, explosions, landslides, sunburns, animals’ bites, exposition to mercury, and other toxins</td>
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<tr>
<td></td>
<td>62% did not get safety equipment (boots, helmets, gloves, or masks)</td>
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<tr>
<td></td>
<td>57% did not get any medical attention in accidents or illnesses</td>
</tr>
<tr>
<td></td>
<td>All drank water from the river (no potable)</td>
</tr>
<tr>
<td>Confiscation of ID/travel doc.</td>
<td>13% were threatened with confiscating payment</td>
</tr>
<tr>
<td></td>
<td>13% had their ID retained at some point</td>
</tr>
<tr>
<td>Physical violence, forced overtime</td>
<td>5% were monitored not to leave their jobs</td>
</tr>
<tr>
<td></td>
<td>2% were locked</td>
</tr>
<tr>
<td></td>
<td>3% threatened</td>
</tr>
<tr>
<td></td>
<td>7% got indebted to buy medicines or to access healthcare</td>
</tr>
<tr>
<td></td>
<td>20% said they had been mistreated, yell at (16%), called names (11%)</td>
</tr>
<tr>
<td>Limited freedom of movement or communication</td>
<td>3% they were threatened if leaving the site</td>
</tr>
<tr>
<td></td>
<td>For 33% it was too far, too expensive (18%), or there was no transportation to leave the site</td>
</tr>
<tr>
<td></td>
<td>43% said that they were under vigilance all the time while they worked</td>
</tr>
<tr>
<td></td>
<td>3% was not allowed to communicate with their families</td>
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<tr>
<td></td>
<td>30% did not communicate with their family because there was no phone</td>
</tr>
<tr>
<td>Withholding or delayed wages</td>
<td>24% had to pay back the living expenses or damaged equipment</td>
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<tr>
<td></td>
<td>29% were paid late, and 20 said that they were never paid at some point</td>
</tr>
</tbody>
</table>

Many workers had their documents retained, were monitored or locked not to leave the work, threatened, and uncommunicated. Particular to the ASGM is the use of mercury, a highly toxic metal often mishandled that can lead to serious physical disorders and neurological conditions. The testimony gathered by the UN Special Rapporteur on Contemporary Forms of Slavery describes the process well.
Men and adolescents are often recruited through deception, being offered working conditions and workers’ rights that are subsequently not complied with in practice. Often, the workers receive advance payments in cash or goods during their first three months of work, which are then deducted from the salary, using a mechanism of overestimating the goods provided and underestimating the quantity and quality of the gold handed over, so that the worker is indebted to his “patron”, a situation similar to the enganche system seen in the logging sector. They work long hours in very dangerous conditions, are exposed to toxic substances (such as mercury) and to serious diseases (such as malaria). Workers are poorly fed and have no form of labour protection or health and social security coverage. (Shahinian 2011)

Although the presence of children has decreased, to the Special Rapporteur, around 20% of the miners in the remote area were between 11 and 18 years old in her 2011 visit to the area.

Such children are also exposed to serious injury and harm, breathe contaminated air and are exposed to soil and water that are contaminated with metals and chemical products.

What Is the Peruvian Government Doing to Fight Human Trafficking?

Peru has a well-developed legal framework to fight human trafficking; it is a member of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and has also ratified the relevant International Labor Organization (ILO) conventions. That includes the Forced Labor Convention (No.29), the Abolition of the Forced Labor Convention (No.105), and the Worst Forms of Child Labor Convention (No 182). The Article 153 of the Peruvian penal code prohibits all forms of trafficking in persons, with penalties up to 15 years imprisonment. In January 2017, the penal code was amended to introduce slavery (Art. 153-C) and forced labor (Art 168-B) as other forms of exploitation, prescribing sentences over 25 years in some aggravating circumstances, such a death of the victim. In its legislation, Peru has adhered to the definition of the Trafficking Protocol as stated in its Article 3, as:

the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs

This country also counts with a comprehensive National Plan to Fight Human Trafficking (2017–2021) but no budget was assigned to implement this strategy, and
most efforts have been placed on law enforcement initiatives (Montoya Vivanco 2016; Tuesta Reátegui 2018). Although the policy contemplates all forms of exploitation, there are no specific measures to protect exploited or trafficked men. As an example, at the time this chapter was written, there was no single facility in the country to accommodate adult male victims. Within the informal and illegal mining camps of the Amazon, workers are often seen as the cause of social unrest, sexual exploitation, and environmental damage.

In the year 2010, the local government of Madre de Dios developed its own strategy to fight human trafficking. Following the principles and objectives set forth in the National Plan, the Madre de Dios’s Human Trafficking Plan included industry-specific elements stressing the need to coordinate with the authorities in charge of the formalization process at a local and national level. A Multi-Sector Permanent Working Group was also created to follow the objectives of this local strategy, but as it happened with the National Plan, the entity lacks funding and institutional weight. This group serves as a useful space for information sharing and allows for some degree of coordination, but, without the necessary resources, it has a limited scope for action. Consequently, the objectives established by the first local plan of action were not met. In words of the chief of the human trafficking department of the Public Ministry of MDD, “human trafficking will only be stopped if illegal mining stops” (Salazar and Castro 2018).

**The Need for New Approaches to Counteract Labor Trafficking: The Theoretical Debate**

While the study of human trafficking has triggered an extensive body of work within scholarly circles during the last 15 years, the overwhelming focus has been placed on international trafficking of women for sexual exploitation at the expense of other types of trafficking (Andrees and Linden 2005; Cockbain et al. 2018; Laczko and Gozdziak 2005). During this time, new paradigms have emerged, some of them driving away from the concept of human trafficking to propose a new school of contemporary slavery studies (Brysk and Choi-Fitzpatrick 2012). Disappointed with the limitations of the traditional, security-based approach (Chacón 2010; Gallagher 2012; Rizer and Glaser 2011) and the policies developed under that umbrella, Brysk and Choi-Patrick believe that the problem of trafficking lies in the powerlessness of victims and advocate for their emancipation. For years, the United States has donated an average of $80 million per year to fight human trafficking worldwide, of which $32 million just to Peru (U.S. Embassy in Peru 2017), yet the phenomenon continues to grow.

In its 2017 report, the United Nations Office on Drugs and Crime (UNODC) (2017) noted that over the last 10 years, the profile of victims has changed. The ratio of forced labor has increased (four out of every ten), so has the number of trafficked males (from 13% to 21%) who constituted 63% of the detected forced labor cases for this period. The crime is also increasingly perceived as a domestic phenomenon, and 42% of victims were trafficked inside their own countries. Human trafficking for
labor exploitation is often viewed as a violation of worker’s rights, but the line between poor working conditions and trafficking is far from clear (Steele 2013). Labor trafficking has been viewed as an extension of the exploitation inherent in the nature of an industry that operates in the informality, part of the capitalist system and the vulnerability of a mobile migrant workforce (Samaddar 2018). It has also been interpreted as part of the global value chain theoretical framework which “dynamics of production networks” reproduce unfree and degrading labor bringing about processes by which workers enter into severely exploitative arrangements (Barrientos et al. 2013; LeBaron and Howard 2015; Phillips 2016).

While it is clear that there is a need of more and deeper analysis on issues related to labor trafficking, an interesting paradigm that introduces cultural and social elements into the understanding of trafficking has emerged, an approach that can very well be used to explain some of the dynamics of this crime in Peru. Antonela Arhin’s (2016) “diaspora networks” perspective argues that traffickers rely on diasporas for the recruitment, transportation, and exploitation of victims. Thus, the intersection between traffickers, victims, and diaspora communities can provide a window of insight into the socio-economy of trafficking. These economies tend to resemble the culture from which they originate and rely on trust and co-ethnic identification when cooperating with diaspora members (Arhin 2016; Shelley 2010). Ethno-national diaspora interactions are often based on an “affective economy of co-ethnic identification” that produces relations of trust (Arhin 2016) among groups that have in common ethnic and national traits, identities, and affinities (Sheffer 2003). Arhin questions the role that diasporas play in recruiting victims and the ways in which they serve as a source of help and protection. She analyzes 72 court cases of trafficking of adults and children for labor exploitation filed between 2004 and 2014. She found out that there is a strong correlation between the nationalities of traffickers and their victims, as well as between traffickers and their intermediaries and collaborators. As she notes, they prefer to recruit co-ethnics to “minimize costs and maximize profits” (Arhin 2016).

From the Security Approach to the “Diaspora Networks Approach”

In line with the above, there has been an evolution in the perception of the human trafficking dynamics in Peru since the country ratified (2004) the Trafficking Protocol. Initially, trafficking was seen as a security problem related to the domestic and international sexual exploitation of women (Flora Tristán 2005; OIM y Movimiento El Pozo 2005). In the early 2000s, there were emblematic cases of Peruvian women trafficked to Japan, the United States, and Europe; thus, initial assessments of the phenomenon assumed that this crime was a lucrative business run by profitable transnational crime networks (CHS 2007). This early approach to the subject was filtered by a perception imbedded in a legal instrument created by the international community in reaction to the expansion of transnational criminal networks.
The Trafficking Protocol was designed in parallel to the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the UN Convention against the Transnational Crime. These treaties were managed under the umbrella of the UN Office on Drugs and Crime (UNODC) and the IOM, devoted to fight crime and to manage migration, respectively. Thus, the early steps given by the Peruvian authorities were made from a state-centric, security, and law enforcement perspective, to adjust to the requirements of both crimes: trafficking in persons and migrant smuggling. Policies and strategies developed at that time included both crimes. An example of that is that, for years, the National Task Force to Fight Human Trafficking was also in charge of counteracting migrant smuggling. Awareness raising campaigns and capacity building initiatives were also part of this twofold approach that tackled human trafficking and migrant smuggling as part of the same problem.

