

anti trafficking review

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Special Issue - Traffickers

Editorial: Traffickers

Thematic Articles

The Myth of the 'Ideal Offender': Challenging persistent human trafficking stereotypes through emerging Australian cases

What We Know about Human Traffickers in Vietnam

Chasing Geographical and Social Mobility: The motivations of Nigerian madams to enter indentured relationships

Oblivious 'Sex Traffickers': Challenging stereotypes and the fairness of US trafficking laws

Sex Traffickers: Friend or foe?

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'It's About Survival': Court constructions of socio-economic constraints on women offenders in Australian human trafficking for sexual exploitation cases

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Short Articles

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Traffickers and Victims: Opposite sides of the same coin?

Interview: Raised in Pimp City: Urban insights on traffickers, trafficking, and the counter-trafficking industry

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ANTI-TRAFFICKING REVIEW

Special Issue
TRAFFICKERS

Issue 18, April 2022

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The *Review* is primarily an e-journal, published biannually. The journal presents rigorously considered, peer-reviewed material in clear English. Each issue relates to an emerging or overlooked theme in the field of anti-trafficking.

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Editorial: Traffickers

Marika McAdam and Borislav Gerasimov

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Some years ago, the owner of a Chinese restaurant in the Netherlands was approached by six Chinese irregular migrants. They were desperate and afraid of being found by authorities, and begged him for shelter and work. He relented, accommodating them out the back of the restaurant, and giving them meagre pay for working at this restaurant. He was convicted as a trafficker. On appeal, the Supreme Court affirmed this decision, finding that the trafficker need not take initiative, nor intentionally abuse the vulnerability of his victims, but that it was enough that he was aware of their vulnerability to establish that he had intended to abuse it. That the living and working conditions fell below accepted standards in Dutch society made the circumstances sufficiently exploitative, and the elements of trafficking in persons were established.¹

More recently, in the United States (US), alarm was raised about potential 'sex trafficking' of Asian women in suburban massage parlours and spas across Southern Florida. A media frenzy ensued, as did the 'raids and rescues' that inevitably follow where decision-makers can accept more readily the narrative of victimisation than that of willing sex work. As time went on and the so-called victims continued to insist that they were not, in fact, victims, the trafficking case quickly unravelled. The authorities were unable to invent 'traffickers' as easily as they were able to initially fashion 'victims' out of the people they encountered making a living at those premises. No traffickers could be identified, and the 'victims' were soon rebranded as offenders facing prostitution-related charges.²

¹ A T Gallagher and M McAdam, *Abuse of a Position of Vulnerability and Other Means Within the Definition of Trafficking in Persons*, United Nations Office on Drugs and Crime, 2013, pp. 34-35, referring to the case of Supreme Court, 27 October 2009, LJN: B17099408.

² No author, 'Robert Kraft: A case study in caution for the anti-trafficking sector', Freedom United, 10 February 2021, retrieved 14 February 2022, <https://www.freedomunited.org/robert-kraft-caution-for-the-anti-trafficking-sector>.

In Ghana, local police with the support of international NGOs raided impoverished fishing communities, where children undertake the dangerous work of untangling fishing nets, as their fathers and grandfathers did before them.³ Does the graphic, dramatic footage recorded by the NGOs depict children being rescued from their ‘traffickers’ or does it document the wrongful removal of children from their parents?

These situations are illustrative of the types of scenarios that can fall within the realm of ‘human trafficking’. Where the language of human trafficking is used, connotations of human rights violations and assumptions of violence and abuse follow, notwithstanding the absence of transnational organised criminals,⁴ or sometimes even the absence of traffickers.

The international legal framework adopted to address trafficking in persons—the *United Nations Convention against Transnational Organized Crime* (UNTOC) and its supplementary Trafficking in Persons Protocol—grafted a criminal justice lens onto responses to human exploitation. Criminal justice responses, of course, need criminals. They need victims and perpetrators, goodies and baddies. But who are the baddies?

This was the central question we had in mind when we decided to devote this Special Issue of *Anti-Trafficking Review* to the theme ‘Traffickers’. We wanted to understand who traffickers are, what factors led to their offending, and how they are treated in the criminal justice system, among other issues.

The three-element definition of trafficking in persons is a shifting mosaic of the ‘acts’, ‘means’, and ‘purpose’ elements that describe the conduct and intentions of traffickers. The application of the definition constructs, from among complex human interactions, a subset of interactions deemed serious enough to criminalise.

³ S Okyere, N K Agyeman, and E Saboro, “‘Why Was He Videoing Us?’: The ethics and politics of audio-visual propaganda in child trafficking and human trafficking campaigns”, *Anti-Trafficking Review*, issue 16, 2021, pp. 47– 68, <https://doi.org/10.14197/atr.201221164>.

⁴ While national definitions and interpretations of ‘trafficking in persons’ vary, Art. 4 of the Trafficking Protocol states that it applies in cases where ‘[trafficking] offences are transnational in nature and involve an organized criminal group’ (UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000). For more on this point, which is relevant to the special issue too, see M McAdam, ‘There’s No Human Trafficking or Migrant Smuggling Without Organised Crime, the Law Says—and that matters’, *OpenDemocracy*, 26 February 2020, <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/theres-no-human-trafficking-or-migrant-smuggling-without-organised-crime-the-law-says-and-that-matters>.

Yet, the definition is subject to the interpretation of whoever wields it, in order to capture or exclude activities and so to make traffickers—or not—of people who fall within the scrutiny of the law.⁵ As a result, who is considered to be a ‘trafficker’ becomes less a matter of objective fact than a matter of opinion. Given that a ‘trafficker’ in one jurisdiction may in another be only guilty of minor offences or perhaps none at all, who then is a trafficker, and what is an appropriate and proportionate response to their conduct?

Transposed on top of these variables are the sensational and sometimes salacious stories of what happens to victims—where, with whom, and how—that have resulted in more forensic interest in victim profiles than in perpetrator profiles. This victim-focus manifests in practice, with the definition of trafficking in persons applied to the plight of victims rather than to the actions and intentions of traffickers, with lists of human trafficking indicators that describe the circumstances, movements, motivations, and appearance of victims. There are countless studies about who victims are, what happened to them, and what led to the choices they made, but far fewer that reveal who traffickers are, and what led them to theirs.⁶

The 2021 US State Department *Trafficking in Persons* report mentions victims 18,134 times, and traffickers 3,461 times. Similarly, the 2020 *Global Report on Trafficking in Persons* by the United Nations Office on Drugs and Crime (UNODC) mentions victims 1,033 times, and traffickers only 322 times. It is clear that we talk more about victims than we do about traffickers because we know so little about the latter.

There are understandable reasons for this: victims may be reluctant to cooperate with law enforcement for the identification of traffickers. Of those traffickers who are identified and arrested, few are prosecuted and fewer still are convicted. Many are able to use their resources to evade authorities. There are also methodological challenges in accessing criminals and eliciting responses from them.⁷

We are told that there are some 40 million ‘modern slaves’ in the world today,⁸ yet we are not told how many traffickers were involved in enslaving these masses.

⁵ A T Gallagher and M McAdam, *The International Legal Definition of Trafficking in Persons: Consolidation of research findings and reflections on issues raised*, Issue Paper, UNODC, Vienna, 2018.

⁶ A Choi-Fitzpatrick, ‘The Good, the Bad, the Ugly: Human rights violators in comparative perspective’, *Journal of Human Trafficking*, vol. 2, issue 1, 2016, pp. 1–14, <http://doi.org/10.1080/23322705.2016.1136166>.

⁷ *Ibid.*, p. 3

⁸ No author, *Global Estimates of Modern Slavery: Forced labour and forced marriage*, International Labour Office (ILO) and Walk Free Foundation, Geneva, 2017.

This trafficker blind-spot limits counter-trafficking responses. In the same way that the term ‘violence against women’ focusses on the object of that crime, rather than, say, ‘violence by men’, which would shift attention to its perpetrators, so too is counter-trafficking discourse victim-oriented. In the field of gender-based violence, it is now recognised that simply teaching women to protect themselves is not a sustainable prevention strategy.⁹ However, in the field of human trafficking, prevention is almost always concerned with vulnerability to, and how to protect oneself from, *being* trafficked, not vulnerability to *perpetrating* trafficking. This is notwithstanding that vulnerability factors, as many of the contributions to this Special Issue emphasise, are very often the same for victimisation as for perpetration. We are not aware of government or NGO programmes that aim to prevent people from *becoming traffickers*.

Likewise, in the criminal justice system, there is a significant focus on a victim-centred approach now so widely and rightly advocated. Indeed, attention to victim vulnerability and their human rights are hallmarks of good counter-trafficking responses. Victim-centred prosecutions are essential, given the often humiliating treatment of especially women victims of sexualised violence by the criminal justice system. But human rights-based approaches to human trafficking need to also apply to persons accused or convicted of trafficking. Equality before the law—a hallmark of any free and democratic society—requires equal attention to the rights of the accused and the victim. As has been pointed out, however, alleged traffickers often find themselves in situations where their rights are at acute risk of violation, whether from their misidentification, miscarriages of justice in the criminal justice system, or their treatment within it.¹⁰ Political pressure to increase prosecution and conviction rates may have exacerbated the human rights risks, particularly in the absence of metrics that consider the fairness of criminal justice procedures and the human rights of accused and convicted persons, alongside those of victims.

This Special Issue of *Anti-Trafficking Review* attempts to redress these imbalances by bringing the perpetrators of crime into focus. This is not to detract from a victim-centred approach, nor to stifle victims’ voices, some of whom, we must recall, may be traffickers too.¹¹ Indeed, anti-trafficking stakeholders will do well

⁹ See, for example: C Linder, ‘Telling Women How Not to Get Raped Won’t Stop Sexual Violence on Campus’, *The Guardian*, 2 August 2018, <https://www.theguardian.com/higher-education-network/2018/aug/02/telling-women-how-not-to-get-raped-wont-stop-sexual-violence-on-campus>.

¹⁰ A T Gallagher, ‘Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice’, *Anti-Trafficking Review*, issue 6, 2016, pp. 1–11, <https://doi.org/10.14197/atr.20121661>.

¹¹ L Mann, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A case law analysis*, United Nations Office on Drugs and Crime, Vienna, 2020.

to listen more closely to the voices of exploited persons, sometimes raised in defence of people who have been quickly condemned as traffickers in a criminal justice climate thirsty for the blood of traffickers. This issue is therefore offered in recognition of the fact that counter-trafficking efforts must be informed not only by an in-depth understanding of those who are trafficked, but also those who traffic.

This Special Issue

The final selection of contributions to this Special Issue includes nine full-length research articles, four short articles, and one interview. Written from a variety of perspectives and focussing on diverse contexts, these contributions illuminate: the characteristics, motivations, and modus operandi of people convicted of human trafficking; their relationships with their victims; and their treatment in the criminal justice system.

Characteristics

Several authors contrast the characteristics of traffickers with the stereotype of an ‘ideal offender’ promoted by media, popular culture, governments, and NGOs. In their article, **Kyla Raby and Nerida Chazal** examine four common stereotypes of traffickers—that they are exclusively male, unknown to their victims, foreign, and always use physical force—against evidence found in literature as well as in two recent trafficking cases uncovered in Australia. The authors emphasise that narrow depictions of traffickers can prevent the successful identification of trafficking situations. They urge the media, NGOs, and governments to avoid ‘stereotypes that limit understanding of what human trafficking is, how and where it occurs, and who perpetrates it and why’.

The picture of traffickers that emerges from the articles is of ordinary people, from low educational and disadvantaged socio-economic backgrounds, and often from racial or ethnic minorities—in other words, people who share similar profiles with their victims. Authors refer to these traffickers variously as ‘accidental/incidental’, ‘opportunistic’, ‘oblivious’ traffickers, or the ‘trafficker-next-door’. In Vietnam, for example, as **Le Thi Hong Luong and Caitlin Wyndham** describe, the majority of convicted traffickers are poor, low-educated members of the disadvantaged H’mong ethnic minority community. In Italy, the Nigerian women convicted of trafficking whom **Milena Rizzotti** interviewed had the same life and migration trajectories as their victims. Likewise, the women convicted of human trafficking for sexual exploitation in Australia, whose court cases were reviewed by **Alexandra Baxter and Nerida Chazal**, had all experienced economic deprivation and violence in the family from a very young age. Self-proclaimed former trafficker **Armand King**, whom the two of us interviewed, also spoke at length about the deprivation and racism forced upon inner-city Black communities in the United

States, including his own. In Greece, **Georgios Papanicolaou and Georgios Antonopoulos** describe local and migrant farmers and small business owners who supply much-needed migrant labour for the Greek economy, as ‘traffickers-next-door’. In Hong Kong, **Helen Leung, Crystal Yeung, and Patricia Ho** show how traffickers represent a complex web of religious leaders, friends, family members, and former victims. In the United States, **Alyssa Currier Wheeler** presents statistical information on the gender, age, citizenship, and criminal involvement of people convicted of trafficking at the federal level.

Within these articles, the fluidity between victims and traffickers (that is, situations where former victims become recruiters or exploiters) is specifically highlighted by **Baxter and Chazal, Leung, Yeung, and Ho, Rizzotti, and Wheeler**.

Motivations

To the extent that it is specifically articulated in the articles, the primary motivation of traffickers appears to be financial gain. However, given their often deprived socio-economic status, the traffickers in these articles did not seem to aim for an opulent life, but like their victims, primarily aspired to survive and support their dependants. **King** describes his involvement in trafficking as ‘the better of the very few options we had’. As reported by **Baxter and Chazal**, an Australian judge wrote in his sentencing remarks that ‘[people] become the trafficker just out of economic necessity’. These two authors explore the drivers of women’s engagement with trafficking, namely economic constraints and the need to support dependants. Similarly, many of the convicted Nigerian women whom **Rizzotti** interviewed said that as the eldest daughters, they were expected to provide for their families, which was their motivation for facilitating other women’s migration to Europe. In Vietnam, the court cases reviewed by **Le and Wyndham** show that while some traffickers engaged in trafficking because it was ‘easy money’, others did not receive any payment, or received relatively small amounts for the recruitment of victims. This last point is reinforced by **Matthew C. Clarke** who argues against seeing financial gain as the primary motivation of traffickers. He points to data showing that some traffickers do not make large amounts of money but seem to be motivated by factors such as ideology and sexual pathology. Therefore, he calls for a more careful and in-depth examination of traffickers’ motivations.

Modus Operandi

The article by **Erica Koegler, Claire Wood, Lilly Bahlinger, and Sharon D. Johnson** explores how traffickers use substances to recruit and exploit victims. Based on interviews with service providers in the American Midwest, the authors highlight how traffickers offer victims drugs ‘for fun’, to control their mood and performance, as a reward, to force addiction, or without the victims’ knowledge. The authors call for more research into the issue, wider availability of

harm reduction programmes, and the integration of substance use discussions in school curricula.

Other authors describe in more general terms the recruitment methods of traffickers. For example, in Vietnam, the court documents that **Le and Wyndham** reviewed showed that the most common recruitment method was contacting victims via Facebook or the messaging app Zalo with promises of jobs or marriage in China or Vietnam. In Italy, a Nigerian woman typically sponsors the migration of a co-national who pays around EUR 25,000–40,000. Most of the women whom **Rizzotti** spoke with knew in advance that they would be engaging in sex work under constrained conditions. After they repaid their debt, they began recruiting other Nigerian women and sponsored their migration to Italy—often because this was the only way to earn as undocumented migrants. In Hong Kong, **Leung, Yeung, and Ho** describe how traffickers use emotional blackmail, dependency, and even religious beliefs to recruit victims and keep them in exploitative labour situations.