A key element in the evolution in the perception of the crime relates to the fact that the definition of trafficking in persons, as set forth in the Article 3 of the Trafficking Protocol, does not include crossing borders as a requirement to constitute the crime. This left the door open to contemplate domestic situations of exploitation. Indeed, if originally designed to fight the expansion of international networks, the openness of the definition of the instrument allowed to tackle domestic situations of trafficking that, in some instances, had existed historically but that were not perceived as a crime. In Peru the first investigations on human trafficking assumed that transnational networks had penetrated the Andean nation and early law enforcement strategies aimed at dismantling them. Progressively, it was understood that the phenomenon was, overall, a domestic problem (OIM y Movimiento El Pozo 2005). If the bulk of trafficking was not international, neither was it such a lucrative businesses per se.

Notwithstanding its complexity, a study was carried out by Mujica and Cavagnoud (2011) on sexual exploitation of children in the busy port of Pucallpa along the Amazon River, a hub to smuggle wood, species, or gold. These authors exposed that the trafficking dynamics emerge to complement local economies. In their case study, restaurant owners recruited their own siblings or acquaintances, oftentimes girls whom they encouraged to drink with customers to boast alcohol consumption. These arrangements often led to sexual abuse. Paradoxically, the trafficker in this case is a “mother-godmother-aunt” character that, in their cultural perspective, is protecting their daughter/goddaughter/niece as a member of the

(a) “Trafficking in persons” shall mean 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
family but that, at the same time, sexually exploits them. Thus, the trafficker is not a professional criminal part of a transnational band but the head of a family business that includes sexual services as part of their portfolio. The exploitation is seen as part of the family custody and tutelage of the girl.

Mujica and Cavagnoud (2011) unveiled what Arhin (2016) later on will refer to as “affective economy of co-ethnic identification.” Although in her analysis, this concept is not specifically mentioned either; the American anthropologist Ruth Goldstein (2014) arrives to a similar conclusion in her study on sex trafficking patterns within the Madre de Dios gold mining camps. She was surprised to find out that many of the sex workers had arrived in Madre de Dios through sisters, cousins, aunts, and friends, instead of trafficked by men or vast transnational networks. She studied the nature of the relationship between the “madams,” Doña Rosa and Doña Mariela, and their 250 sex workers in the capital of Madre de Dios, Puerto Maldonado. Goldstein noticed that co-ethnic bonds brought about solidarity ties between the madams and the sex workers, that is, between traffickers and the victims. As she puts it, “for along with their network of sex workers, their work was more about solidarity with one another than about “each woman for herself”. Two hundred women out of the 250 were recruited by family members, friends, or acquaintances.

The studies carried out by Mujica and Cavagnoud (2011) and Goldstein’s (2014) describe the affective economy of co-ethnic identification (Arhin 2016) among groups that have in common family, ethnic and national traits, identities, and affinities (Sheffer 2003). While their conclusions come from the analysis of sex trafficking practices, a similar pattern is reproduced in the exploitation of men for labor purposes in the Madre de Dios gold enclave. The international NGO Verité (2013) has reported the Peruvian ASGM trafficking. In their research they also realized that while Peruvian media outlets, as well as the US Department of State, have reported that criminal networks traffic minors into mining camps, in fact, they note: “recent reports, as well as interviews with experts and workers, indicate that labor and sex trafficking are more commonly carried out by informal or family networks.”

This point is illustrated in the following two testimonies by two brothers that were recruited by a family member who deceived them. The testimony exposes interactions between traffickers (patron), recruiters (the uncle), intermediary (chacal, the cook), and the victims.

“My uncle (The term uncle in Peru does not always relate to a blood relationship, oftentimes it refers to some sort of tutelage form the adult) brought us in a truck to the town of Mazuko. We (me and two older brothers) were left with a woman. I was taken with him along the river, to the town of Laberinto. I was very scared of the river because I did not know how to swim. In Laberinto he left me with another man. He told him: “here he is, give me the money”. He told me that I should stay with that man to work. He, “el patron” (the boss) was from the city of Cusco. The man gave my uncle the money, I don’t know how much. My uncle told me that if I do not mind they would through me to the river...” “I stayed there for five years. My uncle came from time to time, I believe every three months, to see if I was working and was given money. He came but did say nothing to me. He just looked at me
from afar. Martha (the cook) told me that I had been sold to the patron. I did not understand anything”.

“When I finished helping in the kitchen, the ‘chacal’ sent me to filter gold in the shaft. I didn’t want to go but Martha (the cook) helped me. She told the chacal that I was too young to be in the mine and that he should help. In that place they beat workers up with stickers when they do not work, they throw stones at them to make them work. They also hit the cook’s son. I did not play because I was scared to be beaten up” . . . “During that time, I was very scared. They hit hard those that did not want to work or did not mind. One day they almost killed a worker. Leo was his name. They said that he had stolen two grams of gold, but he said it was not true. They threw him in the well and almost drowned him. They kept beating him up with a stick, they kicked him hard. They let him badly wounded.” (Novak and Namias 2009)

According to the mining census of 2014, 80% of the miners that run an operation in Madre de Dios were migrants, and 50% of those came from the neighboring region of Cusco, place of origin of the largest part of the workforce. They are Quechua-speakers, connected through family and community ties. The first miners arrived at Madre de Dios in the 1970s and were followed by successive migration waves due to the raise in the price of gold and the construction of the Interoceanic highway. The last chain of this road that connects the Atlantic and the Pacific Oceans was built in Madre de Dios, facilitating all economic trade but also illegal activities (Goldstein 2015). Some of the miners, especially the ones to arrive to the area of Huepetue in the 1970s, managed to gather capital, buy machinery, and prosper into ASGM entrepreneurs (Cortés-McPherson 2018; Verbbruge and Besmanos 2016). To meet the industry’s need for labor, they recruited laborers from their places of origin in the Peruvian highlands (Mujica 2014). Having said that, the landscape of the mining camps in Madre de Dios is complex and in permanent mutation. In other areas, such as La Pampa, the operations are illegal because they are located in a protected area. The evolution of La Pampa has led to the expansion of other associated crimes.

In spite of the diversity of the mining landscape, most workers are recruited in neighboring poor areas, mostly in the Quechua-speaking province of Cusco in the Peruvian highland. In the survey realized by Sanz in Cusco, he found out that the average of family’s monthly income of the trafficked male was S/.243 (UD$ 70). During the last 5 years, 77% of those households had been affected by severe problems (drought, freeze, floods, illnesses, accidents, etc.) and were indebted with loans that they were not able to pay back (31%). In his survey he also found out that just 9% of these men had Spanish as their native tongue, 2% of them did not even have an identification card. Their poverty, responsibility, and cultural isolation make them particularly vulnerable to deception, and many of them are recruited to work in the mines by family members or acquaintances following the co-ethnic identification pattern.

In his sample, Sanz confirmed that 10% of the miners were recruited by a family member and 5% were forced into going to the mining area to work. Going back to the testimonies, the victim describes how his “uncle” went periodically to see him and looked from the distance. In a similar fashion to the dynamics of affective co-ethnic identification described by Mujica and Cavagnoud (2011) and Goldstein
(2014) for the cases of sex trafficking, labor exploitation seems unfolds in an affective economy as part of the interrelations between traffickers, recruiters, and victims in the gold mining camps of MDD.

Thus, there is not a central structure to recruit workers. As in the case of the girls and women trafficked, these dynamics of labor trafficking of men in the mining camps can be interpreted as a diaspora network. This idea is key for policy development. Strategies to fight human trafficking need to take into account the reality of the sociopolitical economy of this crime and insert elements to bring about a different approach to this problem.

**Conclusion**

A fifth of the gold produced worldwide is sourced in artisanal and small-scale unregulated pits in which workers endure extremely dangerous conditions and slavery like practices. Often malnourished and isolated in remote improvised camps, they perform highly dangerous jobs without health or safety nets. They are exposed to toxic substances, diseases, and threatened with violence. Many are recruited through deception within their own communities. This is the situation in some areas of the Peruvian mining enclave of Madre de Dios, where a contemporary gold rush has attracted thousands during the last 20 years. In this economy, workers entry the job process voluntarily, once in the mine, leaving becomes impossible for many. The slavery-like practices in Madre de Dios have been reported by international humanitarian organizations for years, yet by 2018 there were just two sentences related to labor trafficking in the country, none in Madre de Dios. As many other nations, Peru signed and ratified the Trafficking in Persons Protocol in the early 2000’s to introduce human trafficking in its penal code by 2007. In doing so, this Government followed a security-based approach that implied that human trafficking was linked to transnational criminal networks and focused on sexual trafficking on women. The chapter exposes the need to adjust policies to a different reality in which human trafficking practices are, often times, part of local economies connected to the global market. That is the case of the extractive industry and the unregulated gold economy. Workers are not recruited by force or exploited by criminal bands but enrolled by friends and family members following diaspora’s networks. They see the activity (mining) as seasonal, complementary source of income, but they end up exploited and unable to leave.

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Is It Time to Open a Conversation About a New United Nations Treaty to Fight Human Trafficking That Focuses on Victim Protection and Human Rights?

Jackie Jones

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Abstract

This chapter makes the case for negotiating a new UN Treaty on Human Trafficking that takes account of accumulated knowledge and good practice, with a primary theoretical underpinning of human dignity and human rights rather than crime and immigration control. An updated Treaty could provide opportunities to enable legal changes that enhance the scope for securing more convictions, for changing the dynamics of the law to free more people from human trafficking and slavery-like conditions. It could provide the space for more precise legal definitions for all forms of human trafficking, slavery, or servitude, adding newer forms explicitly. Decided cases could influence these more precise legal definitions from domestic, regional, and international courts. For instance, more inclusive/progressive legal meanings of “vulnerability,” “coercion,” and

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“exploitation” that more accurately reflect our more nuanced understanding of how victims become vulnerable, how they are recruited, held, and controlled, and the different methods employed to exploit them. Actions to help potential and actual victims/survivors exit vulnerable situations should equally be part of any new Treaty that uphold, respect, and protect their dignity.