In Malaysia, **Haezreena Begum Abdul Hamid** spoke with 29 women who had been identified as victims of trafficking (although not all identified themselves as such). The vast majority were recruited by friends and acquaintances and had travelled to Malaysia with the necessary documents but were not informed that they did not have the right to work with their type of visa. While thirteen of the women had migrated with the intention to engage in sex work, fourteen others felt deceived or coerced into it. Many of the women were paying off migration debts to their traffickers and had limited knowledge about their rights in Malaysia; however, they did not seem to mind these factors when their traffickers allowed them to keep their passports, move around freely, and have some control over their working conditions and earnings.

Relationship with Victims

All authors describe how victims and traffickers knew each other before the trafficking situation. In many cases, their relationship involved deception, as described above, and debt, coercive control, and constrained working conditions, as described also by **Raby and Chazal** and **Baxter and Chazal**. However, other narratives emerged too. **Hamid** asked identified victims what they thought of their traffickers, and the vast majority did not share any negative feelings. Many used affectionate terms for them and described quasi-familial relationships. All women considered their ‘traffickers’ as people who had helped them come to Malaysia to earn money and support their families. Similarly, some of the Nigerian women whom **Rizzotti** spoke with referred to their traffickers as people who had helped them come to Italy. In the United States, **Amber Horning and Loretta Stalans** describe situations where the traffickers’ only role was to transport women from one place to another, or situations where older women recruited underage men to be their ‘pimps’. In his interview, **King** too shared how women

in his community often approached men to be their ‘pimps’ and how traffickers and victims (or ‘pimps and prostitutes’ as he says they were referred to at the time) grew up together, went to school together, and survived hardship together. In these cases, it was the recruited pimp, rather than their recruiter, who was considered to be the trafficker.

Treatment of Traffickers in the Criminal Justice System

This theme is the least prominent in the issue. **Baxter and Chazal** examine how Australian judges discuss women traffickers’ socio-economic pressures to support their families. They find that, while judges acknowledge these pressures, they largely ignore them when delivering their sentences. The authors argue that structural constraints and former victimhood need to be taken into consideration when sentencing women traffickers. **Horning and Stalans** focus on people who have various supporting roles in the sex industry, such as ‘pimps’, boyfriends, or drivers, who do not realise that they would qualify as traffickers under US legislation. Based on interviews with such ‘oblivious traffickers’, the authors similarly call for differential treatment and sentencing based on their specific roles as well as information campaigns that illuminate which activities are punishable. **Jason Haynes** tests whether the prosecution provisions of anti-trafficking laws adopted by Commonwealth Caribbean states have encroached or threaten to encroach upon the constitutional rights of accused persons. He finds that while most provisions are not unconstitutional, some could be challenged. He urges governments in the region to amend these provisions to avoid the possibility of traffickers escaping justice on a technicality. Finally, writing from the perspective of a barrister practising in New Zealand, **Thomas Harré** makes the simple argument that traffickers’ right to a fair trial must be upheld. He examines the tension between international criminal law, designed to prosecute offenders, and the international human rights regime, designed to protect people from state oppression, and concludes that the two must work in tandem. A successful trial can only be achieved when the fair trial rights of both complainant and defendant are guaranteed.

Conclusion

Collectively, the articles in this Special Issue reveal that many of the people who are convicted as traffickers—at least for trafficking for the purpose of sexual exploitation, which was the focus of the articles—are not members of organised criminal groups but, much like their victims, are individuals from disadvantaged socio-economic backgrounds, ethnic minorities, or other marginalised groups. They often have low education and limited job prospects, and again, much like their victims, may enter into trafficking as a result of having few alternatives. We are right to ask whether these individuals really are the ‘traffickers’ that the transnational organised crime framework intended criminal justice responses

to punish, or whether they have become the sacrificial lambs that distract from States' failure to aim for harder targets.

The language of countering human trafficking (and its PR-savvy sibling 'modern slavery') is deployed to market anti-migration and border control policies to the voting public, disguising policies that fuel exploitation as policies aimed at countering it. In stoking outrage at the scourge of human trafficking, the State can cut its pound of flesh from whoever is the designated 'baddie' in its crime-fighting narrative. The 'trafficking' label triggers the public imagination to assume that the culprits being combatted are members of dangerous organised crime groups, rather than a motley crew of disadvantaged individuals scraping an average living from members in their own communities with whom they coexist in often mutually beneficial relationships that serve each other's interests.

Perhaps the finding that these low-level convicted traffickers are not so different from their victims has some lessons to offer from a prevention perspective. Addressing the root causes of trafficking—such as racial, ethnic, gender, or other discrimination; unequal access to regular migration pathways; and limited opportunities for education and jobs that pay a living wage—may serve to prevent vulnerable and marginalised people from becoming victims of trafficking *and* traffickers.

There are also lessons to be drawn from the treatment of offenders. The analysis offered here underscores the need to ensure that the rights of accused and convicted traffickers are upheld; humans need not be 'good' or even likeable in order to enjoy the full respect, protection, and fulfilment of their human rights. A rights-based approach to human trafficking is not only of intrinsic value in adhering to obligations in international law but key to preventing re-trafficking. It is apparent that the 'stereotypical' understanding of trafficking as a serious organised crime has given way to a broader understanding that captures a range of actors who are involved in different stages of processes leading to varying degrees of exploitation. This being the case, the punishments meted out should fit the crime.

Here, there is a role to be played by restorative rather than retributive justice that sets out not just to punish traffickers but also rehabilitate and meaningfully reintegrate them into society, equipped with tools and options to not reoffend. Indeed, as advocates promote the need for victims to be reintegrated in ways that ensure they are not just returned to the conditions that made them vulnerable to trafficking in the first place, traffickers and potential traffickers need to be given options to eke out a living that do not depend on the exploitation of others. In this respect too, more research is needed on child trafficking—not trafficking of children, but trafficking by children—and how children should be treated in the criminal justice system so that they do not grow up to become hardened traffickers in adulthood.

Future research would do well to enquire into how sentences can fairly differentiate between traffickers. More reflection is needed on what is an appropriate punishment for the trafficker who lacked choices and opportunities to be otherwise. Few would dispute that there is a moral difference between the CEO of a shell company that enslaves children at sea for profit, and the impoverished parent who exploits a child for the child's own survival. But in a counter-trafficking context that can easily brand both as 'traffickers', more consideration must be given to how these scenarios can be distinguished through the penalties imposed on them, the role of retributive and restorative justice, and whether the outcome is recidivism or reform. Efforts to bring traffickers to justice and end impunity must be informed by an understanding of who traffickers are, so that the sentences imposed are just, proportionate, and meaningfully dissuasive.

In our call for papers, we invited contributions that considered not only natural persons as traffickers, but legal persons too. Unfortunately, we received no submissions that took up this theme. Further research is needed into how, for instance, to confront legal persons when trafficking occurs as part of corporate supply chains, the role of healthcare facilities in trafficking of humans for organ removal, the role of recruitment agencies in trafficking into forced labour, and the challenges posed to prosecution where domestic legislation essentially legitimises exploitation of a country's migrant labour force. More analysis is required to elucidate the point at which employers—both legal and natural persons—are criminally culpable for trafficked labour in formal, informal, private, and public sectors.

Trafficking by the State itself raises unanswered questions about when the State should be held to account for its role in trafficking, and by whom. Here, there is scope to consider State accountability not only for the raft of labour and migration policies that create and exacerbate exploitation, but also exploitation by the State of its own citizens and others within its jurisdiction (including on flagged vessels and in Special Economic Zones), such as on State-owned palm plantations or forests, involvement of children in armed conflict, forced labour of citizens abroad or ethnic minorities domestically, or forced military service, forced labour in prisons, or in diplomatic households around the world.

There are no clear answers to the questions raised here. But recognising the diversity of traffickers, it becomes clear that a similar diversity of approaches is required to meaningfully disrupt human trafficking. Merely convicting disadvantaged and desperate people without addressing the underlying reasons for their disadvantage and desperation, or understanding the impact of their punishment on their future choices and options, will continue to be a blunt, worn-out tool against traffickers.

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Thematic Articles: Traffickers

The Myth of the ‘Ideal Offender’: Challenging persistent human trafficking stereotypes through emerging Australian cases

Kyla Raby and Dr Nerida Chazal

Abstract

Human trafficking and slavery offences are often constructed through prominent stereotypes of the ideal victim and the ideal offender. This article examines four common offender stereotypes created by representations of trafficking seen in the media, popular culture, government reports, and awareness campaigns, and challenges these stereotypes by comparing them with international and Australian research and statistics. This comparison demonstrates that the ideal trafficking offender is a myth that must be broken. To support this argument, the article explores two emerging Australian cases involving sexual exploitation and allegations of slavery and servitude that significantly depart from stereotypical representations of trafficking. This shows the limitations of offender stereotypes in explaining trafficking offences and demonstrates the need for greater emphasis on the role of coercive control in trafficking offences, the impact of trust and changing relationships, and the interrelationship of trafficking with domestic violence.

Keywords: offender stereotypes, ideal offender, trafficking narratives, coercive control

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Introduction

Stereotypes and myths of human trafficking offending and offenders are proliferated by the media and popular culture as well as through government policies and awareness campaigns of government and non-government organisations (NGOs). In order to make complex concepts associated with

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trafficking understandable and compelling to an audience with limited knowledge of the subject, the media simplify information through the use of meaning-facilitating mechanisms or stereotypes.¹ Awareness campaigns are also commonly designed to present trafficking narratives in a way to ‘capture the public’s attention and sympathy’.² Consequently, trafficking narratives are often constructed through stories involving three central subjects: victims, villains, and rescuers.³ The impact of this framing is significant, diverse, and often counter-intuitive to storytellers’ intent. Also known as the ‘hero’ and ‘villains’ narrative, a serious implication of this is that it involves ‘placing the blame for trafficking on some, whilst obscuring the responsibility of others’.⁴ When human trafficking is presented as an issue of individual vulnerability, which can be remedied by charitable efforts, it ignores much more complex cultural, political, and economic systems such as sexual and racial discrimination which act as root causes.⁵ The value of trafficking within the growing field of human rights is therefore tied to how anti-trafficking narratives influence viewers of the issue and how this occurs through dominant framings.⁶ Trafficking narratives that employ tropes of ‘victims’, ‘villains/offenders’, and ‘heroes/rescuers’ reinforce racialised and gendered assumptions about trafficking and have led to a legal response largely focused on punishing offenders.⁷ Popular narratives shape how trafficking is defined and understood, and how change is envisioned. Critiquing them is therefore crucial in reframing, rather than re-asserting, troubling racial, gender, and national stereotypes.⁸

¹ C Wallinger, ‘Media Representation and Human Trafficking: How anti-trafficking discourse affects trafficked persons’, *Second Annual Conference on Human Trafficking*, University of Nebraska, Lincoln, NE, USA, 2010.

² E O’Brien, ‘Human Trafficking Heroes and Villains: Representing the problem in anti-trafficking awareness campaigns’, *Social and Legal Studies*, vol. 25, issue 2, 2016, pp. 205–224, p. 205, <https://doi.org/10.1177/0964663915593410>.

³ E Kinney, ‘Victims, Villains, and Valiant Rescuers: Unpacking sociolegal constructions of human trafficking and crimmigration in popular culture’, in M Guia (ed.), *The Illegal Business of Human Trafficking*, Springer, Cham, 2015, pp. 87–108, https://doi.org/10.1007/978-3-319-09441-0_7.

⁴ O’Brien, 2016, p. 205.

⁵ B Barnett, ‘Dividing Women: The framing of trafficking for sexual exploitation in magazines’, *Feminist Media Studies*, vol. 16, issue 2, 2016, pp. 205–222, <https://doi.org/10.1080/14680777.2015.1052004>.

⁶ W Hesford, *Spectacular Rhetorics: Human rights visions, recognitions, feminisms*, Duke University Press, Durham, 2011, p. 9.

⁷ S Balgamwalla, ‘Trafficking in Narratives: Conceptualizing and recasting victims, offenders, and rescuers in the war on human trafficking’, *Denver Law Review*, vol. 94, issue 1, 2016, pp. 1–42, <http://doi.org/10.2139/ssrn.2639754>.

⁸ A Fukushima and J Hua, ‘Calling the Consumer Activist, Consuming the Trafficking Subject’, in L M Cuklanz and H McIntosh (eds.), *Documenting Gendered Violence: Representations, collaborations, and movements*, 1st edition, Bloomsbury Academic, 2015, p. 48.

It has been widely recognised that within the modern field of human trafficking and slavery, there has been limited research undertaken on those who traffic people,⁹ while victims have received much more attention. Although some analysis of traffickers' characteristics and development of offender typologies has occurred,¹⁰ critique of offender myths and stereotypes has largely not. Where insights on offenders have been gained, this has primarily been by academics and specialist agencies, meaning this more in-depth knowledge is held by a small percentage of the general population. When such knowledge does not reach those in positions to communicate trafficking offending narratives to a larger audience, it has a limited impact on changing stereotypes. Research has shown that within the Australian context, members of the public identify film, television, newspapers, and radio as their main sources of information on human trafficking.¹¹ From a social constructionist perspective, narrow framing of trafficking offending is important as the information we gather from social interactions, the media, and popular culture shapes our reality and responses to social issues.¹² The mass media's ability to influence the public's perceptions of trafficking offending through both correct and incorrect information, in particular given the increasing tabloidisation of mainstream media, has the potential to set the agenda for which laws are passed, how funding is allocated, and what issues are deemed worthy of research and attention.¹³ Popular portrayals of trafficking offending with cinematic expression have also been found to shape common understanding and in turn influence related law and policy.¹⁴ Assessing how current knowledge on trafficking

⁹ A Aronowitz, G Theuermann, and E Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, OSCE, Vienna, 2010; F David, 'Organised Crime and Trafficking in Persons', *Trends & Issues in Crime and Criminal Justice*, no. 436, Australian Institute of Criminology, 2012, <https://www.aic.gov.au/publications/tandi/tandi436>.

¹⁰ N Busch-Armendariz, M Nsonwu, and L Heffron, 'Understanding Human Trafficking: Development of typologies of traffickers PHASE II', First Annual Interdisciplinary Conference on Human Trafficking, 2009; E Denton, 'Anatomy of Offending: Human trafficking in the United States, 2006–2011', *Journal of Human Trafficking*, vol. 2, no. 1, 2016, pp. 32–62, <https://doi.org/10.1080/23322705.2016.1136540>.

¹¹ J Joudo Larsen and L Renshaw, 'People Trafficking in Australia', *Trends & Issues in Crime and Criminal Justice*, no. 441, Australian Institute of Criminology, 2012, <https://www.aic.gov.au/publications/tandi/tandi441>.

¹² R Surette, *Media, Crime, and Criminal Justice: Images, realities and policies*, 3d ed., Wadsworth, Belmont, 2006.

¹³ R Fox and R Van Sickle, *Tabloid Justice: Criminal justice in an age of media frenzy*, Lynne Rienner Publishers, Boulder, 2001; R Sanford, D Martínez, and R Weitzer, 'Framing Human Trafficking: A content analysis of recent U.S. newspaper articles', *Journal of Human Trafficking*, vol. 2, no. 2, 2016, pp. 139–155, <https://doi.org/10.1080/23322705.2015.1107341>.