**Keywords**

New Treaty · Definitions · Human dignity · Human rights · Immigration · Law

**Introduction**

Human trafficking is pervasive and its scale challenging to quantify reliably. However, statistics reveal that it exists everywhere, is growing year on year, and is one of the top three criminal trades in the world alongside arms and drug smuggling (UNODC 2014, 2016). According to the United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons, 2014* (UNODC 2014), around 40 million people have been trafficked with at least 152 different nationalities, detected in 124 different countries, with domestic trafficking accounting for 27% of all detected cases of trafficking in persons worldwide. Trafficking for sexual exploitation and forced labor are the most detected forms. Collectively, women and girls represent around 79% of all victims of trafficking (UNODC 2016). Human trafficking for sexual exploitation is a gendered crime, with women and girls making up 96% of all victims and men making up the vast majority of traffickers/perpetrators (UNODC 2014).

Rather than being assigned to history, human trafficking constitutes a twenty-first-century human rights crises, with international law seemingly unable to stop its spread. The Palermo Protocol, an annex to the United Nations Convention Against Transnational Organized Crime (UNTOC), came into force in December 2003 and is the only international legal instrument addressing human trafficking as a crime. It has been ratified by the vast majority of UN States (excluding Bangladesh, Bhutan, Brunei, Comoros, Congo, the Republic of Iran, North Korea, Marshall Islands, Nepal, Pakistan, Palau, New Guinea, Solomon Islands, Somalia, South Sudan, Tonga, Uganda, and Yemen). The Protocol, which can only be ratified by States who also ratify the Convention, is a transnational treaty that calls on State Parties to pass domestic criminal laws on human trafficking. It is “the first serious attempt by the international community to invoke the weapon of international law in its battle against transnational organized crime” (Gallagher 2001). Focusing on organized criminal groups rather than on the victims of trafficking (for an overview see Gallagher 2001, 2010; Lee 2011), including the lack of effectiveness of border control methods and criminal laws in the way that they are currently being utilized by States (see below), have been subject to much criticism (Hathaway 2008; Doezema 2002, see below).

As the international community’s knowledge has grown over the life of the Palermo Protocol, it is evident that the understanding and acceptance of what constitutes human trafficking has evolved. Currently, the emphasis on crime-control and ever narrower and more draconian immigration laws and policies which
intersect with trafficking are not working to end it. At the same time, imprecise and vague definitions of key terms contained within the Palermo Protocol (for instance, “vulnerability” and “exploitation”) make prosecutions challenging. In addition, decided cases could provide valuable updated legal precedent thus enhancing possible prosecutions. This chapter makes an urgent call to enter into a conversation about enacting a new UN Treaty based primarily on human dignity and human rights with criminal justice and crime control aspects as secondary goals. Any new Treaty should permit provisions for gender specificity in laws and policies and flexibility to adapt to new situations.

This contribution is divided into three sections. The first outlines some provisions of the Palermo Protocol. It critiques the current theoretical paradigms that are not working to stop human trafficking and that are not effective enough to assist victims/survivors of human trafficking. Section two puts forward the idea that human rights provisions, underpinned by a dignitarian approach, interpreted in line with attainment of the SDGs, is a possible model for any new Treaty that might be negotiated at United Nations level. The chapter concludes with proposing starting a conversation about incorporating the learning of the last 18 years since the Palermo Protocol was signed into a new legally binding, proscriptive international normative instrument.

Part 1: The Palermo Protocol

The Palermo Protocol provides States with the definition of human trafficking in Article 3:

(a) “Trafficking in persons” shall mean 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

According to this definition, three elements must be present: an act (e.g., recruitment, transport) by a means (e.g., threats, coercion) for a purpose (e.g., sexual exploitation). The Protocol does not require movement of the victim across borders,
international or otherwise. This is an important aspect of trafficking because many people are trafficked within borders especially into prostitution. (An example would be indigenous women in Canada trafficked from their reservations into prostitution in urban areas.) It does require “exploitation” or intention to exploit as a purpose, the definition of which is contested (see below).

The Protocol has a dual remit: fighting organized crime groups who traffic for a variety of exploitative practices defined in Article 3 and passing domestic criminal laws on human trafficking. The latter does not require a transnational element (Gallagher 2018) despite the somewhat confusing language in Article 4 of the Protocol, which defines its scope as “the prevention, investigation and prosecution of the offences established” under Article 5 “where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences” (Bajrektarevic 2011). Article 2(a) of the UNTOC defines organized criminal group as “a structured group of three or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit.” Even though some academics have questioned whether the majority of human trafficking cases are perpetrated by organized criminal groups, citing lack of empirical evidence (see Tripp and McMahon-Howard 2016), there is in fact little doubt that many organized criminal groups are operating to traffic humans into exploitative situations. It may well be the case that many modern manifestations of criminal groups do not fit comfortably within Article 2, therefore making a case for a re-envisaging of critical aspects of current normative frameworks on human trafficking at UN level.

The transnational criminal law definition contained in the Palermo Protocol has provided States with the opportunity to transpose into their domestic codes the same legal terms, with the same elements of the crime to be proven. The uniformity in law, in theory at least, should assist transnational law enforcement agencies to operate jointly in order to fulfill the aims of the Protocol. This is equally the case for guidance on standard setting, action plans, and strategies to tackle human trafficking across the world. The Protocol is therefore to be applauded as a good (legal) beginning in fighting the myriad forms of human trafficking. The Protocol has also had the positive effect of widening the scope of previous UN normative instruments dealing with aspects of slavery enacted between 1904 and 1933, four instruments of which focused on women and children in the “White Slave Traffic” (see section 1 of this book and Siller 2017) (the International Agreement for the Suppression of White Slave Traffic 1904, International Convention for the Suppression of the White Slave Traffic 1910, International Convention for the Suppression of Traffic in Women and Children 1921, and International Convention for the Suppression of the Traffic in Women of Full Age 1933). The special legal emphasis on women and children was carried through to the Palermo Protocol (as well as the Council of Europe Anti-Trafficking Convention and the EU Directive of 2011) in recognition of the fact that the majority of victims are women and girls. Any new instrument should retain it.

Domestic implementation of the full Palermo Protocol definition, however, is sporadic, making it challenging to fulfill the dual goals of ending human trafficking through border control and criminal laws. One hundred and seventy-three States
have ratified the Palermo Protocol, but many have only implemented it in part; it being more common for individual States to pass elements of the trafficking definition as criminal laws that suit the State’s domestic criminal codes. The pace and particulars of State-level enactment vary greatly with the consequent lack of uniformity the Protocol strives for. There are many reasons for this but is, in international or transnational terms, an important element of sovereignty. Three reasons will be given here. First, some States will not recognize all potential forms of trafficking and will pick and choose the types of trafficking they will criminalize within a domestic legal system. It may reflect the emphasis on women and girls, maybe paying particular attention to trafficking for sexual exploitation within the Palermo Protocol definition or introducing heavier penalties for certain forms. For instance, the USA specifies sex trafficking as a “severe form of trafficking in persons.” (Section 103 (8) of the Trafficking Victims Protection Act 2000 defines it as: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. A victim need not be physically transported from one location to another for the crime to fall within this definition.) Second, it may reflect the evolution of cognizance of human trafficking. Some States do not identify specific types of trafficking as trafficking despite falling within the Palermo Protocol definition. Reasons include the State not accepting, not willing to recognize or believe the particular type of trafficking within the home State (e.g., organ trafficking or forced begging). Finally, some States may not have a criminal law tradition for a certain type of trafficking included in the Palermo Protocol (e.g., debt bondage) despite the fact the Palermo Protocol explicitly calls for all forms to be criminalized. Consequently, there are still normative gaps in both the Palermo Protocol and domestic laws which require urgent attention if we are to tackle human trafficking effectively and treat humans with dignity. A new UN Treaty provides an opportunity, through law, to fill these gaps humanely. It also begs the question as to whether hybrid, civil law remedies or other “more appropriate alternatives” (see Gallagher 2018) would be acceptable to fight human trafficking more effectively and protect and respect the dignity of victims.

Critique of Aspects of the Transnational Criminal Justice, Crime Control as Deterrent, and Immigration-Led Approaches of the Palermo Protocol

At the time of the negotiations for the Convention and its Protocols, the dominant orthodox discourse (Fouladvand 2018) was for punitive measures to be a major component in order to act as deterrents for transnational criminal activity. That included the ones aimed at “illegal migrants,” where border controls measures to stop migrant flows were conflated with stopping traffickers who were perceived to operate across “porous” borders in an organized and systematic way. The hybrid
immigration-led crime-control approach integrated within the Protocol and its effect on the protection of dignity, and human rights therefore requires assessing in the broader context of the parent Convention and its two further Protocols: migrant smuggling and firearms smuggling. The package of measures in these instruments ensures the primacy of law enforcement measures to stop people and illegal goods at borders. State parties are also free to pass more restrictive measures to ensure compliance. In terms of the Palermo Protocol, its focus is on transnational cooperation, training, and information sharing between agencies (Article 10), i.e., law enforcement, border guards, and immigration officials, in order to catch people who are crossing borders unlawfully (Articles 10–12). For instance, Article 10 of the Protocol permits States, where necessary, to strengthen border controls in order to stop trafficking and to catch traffickers. Provisions on victim identification are, however, absent from the Protocol. This is a major gap. One of the consequent domestic results has been the extended use of criminal laws applied without distinction to traffickers and to victims of trafficking. It is only once the human rights violations have become clear, whereby many victims of trafficking are processed as criminals through the criminal justice system and then sent back to their home country to be at risk of retrafficking that the lack of identification Protocols or legal representation for victims is taken seriously as undermining efforts to combat trafficking. Border control measures within a trafficking context require much more careful consideration in order to allow potential victims of human trafficking to be filtered out of the criminal justice and immigration processes. A clear (legal) understanding and separation that victims of trafficking are neither criminals nor traffickers requires specialist training and implementation. However, first border guards must be (en)able(ed) to identify genuine victims of trafficking. The lack of such training is another gap in the Palermo Protocol which could be closed in any new Convention.