¹⁴ J Todres, 'Human Trafficking and Film: How popular portrayals influence law and public perception', *Cornell Law Review*, vol. 101, 2015, pp. 1–24.

offending translates to community awareness in order to challenge accepted myths and stereotypes is important as members of the community are more likely than authorities to come into contact with trafficked persons and therefore need to recognise offending behaviour. The narrow constructs of the myth of an ‘ideal offender’ also establish a limited scope of blame for the crime of trafficking, absolving others of responsibility and negatively impacting efforts to prevent and disrupt the crime, identify victims, and refer them to organisations for support.¹⁵

In this article, we examine and critique the notion of the ‘ideal offender’ formulated through common trafficking narratives. Through a review of existing research and academic texts, we have identified four common stereotypes associated with the ‘ideal offender’ which will be the focus of our analysis: that they are male, unknown to their victims, foreigners, and use physical force to control their victims. We first explore the presence of these stereotypes, how they are constructed, and how they fit with ideal offender tropes before disproving them as myths by contrasting them with the reality of trafficking offenders as profiled by international and Australian statistics and research, including Australian trafficking case law. We then examine two emerging Australian cases involving allegations of slavery and servitude offences to further exemplify the incompatibility of the offending stereotypes with the contemporary nature of trafficking. These cases were chosen because of their timeliness—at the time of writing, they were the two most recent examples of trafficking offending reported in the Australia media—and the widespread media coverage the cases received. An analysis of this media reporting and official statements by relevant policing bodies was undertaken to examine language, expression, and framing that reinforce or disprove the four elements of the myth of the ‘ideal offender’. Taking a critical social constructionist approach, which exposes the gendered, racialised, and socio-economic assumptions that underpin human trafficking discourse,¹⁶ our analysis highlights the danger of prominent offender stereotypes. Through this article, we demonstrate the need for greater emphasis on the role of coercive control in trafficking offending, the impact of trust and changing relationships, and the interrelationship of human trafficking with domestic violence and other forms of gender-based violence. As this discussion shows, these factors are much more relevant to the reality of trafficking offending than current offender stereotypes.

¹⁵ O’Brien, 2016, p. 208.

¹⁶ S Haslanger, *Resisting Reality: Social construction and social critique*, Oxford University Press, Oxford, 2012.

The Ideal Offender: Persistent stereotypes of offender and offending

In 1986, Nils Christie developed the theory of the ideal victim. Christie's work constructed a typography of the ideal victim and outlined the five main attributes that constitute an ideal victim: the victim is weak; the victim was carrying out a respectable project during the time of attack; they were in a place they could not possibly be blamed for being; the offender was big and bad; and finally, the offender was unknown, with no personal relationship to the victim.¹⁷ While the ideal victim is a recognised framework in trafficking literature, the concept of the ideal offender is less prevalent. However, the two concepts (ideal victim/ideal offender) are closely linked. For example, Christie argues that an ideal victim is most often created by an ideal offender. The ideal offender is predominately a person who is evil, culpable, unknown to the victim, socially undesirable, and not themselves a victim.¹⁸

In human trafficking, common stereotypes about offenders and their offending patterns follow the profile of the ideal offender and create representations of traffickers that are removed from many versions of the reality. O'Brien finds that Christie's characterisation of the ideal offender is consistent with representations of trafficking offenders in NGO awareness campaigns.¹⁹ Further, Wilson and O'Brien examine how the United States (US) *Trafficking in Person* (TIP) Report reproduces offender narratives that are consistent with Christie's archetype of ideal offenders as 'big and bad', deviant, and unknown.²⁰ The mainstream media has predominantly presented trafficking narratives as sensationalist stories which detail specific experiences of physical and emotional suffering and use imagery and language designed to shock and invoke an emotional reaction,²¹ yet contain stereotypes which align with myths related to the ideal victim and ideal offender. This leads to a series of stereotypical narratives, four components of which are outlined below, that define trafficking discourse but do not appropriately reflect the diverse reality of trafficking offending.

¹⁷ N Christie, 'The Ideal Victim', in E A Fattah (ed.), *From Crime Policy to Victim Policy: Reorienting the justice system*, Palgrave Macmillan, London, 1986, pp. 17–30.

¹⁸ *Ibid.*

¹⁹ O'Brien, 2016, p. 208.

²⁰ M Wilson and E O'Brien, 'Constructing the Ideal Victim in the United States of America's Annual Trafficking in Persons Reports', *Crime, Law and Social Change*, vol. 65, 2016, pp. 29–45, <https://doi.org/10.1007/s10611-015-9600-8>.

²¹ J Muraszkievicz *et al.*, *Review of the Media Framing of Human Trafficking*, Report for the TRACE Project, 2014, retrieved 21 April 2021, https://cris.cumulus.vub.ac.be/portal/files/5208711/TRACE_D1.2_Final.pdf; Barnett, pp. 205–217.

Stereotype One: Traffickers are exclusively male

One of the most widely held stereotypes is that traffickers are exclusively male.²² It is common for films and popular culture to represent traffickers as men,²³ and international news coverage on human trafficking cases more regularly constructs men as the main perpetrators.²⁴ Further reinforcing a polarisation of men and women in trafficking cases is that despite ideological differences, anti-trafficking campaigns also frequently rely on women's victimisation narratives to structure their rhetorical appeal.²⁵ These stereotypical constructions contradict emerging research into human trafficking which suggests that women play a key role in human trafficking not just as victims, but also as offenders.²⁶ Although men continue to account for the majority of offenders in many nations, 'trafficking in persons is a crime with a relatively high rate of female involvement' and there is a 'positive correlation between the share of girls detected as victims and the share of women convicted for trafficking in persons'.²⁷

Examination of the Australian context further challenges the common stereotype of traffickers being exclusively male. As of June 2021, 25 people have been convicted of trafficking in persons, slavery, and slavery-like offences under divisions 270 and 271 of the *Commonwealth Criminal Code Act* 1995, with 14 of these being male and 11 female. Analysis of offending patterns in Australia²⁸ found diverse roles of female offenders, sometimes acting as leaders,²⁹ in subordinate roles with clear histories of prior victimisation,³⁰ and some having been in rela-

²² J M Chacón, 'Tensions and Trade-Offs: Protecting trafficking victims in the era of immigration enforcement', *University of Pennsylvania Law Review*, vol. 158, no. 6, 2010, p. 1616; E O'Brien, *Challenging the Human Trafficking Narrative: Victims, villains and heroes*, Routledge, Oxon, 2019.

²³ Todres, p. 12.

²⁴ E Denton, 'International News Coverage of Human Trafficking Arrests and Prosecutions: A content analysis', *Women & Criminal Justice*, vol. 20, issue 1-2, 2010, pp. 10-26, p. 21, <https://doi.org/10.1080/08974451003641321>.

²⁵ Hesford, p. 126.

²⁶ I Chatzis *et al.*, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A case law analysis*, United Nations Office on Drugs and Crime (UNODC), Vienna, 2020.

²⁷ K Kangaspunta *et al.*, *Global Report on Trafficking in Persons 2012*, UNODC, Vienna, 2012, p. 29.

²⁸ F Simmons *et al.*, 'Human Trafficking and Slavery Offenders in Australia', *Trends & Issues in Crime and Criminal Justice*, no. 464, Australian Institute of Criminology, 2013, retrieved 20 April 2021, <https://www.aic.gov.au/publications/tandi/tandi464>.

²⁹ *The Queen v Tang* [2008] HCA 39; *R v Nethip* [2010] NSWDC 159.

³⁰ *DS v R* [2005] VSCA 1992 [2].

tionships with male co-offenders.³¹ O'Brien observed that, when offenders are identified as being female, they are subjected to more detailed characterisation in news reporting, including analysis of motivation for their actions, than male traffickers.³² This involves framing female traffickers as the 'exception' and is done potentially to overcome the audience's worldview of women as intrinsically gentler or kinder than men, and enable them to recognise the woman as the 'villain' in the trafficking narrative.³³

Stereotype Two: Traffickers are unknown to their victims

Another common stereotype linked to the 'ideal offender' and 'ideal victim' theory is that traffickers are always unknown to their victims, and that the point in which their relationship turns exploitative is immediately upon meeting. O'Brien identified that the most familiar stories of human trafficking within the general public 'centre around a young female victim, kidnapped or duped into forced prostitution'.³⁴ Although trafficking offending can involve the abduction of individuals who are sold for commercial sex or used for other labour, the media tends to over-represent such scenarios because they command attention from audiences.³⁵ An analysis of data gathered from three separate American studies of youth and young adult sex workers found that recruitment into sex work by a third party is far less common than is presupposed by trafficking narratives, and when it did occur, rather than a stranger, the facilitator was often an informal or legal guardian or a friend or intimate companion of a parent.³⁶ Narratives such as these about 'pimp trickery' leading to forced prostitution are more likely to awaken public empathy, generate social alarm, and increase reader and viewership, a key objective of mainstream media. However, such narratives ignore root causes of labour and sexual exploitation within the provision of sexual services globally.

³¹ *R v Sieders & Yotchomchin* [2006] NSWDC 184.

³² O'Brien, 2019, p. 78.

³³ *Ibid.*

³⁴ O'Brien, 2016, p. 208.

³⁵ E Albright and K D'Adamo, 'The Media and Human Trafficking: A discussion and critique of the dominant narrative', in M Chisolm-Straker and H Stoklosa (eds.), *Human Trafficking Is a Public Health Issue*, Springer, Cham, 2017, pp. 363–378, https://doi.org/10.1007/978-3-319-47824-1_21.

³⁶ A Marcus, *et al.*, 'Conflict and Agency Among Sex Workers and Pimps: A closer look at domestic minor sex trafficking', *The ANNALS of the American Academy of Political and Social Science*, vol. 653, no. 1, 2014, pp. 225–246, <https://doi.org/10.1177/0002716214521993>.

As recognised by the international legal definition of trafficking within the UN Trafficking Protocol, situations of human trafficking involve an element of coercion, fraud, deception, or abuse of power to recruit a potential victim.³⁷ For these strategies to be effective, traffickers often need to first gain the trust of their potential victim. This can be achieved through establishing connection and a non-exploitative relationship first, and then increasing coercion and control over time. To help with establishing commonality and trust, recruitment is often carried out by traffickers of the same nationality or background as the victims.³⁸ A study examining trafficker typologies in the US reported that traffickers tended to be from the same country of origin as their victims.³⁹ Having the same nationality often means similarities in language, culture, and religious backgrounds, which can be used to develop rapport, and in this way, ‘the notion of a collective ethnic brotherhood/sisterhood in a host nation may be an ideal that facilitates the trafficking act’.⁴⁰ Analysis of female convicted offenders in Australia also found that it is common for offenders to share the same background as their victims.⁴¹ The use of commonalities to build trust also helps to facilitate exploitation by reducing the risk of escape. Indeed, offering a stark contrast to the myth of traffickers as strangers to their victims, a significant proportion of human trafficking offences are committed by family, acquaintances, and friends.⁴² The common essential elements of connection and trust in the initial stages of a relationship between traffickers and their victims is not often represented in mainstream media or popular culture. Instead, narratives are couched in the myth of unknown predators that lurk in the dark and from this a ‘story of crime’ emerges which ‘positions criminal justice interventions as the natural solution to human trafficking’.⁴³

³⁷ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Supplementing the *United Nations Convention against Transnational Organized Crime*, 15 November 2000, (Trafficking Protocol), Article 3(a).

³⁸ Y van Damme *et al.*, *Organized Crime Involvement in Trafficking in Persons and Smuggling of Migrants*, UNODC, Vienna, 2010.

³⁹ Busch-Armendariz, Nsonwu and Heffron, 2009, p. 5.

⁴⁰ Denton, 2016, p. 54.

⁴¹ A L A Baxter, ‘When the Line Between Victimization and Criminalization Blurs: The victim-offender overlap observed in female offenders in cases of trafficking in persons for sexual exploitation in Australia’, *Journal of Human Trafficking*, vol. 6, issue 3, 2020, pp. 327–338, p. 329, <https://doi.org/10.1080/23322705.2019.1578579>.

⁴² M Viuhko, ‘Hardened Professional Criminals, or Just Friends and Relatives? The diversity of offenders in human trafficking’, *International Journal of Comparative and Applied Criminal Justice*, vol. 42, issue 2–3, 2017, pp. 177–193, <https://doi.org/10.1080/01924036.2017.1391106>.

⁴³ Albright and D’Adamo, p. 372.

Stereotype Three: Traffickers always use physical force

Another common stereotype is that physical force is always used to recruit and control victims. Although the use of physical force or restraint is indeed a technique of trafficking offending, it is not always necessary due to traffickers' use of psychological coercion and control.⁴⁴ The UN Trafficking Protocol recognises the methods used by traffickers are much broader than the use of physical force;⁴⁵ however, ambiguities within the definition of some terms such as 'coercion' and 'abuse of a position of vulnerability', in particular when they relate to use of psychological instead of physical means, has led to a lack of understanding of the prominent role they play in trafficking offending. Coercion is commonly seen as an umbrella term for a range of behaviours, and in the UN Trafficking Protocol it is linked to, but not synonymous with, the threat or use of force; however, the meaning of psychological coercion is less understood. The stereotype of traffickers always using physical force to 'enslave' their victims exists because it is easier to comprehend slavery achieved through the use of chains and other physical forms of force, whereas psychological forms of coercion and control are easier to conceal and therefore also easier to overlook or misunderstand.⁴⁶

This stereotype is further disproved by data on convicted offenders in Australia, which shows that 'offenders have typically exploited their victims through subtle methods of control rather than through the overt use of force or explicit threats of violence'.⁴⁷ For example, in the case of *R v Nettbip*, the offender exercised control through an arrangement that was akin to debt bondage. In accordance with Australian law, in order to prove the condition of 'sexual servitude', it must be shown that the use of force or threats causes a person not to be free to cease providing sexual services;⁴⁸ in this case, a 'threat' was ascertained to have arisen from the presence of the debt and not physical force.⁴⁹ Despite this, stereotypes about traffickers only using physical force to 'enslave' their victims are commonly held by the general public. Of the twenty-two per cent of Australian respondents to a national online survey who indicated that they believed they would be able to identify a trafficked person, a lack of freedom of movement and not being in possession of personal documents such as passports were identified by

⁴⁴ K Doychak and C Raghavan, "No Voice or Vote: Trauma-coerced attachment in victims of sex trafficking", *Journal of Human Trafficking*, vol. 6, issue 3, 2020, pp. 339–357, <https://doi.org/10.1080/23322705.2018.1518625>.

⁴⁵ Trafficking Protocol, Article 3(a).

⁴⁶ E Hopper and J Hidalgo, 'Invisible Chains: Psychological coercion of human trafficking victims', *Intercultural Human Rights Law Review*, vol. 1, 2006, pp. 185–210.

⁴⁷ Simmons *et al.*, p. 9.

⁴⁸ *Criminal Code (Cth)* s 270.4(1).

⁴⁹ *R v Nettbip* [2010] NSWDC 159.

respondents as relevant indicators.⁵⁰ Although these can indeed be indicators of trafficking, limiting understanding of the issue to only this context of physical restrictions on freedom of movement overlooks offending techniques such as social, economic, and geographic isolation, or other coercive behaviours, which can be employed progressively over time to deliberately control victims and prevent their escape. Trafficking offending narratives which only involve clear forms of physical force build on the ‘story of crime’ mentioned earlier, and those held through other methods such as debt bondage may not recognise themselves as being in an exploitive situation and thus not seek help.⁵¹ Developing greater understanding of the role that coercive control can play in situations of human trafficking will help to break down the stereotype that trafficking always involves the use of physical force and other visible means of control.