The concessions necessary in order to pass the Convention and its Protocols resulted in three hybrid normative instruments that certainly, in terms of human trafficking at least, were too compromised in order for the Palermo Protocol to be seen as a good practice example of effective crime control or criminal justice measure for human trafficking and thus is a major challenge to its effective implementation. Indeed, to what extent the Protocol’s orthodox crime control/punitive methodology has achieved its aim in reducing trafficking globally is questionable. Punishment of offenders, especially at the time of former Soviet States’ collapse and globalization (Jones 2012), was prioritized by the transnational Convention and its Protocols. However, despite its rhetoric, few provisions within the Palermo Protocol that could in fact be described as “hard obligation(s)” were included. As Gallagher points out, the “requirement that states parties impose appropriate penalties for trafficking, accepted throughout the negotiation process, was quietly omitted from the final text of the protocol” (Gallagher 2001).

The number of global convictions for human trafficking demonstrates the lack of effectiveness of the Protocol. According to the 2009 UNDOC Global Report on Trafficking in Persons, despite the fact that the number of convictions is increasing, they are not doing so proportionately to the growing awareness of the
problem. The Report found that “as of 2007/08, two out of every five countries covered by the report had not recorded a single conviction. Either they are blind to the problem, or they are ill-equipped to deal with it” (UNODC 2009). This may well also be a question of lack of legal clarity as to the definition of words – elements to be proven within the trafficking definition contained in the Palermo Protocol (UNODC 2015), perhaps leading to questions being raised as to what it reasonably encompasses within the meaning of, e.g., “exploitation” or “vulnerability” (Dworkin 1986). The annual US TIP Report gathers statistics for global investigations, convictions, and sentences of trafficking for sexual exploitation and from 2007 for forced labor. Prosecutions remain steady at between 5 and 10,000 in the countries providing statistics (around 167) for trafficking for sexual exploitation. Despite the increase in the number of prosecutions being brought, there is actually a decrease in the number of convictions: from a peak of 5776 in 2013 to 4443 in 2014. For labor exploitation, the numbers are significantly lower – between 500 and 600 annually, with 2 peak years (2012 and 2013). What is even worse is the number of convictions: only around 4400 in 2014 for all forms of trafficking, including for sexual exploitation and only around 220 for forced labor (US TIP Reports 2015). The UNODC Global Report 2016 uncovered that “conviction rates, however, have remained remarkably low in many parts of the world, and there have been no significant increases on a global scale” (UNODC 2016). This is appalling (see Jones 2016).

These statistics indicate a lack of priority in prosecuting and convicting traffickers under domestic criminal laws. Why are conviction rates so low? Several explanations can be provided, only two will be mentioned here. Firstly, there is a lack of clarity of the definition of human trafficking both at international and domestic level, including an understanding of what makes trafficking (a human rights issue) different from smuggling (a border control issue). These are two diametrically opposite ways of looking at how to deal with the people involved in human trafficking. If one deals with it as an immigration control issue, the likelihood is that the person will not be identified as a victim, instead labeled as an “illegal immigrant” with the consequence of being detained and then removed, without the possibility of a successful asylum claim. Their dignity will almost certainly have been violated during the process. If, on the other hand, it is treated as a human rights issue/violation, the person suspected of being a victim will be entitled, by law, to a series of support measures enabling them to come to terms with the abuse they have been subject to (Jones 2018). Kanics documents instances where law enforcement turned a blind eye to trafficking because they either could not or would not deal with persons as trafficked, but rather as irregular migrants. Law enforcement “officials apply well-known immigration laws and avoid the bureaucratic hurdles involved in securing protection measures for a presumed victim while claiming at the same time that trafficking is on the decrease since. Consequently, there are fewer recognized cases” (Kanics et al. 2005). Conceptual certainty is a vital component of any new potential Treaty that might be negotiated (see below). Secondly, concerning criminal justice, the most obvious is that it is not a priority crime. Many local
law enforcement agencies and the police still have no, or little, training in how to investigate, how to prosecute, and how to identify victims of trafficking. They consequently frequently use other offences to charge traffickers with (e.g., rape, common assault). This has been recognized in many NGO and government-sponsored reports and requires addressing as part of a comprehensive prevention strategy. A new Treaty could be more prescriptive in what this training should look like. There are good practice examples that exist, for instance, in Wales there are a variety of different criminal justice training modules, especially tailored to the trainees (e.g., prosecutors, police, support workers, NGOs, etc. (see Chaps. 82, “Soroptimist International’s Work in the Prevention of Modern-Day Slavery: Wales as a Good Practice Example of Partnership Working” and 61, “Tackling Modern Slavery and Human Trafficking in Wales”).

Despite these criticisms and failings (and others), the preference for a crime control model and border control to tackle human trafficking and/or modern-day slavery is mirrored at different levels of governance. Regional normative instruments and domestic laws all include articles on crime control. For instance, the Council of Europe Anti-Trafficking Convention, a human rights treaty, contains criminal justice provisions and substantive criminal laws, aimed at reducing instances of trafficking through criminalization and prosecution. (The difference is that the Council of Europe instruments are not dominated by crime control measures, but rather have accepted a human rights (victim-led) approach, with supplemental criminal justice measures.) The criminal justice orthodoxy of deterrence is therefore a global phenomenon even in the face of evidence that it is not working in the human trafficking arena (Gallagher 2006). The use of criminal laws and border control measures speak more to the political rhetoric that is prevalent across the globe, rather than to truly working toward ending human trafficking through prevention measures like poverty reduction, building stable communities, and exit programs (see also Nussbaum 2000).

None of the above criticisms are intended to suggest that a crime control model, criminal justice approach, or (some) border control measures are not needed in order to deal with human trafficking. Quite the contrary. Yet it requires holistically integrating into other approaches that place the victim/survivor at its heart (survivor-led). Doing this effectively will lead to higher conviction rates as victims/survivors feel enabled to assist prosecutions. This is because (generally) a well-supported victim is a good witness, remaining within the legal jurisdiction until the end of the legal process, with adequate and appropriate legal, psychological, social, and economic support.

In summary, to the extent that the primary goals of the criminal justice approach are to prosecute as many traffickers as possible and of the immigration-led approach are to stop traffickers at the border, they appear to be failing. There are serious limitations to the Palermo Protocol (some of which have been discussed here) which, I submit, would best be solved by amending it or passing a new Treaty that is human rights-based, protecting the human dignity of all participants in the trafficking chain.
Critique of Limited Victim Protection and Prevention Measures in the Palermo Protocol

The dearth of prevention and assistance provisions speaks to the lack of commitment to human rights protection of victims contained within the Palermo Protocol. Few provisions deal with victim protection and prevention (some are contained within the Convention but are criminal justice specific). Those measures are primarily at the discretion of States and many are not mandatory. Paradoxically, modern human rights-based laws contain a plethora of such provisions. The Protocol stands in stark contrast therefore to the Council Europe Convention which is very prescriptive in actions to be taken to prevent trafficking and the kind of support victims should be given. (It is not suggested here that the Council of Europe Convention or the European Court of Human Rights have the answers to end human trafficking, merely that they can serve as good practice examples in certain areas that are worth considering for any new Treaty.) The lack of protection measures is reason enough to call for a new Treaty.

There are only three Articles in the Protocol on assistance and protection of victims, all of which are suggested to States, not mandated. They are primarily concerned with the criminal justice process. Article 6 limits assistance and protection action to appropriate cases “to the extent possible under its domestic law” and only then in terms of their privacy and identity in relation to criminal proceedings (Article 6(1)). The main focus is securing witnesses for criminal proceedings. Article 6 (2) restricts the measures in domestic legal or administrative systems to: “information on relevant court and administrative proceedings; and assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.” The limited nature of human rights protection for victims is made clear in Article 6(3) which, instead of mandating States, simply asks States to consider implementing measures “to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of housing, counseling, information, legal rights, in a language the victims can understand, medical, psychological and material assistance; and (d) Employment, educational and training opportunities.” The Article does ask States to “take into account” “the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care” (Article 6(4)). It also asks States to ensure their physical safety while in the State (only) and the possibility of compensation (Article (5) & (6)). Article 8 is a lengthy one providing for the repatriation of victims of trafficking, making it clear that this is the preferred response of States, further evidencing the primacy of immigration policy, rather than a human rights approach which would focus on protection, rehabilitation, and compensation. Repatriation, it must be assumed, may appear more cost-effective.
The Protocol only contains one provision relating to the prevention of human trafficking. Article 9 obligates States to establish comprehensive policies, programs, and other measures to prevent and to combat human trafficking that protect victims from revictimization. It is gendered as it specifically mentions women and children with revictimization yet does not proscribe a gendered approach explicitly detailing what we now know to work in order to gain the trust and confidence of potential female witnesses/victims/survivors (see EU Anti-Trafficking Office website). Finally, States parties are obligated to adopt or strengthen legislative or other measures to discourage “the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” There is no mention of the fourth “P” – partnership working with NGOs, etc. which is a vital ingredient in helping victims exit vulnerable situations. The fledgling provisions within Article 9 were a beginning. They have been enhanced and extended in human rights and social justice approaches of subsequent regional and domestic laws and policies.

### Changing Mindsets: Human Rights and Human Dignity as the Theoretical Underpinning of a New UN Treaty on Human Trafficking

Legal responses to human trafficking embrace different theoretical models, many of which intersect. As outlined above, the international and domestic legal systems use crime-control (criminal justice), immigration, and human rights approaches in different measure. Most evolve from a crime control model to a more nuanced human rights-based approach, even in a climate of frenzied criminal and antiterrorist law-making (Stevenson and Harris 2007). Slavery has been recognized as a jus cogens crime. Human trafficking, slavery, and servitude have been included in a variety of different treaties all of which undeniably make them well-known human rights violations.