Stereotype Four: Traffickers are always foreigners

A fourth common stereotype is that human traffickers are always foreigners and that trafficking only occurs across international borders. In popular discourse concerning the trafficking of migrants, traffickers ‘are almost always identified as noncitizen men or men of color’⁵² and the ‘otherness’ of traffickers is further established through common depictions in the media of them being ‘dark’ or ‘eastern’ criminals.⁵³ Related to this is the common perception of those in developed countries that trafficking is a phenomenon that only happens overseas, across international borders, or to foreigners by foreigners. Wilson and O’Brien demonstrate how this portrayal is maintained in the US TIP reports, which construct trafficking as emanating from ‘source’ countries.⁵⁴ Barnett’s analysis of 110 articles on trafficking for sexual exploitation from forty-nine magazines published across seven countries found that that the portrayal of industrialised nations as victims of crime and developing countries as the source of crime was apparent; however, discussion on colonisation, racism, imperialism, and ‘sociopolitical systems forced upon developing countries by developed governments’ was absent.⁵⁵ The myth that trafficking is rooted in foreign cultures and international travel is also perpetrated through American films that portray other cultures as exploitative by nature and Americans as their saviours.⁵⁶

⁵⁰ Joudo Larsen and Renshaw, p. 5.

⁵¹ Albright and D’Adamo, p. 374.

⁵² Chacón, p. 1616

⁵³ J Berman, ‘(Un)Popular Strangers and Crises (Un)Bounded: Discourses of sex-trafficking, the European political community and the panicked state of the modern state’, *European Journal of International Relations*, vol. 9, issue 1, 2003, pp. 37–86, <https://doi.org/10.1177/1354066103009001157>.

⁵⁴ Wilson and O’Brien.

⁵⁵ Barnett, pp. 215–216.

⁵⁶ Todres, p. 15.

This positioning of trafficking leads to a general understanding by citizens in developed countries that trafficking is not something their own citizens can be involved in and is only perpetrated by migrants against migrants. Indeed, it is well evidenced that migrants are commonly victimised as they face specific vulnerabilities due to factors such as social isolation or limited access to networks, information, or resources. However, the myth of traffickers being primarily foreigners is disproven by findings published by the UN Office on Drugs and Crime (UNODC) in 2020 that seventy-four per cent of convicted traffickers globally were citizens of the country of their conviction.⁵⁷ It is important to note that this statistic does not capture the traffickers' ethnic backgrounds and the fact that traffickers may have cultural ties to countries other than that of which they are citizens. As noted in the discussion of stereotype two, trafficking offenders often use ethnic, cultural, and linguistic similarities to build rapport with victims with the same backgrounds. So, although trafficking does often involve individuals with foreign backgrounds, this is not always the case (as the case studies in this article demonstrate). The danger is in viewing trafficking as exclusively a foreign issue, or one that necessarily involves international cross-border travel.⁵⁸ Framing trafficking as a crime perpetrated only by foreigners across international borders fuels a popular discourse in which the noncitizen is perceived as a criminal threat, which in turn has policy implications that undercut trafficking protections whilst ignoring consideration of root causes of trafficking and sources of demand for trafficked labour.

This stereotypical narrative has influenced perceptions of trafficking within the Australian community. Of the twenty-two per cent of Australian survey respondents who indicated that they believed they would be able to identify a trafficked person, the majority identified foreign characteristics such as poor English language skills and Asian background as relevant indicators.⁵⁹ Although the majority of cases of convicted traffickers in Australia have involved both migrant offenders and victims, Australian residents and citizens with no migrant background have also been convicted of trafficking and slavery offences;⁶⁰ however, this has not seemed to influence the dominant narrative that traffickers are always foreigners and trafficking is a foreign issue that involves cross-border travel. The two case studies explored in the following section further demonstrate how trafficking can be 'home grown'; however, the influence of the dominant

⁵⁷ Kangaspunta *et al.*, 2020.

⁵⁸ OHCHR, 'Human Rights and Human Trafficking', *Fact Sheet no. 36*, United Nations, 2014, https://www.ohchr.org/documents/publications/fs36_en.pdf.

⁵⁹ Joudo Larsen and Renshaw, p. 5.

⁶⁰ *DPP (Cth) v Kannan & Anor* [2021] VSC 439; ABC Staff, 'Melbourne Couple Found Guilty of Keeping Tamil Woman as a Slave for Eight Years', *ABC News*, 23 April 2021, retrieved 16 August 2021, <https://www.abc.net.au/news/2021-04-23/melbourne-couple-guilty-of-slavery-treatment-of-tamil-woman/100091328>.

narrative of trafficking as a foreign issue may have contributed to a delay in identifying situations of exploitation as trafficking and slavery.

Emerging Australian Cases: Breaking the myth of the ideal trafficking offender

In early 2021, two Australian cases involving allegations of slavery and servitude offences emerged that challenge the stereotypical representations of the ‘ideal offender’ outlined above. In Australia, divisions 270 and 271 of the *Commonwealth Criminal Code Act 1995* criminalise human trafficking and slavery. This Act defines slavery as ‘the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person’⁶¹ and includes slavery-like practices such as servitude. This section explores the cases of Markcrow, Sawyer, and Stead and the case of Davis, which involve charges of slavery and servitude under division 270 of the *Commonwealth Criminal Code Act 1995*. At the time of writing, both cases were yet to be heard in court, and therefore no verdict had been reached. However, an analysis of publicly available information relating to these cases illustrates their departure from traditional understandings of trafficking offending and offences dominated by stereotypes. Comparing the reality of these cases to the four trafficking offender myths examined in the previous section demonstrates the need for more realistic representations of human trafficking in popular narratives.

The Case of Markcrow, Sawyer, and Stead

On 4 February 2021, a 35-year-old man, Matthew James Markcrow, and a 23-year-old woman, Crystal Marie Sawyer, were arrested by Queensland Police in South Brisbane and charged with multiple offences, including a charge against Markcrow for conducting a business involving servitude under the *Commonwealth Criminal Code Act 1995* as an aggravated offence involving a victim under 18 years of age.⁶² Shortly after, a third person, 23-year-old Hannah Christina Stead, was also charged with the same offence,⁶³ and further charges were laid against Markcrow, including six additional counts of conducting business involving servitude and

⁶¹ *Criminal Code Act 1995 (Cth)*

⁶² Queensland Police Service, ‘Sexual Servitude and Organised Prostitution Charges’, 5 February 2021, retrieved 4 May 2021, <https://mypolice.qld.gov.au/news/2021/02/05/sexual-servitude-and-organised-prostitution-charges-brisbane>.

⁶³ Queensland Police Service, ‘Update: Sexual servitude and organised prostitution charges, Brisbane’, 12 February 2021, <https://mypolice.qld.gov.au/news/2021/02/12/update-sexual-servitude-and-organised-prostitution-charges-brisbane>.

two counts of attempting to do so.⁶⁴ Police allege that Markcrow was keeping multiple women, aged between 17 and 24 years old, in conditions of servitude of unlawful prostitution, using stupefying drugs to control their movements.⁶⁵ When the search warrant was executed, police reported finding four victims at the address who had been tattooed as being Markcrow's property, with a further five victims coming forward to police following the arrests.⁶⁶ This case challenges three of the four offender stereotypes identified in the previous section.

First, in contrast to the first myth of traffickers always being male, this case involves two female offenders alongside a male offender. The presence of female offenders in cases of sexual exploitation in Australia is not uncommon.⁶⁷ The UNODC has suggested that '[i]t is not surprising that a crime for which 75–80 per cent of detected victims are female also involves a higher rate of female offenders'.⁶⁸ Despite recognition both internationally and in Australia of the commonality of female trafficking offenders, the male offender profile remains dominant and can be seen when considering comments made by the Queensland Police Officer-in-Charge, Detective Inspector Juliet Hancock, at the time of the arrests. Despite having laid charges on both a man and a woman, Detective Inspector Hancock was quoted as saying 'we believe there are other victims who have been exploited by the man', ignoring the role perceived by police that the female co-offender played in their exploitation.⁶⁹ This focus on the male offender can also be seen in mainstream media headlines such as an article from 9News entitled 'Man charged with keeping young Brisbane women as sex slaves', where it is not until the sixth paragraph of this article that a female co-offender is mentioned.⁷⁰ Similarly, 7News reported 'Man facing 10 charges over allegations

⁶⁴ Queensland Police Service, 'Update 2: Sexual servitude and organised prostitution charges, Brisbane', 23 February 2021, <https://mypolice.qld.gov.au/news/2021/02/23/update-2-sexual-servitude-and-organised-prostitution-charges-brisbane>.

⁶⁵ Queensland Police Service, 'Sexual Servitude and Organised Prostitution Charges'.

⁶⁶ *Ibid.*

⁶⁷ *R v Sieders & Yotchomchin* [2006] NSWDC 184; *The Queen v Tang* [2008] HCA 39; *R v McIvor & Tanuchit* [2010] NSWDC 310; *R v Netthip* [2010] NSWDC 159; *R v Chee Mei Wong*, [2013] NSWDC; *R v KAK* [2013] QCA 310.

⁶⁸ Kangaspunta *et al.*, 2012, p. 29.

⁶⁹ T Siganto and J Malo, 'Women Held as Sex Slaves, Drugged and Tattooed as Being "Property", Queensland Police Say', *ABC News*, 5 February 2021, <https://www.abc.net.au/news/2021-02-05/brisbane-prostitution-charges-sex-slaves-mount-gravatt/13125336>.

⁷⁰ 9News Staff, 'Man Charged With Keeping Young Brisbane Women as Sex Slaves', *9News*, 5 February 2021, <https://www.9news.com.au/national/women-allegedly-forced-into-sexual-slavery-brisbane-news-sex-arrest-covertly-filmed-tattooed-drugged-mount-gravatt-east/f97fc667-aaca-4a79-bf6c-f58335aa4e97>.

sex slaves were kept in Brisbane home'.⁷¹

The allegations in this case that the offenders used stupefying drugs to control the victims' living, financial, and work conditions also challenge the offender stereotype that traffickers always use physical force to control their victims. After speaking to alleged victims found at the property, Detective Inspector Hancock said 'a couple of them yesterday were definitely very heavily under the influence of drugs'.⁷² Utilising substances as a means of enacting control over victims is a common tactic of traffickers, and has been recognised by a US Supreme Court Justice in a landmark forced labour case as being a form of coercive control.⁷³ As drug use is generally seen as an undesirable trait by the broader community, an additional impact of this not well or widely understood phenomenon is that the trafficked person may be viewed as not meeting one of the attributes of Christie's 'ideal victim', that is, that they were carrying out a respectable project during the time of attack. This can lead to challenges for trafficked people in self-identifying as victims, and indicators of such consequences are present in this case. After speaking with some of the women found at the house, Detective Inspector Hancock stated that 'it would be, I think, fair to say that some of them do not understand they have been exploited'.⁷⁴

Related to the stereotype that traffickers always use physical force is the idea that the point at which the relationship between a trafficker and victim becomes exploitative is immediately upon meeting. Although in this case the exact nature of the initial relationship between the alleged offenders and their victims is not publicly reported, a police prosecutor explained to the court that Sawyer had told police she was 'like a mother' to the four women, saying 'she took care of them' and that 'she exercised a degree of control over the other girls'.⁷⁵ Establishing trust is a vital component for enacting techniques of coercive control, which can be used to gain, maintain, or increase control of a victim.⁷⁶ The ever-persistent stereotype of trafficking as requiring physical force and the relationship between a trafficker and their victim being exploitative immediately upon their meeting does not allow for these forms of psychological coercion to be understood in the mainstream.

⁷¹ W Barnsley, 'Man Facing 10 charges Over Allegations Sex Slaves Were Kept in Brisbane Home', *7News*, 5 February 2021, <https://7news.com.au/news/qlld/man-facing-10-charges-over-allegations-sex-slaves-were-kept-in-brisbane-home-c-2099552>.

⁷² Siganto and Malo.

⁷³ *United States v. Kozminski*, 487 U.S. 931, 957, see J. Brennan, concurring in judgment.

⁷⁴ Siganto and Malo.

⁷⁵ *Ibid.*

⁷⁶ L N Olson *et al.*, 'Entrapping the Innocent: Toward a theory of child sexual predators' Luring Communication', *Communication Theory*, vol. 17, no. 3, 2007 pp. 231–51, <https://doi.org/10.1111/j.1468-2885.2007.00294.x>.

Finally, a number of factors are present in this case, which challenge the fourth stereotype explored in this article—that traffickers are always foreigners. Although residency or citizenship of the alleged offenders or victims has not been reported publicly, photos of Markcrow printed in the media show he is white and he has been labelled as a ‘Brisbane man’ in reporting,⁷⁷ indicating a likelihood that he is an Australian citizen or resident. Despite this, the comments reported by Detective Inspector Hancock at the time of the arrests contain evidence of the related commonly held stereotype that trafficking in general is a foreign issue. Hancock said ‘(i)t’s something that you see that’s happening overseas’ and that ‘we’ve been shocked by this, we didn’t think this was happening in Australia, let alone Brisbane’.⁷⁸ Seeing the important role that policing agencies play in identifying trafficking situations, and their significant exposure to members of the community in situations of vulnerability, it is vital that police have an up-to-date understanding of the reality of trafficking crimes. Critically, this understanding must include the diverse typology of these crimes, informed through evidence and research, and widely shared with frontline service providers and the Australian community to avoid the influence of inaccurate and harmful stereotypes.

The Case of Davis

A second situation of exploitation in Australia exposed in early 2021 also challenges several of the ‘ideal offender’ tropes. On 11 March 2021, a 40-year-old man, James Robert Davis, was arrested by the Australian Federal Police (AFP) in Armidale, a town in regional New South Wales, and charged with three offences under the *Commonwealth Criminal Code Act 1995* related to one alleged victim, including reducing a person to slavery, intentionally possessing a slave, and causing a person to enter/remain in servitude.⁷⁹ The AFP allege that Davis manipulated a victim between 2012 to 2015 for a so-called ‘cult’, with investigators stating that Davis refers to himself as the patriarch of a group known as the ‘House of Cadifor’ and was living in a property with six women who had signed ‘slavery contracts’.⁸⁰

This case challenges the stereotype that traffickers are always foreigners and shows how, when viewed in this way, it may lead to situations of exploitation not being recognised as slavery. Davis and Felicity Bourke, a woman who has spoken publicly

⁷⁷ 9News Staff.

⁷⁸ Siganto and Malo.

⁷⁹ Australian Federal Police, ‘Modern Slavery Charges Laid Against Armidale Man’, 16 March 2021, retrieved 4 May 2021 <https://www.afp.gov.au/news-media/media-releases/modern-slavery-charges-laid-against-armidale-man>.

⁸⁰ T Swanston, ‘AFP Calls for More People to Come Forward After James Davis Charged With Slavery Offence’, *ABC News*, 16 March 2021, <https://www.abc.net.au/news/2021-03-16/afp-call-out-nsw-james-davis-alleged-sex-slave-charges/100013332>.

about the ways in which she alleges he caused her harm,⁸¹ are both Australian citizens, and from publicly available information, there appears to be no international element in this case. Davis's treatment of women was within clear view of both the physical community in which he lived and the online community as Davis frequently published blogs and videos online in which he openly detailed his control of women for sexual pleasure.⁸² An investigative journalist claims to have learnt that 'numerous reports about Davis have been made to state and federal authorities over several years'; however, when the programme she worked for approached New South Wales Police and the AFP about the situation, 'both said they were not investigating Davis'.⁸³ Neither policing agency has provided public comment on why this may have been so, in particular given the public nature of Davis's own documenting of his exploitative behaviours. However, after Davis's arrest, the AFP publicly acknowledged the assistance of the investigative journalism to their operation.⁸⁴ At the time of Davis's arrest, the AFP Assistant Commissioner stated, 'we want the public to be aware that human trafficking, slavery and slavery-like practices are happening here in Australia, all too often without anyone in the community knowing'.⁸⁵ This situation highlights the need for the stereotype of traffickers as always being foreigners to be broken down. This case demonstrates that there may have been an issue of both the community and policing agencies not recognising an exploitative situation as amounting to slavery due to this persistent stereotype that has misguided the general public's understanding of trafficking only as a foreign or cross-border issue. It also shows the importance of policing agencies having up-to-date knowledge of the diversity of trafficking offending.

This case also challenges the stereotype that traffickers are always unknown to their victims, and that the point at which their relationship turns exploitative is upon first encounter. Indeed, Davis and Burke's relationship began as a consensual romantic one, and it was not until after developing this initial relationship that Davis began utilising techniques of physical violence and psychological manipulation to coerce and control Burke.⁸⁶ Davis and Burke also share common features in their backgrounds and professional interests, which may have

⁸¹ Four Corners, 'Enslaved', *Australian Broadcasting Corporation*, viewed 6 May 2021, <https://www.abc.net.au/4corners/enslaved/13250368>.

⁸² *Ibid.*

⁸³ E Worthington and K Taylor, 'Former "Slave" Speaks Out About Abusive Sex Cult Being Run From a Rural Property', *ABC Investigations*, 15 March 2021, retrieved 19 January 2022 from Internet Archive, <https://web.archive.org/web/20210804061102/https://www.abc.net.au/news/2021-03-15/four-corners-felicity-bourke-speaks-out-about-cult-master/13230546>.

⁸⁴ Australian Federal Police.

⁸⁵ *Ibid.*

⁸⁶ Worthington and Taylor.

been used by Davis to develop Burke's trust. According to media reports, Davis served in the military for 17 years and also previously worked as a prison guard,⁸⁷ whereas Burke was studying to become a police officer when she met him.⁸⁸ The technique of first establishing trust as a foundation for enacting coercive control, often present in situations of intimate partner violence (IPV), can be seen in this example of alleged trafficking offending to be a key factor, which was then used by Davis to control Burke.

Finally, the case also challenges the stereotype that traffickers always use physical force to control their victims as it demonstrates multiple forms of psychological coercion allegedly used by Davis over long periods of time, in addition to physical means. In Davis's online writing, he openly described his philosophy of 'psychologically conditioning' his slaves 'to be 100% dependant [sic]⁸⁹, and gave advice to other men as to the specific techniques he used to do so, such as 'collaring' women. As in the Australian case of *R v Netthip*, where victims had freedom of movement and freedom of communication,⁹⁰ Davis's use of psychological coercion allowed him to control his alleged victims without the use of physical restraint. After openly promoting his exploitative behaviours online for many years, Davis relocated himself and multiple women to a rural property, creating a degree of social isolation between the group and the broader community. Burke also reported that soon after meeting Davis and introducing him to her family, Davis acted to sever ties between her and her family.⁹¹ Using isolation to gain control has been identified as one of four common patterns of behaviour in situations of coercive control across both IPV and trafficking.⁹² Deeper analysis of the intersection between domestic and family violence and human trafficking and the role of coercive control is essential in furthering understanding of more subtle forms of control traffickers utilise in offending.

⁸⁷ E Partridge, 'Former Soldier Charged With Keeping a Slave Refused Bail', *9News*, 17 March 2021, <https://www.9news.com.au/national/james-robert-davis-refused-bail-in-armidale-local-court-on-slavery-charges/e2da03bf-df55-4a08-9ac8-250895e32fd1>.

⁸⁸ Worthington and Taylor.

⁸⁹ *Ibid.*

⁹⁰ *R v Netthip* [2010] NSWDC 159.

⁹¹ Worthington and Taylor.

⁹² J Duron *et al.*, 'Observing Coercive Control Beyond Intimate Partner Violence: Examining the perceptions of professionals about common tactics used in victimization', *Psychology of Violence*, vol. 11, no. 2, 2021, pp. 144–54, <https://doi.org/10.1037/vio0000354>.

Recognising the Role of Coercive Control in Trafficking Offending

Although the concept of coercive control⁹³ was initially developed to explain offending techniques in IPV, recognition is beginning to emerge that victims of other forms of exploitation and abuse are subject to the same tactics. This includes victims of trafficking and involves techniques that ‘draw and trap them in relationships with their perpetrators and alienate them from their support systems’.⁹⁴ Professionals working with perpetrators and victims of abuse describe a common pattern of offending that transcends victimisation type. Utilising the specific term ‘coercive control’ to describe these tactics ‘broadens the recognition of instances when an individual’s personal freedoms are limited by another individual’s exertion of control’.⁹⁵ There is a lack of understanding of techniques of psychological and financial coercion within the Australian context as demonstrated by the absence of a nationally agreed definition of what constitutes coercive control. The need to better understand coercive control and consider what related effective legislative interventions look like was recently recognised by the Parliament of New South Wales in establishing a joint select committee to inquire into coercive control in domestic relationships. A key finding of this committee was that current laws do not adequately cover coercive and controlling behaviour.⁹⁶ Domestic violence offending in Australia has also been found to be part of a broader pattern of offending behaviour;⁹⁷ however, human trafficking and slavery are federal offences, while domestic and family violence are state-based offences, meaning Australia’s federated system of governance has contributed to a disconnect between these closely related crimes. A federal parliamentary inquiry recently addressed some of these concerns by recommending the adoption of a uniform definition of family, domestic, and sexual violence across all Australian states and territories, which is inclusive of coercive control and considers situations of ‘complex forms of violence’ such as forced marriage.⁹⁸ It is essential that the role of coercive control

⁹³ E Stark, *Coercive Control: How men entrap women in personal life*, Oxford University Press, Oxford, 2007.

⁹⁴ Duron *et al.*, p. 144.

⁹⁵ *Ibid.*

⁹⁶ Parliament of New South Wales, ‘Coercive Control in Domestic Relationships’, Joint Select Committee on Coercive Control, retrieved 20 May 2021, <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=271#tab-reportsandgovernmentresponses>.

⁹⁷ C Dowling, H Boxall and A Morgan A, ‘The Criminal Career Trajectories of Domestic Violence Offenders’, *Trends and Issues in Crime and Criminal Justice*, no. 624, Australian Institute of Criminology, 2021, <https://www.aic.gov.au/publications/tandi/tandi624>.

⁹⁸ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry Into Family, Domestic and Sexual Violence*, March 2021, recommendation 1.

is also recognised in all forms of trafficking and that further understanding of this is developed and embedded in law, policy, and practice, to increase individual and institutional capacity to identify and respond to these methods and other psychological forms of harm and control.

Conclusion

This analysis has demonstrated the importance of unpacking, challenging, and changing stereotypes about the ‘ideal offender’ that dominate the trafficking discourse. While media, popular culture, NGO programmes, and government reports may construct ideal offender narratives to garner support, engage the public, and mobilise action against human trafficking, narrow stereotypes surrounding offenders and offending can have dangerous implications. As the case studies highlight, situations that depart from commonly held stereotypes can go unnoticed or unreported. Service providers, police, and even victims themselves may not recognise the nature of the harm they witness or experience if it runs counter to commonly perpetuated stereotypes that limit understanding of what human trafficking is, how and where it occurs, and who perpetrates it and why. It is imperative to view trafficking not only as perpetrated by foreigners based on familiar tropes of criminal ‘others’, but as a crime that can be perpetrated by citizens with no migrant associations. There is also a need for future research to better understand and highlight female offending profiles to combat the stereotype of traffickers as solely being male.

Finally, the major finding of this analysis is related to the importance of recognising the role of coercive control in trafficking offending, counter to myths that traffickers only use physical force and are strangers to their victims at the point of exploitation. Critical awareness of how trafficking narratives inform myths and stereotypes is vital in disrupting damaging assumptions shaping the subjectivities of trafficking victims and offenders. To disprove stereotypes and reduce the impact they have on the general public’s understanding of trafficking, information must be shared with those with responsibility for communicating to a broad and diverse audience. This includes journalists, film makers, and NGO and government communication staffers, and it must enable them to easily and effectively disseminate in a way that provides counter-narratives.

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What We Know about Human Traffickers in Vietnam

Le Thi Hong Luong and Dr Caitlin Wyndham

Abstract

Myths and misconceptions about traffickers, the nature of trafficking, and how the crime varies in different jurisdictions pose challenges for prevention work, rehabilitating offenders, and achieving justice for victims. This article, based on an analysis of over 100 human trafficking court cases in Vietnam, outlines the reality of one particular trafficking crime: the trafficking of Vietnamese women and girls for sexual exploitation in China. We show that the majority of the prosecuted traffickers are similarly poor and vulnerable as their victims. Most are from ethnic minorities, with a poor educational background, and few income generation opportunities. Based on this evidence, we discuss some challenges associated with prosecution of these particular traffickers and suggest more effective approaches for human trafficking prevention.

Keywords: human trafficking, traffickers, trafficking data, sexual exploitation, labour exploitation, child labour, ethnic minorities, justice, Vietnam

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Context: Traffickers and the crime of trafficking in persons in Vietnam

Vietnam is primarily a source and transit country for human trafficking. Based on the available information, most Vietnamese are trafficked in the Asian region, particularly China, as well as domestically.¹ Over the past 20 years, the Vietnamese government has responded and engaged in a process to improve the

¹ US Department of State TIP Office, *Trafficking in Persons Report 2018*, Washington, 2018, pp. 456–457.

legal framework for trafficking prevention and control. There have been efforts to better align the domestic legal framework with international and regional definitions and standards. However, significant shortcomings remain, making prosecuting all forms of trafficking a challenge and limiting legal, policy, and public understanding of traffickers.²

The internationally recognised definition of trafficking in persons is contained in the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* (Trafficking Protocol), Article 3(a). In accordance with this definition, human traffickers are those who engage in a set of actions (such as recruitment, transfer, or receipt of persons) by means of threat or use of force or other forms of coercion, abduction, etc., for the purpose of exploitation. The Protocol lists various categories 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.’ In the case of child victims, the ‘means’ do not need to be considered: no force or coercion is necessary to prove the trafficking of a minor.

Vietnam has engaged in a long process to ratify and internalise the standards of international laws. It ratified the Trafficking Protocol on 8 June 2012 and the *ASEAN Convention Against Trafficking in Persons, Especially Women and Children* (ACTIP) on 5 January 2017 as the fourth ASEAN Member State to do so. Amendments to the Vietnamese Penal Code, most significantly in 2015, ensured a wider definition of trafficking to include forced labour as well as sexual exploitation, removed the means of coercion or force for cases of trafficking in minors, and recognised that both men and women can be trafficked. The recently approved National Plan of Action to Combat and Prevent Trafficking in Persons for the period 2021–2025, with a vision to 2030 (NPA), emphasises countering all forms of trafficking, including trafficking for labour exploitation. The plan aims to engage all related ministries and agencies to more effectively prevent this form of trafficking.

Despite these changes, Vietnam still fails to address all forms of trafficking, which limits legal, policy, and public understanding of traffickers. For example, the latest available statistics from 2020 indicate that the court system convicted 136 individuals in seventy-one cases of trafficking for sexual exploitation, ten cases of forced labour, and three cases of either sexual or labour exploitation.³ While the location of exploitation is not reported, the Ministry of Public Security estimates that approximately 90 per cent of human trafficking cases are cross-

² US Department of State TIP Office, *Trafficking in Persons Report 2020*, Washington, 2020, pp. 532–535.

³ *Ibid.*, p. 606.

border. Domestic trafficking, mainly into prostitution or forced labour, accounts for about ten per cent of the total number of cases detected.⁴

The statistics of Blue Dragon Children’s Foundation—the organisation we work for—also speak to this focus on cases of cross-border human trafficking for sexual exploitation. Blue Dragon has been involved in rescuing victims of human trafficking since 2005, with the first case being a child trafficked for labour on the streets of Ho Chi Minh City. In fifteen years, Blue Dragon has rescued and provided repatriation and reintegration support to over 1,760 victims and suspected victims⁵ who were exploited in commercial sex, forced marriage, and labour in Vietnam and across borders. All victims are supported through the legal process to be identified as victims of trafficking, and Blue Dragon supports the police to arrest and prosecute many of their traffickers.

However, after fifteen years and the rescue of 736 victims of trafficking for forced labour, mostly children trafficked within Vietnam, Blue Dragon lawyers in collaboration with police have so far been unable to prosecute a single case of trafficking for forced labour or domestic trafficking. Instead, employers have received administrative sanctions for using child labour. Most domestic trafficking cases are not prosecuted as human trafficking offences but other offences such as forced labour (Article 279 of the Penal Code), harbouring prostitutes (Article 327), procuring (Article 328), or engaging in prostitution with a person under 18 (Article 329). Thus, despite reforms, weaknesses in the Penal Code and the Law No. 66/2011/QH12 on Prevention and Suppression of Human Trafficking remain and trafficking is primarily understood as occurring cross-border, to gain profit, and for the purpose of sexual exploitation, while labour exploitation and domestic trafficking remain less known and, as a result, less investigated.

In this article, based on over 100 human trafficking court cases from the past ten years, we analyse the characteristics of individuals prosecuted for human trafficking. We find that most of these individuals have limited education and come from similar ethnic and socioeconomic backgrounds as their victims. They largely use relationships of trust with their victims, in order to deceive them with false offers of jobs or marriage, and in general they receive quite modest remuneration for their crimes. Based on the court documentation, we present two case studies of human traffickers to further illustrate the profile of traffickers in Vietnam.

⁴ Department of Criminal Investigation, *Training Handbook: Capacity building to prevent and combat human trafficking for criminal police forces and grassroots police*, Ministry of Public Security, 2018, p. 44.

⁵ ‘Victims’ are those who were formally identified as victims of trafficking by the Vietnamese government; ‘suspected victims’ are those about whom Blue Dragon has good evidence to indicate that they are victims of trafficking, but who have not been formally identified as victims of trafficking by the Vietnamese system.

We conclude that, at least for these prosecuted individuals, they are similarly vulnerable as their victims, and that economic development in ethnic minority communities is likely to be more effective in combating human trafficking than an approach focussed solely on law enforcement and prosecution.

Methodology

This article is based on analysis of 102 court cases involving 199 victims and 236 traffickers drawn from two separate data sources. Firstly, it includes fifty-nine human trafficking cases (involving 109 victims and 126 traffickers) that Blue Dragon lawyers have been involved in, as recorded in the Blue Dragon database. The second source of data are forty-three cases (involving 90 victims and 110 traffickers) in which offenders were charged with human trafficking or trafficking of a person under 16 years of age, from an online dataset of the Supreme Court.⁶

The analysis of the cases involved reading all the court documents, including the statements of the perpetrators, victims, and witnesses, as well as police investigation documents, to extract key information and data about the victims, the traffickers, and the crimes.

In this data source, 198 victims are female and only one is male: a newborn who was sold to China for adoption, notwithstanding that selling of children is not explicitly included as a form of exploitation in Vietnamese law.⁷ All cases involve cross-border trafficking to China. The vast majority involve sexual exploitation (97.5%), both in the context of forced marriage and commercial sexual exploitation. There is one case of trafficking for labour exploitation included; however, this is a case where the victim was not purchased by a husband so the traffickers forced her to work to repay the money she had ‘cost’ them. The data includes four cases of babies sold to families in China.⁸

⁶ On 16 March 2017, the Judicial Council of the Supreme People’s Court issued a resolution ruling that a sample of the Court’s judgments and decisions were to be published on the Court’s web portal from 1 July 2017. See <https://congboaban.toaan.gov.vn/0t15at1cvn1/Tra-cu-ban-an>.