### Progressing the Human Rights Agenda: Palermo and Beyond

The criticisms of the Protocol and the lack of human rights protections made evident by a variety of scholars (see above), resulted in a shift toward a more human rights-led approach in various instruments and measures at international and national levels. For instance, as far back as 2003, recognizing the need for further human rights initiatives, the OSCE established the Special Representative for Combatting Trafficking in Human Beings in order to promote a victim-centered approach and to help States implement such an approach into domestic settings. The OSCE issued its Action Plan on Human trafficking in 2003, at the time the Palermo Protocol came into force. It proclaimed in the Preamble that “Reiterating that trafficking in human beings (THB) and other contemporary forms of slavery constitute an abhorrent violation of the dignity and rights of human beings.” The OSCE Action Plans of 2003 and 2013 were based on the Palermo Protocol and adopted some of the main
commitments needed in order to alleviate some of the push factors of human trafficking, including security of persons considered vulnerable to trafficking from a politico-military, economic, and human perspective, whether in the supply chain or in domestic servitude. By 2017, the OSCE Ministerial Council had adopted new commitments on slavery-free government procurement supply chain and stronger commitments to tackle child trafficking, demonstrating the progress in recognition of different forms of trafficking and the variety of different measures required. These measures included criminal justice responses but mainly focus on human rights ones. It would therefore appear that the shift has taken hold in the OSCE, arguably recognizing the need for a change in direction and possibly an amendment to (or a new Treaty).

In terms of other supra-national institutions, the Council of Europe has from its inception accepted and articulated the prohibition on slavery and forced labor as a human rights violation (because of its prevalence during World War II) in Article 4 ECHR. Recognizing that further action was necessary, partly to codify the case law of Article 4 which has consistently emphasized the need for the States’ positive obligations toward the victims and to emphasize that human trafficking was also included within Article 4 despite not being explicitly articulated in the original article, in 2003, the Council of Europe started drafting a new normative instrument. The committee to draft the Convention on Action against Trafficking in Human Beings (see Council of Europe 2018) had the mandate to complement the Palermo Protocol provisions by enacting legally binding victim protection provisions that granted rights, assistance, and protection for victims of trafficking in destination countries as these were very often European States (Kanics et al. 2005). The crime control model, as outlined in the provisions of the Palermo Protocol, was incorporated within the new Convention and added to – reflecting the more nuanced learning of the next the generation of measures to deal with human trafficking. The Council of Europe Convention of 2005 has three main objectives, all designed as a human rights response to human trafficking: (1) to prevent and combat trafficking in human beings and guarantee gender equality; (2) to protect the human rights of the victims of trafficking, to design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality and ensuring an effective investigation and prosecution of trafficking; and (3) to promote international cooperation on action against trafficking in human beings. It has a similar definition of trafficking to the Protocol in Article 4. It also has its limitations (Skrivankova 2017) and any new Treaty cannot be negotiated to simply reflect a Europe-centric (or other regions’) normative instrument(s). It must reflect the global understanding of human trafficking and human dignity.

**Human Dignity as the Foundation of Any New Treaty**

Human dignity offers a first-generation human rights perspective to laws, policies, and strategies designed to cope with ever more complex (and violent) ways in which traffickers exploit human beings. Human dignity arguably underpins all human
rights treaties and certainly encapsulates the spirit of humanity often lacking in recent times. It is justiciable and identifiable, yet flexible enough as a concept to adapt to modern trafficking techniques while at the same time providing the standard-setting in support, identification, criminal justice processes to enable victims/survivors to live a full life after their traumatic, life-changing experiences.

No exact definition of human dignity exists and has been variously described (see McCrudden 2013). It refers to the intrinsic value of every human being that must be respected. It cannot be taken away or be given. It simply is. Every human possesses human dignity, regardless of her/his characteristics, achievements, social status, age, nationality, or mental state. It is not even forfeited by means of “undignified” behavior. Human dignity is not only the individual dignity of every person, but also the dignity of the human being as a species: a manifestation of our humanity. Thus, although firmly rooted in communitarian rhetoric, dignity applies as an individualistic right or liberty.

Kant’s conception of human dignity is arguably the main philosophical underpinnings of many human rights discourses. Kant explained that

act in such a way that you always treat humanity, whether in your person or in the person of any other, never simply as a means, but always at the same time as an end. Only when the state and man are not governed by principles that do not presuppose any particular ends is man [and woman] free to pursue his own ends consistent with a similar freedom for everyone. (Kant 1994)

A modern (human rights-based) manifestation of human dignity is contained in the Universal Declaration of Human Rights (UNDHR) which declares that the inherent dignity everyone embodies is freedom and equality in dignity and rights (Article 1, UN 1948). It includes a prohibition on slavery and servitude as does Article 8 of the International Covenant on Civil and Political Rights (ICCPR 1976). The latter also recognizes that the Convention rights “derive from the inherent dignity of the human person,” stating that everyone “deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Articulated in this fashion, it is hard to object to respecting and protecting human dignity. It should be inviolable. What can be debated are the parameters of the protection.

The dignitarian approach put forward here means valuing and respecting the inherent worth of all human beings. Protecting and respecting requires States and others to agree to uphold a set of rights, standards, and behaviors that are not minimalist, rather, to right a wrong, and ensure equality of treatment of everyone, without discrimination based on any ground and that everyone, regardless of citizenship or place, be enabled to enjoy their human rights by virtue of being a human being (Article 2, UNDHR). Equality (and equity) here is not bounded by identity and discrimination, rather a “universal resource, a radical guarantee that is a benefit to all” (Fineman 2008, 2017). It is a relational concept (Arendt 2003).

These rights and standards have been set out in various normative human rights instruments, with the Universal Declaration making no distinction based on types of
rights. Socio-economic rights therefore must be upheld as much as other rights (Bilchitz 2007; Fredman 2018). It has become crystal clear that protecting socio-economic rights are vitally important in the current challenging economic circumstances and a means of redressing human rights violations, including human trafficking. (Arguably this was acknowledged in the EU Charter of Fundamental Rights. Article 1 of the EU Charter: “[h]uman dignity is inviolable. It must be respected and protected.” It applies to all the other rights contained within the Charter which include socio-economic rights (Jones 2012).) An expanded and twenty-first-century conception and interpretation of human dignity therefore would encompass “equal concern and respect” (Chaskalson 2000; Dworkin 2002) and should include, at a minimum, “equality of welfare.” Welfare here is broadly defined to attain the goals articulated in the Sustainable Development Goals (SDGs 2030) that encapsulate so many of the root causes of trafficking (poverty, violence, health, gender inequality, etc.) and that would provide the opportunities needed for an effective capabilities approach to be adopted in which “each has been put in a position to live really humanly” (Nussbaum 2000) while, at the same time, ensuring a responsive State to vulnerabilities that arise (Fineman 2008).

The proposition detailed in this contribution articulates a theory of rights to end exploitation and violence in human trafficking; it is not a general theory. Exploitation, harm, and violence to a person all violate dignity. The human rights approach, guided by the principle of upholding the dignity of the individual, through the use of societies’ goods (Gewirth 1978), would be utilized in at least two ways: first, to prevent trafficking from occurring by focusing efforts on combatting the root causes of human trafficking, and, second, by ensuring exit programs, job opportunities and specialist services are available and accessible to victims/survivors for the length of time they are needed.

**Prevention and Assistance**

In order to prevent trafficking, the root causes must be addressed, including, but not limited to, situations that make individuals vulnerable: poverty, social status, powerlessness, dependency, conflict, natural disasters. Children are the hardest hit by these and other examples. Traffickers seize on vulnerabilities and human beings’ inherent search for a better life in order to exploit them in different types of trafficking. In addition, austerity measures and fiscal consolidation policies have massive adverse impacts on the human rights of persons in situations of vulnerability, particularly those with multiple and intersecting statuses (economic, social, race, and migrant). Those policies increase migrant flows and negatively impact on the protection of human rights (UN 2018). To address the root causes, socio-economic rights enshrined in a variety of covenants and treaties should be fully realized, with the rights that directly relate to human trafficking incorporated, for example, the International Covenant on Economic, Social, and Cultural Rights. It establishes two types of obligations for States: (a) obligations with immediate effect (the elimination of discrimination) and (b) the obligation to ensure the progressive realization of economic, social, and cultural rights by making use of the maximum of their
available resources. The Committee on Economic, Social and Cultural Rights has said taking steps that would reduce the enjoyment of these rights is permissible only if States can prove that such retrogressive measures satisfy a long list of conditions (see Committee on Economic, Social and Cultural Rights 2007). When it comes to human trafficking, because it is designated as a crime, the highest status given to actions that transgress humanity’s moral code, there is no excuse for prioritizing austerity measures at the expense of the dignity of trafficked victims: this is a political choice (UN 2018). The obligations on States and corporations should be made explicit and immediate in any new Treaty. Sanctions for noncompliance should be incorporated in order to ensure compliance.

In addition, a human rights approach which safeguards and upholds the dignity of individuals must ensure the rights of those who have been trafficked are the primary concern by elevating their safety and recovery as a prime modus operandi of laws, policies, and strategies. The dehumanizing effect of being exploited through being trafficked is startling. The negative consequences on mental and physical health for women and girls in the sexualized commercial trade, for example, are lifelong. Thus, the non-punishment principle, extended reflection periods, the right to dignified work, free legal assistance, psychological assistance, and many other human rights-based provisions are key to helping those who have been trafficked to start to recover. A new Treaty presents the opportunity to envisage a world free of the triggers that cause human trafficking.

**Conclusion**

It has been the argument of this contribution that it is now time – 18 years after the Palermo Protocol was enacted, 15 years after it came into force – to open a conversation about whether we should enact a new United Nations Treaty that incorporates the learning and progress made in the past 18 years. For instance, including newer forms of human trafficking, incorporating case law, a survivor-led approach, and good practices from around the world. A new Treaty could also take account of our renewed commitment to end human trafficking enshrined in the Sustainable Development Goals of “leaving no one behind” and with it the goals of ending poverty and economic deprivation, thus addressing many of the causes for human trafficking and counterbalancing the immigration and crime control prevalence in law-making. It could incorporate the growing knowledge of the use of mobile technologies in several aspects of human trafficking or the public’s (and many businesses’) growing willingness to look inward at their buying choices (consumer capitalism and supply chains).

Any negotiations must be survivor-led and have INGOs and NGOs with vast amounts of experience at the negotiating table. For the author, the theoretical foundations of any new Treaty should be human dignity and human rights. A dignitarian approach is manifested through the human rights upheld and how these positively transform the lives of those affected by violations of rights. It is recognized that human rights pose equally problematic questions that are not easy to
resolve. Despite these concerns, any new Treaty based on human rights and human dignity is vitally important to effectively and genuinely begin to tackle the root causes of human trafficking, in order to treat migrants and survivors not as criminals but as full human beings. Setting the bar high for the protection of the dignity of victims/survivors of human trafficking should be the main aim of any new Convention because there is no dignity for humanity in trafficking humans in order to exploit them for profit.

Cross-References

▶ A Comprehensive Gender Framework to Evaluate Anti-trafficking Policies and Programs
▶ Criminal Justice System Responses to Human Trafficking
▶ Establishing the Constituent Elements of Trafficking in Persons: Conceptualizing “Transnationality” and “Involvement by an Organized Criminal Group”
▶ Human Trafficking and Migration: Examining the Issues from Gender and Policy Perspectives
▶ The Challenge of Addressing Both Forced Labor and Sexual Exploitation
▶ UN Palermo Trafficking Protocol Eighteen Years On: A Critique

References


Human Trafficking and Migration: Examining the Issues from Gender and Policy Perspectives

Kim Anh Duong

Abstract

This chapter highlights the needs to address human trafficking and migration issues from gender and policy perspectives. Among the mass waves of migration, women and girls are more vulnerable and easily become prey to traffickers. In terms of migration policies, migration-supportive policies and migration-restrictive policies have different gender impacts. To successfully protect people from the risks of being trafficked in their migration, multifaceted factors should be considered.

This chapter examines the human trafficking and migration nexus, to differentiate human trafficking and smuggling of migrants, and points out policy issues and gender issues in human trafficking and migration nexus. Moreover, this chapter aims to give recommendations to the states for paying special attention to women in both policies and intervention activities. The chapter argues that human trafficking and smuggling of migrants are two distinct crimes but having
overlapping problems. It is important to distinguish the two crimes to help pursue relevant interventions. Further, there are different policy and gender issues in human trafficking and migration nexus that call for gender responsive policy to tackle human trafficking and smuggling of migrants as well as to protect the victims. To successfully protect people from the risks of being trafficked in their migration, different factors should be considered, especially gender and policy issues, and anti-trafficking policy must be gender responsive to successfully respond to specific needs of trafficked victims.

**Keywords**

Human trafficking · Migration · Smuggling of migrants · Gender · Policy

...[T]he grinding reality of fighting modern slavery takes place not on world stages but through the dedicated actions of individuals to meaningfully implement such commitments - in the slow and often tedious process of building a strong case against a trafficker; the long-term and case-specific provision of comprehensive care for victims; the consistent efforts of civil society partners to strategically raise awareness about human trafficking; and the development of well-planned and evidence-driven preventive policies (USDOS 2018).

 Trafficking and migration are separate but interrelated issues and have a close connection. Trafficking and migrants have become the focus of different studies, such as those of Kaye (2003), GAATW (2010), Chibba (2014), and UNODC (2016). Illegal migration or smuggling of migrants relates to the movement which is coerced and exploited. Also, human traffickers use migration crisis to force more people into slavery, or during migration, people fall prey to the trafficking process.

This chapter looks at trafficking as part of migration agenda and uses gender and policy perspectives to explore and answer the three questions (1) What are the differences between human trafficking and smuggling of migrants? (2) What are the linkages of human trafficking and migration? (3) What are policy issues and gender issues inherently in the human trafficking-migration nexus? This chapter discusses some of the issues both emerging and absent from existing literatures on human trafficking and migration, including but not limited to the differences between human trafficking and smuggling of migrants; the linkage between human trafficking and migration; policy issues in human trafficking and migration; and gender issues in human trafficking and migration nexus. The final part of the chapter provides conclusions and recommendations.

**Differentiating Human Trafficking and Smuggling of Migrants**

Human trafficking is a prominent global issue of our times and, reportedly, on the rise (Voronova and Radjenovic 2016). It is a multidimensional issue; it is a crime, a violation of fundamental human rights, a cross-border security concern, and, because of the implications for human growth, also a development issue.
The most current and internationally accepted concept of human trafficking is presented in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, issued by the United Nations in 2000 (hereafter called UN Trafficking Protocol). Accordingly, for the purpose of this research, trafficking in persons means:

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\text{[T]he 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... (Article 3a).}
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\text{[T]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (3a) of this article shall be irrelevant where any of the means set forth in subparagraph (3a) have been used... (Article 3b)}
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This definition provides general guidance to different actors, including scholars, governments, governmental organizations, and nongovernmental organizations. The definition also clarifies that human trafficking is not just a single element on its own. It is a combination of an act (recruitment, transportation, harboring, etc.), a means (use of threats, force, coercion, deception, etc.), and a purpose (exploitation). Further, the main characteristic of trafficking (forced exploitation of people) has been emphasized in this definition as a main criterion for recognizing and determining the crime. The long checklist of forms of exploitation shows that all persons are potential victims of trafficking, while women and girls are more vulnerable to this crime (FATF – APG 2018). As a result, the currently accepted definition may enhance our understanding of trafficked persons and emphasize the need to view them as victims, rather than criminals who violate national immigration laws and regulations. Also, the subdefinition of consent serves as the “hinge of coercion and choice” in a “voluntary/forced” conceptual framework to understand sex work (Doezema 2005, p. 71). However, it is clearly apparent that the understanding and use of “human trafficking” as a concept has not been the same in different countries. In some contexts, including Vietnam and Indonesia, the terms “trafficking in women” and “trafficking of women and children” are still in use in different cases, instead of “human trafficking” or “trafficking in persons” (Sakharina 2016; Stockl et al. 2017).

The concept of human trafficking, as defined in the UN Trafficking Protocol 2000, shows that human trafficking is a combination of an act, a means, and a purpose. The definition, however, has also resulted in different critiques. One of these is the absence of the definitions for the terms “exploitation of the prostitution of others” and “other forms of exploitation,” which therefore, creates gaps in prejudice for states parties to address the related issues (such as prostitution, exploitation) in their domestic laws (UNICEF 2009). The other is controversies about its overly broad nature and legal constraints posed by the notion of consent (Williams 2017).
The definition leaves the states free to decide what would determine “consent.” However, many are confused about whether or not to recognize sex work or prostitution as legitimate labor. This challenges states in differentiating who needs to be supported and treated as a victim of trafficking among a massive stream of migrants in some contexts. While consent is a difficult issue to define, the definition of human trafficking, provided in the UN Human Trafficking 2000, still attracts different debates as it leaves too much ground for states to define their own understanding and actions.

Consent, according to UNODC (2014), is central to the narrative around trafficking. However, the means element was subsequently eliminated, thereby rendering consent wholly irrelevant once the act (procuring, enticing, or leading away any woman, of any age, across an international border) and purpose (“immoral purposes”) were both established. Internationally, few states that have included explicit reference to consent in their definition of trafficking, including Argentina, Australia, Indonesia, the Philippines, Serbia, Spain, and Thailand. Thus, three Asian countries can be seen in the list.

Trafficking in persons and smuggling of migrants are a global problem and a serious threat to human dignity. Trafficking in persons and smuggling of migrants are distinct crimes, but they represent overlapping criminal problems (GAATW 2010; UNODC 2012). The definition of smuggling used in the Protocol against the Smuggling of Migrants by Land, Sea and Air issued by the United Nations in 2000 (the Smuggling Protocol) acts as an important basis for differentiating human trafficking and smuggling of migrants. Under the Smuggling Protocol, smuggling of migrants means:

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[T]he \text{ procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. (Article 3a)}
\]

Accordingly, the smuggling of migrants contains three main elements: the acts (the procurement of illegal entry), the destination (entry into a state of which the person is not a national or a permanent resident), and the purpose (to obtain a financial or material benefit). Some important differences between trafficking and smuggling can thus be identified. The first is the consent of victims. Migrants may actively seek a way to be better off and may have colluded with smugglers to cross borders, while victims of trafficking are being lured, deceived, or abused. In the case of trafficking victims, even when they initially have consented to trafficking, consent has been rendered meaningless by the use of illicit means or actions. The second is exploitation. Smuggling ends with the arrival of migrants at their intended destination, whereas trafficking involves the on-going exploitation of the victims. Smuggling victims may become trafficking victims when they experience exploitation at their destination. The third is trans-nationality. While smuggling is always trans-national, with migrants moving outside their departure countries, trafficking occurs inside or outside the country of origin. Further, smuggling of migrants and trafficking in persons have some additional differences. The profits of trafficking do not come
from the movement of victims but from their sexual or labor exploitation and even the harvesting of their body organs.

Existing documents have noted that human trafficking is the crime against people, while smuggling of migrants is the crime against the state, the first one goes against human rights and human dignity and the second goes against migratory order (Campana and Varese 2016; UNODC 2017; USDOS 2017). A key difference is that victims of trafficking are considered victims of a crime under international law; smuggled migrants are not – they pay smugglers to facilitate their movement. For human trafficking, contact is established through abuse, and/or deception, and/or coercion. The victim is cheated or forced to fall into human trafficking process. In other words, there is no consent, neither verbal nor written one. In case of migrant smuggling, the migrant establishes direct and voluntary contact with the human smuggler, which means there is consent. Human trafficking can take place within or outside a country, thus, border crossing is not necessary. Migrant smuggling always implies the illegal crossing of one or more borders. Further, for human trafficking, the trip fare required for the transfer is not an important factor, rather the effect it has of subjecting the victim to economic debt which forces him/her to be exploited while money is an intrinsic factor in the transfer of migrant smuggling; and false documents are used to push up the smuggling process. It should be noted that the relationship between the human trafficker and the victim of human trafficking is more prolonged, and exploitation either continues or begins upon the arrival at the destination place. The relationship between the human smuggler and the migrant victim generally ends upon arrival at the destination.