⁷ The Vietnamese law defines the forms of exploitation as ‘sexual exploitation, forced labour or removal of human organs, or other inhuman purposes.’ Article 3, No. 66/2011/QH12: *Law on Human Trafficking Prevention and Combat*.

⁸ For the full report that serves as the basis of this analysis see L Le and C Wyndham, *Human Trafficking and Traffickers in Vietnam*, Blue Dragon Children’s Foundation, Hanoi, 2017, retrieved 30 November 2021, <https://www.bluedragon.org/blue-dragon-profile-of-trafficking-in-vietnam>

As far as we are aware, this is the most comprehensive data source about trafficking and traffickers in Vietnam and thus provides insight into traffickers and the nature of human trafficking in Vietnam. These insights are significant for efforts to fight human trafficking, as it is impossible to combat a crime that is misunderstood, or to identify and dissuade perpetrators unless we know who they are.

Limitations

While this data is comprehensive, it is not representative of the whole picture of human trafficking in Vietnam. By its nature, the data only includes information about **prosecuted** traffickers. As discussed above, there are weaknesses in the Vietnamese legal framework that mean prosecution is limited to particular forms of trafficking and types of traffickers. As a result, this analysis includes only cases of cross-border trafficking, mostly for the purposes of sexual exploitation in China.

The term ‘trafficker’ is used for people playing a range of different roles in the trafficking crime. ‘Trafficker’ can mean the ‘recruiter’ who initially finds and convinces the victim, the ‘transporter’, the ‘buyer’, and other people involved during the trafficking process. This court case data primarily includes recruiters and some transporters, who tend to be at the lower levels in the chain of trafficking. The information about these individuals may thus be irrelevant for other roles in the trafficking crime. Therefore, it cannot be assumed that this data is representative of all traffickers, all types of trafficking, or traffickers in other countries.

Key Findings

Characteristics of Traffickers

In the cases of trafficking for sexual exploitation to China, which were the only type recorded and analysed, most Vietnamese recruiters found young women and tricked them to go to China. In China, they were met by other people, both Vietnamese and Chinese, who then sold them on to the respective buyers. The court case database analysed for this research only includes traffickers from the Vietnamese side who are relatively low-level recruiters and would not normally be considered professional criminals. Of the 206 traffickers for whom we have detailed information, 79 per cent had violated the law for the first time. Fifty-nine per cent were men (140 of 236) and 41 per cent women (96 of 236), with their average age being 29 years. The traffickers profiled in this data source are ethnic minority people who are economically disadvantaged as their victims. Sixty-five per cent (153 of 236)

are from ethnic minorities who tend to be poorer and more disadvantaged than the Kinh majority. The level of education of these traffickers was low: 16 per cent (39 people) were illiterate and 60 per cent (139 of 236) had not completed twelve grades of education.

Table 1: Educational background of traffickers

Qualifications	No of traffickers	% of total
Illiterate	39	16.5%
Dropped out of school at:	139	58.9%
<i>Primary level (grades 1-5)</i>	51	21.6%
<i>Secondary level (grades 6-9)</i>	77	32.6%
<i>High school level (grades 10-12)</i>	11	5.0%
No information available	49	20.8%
In school at time of crime	1	0.4%
Finished grade 12	8	3.4%
Total	236	100%

The recruiters are very often known to their victims. In fact, 62 per cent of the victims (123 out of 199 victims) knew their traffickers prior to the trafficking situation: as boyfriends, work colleagues, fellow villagers, or extended family members. The recruitment role is often fulfilled by people from similar backgrounds who may have friends or relatives in China who ask them to find wives for them. Twenty per cent of the recruiters in the dataset were people who worked in China or women married to Chinese men who knew someone who persuaded them to take Vietnamese women and girls to China. The majority of the other traffickers with no criminal background had acquaintances, friends, or relatives working or living in China.

The fact that most recruiters are ‘opportunistic’ traffickers is an important finding, as it is far easier for police and anti-trafficking organisations to address opportunistic crime than professional criminals. While dissuading such people from exploiting their peers may not end all trafficking, it can lead to a significant reduction in the particular crime of trafficking women and girls as forced brides and into the sex industry.

The picture of traffickers that emerges from our analysis is very different from what is portrayed in the media and popular films, which tend to focus on trafficking gangs and strangers kidnapping women and children to sell into

slavery.⁹ This myth is also widespread in Vietnam. In surveys conducted prior to recent anti-trafficking training workshops held by Blue Dragon in remote provinces, 42 per cent (92 of 220) of local government officers and teachers believed that traffickers are normally unknown to victims and have criminal records. Among village leaders in poor, vulnerable communities this number increased to 64 per cent (54 of 84).

Modus Operandi

Media articles and popular culture in Vietnam often focus on how perpetrators spike the drinks or food of victims and then kidnap them into slavery. An article in the newspaper of the Labour Ministry illustrates the popularity of this view: ‘One day in July 2017, a man stopped his car at a furniture store to buy some furniture. After showing the customer around the store, the storeowner felt uncomfortable, dizzy, and tired. She thought the man had hypnotized her as she had recently read about this on social networks. She shouted out “Hypnotizing, Hypnotizing.” Quickly, many people rushed out to stop the customer’s car, beat him, and prevented the authorities from rescuing the man. Finally, his car was burnt.’¹⁰

Two days later, on the outskirts of Hanoi, two women were going from house to house to sell toothpicks. They called out to a small boy who was playing in front of a house. The grandmother noticed and immediately shouted out, ‘Kidnappers, kidnappers’. In response to the suspicion that these two women kidnapped children to sell their organs, hundreds of people rushed to beat them and live streamed it on Facebook. The incident only ended when the police rescued the women from the angry mob.¹¹

After a police investigation, it was found that none of these three people had done anything wrong, and they were certainly not human traffickers. However, these articles indicate how widespread the belief of drugging and kidnapping is. Indeed, Vietnamese children are still commonly taught to be careful of strangers who may kidnap or drug them to sell them to China for organ removal or into the sex industry.

⁹ J Gulati, ‘Media Representation of Human Trafficking in the United States, Great Britain, and Canada’, *SSRN*, 3 July 2010, <https://doi.org/10.2139/ssrn.1633574>.

¹⁰ LDO, ‘Vụ nghi bắt cóc trẻ em, đốt xe Fortuner ở Hải Dương: Tạm giam 3 đối tượng cầm đầu kích động nhân dân’, *Lao Dong*, 9 August 2017, retrieved 27 May 2021, <https://laodong.vn/phap-luat/vu-nghi-bat-coc-tre-em-dot-xe-fortuner-o-hai-duong-tam-giam-3-doi-tuong-cam-dau-kich-dong-nhan-dan-547819.ldo>.

¹¹ D Nguyen, ‘Hà Nội: Xôn xao clip hai phụ nữ bị đánh dã man vì nghi bắt cóc trẻ em, nhưng sự thật là họ đã bị oan’, *Kenh 14.vn*, 22 July 2017, <https://kenh14.vn/ha-noi-nghi-bat-coc-tre-em-hai-nguoi-phu-nu-bi-nguoi-dan-bat-giu-danh-dap-chay-mau-20170722171626296.chn>.

The reality is quite different. The court case documents contain detailed information about how the victims were recruited and what promises were made to convince them to go with the traffickers. The majority were recruited via false job offers (34 per cent) and false relationship/friendship offers (26 per cent). Marriage brokers recruited another 25 per cent of the victims to marry Chinese men, but this turned out to be domestic and sexual servitude with no legal marriage taking place.

Table 2: Means of recruitment of victims

Means of recruitment	No of victims	% of total
Marriage brokerage to Chinese men	50	25.1%
Job offer in China	40	20.1%
Invitation from a friend/online friend to meet up in Vietnam	39	19.6%
Promise of marriage (as a boyfriend)	27	13.6%
Job offer in Vietnam	23	11.6%
Invitation from a friend/online friend to meet and travel in China	12	6.0%
Job offer in another country (South Korea, Laos)	4	2.0%
Adoption	3	1.5%
Unconfirmed	1	0.5%
Total	199	100%

A significant proportion of victims (34 per cent) were recruited online, largely through Facebook and the Zalo messaging app.¹² This form of recruitment is becoming more common and indicates that prevention campaigns need to not only focus on messages that traffickers are usually known to victims, but also teach young people the skills to assess the validity of online offers of friendship, jobs, or marriage proposals, and ways to stay safe online.

¹² A Vietnamese-developed messaging platform that is the most popular messaging app in Vietnam.

Table 3: Relationship between victims and traffickers

How the victim knew the trafficker	No of victims	% of total
Met on internet/ via phone	67	33.7%
Boyfriend/friend/acquaintance/classmate/ neighbour	67	33.7%
Someone from the same district	43	21.6%
Relative, family member	10	5.0%
Work colleague	3	1.5%
Unconfirmed	1	0.5%
Other (marriage broker, fortune teller)	8	4.0%
Total	199	100%

We note here that the idea of drugging and kidnapping victims needs some context and nuance. A commonly held belief in Vietnam is that women victims of trafficking are lazy, have poor morals, and choose to make easy money as sex workers, and therefore should take responsibility for being trafficked. Twenty-four per cent of grassroots officials (52/220 people) who attended Blue Dragon's anti-trafficking training held this belief prior to the workshops.

This widespread perception leads to stigma and feelings of shame over the experience of being trafficked. Blue Dragon's work with hundreds of survivors has revealed that many refuse to be officially identified as victims of human trafficking or give untrue information to police and social workers about being drugged or kidnapped. This is a way for survivors to protect themselves from being blamed and discriminated against in the community.

Profits Received by Recruiters

Most people are familiar with claims that human trafficking is a multi-billion-dollar industry.¹³ While this may be the case, such huge estimates obscure the complexity of the various stages and actors in the trafficking process, and certainly do not mean that all people involved in trafficking are earning large sums.

¹³ See for example: Polaris, 'Human Trafficking', n.d., retrieved 9 November 2021, <https://polarisproject.org/human-trafficking>; Human Rights First, 'Human Trafficking by the Numbers', 7 January 2017, <https://www.humanrightsfirst.org/resource/human-trafficking-numbers>; Inter-American Development Bank, 'Human Trafficking's Dirty Profits and Huge Costs', 2 November 2006, <https://www.iadb.org/en/news/human-trafficking-dirty-profits-and-huge-costs>, both retrieved 7 July 2021.

Recruiters in Vietnam generally do not receive large amounts of money for their role in the trafficking process. In the dataset we analysed, the average amount received by the traffickers was just over USD 1,500 per victim. Thirteen of the cases did not include information about how much the trafficker was paid. Of the remaining, the lowest amount received was VND 200,000 (USD 8.70), and the highest was VND 382,000,000 (USD 16,610). Forty-one traffickers did not receive any payment, either because they were caught in the act of trafficking or tricked by higher-level traffickers.

Case Studies

To better illustrate the realities of the trafficking of women and girls for sexual exploitation in China and shine additional light onto the statistical information presented above, we share two case studies from the court case documents.

Tien was born in 1987, left school after Grade 9, and did various manual jobs to make a living. He married at the age of 21 and two years later had a baby girl. Around this time, he was in touch with a relative, Van, who was working in China. Van persuaded him to find young women to work for her brothel in China and promised to pay him VND 5,000,000 (USD 220) for each person he brought to China.¹⁴ In addition, Tien would be paid VND 2,000,000 (USD 87) per month deducted from the salaries of his victims. Initially, when he heard the offer, Tien refused because he thought it was unethical. However, after being coaxed by Van, he decided to give it a try.

At that time, Tien was dating Lan who was from a very poor family. Her father had died when Lan was young and her mother had to raise her two sisters alone. Lan jumped at Tien's offer of a job in a shop in Hanoi. When they arrived in Hanoi, Tien told Lan that the shop owner needed them to pick up some dye, so they continued up to the Chinese border. Tien's job was now done as Van arranged for others to collect Lan and take her across a remote, unofficial border crossing. For this, Tien received the promised amount of VND 5,000,000.

In an interview from prison, Tien explained that when he first decided to accept Van's invitation to traffic women to the border, he was very anxious. 'The feeling that I was doing unethical work, pushing others onto a dark path haunted me', he said. However, he could not resist the temptation of easy money. The first time he took Lan to the border he was ashamed, but the next time he had to

¹⁴ In 2010, when this case occurred, the monthly minimum wage for government officers and employees at companies or factories was VND 730,000 (approx. USD 35). Decree 28/2010/ND-CP: General Minimum Wage Regulations.

take others he was excited. He felt happy because making money was so easy, so he continued to find new women. Eventually, Tien was caught and sentenced to fourteen years in prison for selling six girls and women.¹⁵

In the dataset we analysed, only four of the prosecuted traffickers (2 per cent) were former victims. These are two of their stories.

The first former victim, Ha, was born in 1999. She left school after Grade 8 and along with a childhood friend looked for a job. They met a man who offered them jobs in China with a monthly salary of VND 8,000,000 (USD 349). However, there were no jobs and they were sold into forced marriages. The trafficker earned USD 24,100.

Two months later, the trafficker asked Ha if she would like to join the trafficking gang. Ha was then 16 years old and contacted two friends who had worked in the same factory in Vietnam to see if they would like to work in China. They agreed and Ha and the other traffickers sold them for a total of USD 16,600.

In November 2019, Ha visited Vietnam and made friends with two ethnic minority women aged 16 and 22 on Zalo. She suggested that they could marry Chinese men and have a better life. However, before she could take the girls to China, local police caught her. The court considered her status as a former victim and a child, and she was sentenced to only eight years in prison for selling four victims (the maximum sentence for selling multiple victims is 15 years).

Another trafficker, Su, was born in 1990 in Vung Tau in southern Vietnam. In 2017, she borrowed VND 80,000,000 (USD 3,460) but then could not repay the loan. The lender persuaded her to marry a Chinese man so that she would be able to repay the loan. She agreed and found a way to go to China and marry a Chinese man. There, she learnt that traffickers could earn a lot of money and many Chinese men wanted wives. She contacted her mother and explained that, if she recruited women to go to China, she could be paid between VND 3,000,000 and 17,000,000 (USD 129 to 735). Su and her mother used social media to approach their friends and other women in the same province to offer them happy marriages in China. Between May 2017 and May 2018, they trafficked six women, all of whom ended up in forced marriages.

Su's mother and two other traffickers in Vietnam were sentenced to nine years, eleven years, and five years, respectively. Su remained in China but was arrested in

¹⁵ P Anh and H Chi, 'Giọt nước mắt muộn màng của gã đàn ông lừa bán 6 phụ nữ qua biên giới', *Soha*, 9 June 2019, retrieved 27 May 2021, <https://soha.vn/giot-nuoc-mat-muon-mang-cua-ga-dan-ong-lua-ban-6-phu-nu-qua-bien-gioi-20190608163730457.htm>.

November 2020 when she returned to Vietnam. The case was reopened and she was sentenced to six years, after consideration of her status as a former victim.

Discussion

Using the data from these court cases, we can gain an evidence-based understanding of who traffickers are, why they commit this crime, and therefore how to intervene.

The primary message emerging from our analysis is that, at least for this type of trafficking, traffickers and victims share many similarities. Over 60 per cent of both traffickers and their victims are from ethnic minority groups, especially H'mong. The H'mong are the poorest and most disadvantaged ethnic group in Vietnam, who tend to live in mountainous areas with infertile agricultural land and minimal access to government services.¹⁶ Illiteracy, distance from town centres, complicated bureaucratic requirements, and poverty mean that many H'mong children are not registered at birth, or, if identity papers are lost, adults do not renew them.¹⁷ As a result, H'mong people have limited opportunities to generate income, lack social safety nets, and largely rely on subsistence farming combined with labour migration. Many families lack savings or access to government assistance if illnesses or other shocks occur in the family. Due to all these disadvantages, H'mong people are very vulnerable to both trafficking victimisation and perpetration. Analysis of the Blue Dragon database of over 1,600 victims indicates that H'mong people are fourteen times more likely to be trafficked than the Kinh Vietnamese majority people.¹⁸ The same is true for traffickers, with H'mong people more vulnerable to perpetrating human trafficking.