A clear distinction between trafficking and smuggling is essential to help apply suitable and appropriate modes of intervention, prosecution, and protection for victims of each crime. The need of differentiating human trafficking and smuggling of migrants has been affirmed by the USDOS (2017) as clarifying the differences between the two is critical to the development and implementation of sound government policies. Thus, better awareness of the distinctions between human trafficking and migrant smuggling can potentially improve victim protection and avoid the re-exploitation of victims. Further, the two terminologies of human trafficking and smuggling of migrants are erroneously conflated or referred to interchangeably. In reality, some people do not know the differences between human trafficking and smuggling of migrants, so the differentiation of the terms is needed to clarify.

**Human Trafficking and Migration: The Linkages and Policy Issues**

Human trafficking closely relates to migration and migration processes. Trafficking cannot be viewed separately from migration as human trafficking involves, in part, the movement of a person from his/her place of origin to a new location inside or outside his/her home country. The flows of people migrating to urban areas or across borders to find opportunities for better lives have become a hidden cause of trafficking in persons because people may be vulnerable to sexual or labor exploitation at their destination. The movement of people to new places to better themselves or for a
new life is sometimes seen to pose a threat to a country’s security; however, migrants make rational choices to travel, and although they are often treated as a marginalized group, they form part of the dynamic global economy (Augustin 2007). States worldwide are trying to find suitable solutions to regulate migration and also to reduce human trafficking through migration. While internal migration has been neglected and remains invisible in the policy arena, international migration is quite visible and has become an emergent issue for states worldwide.

There is a close connection between migration flows and trafficking flows. The Global Report on Trafficking in Persons (UNODC 2017) clearly defines different linkages between human trafficking and migration. Approximately 60% detected victims are foreigners in the country of detection. Most are international migrants who have moved from one country to another. Traffickers exploit the human desires to improve their lives and generate huge profits from their pain and losses. Further, trafficking victims are trafficked from poorer areas to wealthier regions.

Though most anti-trafficking legislation and measures have good intentions, they can work against the people they are trying to help and may prevent people from migration. Accordingly, anti-trafficking creates different “collateral damage” (GATTZ 2010, pp. 7–8), including, unintentional stigmatization of migrants, especially women, and trafficked persons; restriction of movement, especially of women’s movement; and increased immigration restrictions, etc.

Leaving one’s birthplace to move to a new region or country has been one of the central features of human civilization. However, it was noted that human traffickers using migration crisis to force more people into slavery. Children are also the target group of human trafficking. It has been emphasized by Save the Children (2017, p. 5) that, Eastern European is the recruitment basin for child victims of sexual exploitation and organized begging. Then there are Asia and Africa, from which adults, children, and teenagers are enrolled in illegal labor schemes and sexual exploitation. In Asia, children are found to be trafficked due to compensated dating (Li 2015) or during their migration process, and at destinations.

States worldwide have different solutions to prevent migration flow into their countries. Migration measures, however, negatively affect both migrants and trafficked persons. According to GAATW (2010), the management of migration and immigration is often in the form of tightening immigration and emigration controls, which make migration harder for all migrants.

Two types of migration policies that potentially have implications for human trafficking are migration-supportive policies and migration-restrictive policies. Many developing countries, including Vietnam and Indonesia, have been encouraging their citizens to seek employment in richer countries to help solve problems of poverty, unemployment, and to increase capital flow of foreign currency in order to repay external debts following structural adjustments (Dang 2006; Iqbal and Gusman 2015). International migration, therefore, has become a development strategy in many source countries. People from developing countries are choosing different ways to migrate, whether through the bride trade or labor export. Among the mass waves of migration, women and young girls are more vulnerable and easily become prey to traffickers looking for fresh faces to recruit for the sex trade.
However, it is not only the demands of the sex trade in the destination countries (especially in countries where open sex policies are applied), which causes women’s vulnerability to trafficking, but also that many source countries are passive partners of migration and do not have relevant policies to protect the rights of migrants abroad. The issue becomes more complex because of the corruption of law enforcement officers and immigration staff.

In Vietnam, the existence of illegal labor agents, bride brokers, and the lack of an official legal system for regulating these issues have contributed to fraudulent marriages and labor exports (Dang 2006; Tran Thi Duyen 2017). Female migrants usually have to struggle to have good work, or good family lives in foreign countries due to language barriers and lack of knowledge about the destination country. It has been documented that the flow of migration in the form of mail-order brides and female migration in general involves relatively high risks and often result in insecure immigration statuses and has a high incidence of human trafficking (Cho 2012).

Restrictive migration policies are generally applied in the destination countries. Those countries, to different extents, are looking for both high-skilled and low-skilled migrant workers to fill the gaps in their labor markets. Some countries choose to apply rigid regulations to the recruitment of migrant workers, and provide few facilities for migrants, others adopt strong measures to restrict the inflow of illegal migrants, such as deportation of undocumented sex workers and illegal migrants, or punishing them as victims who violate the law (United Nations 2008). By doing so, the destination countries hope to reduce the risks of having a migration crisis and to maintain social cohesion. Being victims of sex trafficking or human smuggling, those migrants are treated as offenders and, therefore, become more vulnerable and have a greater potential to become involved in other crimes. Restrictive migration policies are limited in themselves. Kempadoo (2005) explains that tighter border controls cannot halt the flow of migration; instead, irregular migration channels become the only alternative, pushing human trafficking and prostitution further underground. Additionally, under the ruse of trafficking interventions, migrants’ rights to work, to receive health care, social benefits, and respect are often being violated (Kempadoo 2005; Bhojani et al. 2016). Andrijasevic and Anderson (2009) acknowledge that migrant workers, especially illegal migrants, have limited employment rights at the destination. In addition to that, the limits to legal migration discriminate against poor people creating opportunities for exploitation of migrants. For Augustin (2007) and Soova (2015), the label “trafficked” does not accurately describe migrants’ lives and that the rescue measures disempower migrants rather than providing them with life solutions. Also, restrictive migration policies increase the vulnerability of migrants to irregularity and exploitation of human trafficking. Thus, far from empowering migrants, many migrant policies and anti-trafficking activities slide over into treating them as criminals.

What can be seen from this detailed discussion is that migration policy creates a chance for migrants to gain better livelihoods but also presents challenges for them to empower themselves at their destination. Also, migration and human trafficking are two distinct phenomena but have interrelated issues. This is because both issues
involve human beings and illegal profit, and trafficking is a dark side of globalization and also a dark side of the migration agenda.

It should be emphasized that human trafficking is a shameful face of migration. It is because there are now established international policy instruments establishing the 3-Ps of prevention, protection, and prosecution or even 4-Ps anti-trafficking framework of prevention, protection, prosecution, and partnerships. Despite these policies, the reality is that we still do not know enough about the scale and impact of trafficking and its relation to migration, and many countries lack the political will and conditions to provide the protection and migration consulting services that those made vulnerable through trafficking and those want to migrate most need.

Human Trafficking-Migration Nexus: Gender Issues

The International Migration Report 2015 of UN emphasizes that, the number of international migrants worldwide has continued to grow rapidly over the past 15 years reaching 244 million in 2015, up from 222 million in 2010 and 173 million in 2000. The word Asia has been frequently mentioned in the report. Nearly two-thirds of all international migrants live in Europe (76 million) or Asia (75 million). In 2015, of the 244 million international migrants worldwide, 104 million (43%), were born in Asia. Europe was the birthplace of the second largest number (62 million or 25%), followed by Latin America and the Caribbean (37 million or 15%) and Africa (34 million or 14%). Specifically, women comprise slightly less than half of all international migrants. The share of female migrants fell from 49% in 2000 to 48% in 2015. Female migrants outnumber male migrants in Europe and Northern America, while in Africa and Asia, particularly Western Asia, migrants are predominantly men. Between 2000 and 2015, the median age of international migrants declined in Asia, Latin America, and the Caribbean, and Oceania age of international migrants.

Earlier, the trend of feminization of migration was noted. Feminization of migration refers to a contemporary trend in the gender pattern of migration movement, with increased women migrating for employment or for marriage. According to the Global Migration Group (2008), female migrants account for 52.2% of all migrants in the developed countries and constitute 45.7% of all international migrants in developing countries. In other words, about 100 million women were living outside their countries of origin. In the last 20 years, there is a slight decreased in the share of female migrants from 49.1% in 2000 to 48.4% in 2017. The proportion of females migrating varies considerably across regions, and feminization of migration can be seen in Asia (57.6% are female migrants) and Africa (52.9% are female migrants) (IOM 2018). The flow of female migration creates a female face to migration worldwide and contributes to the elimination of the traditional pattern where those women are tied to the house and remain in their reproductive and housekeeping roles. Many women choose to migrate as a way to expand their opportunities, to improve autonomy, human capital, and self-esteem; however, their decision to migrate can subject them to different types of vulnerabilities such as language
barriers, racial discrimination, or even abuse and torture from their husbands in the case of foreign marriages (Piper and Roces 2003; Fleury 2016). Although, in the past 10 years, the rate of female migration tends to be slightly decreased, there has been a regular flow of women moving both domestically and internationally for livelihood and development opportunities. In terms of social benefits, migration gives women new ideas, access to technology, information, and enhances new skills and knowledge. Migration also provides women with autonomy, freedom, and confidence, as they earn an income and have the opportunity to communicate with people outside their villages.