Likewise, in the court database, 65 percent of the prosecuted traffickers are ethnic minority people, while they make up only 15 per cent of the population. This could indicate that ethnic minority people are more likely to be prosecuted

¹⁶ Mekong Development Research Institute, *54 Ethnic Groups: Why the difference?*, Hanoi, 2018; T D Lo *et al.*, *Multidimensional Poverty in Vietnam: Reducing poverty in all its dimensions to ensure a good quality life for all (Summary Report)*, Vietnam Academy of Social Sciences, Ministry of Labour, Invalids and Social Affairs and UN Development Program, Hanoi, 2018.

¹⁷ Blue Dragon experience working with communities. See also J van der Straaten and N Pairaudeau, *Unregistered Children Project. Vietnam Report*, Plan International, Manila (ESARO)/Hanoi, 1999.

¹⁸ L T H Le and C Wyndham, *What Makes People Vulnerable to Human Trafficking?*, Blue Dragon Children's Foundation, Hanoi, 2021, <https://www.bluedragon.org/profile-of-victims-of-human-trafficking-in-vietnam>

than the Kinh majority. But it is likely that the frontline recruiters are more easily arrested because they are the only people the victims know in the trafficking chain and are easier for the police to locate and arrest.

This means that the traffickers are very likely to be poor and disadvantaged prior to their crimes, as evidenced by the information about traffickers' occupations contained in the court documents. Of 236 traffickers, one was a factory worker, two were hairdressers, and one was an office worker for a small company. The remaining 232 were unemployed, worked on a home farm, or in low-wage, casual jobs. Almost all were from rural areas. In 2018, the average national yearly income per capita was approximately VND 58,500,000 or USD 2,540,¹⁹ while in rural areas it was VND 35,880,000 (USD 1,558).²⁰

In addition, both traffickers and their victims have relatively low education levels and come from the same region, and in many cases even from the same village. This illustrates the important role of informal networks among ethnic minority communities such as the H'mong, who are present on both sides of the border with extended families both in China and Vietnam.²¹

Blue Dragon works closely with H'mong and other ethnic communities in border provinces and has seen first-hand how important informal labour migration to both China and Laos is for the economies of these border villages. Many villages where we work are comprised of women, elderly people, and children, with all adult men and many adult women working across the border. Normally, this work is arranged not through formal labour migration schemes but via informal networks of peers. Although some of the work is seasonal, many people stay for years. These networks also facilitate marriages within the same ethnic group. These informal networks are an important and normal part of ethnic minority life. As a result, accepting an offer to cross the border for work or marriage does not seem like a strange or dangerous proposition for young Vietnamese, especially if it is another H'mong person making the offer.

Thus, in Vietnam, prosecuted traffickers are primarily poor, ethnic minority people, with low education, unstable economic situations, and living in remote, rural areas. They are primarily targeting young women from the same ethnic group

¹⁹ The World Bank, 'GDP Per Capita (current US\$) – Vietnam', *World Bank*, retrieved on 27 May 2021, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=VN>.

²⁰ P Lien, 'Tăng nhanh thu nhập bình quân đầu người/năm ở nông thôn', *dangcongsan*, 12 May 2020, <https://dangcongsan.vn/kinh-te/tang-nhanh-thu-nhap-binh-quan-dau-nguoi-nam-o-nong-thon-554604.html>.

²¹ See for example, J Lemoine, 'What is the Actual Number of the (H)mong in the World', *Hmong Studies Journal*, vol. 6, 2005, pp. 1–8.

living in their local areas. It is clear that economic need is the main motivation that drives these recruiters to the crime of trafficking. The role of these recruiters is simple, as they only need to transport the victim to the border area. All other stages of the crimes are taken care of by brokers on the other side of the border. The fact that the traffickers and victims are usually close acquaintances and from the same ethnic group means that gaining victims' trust is easy.

Conclusions

In many countries, the judicial response of prosecution, jail terms, and compensation orders are considered the gold standard to ensure justice for victims and dissuade traffickers. Many donors and NGOs in the anti-trafficking field aim for higher prosecution rates as an indicator of 'success' for counter-trafficking interventions. However, as our analysis shows that in Vietnam recruiters are just as vulnerable and disadvantaged as their victims, it begs the question: is this really always the best solution?

From the perspective of justice for victims, the arrest and prosecution of their recruiters can be important for recovery. Interviews with survivors assisted by Blue Dragon show that many victims blame themselves for being tricked. They feel guilty and believe they were responsible for their terrible experiences. These feelings of guilt and blame hinder recovery from trauma. The arrest and prosecution of traffickers can help to legitimise that a crime was committed against these young women, and that others are responsible.²²

Thus, prosecution can be important for victim recovery; however, is it an effective strategy to dissuade traffickers from taking up the trade? On the one hand, since the amount of money received by these recruiters is fairly low, and the penalties can be quite high, increasing the possibility of arrest and prosecution may dissuade some people from taking up the practice. On the other hand, putting a vulnerable person in jail and enforcing a compensation payment is likely to increase their and their family's vulnerability.

Rather than criminalising these low-level, opportunistic traffickers, it would be more effective to address the driving forces of poverty, marginalisation, and lack of access to government services. While prosecution remains important, particularly for higher-level traffickers, it is necessary to provide economic and

²² H T Nguyen, *Project X Final Evaluation. Final Report*, Hanoi, December 2017; see also Dalberg, *Making Justice More Survivor Centric: Applying alternative justice models to human trafficking in South East Asia*, 2021, <https://api.cofraholding.com/media/2161/applying-alternative-justice-models-to-human-trafficking-in-south-east-asia.pdf>.

social opportunities for these disadvantaged ethnic minority communities.

Blue Dragon's experience shows that relatively simple and inexpensive measures such as ensuring citizen registration for ethnic minorities can reduce vulnerability by opening up access to health insurance, welfare, and other social services. Assisting H'mong children to stay in school is another cost-effective way to reduce vulnerability to trafficking perpetration and victimisation. Improving educational access for minority people will not only ensure they have information about the risks of trafficking but can also open up better economic opportunities.

Since most recruiters receive relatively small amounts for the recruitment of victims and are driven by economic imperatives, providing alternative livelihoods could be effective in dissuading them from engaging in such crimes. Tien's feelings of guilt and shame as described above mean that if he had had viable alternative livelihood opportunities and had understood the penalties for human trafficking, he may have made a different choice. If the risks of prosecution and heavy fines are better communicated, and basic livelihood support or vocational training is available for young ethnic minority people, they will have better earning opportunities.

Improving the socio-economic situation for victims and traffickers does not necessarily require extensive and expensive new programming. Vietnam has been relatively successful in reducing poverty and there are a wide range of existing government and NGO poverty reduction programmes.²³ We recommend that anti-trafficking initiatives be better integrated with these existing interventions. Improving access for those vulnerable to trafficking victimisation and perpetration should be prioritised within existing programmes, and the analysis in this article and accompanying report now provides the necessary evidence to enable this.

We do not argue that prosecution is unimportant or ineffective. However, there is a need for a better, more nuanced understanding of traffickers and the crime of human trafficking and an evidence-based approach to addressing it. One-size-fits-all solutions are rarely effective, and for a crime as complex and diverse as human trafficking this is even more true. While criminal prosecution of traffickers is important for victim recovery, and may dissuade some offenders, addressing the root causes with strategies that reduce the vulnerability of the traffickers may be more effective in the longer term.

²³ See for example, M Rama, *Making Difficult Choices: Vietnam in transition*, World Bank, Washington DC, 2008, <https://openknowledge.worldbank.org/handle/10986/28014>.

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Chasing Geographical and Social Mobility: The motivations of Nigerian madams to enter indentured relationships

Milena Rizzotti

Abstract

This article draws from interviews with Nigerian women convicted of trafficking for sexual exploitation in Italy to challenge the simplistic public narrative of traffickers as ruthless foreign men who coerce naïve women into migration and sex work. Madams' narratives shed light on a reality of trafficking where both traffickers and victims share similar desires to overcome constraints imposed on their geographical and social mobility through their migration to Europe. Therefore, the article calls for the inclusion of traffickers' perspectives into the knowledge on human trafficking, which is mainly victim-centred and justifies the current anti-trafficking approach aimed at victims' protection and traffickers' punishment. In the research context, taking into consideration the perspectives of all trafficking actors involved suggests the need to rethink Nigerian women's indentured migration to Europe through sex work (and policies around it) in terms of attempts to achieve geographical and social mobility rather than transnational criminal activities. Finally, the article provides recommendations on how to address these issues both within the current anti-trafficking policy domain and beyond it, by calling for more open borders.

Keywords: trafficking, madams, traffickers, sex work, Nigeria

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Introduction

Research in the field of human trafficking is mainly victim-centred and often conducted in the context of assistance and social protection.¹ This focus is mirrored in the dominant anti-trafficking approach employed by most national governments and informed by the United Nations² as well as by the United States (US) government's 3P framework: the prevention of trafficking from taking place, the protection of victims, and the prosecution of traffickers.³ It follows a popular simplistic narrative, often amplified by the media and public discourse, which deems victims to be naïve women in need of rescue from ruthless male traffickers.⁴

However, this narrative does not always grasp the reality of trafficking actors, as a recent report of the United Nations Office on Drugs and Crime (UNODC) shows.⁵ According to the research, more than 30 per cent of individuals investigated, prosecuted, and sentenced for trafficking for sexual exploitation worldwide are women. The context of trafficking for sexual purposes from Nigeria to Europe is emblematic of this trend. Previous research with identified

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- ¹ R Surtees, *Traffickers and Trafficking: Challenges in researching human traffickers and trafficking operations*, International Organization for Migration (IOM) and NEXUS Institute, Geneva, 2014, http://publications.iom.int/system/files/pdf/nexus_traffickers_and_trafficking_final_web.pdf.
 - ² UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000 (Trafficking Protocol).
 - ³ Office to Monitor and Combat Trafficking in Persons, '3Ps: Prosecution, Protection, and Prevention', U.S. Department of State, n.d., retrieved 3 May 2021, <https://www.state.gov/3ps-prosecution-protection-and-prevention>.
 - ⁴ O Spaggiari, 'Escape: The woman who brought her trafficker to justice', *The Guardian*, 27 August 2020, <https://www.theguardian.com/world/2020/aug/27/nigeria-italy-human-trafficking-sex-workers-exploitation-justice>; Redazione ANSA, 'Nigerian Trafficking, Prostitution Gang', *ANSA*, 14 November 2019, https://www.ansa.it/english/news/general_news/2019/11/14/nigerian-trafficking-prostitution-gang_9694ec77-f857-4efc-b43e-668228022d8a.html; K Romy, 'In Europe, Nigerian Prostitutes Are Held Captive by "Black Magic"', *SwissInfo*, 7 August 2018, https://www.swissinfo.ch/eng/human-trafficking_in-europe--nigerian-prostitutes-are-held-captive-by--black-magic-/44295624; R Andrijasevic and N Mai, 'Editorial: Trafficking (in) Representations: Understanding the recurring appeal of victimhood and slavery in neoliberal times', *Anti-Trafficking Review*, issue 7, 2016, pp. 1–10, <https://doi.org/10.14197/atr.20121771>.
 - ⁵ I Chatzis et al., *Female Victims of Trafficking for Sexual Exploitation as Defendants: A case law analysis*, United Nations Office on Drugs and Crime (UNODC), Vienna, 2020, https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf.

victims⁶ describes the phenomenon in the following terms: Nigerian women's migration to Europe is usually sponsored by other Nigerian women (usually referred to by identified victims as 'sponsors'⁷ or 'madams'⁸) who facilitate and pay upfront for the women's travel. Once in Europe, Nigerian migrants are required to engage in sex work often under constrained and exploitative conditions until the travel debt is repaid.

Most research on the topic has been conducted by Western researchers and is focused on the coercive nature of the relationship, which binds Nigerian migrants-to-be to their madams.⁹ Usually, prior to the women's departure, the two parties make an agreement, which is sanctioned by a *juju* ritual¹⁰ and supervised by a *native doctor*.¹¹ During the oath, both parties swear that they will keep their promises, sanctioning the beginning of the indentured relationship. Madams swear that they will facilitate the migration of co-nationals to Europe, and migrants-to-be swear that they will repay their travel debt (which is often around EUR 25,000–40,000)

⁶ S Taliani, *Il Tempo della Disobbedienza: Per un'antropologia della migrazione*, Ombre Corte, Verona, 2019; P Testai, 'Debt as a Route to Modern Slavery in the Discourse on "Sex Trafficking": Myth or reality?', *Human Security Journal*, vol. 6, issue 1, 2008, pp. 68–77.

⁷ I Peano, 'Bondage and Help: Genealogies and hopes in trafficking from Nigeria to Italy', in J Quirk and D Wigneswaran (eds.), *Slavery, Migration and Contemporary Bondage in Africa*, Africa World Press, Trenton, NJ, 2013, pp. 225–251.

⁸ N Mai, "'Too Much Suffering": Understanding the interplay between migration, bounded exploitation and trafficking through Nigerian sex workers' experiences', *Sociological Research Online*, vol. 21, issue 4, 2016, pp. 159–172, <https://doi.org/10.5153/sro.4158>; S Plambech, *Points of Departure: Migration control and anti-trafficking in the lives of Nigerian sex worker migrants after deportation from Europe*, PhD Dissertation, Department of Anthropology, University of Copenhagen, 2014; such as in the case of this research sample.

⁹ C S Baarda, 'Human Trafficking for Sexual Exploitation from Nigeria into Western Europe: The role of voodoo rituals in the functioning of a criminal network', *European Journal of Criminology*, vol. 13, issue 2, 2016, pp. 257–273, <https://doi.org/10.1177/1477370815617188>; F Carchedi, *Trafficking of Nigerian Girls in Italy: The data, the stories, the social services*, UNICRI, Rome, 2010, http://unicri.it/sites/default/files/2019-10/trafficking_nigeria-italy.pdf.

¹⁰ In 2018, Oba Ewuare II, the spiritual chief of Edo State (where the majority of Nigerian identified victims come from) ordered all native doctors to revoke the oaths placed on victims of trafficking. This resulted in a decrease of the coercive power which bound madams to migrants (Taliani, 2019). However, my research participants had repaid their travel debt before the Oba's edict, and thus, the effects the Oba's communication had on trafficking practices are not discussed in this article.

¹¹ This term is usually employed by Nigerian women to refer to those men who administer the ritual. See, for instance: S Taliani, 'Coercion, Fetishes and Suffering in the Daily Lives of Young Nigerian Women in Italy', *Africa*, vol. 82, issue 4, 2012, pp. 579–608, <https://doi.org/10.1017/S0001972012000514>.

without reporting their sponsors to the authorities. Often, Nigerian migrants are told during the ritual that failure to honour the agreement will result in their or their relatives' death. As the agreement is bound to the debt repayment, once Nigerian migrants have repaid the travel debt, the oath is fulfilled and they can start an independent life in Europe.¹²

To better understand trafficking and indentured sex work migration from Nigeria to Italy, it is useful to contextualise it within longstanding forms of Nigerian autonomous female migration. As Kastner notes drawing on Ikpe's work,¹³ indentured sex work migration is one of the many patterns that already established forms of Nigerian mobility took after Nigerian independence. In the 1930s, when the country was still a British colony, the empire had witnessed the migration of Nigerian women to neighbouring areas of the Gold Coast Colony to sell sex to colonisers.¹⁴ Thanks to the remittances that these women were sending back to their hometowns, migrants' families started to build new houses contributing to the urban expansions of those areas.