Migration is a gendered process in itself as women and men experience migration differently. Men and women tend to migrate for different purposes. Generally, women and men migrate to work in response to gender-specific labor demand in destination places. However, women, especially women in Asia, also migrate for marriage. Yang and Lu (2010) reveal that in the past two decades, there has been a rapid increase in cross-border marriage migration between Southeast and East Asia whereby women from less developed countries migrate for marriage to men in wealthier countries. This is the origin of the term “Asian mail-order brides.” These women not only migrate to Asian countries but also to countries worldwide. Further, male migration and female migration have different impacts on those left behind. Cortes (2010) and Fleury (2016) emphasize that female migration has an overall negative impact on children’s education, and maternal absence is more detrimental than paternal absence. Additionally, men and women face different vulnerabilities in migration; while both are vulnerable to psychological and health risks, such as mental health problems, sexually transmitted diseases, or HIV/AIDS (Sevoyan and Agadjanian 2010), women are at higher risk of being sexually abused or exploited, and women, therefore, are a higher risk of HIV/AIDS infection.

There is evidence showing that globalization has created a feminization of the labor market and this links to the industrialization process in developing countries. According to Perrons (2004) and Fischer (2013), the global neoliberal economy has created a large demand for female laborers to work in the Export Processing Zones (EPZs), export-oriented factories, and the cool chain with the production and processing of fresh fruits in developing countries. Further, globalization and the improvement of modern technology attracts more educated and qualified women in developed countries and in urban areas to join the labor force. This creates an increased demand for female support workers who can be nannies for other women’s children, or caretakers for old or sick people. As a result, women migrate from developing to developed countries, or from rural to urban areas, to grasp these paid work opportunities. Many Asian women have become transnational domestic workers or maids overseas. Dwi (2019) emphasizes that the current global economic situation is forcing women migrate to work in the domestic sector to include reproductive work such as domestic work, caring for the elderly or the young.

Female migration is believed to bring about socioeconomic benefits for individuals, households, and communities. Migrants have been acknowledged to be important vehicles for social and financial remittance (Global Migration Group 2008; Fleury 2016). Migrants, especially female migrants, tend to save a major part of their
income to send home to support their families (Fleury 2016). There are more women who migrate internationally and domestically, given how women are more likely to send remittances than men, female migrants’ remittances are sizable and vital to local communities. GAATW (2010) has emphasized that, with women increasingly migrating for labor, gender roles within families have changed. Women become economic providers.

The migration of women, however, potentially brings with it different negative gender impacts on women and those left behind. Female migrants are more vulnerable than their male counterparts in unsafe migration conditions (Ullah et al. 2016). Due to strict migration policy in destination countries, many female migrants have to live far from family members. In the case of domestic workers or caregivers, women need to care for others while leaving their children behind without direct maternal support. This separation of mothers and children is contributing to the development of the term “mobility orphans” (Caritas Internationalis 2010, p. 11), which refers to children who grow up without the tangible presence and care of parent(s). Also, instead of relaxing and enjoying the rest of their lives, the elderly, normally grandmothers, rather than the absent women of the family, have to care for their grandchildren. The phenomenon of “grand-mothering” (Caritas Internationalis 2010, p. 12) occurs in this particular context. In reality, women are not the winners in this migration process. They migrate to fulfill financial needs to support their families, and at the destination, they suffer psychological and emotional burdens. They live without the support of family members and relatives, and the quality of their lives largely depends on the behavior and treatment of their employers. Risks are often apparent at the destination in cases where migrants have inadequate knowledge of local socioeconomic conditions, customs, poor language skills, and therefore are passive in the work they have to undertake (Ebbe 2005). At the destination countries, female migrants “are often forced to accept subordinate and less secure employment” (Piper 2005, p. 8). In their home countries, they are perceived as having abandoned their families and children for money or for satisfying their ambitions instead of undertaking traditional gender roles as mothers and domestic workers. Female migrants are also at risk of losing their family as they live far from their husbands. GAATW (2010) acknowledged that, migration was being perceived as something that detracted from women’s ability to mother their children in their home village. Women are emphatic about the emotional and social costs of family separation and the impact their migration or migration status has on their ability to parent. The most dangerous potential risk, however, is the risk of being trafficked and exploited, either for sex or labor. As a result of the tremendous surge in female migration within and across borders, more women fall prey to traffickers. Ebbe (2005) illustrates the linkage between this feminization of work, of migration, and trafficking by telling the stories of young poor female workers in developing countries. Some have to prostitute themselves to earn extra money to send home, where brothers and sisters may be relying on that money to spend on their schooling and living. These women easily fall prey to tourists and traffickers. Others become debt-bondage victims because their low salaries are not sufficient to cover their monthly bills.
Vietnam also has been witnessing a feminization of migration internationally and nationally. Within the country, women migrate from rural to urban areas to find employment opportunities as housemaids, as workers in factories, or even as seasonal workers, as workers on construction sites, or as mobile street vendors (Barthelmes 2015). Vietnamese women also migrate across borders, mainly to work as nannies, caregivers, nurses in hospitals, and for foreign marriage. Labor export has been an important solution to the national economic development strategy. Dang (2006) acknowledges that every year, and no fewer than 70,000 Vietnamese leave the country for jobs overseas, and approximately 400,000 Vietnamese workers are present in over 40 countries worldwide. After nearly a decade, in 2017, Vietnam sent 134,751 laborer’s overseas. It was the fourth concessive year Vietnam reached the labor export target of more than 100,000 laborers’ (Vietnam Financial Times 2018). Female workers account for a high proportion of the Vietnamese workforce overseas, especially in Taiwan, Malaysia, and South Korea, where there is a high demand for factory workers, housemaids, and caregivers.

One research study found that many female migrant workers in Vietnam are living in challenging circumstances. Only 28% of female migrant workers have long-term contracts, while others only obtain short-term contracts, verbal agreements, or are without contracts (Actionaid Vietnam and C&D 2009) (C&D is the Centre for Cooperation Human Resource Development in Hanoi, Vietnam). This research also emphasizes that female migrant workers in Vietnam face considerable human trafficking risks, especially in the context of economic crisis, as enterprises tend to reduce the number of workers and workers need to work more, even with lower pay to compensate the company’s loss. In such a situation of work degradation, 90% of female workers interviewed confirmed that they decided to stay in the city rather than returning to their villages (Actionaid Vietnam and C&D 2009). Thus, migration and its risks are accepted by many women in economic crisis, when they do not have much choice in life.

In the context of Industry 4.0, the development of the Internet of things (IOT) along with the increase of the gender digital divide negative impact on women and children’s security and cause the risks of gender-based violence, including human trafficking, prostitution, and sexual harassment (Baker and Campbell 2013). The term gender digital divide refers to the differing amount of information between those who have access to the Internet – especially broadband access and those who do not have access. It also refers to the differences in resources and capabilities to access and effectively utilize Information and Communication Technologies (ICTs) for development that exist within and between countries, regions, sectors, and socioeconomic groups. Throughout the world, economic, social, and cultural obstacles prevent or limit women’s access to, use of, and benefits from ICTs. In addition to that, ICTs have been illustrated as a double-edged sword to facilitate human trafficking (Chawki and Wahab 2013). It has been also noted that human trafficking is a cyber-enabled crime as it is a platform for human trafficking. The rise of the internet and particularly the dark web are enabling traffickers to operate their crime with increased ease in today’s world (Rhodes 2017). The internet and loose control of its security provide lucrative environment for traffickers to operate their business. Thus,
human trafficking can be seen as a dark side of globalization, but also, a dark side of development process.

### Conclusion and Recommendations

Human trafficking and migration are two different issues but interrelated. Understanding the differences between human trafficking and migrant smuggling, and human trafficking-migration nexus is critical to the development and implementation of sound government policies. Better awareness of the distinctions between human trafficking and migrant smuggling can potentially improve victim protection and avoid the re-exploitation of victims. The key difference between human trafficking and migrant smuggling is that victims of trafficking are considered victims of a crime while smuggled migrants are not. However, both victims are vulnerable. There is a close linkage between human trafficking and migration, especially in the development context.

Human trafficking-migration nexus contains different policy and gender issues. In term of policy, both anti-trafficking and migration solutions have negative impacts on migrants and human trafficking victims. Migration-preventive and migration-restrictive policies have negative effects on women as they either cause a high incidence of human trafficking or increase the high vulnerability to human trafficking. Gender issues exist in human trafficking-migration nexus, including, but not limited to the feminization of migration, the changes of gender roles in family, and negative gender impacts on women and the ones who left behind, especially children.

Migration is part of human experience. Migrant women face the same disparities all women confront but may also experience additional challenges. During the process of migration, people, especially women and girls are at risks of being trafficked. To successfully protect people from the risks of being trafficked in their migration, different factors should be considered, especially gender and policy issues. Understanding the intricacies of gender, migration, and human trafficking can result in programs and policies that enhance the benefits and decrease the risks of being trafficked for migrants. Thus, awareness raising and gender analysis of human trafficking and migration need to be conducted. Research on human trafficking and on migration is an important source of information for evidence-based policy that helps deal with human trafficking and migration negative impacts. Gender evaluation of the national anti-trafficking strategy and anti-smuggling of migrants should be considered given that policy evaluation has not been a critical concern of scholars. Also, the corrective approach to promote gender equality must be applied, instead of the formal approach or protectionist approach that hinders people’s rights to move or migrate. For that, policy should be viewed and amended to better meet the needs of victims of trafficking and of smuggled migrants. To counter human trafficking and its negative gender impacts, anti-trafficking policy must be gender responsive to deal with not only gender issues of human trafficking but also to respond to specific needs of trafficked victims. States worldwide should ensure that measures against
trafficking do not have an adverse impact on the rights and dignity who have been trafficked. Also, anti-trafficking policy and migration policy need to take into account the needs of women. Moreover, anti-trafficking policy and smuggling of migrant policy need to be multifaceted responses to complex nature of the crimes. Further, in the context of Industry 4.0, internet security needs to be controlled to prevent possible risks of gender-based violence, including the risks of being trafficked. Technological interventions should account for the range of human rights potentially impacted by the use of advanced technologies. Last but not least, safe migration is the priority to prevent people from human trafficking and migrant smuggling. And finally, human trafficking is unfinished task to study and research. To better facilitate successful anti-trafficking policy, human trafficking needs to be studied and researched from different angles and perspectives.

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