After Nigerian independence, in the 1980s, as part of post-colonial connections, the Italian construction company Dunmez opened several offices in Benin City, Edo State. Italian men moved to the company's Nigerian branch and some married Nigerian women with whom they travelled back to Italy. This phenomenon informed many other Nigerian women's migration plans as they recognised an opportunity to travel to Europe as their co-nationals did.¹⁵ Some of the women independently moved to Italy as sex workers, attracted by the potential of high incomes. Due to the increasingly strict European border controls and limited freedom of movement following the establishment of the Schengen area in 1995,¹⁶ those women who were already in Italy started to facilitate the travel of co-nationals who wanted to migrate.

¹² J O'Connell Davidson, 'Troubling Freedom: Migration, debt and, modern slavery', *Migration Studies*, vol. 1, issue 2, 2013, pp. 176–195, <https://doi.org/10.1093/migration/mns002>.

¹³ K Kastner, 'Moving Relationships: Family ties of Nigerian migrants on their way to Europe', *African and Black Diaspora: An International Journal*, vol. 3, issue 1, 2010, pp. 17–34, <https://doi.org/10.1080/17528630903319813>.

¹⁴ Taliani, 2019, p. 2.

¹⁵ O C Osezua, 'Cross-border Sex Trade, Transnational Remittances and Changing Family Structures Among Benin People of Southern Nigeria', *Gender & Behaviour*, vol. 9, issue 2, 2011, pp. 4276–4297, <https://doi.org/10.4314/gab.v9i2.72200>.

¹⁶ P Testai, "'From the (E)migrant to the (Im)migrant?': The Italian nation-state and its migration rhetoric and history', *Transnational Social Review*, vol. 5, issue 1, 2015, pp. 24–38, <https://doi.org/10.1080/21931674.2015.1016710>.

In the early 2000s, these migration patterns, which in the meantime had developed into indentured sex work migration relationships, became known as human trafficking, following the adoption of the UN Trafficking Protocol. The Trafficking Protocol, adopted in tandem with the Smuggling Protocol,¹⁷ as part of the *Convention Against Transnational Organized Crime*, criminalises the actions of those actors who either coerce migrants into exploitation or facilitate their unauthorised border-crossing. The twinning of the two Protocols under the same Convention makes sense from the point of view of EU governments, which consider traffickers and smugglers' actions to violate their right to control borders and decide who can cross them.¹⁸ By stating that unauthorised border crossings and mobility facilitation are the result of the actions of criminal facilitators, EU governments have misused these instruments to police non-Western citizens' movement and intensify borders control as part of crime prevention strategies.

By portraying some individuals as in need of rescue from their ruthless traffickers, EU governments successfully obscure the agency of migrants, especially women and children, who cross European borders without authorisation. In this way, States create hostile migration regimes which endanger (non-Western) migrants in the first place, as they are left to rely on unauthorised travel facilitators with whom they often enter indentured relationships.¹⁹ Thus, the attention is re-centred on a specific category of individuals, legally identified as traffickers, who are blamed for the suffering of people on the move.²⁰ Therefore, the madams who act as their co-nationals' travel facilitators are criminalised, and the Nigerian migrants pitied.

Nigerian migrants are not always aware of the harsh conditions of indentured sex work migration but ultimately, often choose to endure them to repay their debt and start a new life in Europe.²¹ Within this context, previous research with Nigerian identified victims already challenged their public representation as coerced and naïve victims by acknowledging that women may voluntarily enter and remain in indentured relationships with their sponsors. Even if much research in the context of trafficking from Nigeria to Europe has been conducted with identified victims,²² less is known about the character of madams. The few

¹⁷ UN General Assembly, *Protocol Against the Smuggling of Migrants by Land, Sea, and Air*, 15 November 2000 (Smuggling Protocol).

¹⁸ O'Connell Davidson, 2013, p. 3.

¹⁹ N Sharma, 'Anti-Trafficking Rhetoric and the Making of a Global Apartheid', *NWSA Journal*, vol. 17, issue 3, 2005, pp. 88–111, <https://doi.org/10.1353/nwsa.2005.0069>.

²⁰ J O'Connell Davidson, 'Editorial: The Presence of the Past: Lessons of history for anti-trafficking work', *Anti-Trafficking Review*, issue 9, 2017, pp. 1–12, <https://doi.org/10.14197/atr.20121791>.

²¹ O'Connell Davidson, 2013, p. 3.

²² Mai, 'Too Much Suffering', p. 2; Plambech, p. 2.

studies²³ conducted with Nigerian sponsors suggest that they may be former victims of trafficking, partly resonating with similar studies in different contexts.²⁴ In this regard, previous research found that individuals are usually trafficked by community members and thus, traffickers may experience similar structural and migration limitations to those experienced by victims. However, these findings do not necessarily imply that traffickers have experiences of past victimisation, which seems to be the case of Nigerian sponsors.²⁵

Drawing from original interviews with convicted madams, this paper argues that both sponsors and identified victims may voluntarily enter indentured sex work migration relationships to reach Europe and therefore, they should be primarily understood as migrant sex workers. In the research context, understanding trafficking as indentured sex work migration²⁶ allows exploration of the ways in which migrants organise their labour within a context of international migration.

Listening to convicted women's narratives, their involvement can be divided into two different time periods: 1) when a sponsor facilitated their travel to and sex work in Italy resembling Nigerian identified victims' narratives in previous research;²⁷ 2) when they themselves started to facilitate the travel and to manage the sex work of other fellow countrywomen. Therefore, convicted Nigerian women's experiences of initial involvement could be classified along with those of Nigerian identified victims interviewed in previous studies, making the research sample a specific category, which transcends the character of either trafficker or

²³ See, for example: E Lo Iacono 'Victims, Sex Workers and Perpetrators: Gray areas in the trafficking of Nigerian women', *Trends in Organized Crime*, vol. 17, issue 1–2, 2014, pp. 110–128, <https://doi.org/10.1007/s12117-014-9212-1>; M Mancuso, 'Not All Madams Have a Central Role: Analysis of a Nigerian sex trafficking network', *Trends in Organized Crime*, vol. 17, issue 1–2, 2013, pp. 66–88, <https://doi.org/10.1007/s12117-013-9199-z>.

²⁴ A L A Baxter, 'When the Line Between Victimization and Criminalization Blurs: The victim-offender overlap observed in female offenders in cases of trafficking in persons for sexual exploitation in Australia', *Journal of Human Trafficking*, vol. 6, issue 3, 2020, pp. 327–338, <https://doi.org/10.1080/23322705.2019.1578579>; E Denton, 'Anatomy of Offending: Human trafficking in the United States, 2006–2011', *Journal of Human Trafficking*, vol. 2, issue 1, 2016, pp. 32–62, <https://doi.org/10.1080/23322705.2016.1136540>; R Broad, 'A Vile and Violent Thing: Female traffickers and the criminal justice response', *The British Journal of Criminology*, vol. 55, issue 6, 2015, pp. 1058–1075, <https://doi.org/10.1093/bjc/azv072>; J Kienast, M Lakner, and A Neulet, *The Role of Female Offenders in Sex Trafficking Organizations*, RAUN, 2014, http://www.ra-un.org/uploads/4/7/5/4/47544571/the_role_of_female_offenders_in_sex_trafficking_organizations.pdf.

²⁵ Mancuso, p. 5.

²⁶ Plambech, p. 2.

²⁷ O'Connell Davidson, 2013, p. 3.

victim and places attention on their experiences of migration.

For this reason, notwithstanding that State criminal justice procedures have classified these women as traffickers, I do not use the term *trafficker* in this paper but employ Nigerian women's terminology of 'sponsor' and 'madam'. Similarly, I do not use the term *victim* but migrant sex workers in order to more precisely illuminate the reality of their relationships. Only when discussing previous studies, I use the term 'identified victim' in order to be faithful to previous researchers' terminology and, at the same time, to highlight the contextual nature of the administrative label rather than implying that Nigerian women understood themselves as such.²⁸ Furthermore, as I discuss below, madams' accounts of their experiences invite a re-think of anti-trafficking interventions, which should avoid the dualistic understandings of ruthless perpetrator—naïve victim.²⁹ Instead, these research findings point to the necessity to take into account the nuanced reality of 'trafficking' relationships on the Nigeria-Italy route, which happen within a context of migration, and to design alternative interventions to hostile migration regimes and polarising anti-trafficking policies.

Methodology

This paper draws on doctoral research fieldwork I conducted between April and November 2019 in Italy. I conducted semi-structured interviews in one Italian prison with seven Nigerian women convicted of trafficking, as well as with six Nigerian identified victims taking part in support programmes run by Italian NGOs, and three Nigerian cross-cultural mediators who had also been identified as victims. I also held semi-structured interviews with prosecutors, prison educators, and NGO professionals to shed light on the discrepancies between trafficking actors' social world and its representation in the anti-trafficking domain. In total, I conducted 31 interviews, of which 16 were with Nigerian women who were once involved in trafficking from Nigeria to Italy and 15 with Italian key informants. For the purpose of this article, which aims to contribute to the knowledge about perpetrators, I mainly draw findings from interviews conducted with the seven convicted women.

²⁸ Administrative categories of 'traffickers' and 'victims' do not always mean much to trafficking actors and migrants. See: L. De Noronha, "'Foreign Criminals'" and Victims of Trafficking: Fantasies, categories, and control', in J. O'Connell Davidson and N. Howard (eds.), *Migration and Mobility. Beyond Trafficking and Slavery short course Vol. 5*, openDemocracy, 2015, pp. 85–88.

²⁹ Baarda, p. 2.

After gaining the appropriate ethics clearance by the University of Leicester and by the prison's governor, I introduced the study to eight potential participants convicted of trafficking under Art. 601 of the Italian Criminal Code. I approached potential participants during their association time³⁰ and explained the research to them. Seven women agreed to participate in the study and I conducted the interviews in a meeting room in the institution's female pavilion. The interviews were conducted either in English or in Italian, in accordance with participants' preferences and fluency, and they were assigned pseudonyms. When participants agreed, interviews were audio recorded. No interpreter (or any member of staff) attended the interview but only the participant and I were present in the room. Most participants were between 22 and 35 years of age (and one was over 60). At the time of the fieldwork, most had been in prison for several months and were unsure about the length of their sentence.

I transcribed the interviews and analysed emerging data through thematic analysis³¹ to report, identify, and explore emerging themes. Codes included participants' perceptions of trafficking, Nigerian women's agency, themes related to participants' motivations to become involved, and migration plans. The research findings represent a bridge between sociological, critical migration studies, and criminological theoretical frameworks, suggesting that Nigerian women's involvement should be understood within a context of global inequality, strict migration regimes, and crimmigration³² interventions.

Lastly, considerations should be given to the context within which interviews were conducted, the difference in positionalities between the researcher and participants, and their impact on participants' narratives. Although I explained the academic nature of the research to the women before the interview, there is always the risk that incarcerated participants confuse researchers with institutional authorities,³³ resulting in an interview setting characterised by power imbalance between the research parties. This is especially true when research is carried out with unauthorised migrants—as most of the Nigerian women in the research sample were—because they have little control over the ways in which they are represented in the public arena. Therefore, as researchers are in charge of truthfully amplifying participants' voices (to the extent differences in positionalities allow), participants may not trust them and may shape or omit details from their

³⁰ This is the time prisoners are allowed to be outside of their cells.

³¹ V Braun and V Clarke, 'Using Thematic Analysis in Psychology', *Qualitative Research in Psychology*, vol. 3, issue 2, 2006, pp. 77–101, <https://doi.org/10.1191/1478088706qp0630a>.

³² K F Aas and M Bosworth, *The Borders of Punishment: Migration, citizenship, and social exclusion*, Oxford University Press, Oxford, 2013.

³³ M Cowburn, L Gelsthorpe, and A Wahidin, *Research Ethics in Criminology: Dilemmas, issues and solutions*, Routledge, London, 2016.

narratives.³⁴

In the context of human trafficking, which is a highly charged political issue, my research participants may not have shared with me all details of their stories and may have shaped their accounts to represent themselves positively. Furthermore, social desirability may have played a role in shaping convicted madams' accounts. This is especially likely if participants understood me as their only way to communicate with mainstream society where their voices are often neglected by a public arena mainly concerned with identified victims' testimonies and perpetrators' punishment.³⁵ As I argue throughout the article, it is within this context that Nigerian madams may have been driven by their desire to be accepted by Italian society and thus, their accounts should also be considered as part of their livelihood strategies as migrants.³⁶

With these considerations in mind, the next sections explore interviewed madams' narratives of their involvement in human trafficking.

Madams' Motivations to Become Involved in Trafficking

When convicted women were asked about their motivations to become involved in trafficking, they referred to their initial migration to Europe through indentured relationships with other sponsors. In this context, participants mainly resorted to two different explanations: 1) the socioeconomic hardship they experienced in Nigeria, which was strongly intertwined with the social expectations of their community; and 2) their intention to migrate to Italy to facilitate the travel and manage the sex work of co-nationals. In the next two sections, I discuss each of these themes from interviewed women's perspectives and contextualise them within their perceptions of trafficking. Convicted women framed their trafficking experiences within a migration discourse and understood their involvement as a response to strict migration regimes, which impose constraints on their geographical and social mobility. Contextualising sponsors' narratives within this framework is crucial to understand the ways in which migratory projects and compromises of doing sex work shaped Nigerian women's decisions to

³⁴ F Düvell, A Triandafyllidou, and B Vollmer, 'Ethical Issues in Irregular Migration Research in Europe', *Population, Place and Space*, issue 3, 2009, pp. 227–239, <https://doi.org/10.1002/psp.590>.

³⁵ R Surtees, p. 1.

³⁶ As further discussed in my doctoral thesis: M Rizzotti, *ASK THEM ALL: Exploring the ways in which Nigerian madams and Nigerian migrant sex workers challenge their immobilities*, Forthcoming Doctoral Dissertation, Department of Criminology, University of Leicester, Leicester, 2022.

enter indentured relationships with co-nationals both as migrant sex workers and as madams.

Socioeconomic Hardship and Social Expectations

When madams discussed their motivations to become involved in trafficking, all but one explained that they had first left Nigeria with the help of somebody. Only after, when they had repaid their travel debt through sex work in Italy, did they start to manage the travel and sex work of fellow countrywomen. All of them explained that they wanted to leave Nigeria because, as one said, the ‘sufferance [sic] was too much’. They spoke about the socioeconomic hardships they experienced in their hometowns, which led them to take the decision to migrate. Most participants also explained that they actively looked for people who could help them reach Europe.

The economic hardship was often intertwined with social and community expectations. All the women described themselves as eldest daughters in their family and as such, they were expected to take care of their household and siblings. For example, Susan, 32 years old, stated: ‘I needed to go to Europe to take care of my siblings, my mum because I do not want them to suffer! So, this is why I am here’. Participants explained that once in Italy, they engaged in sex work to repay the travel debt as well as to send remittances back home.

In this regard, most interviewed madams referred to sex work as a temporary compromise in order to be in Europe. Five of the seven women explained that they knew upon their departure that they would have to engage in sex work in Europe and had agreed to it as long as it allowed them to financially support their family. The remaining two were not aware of the nature of the job awaiting them in Italy. Yet, when they arrived, they perceived sex work as the only job they could have as unauthorised migrants. For example, Last explained: ‘I wish I had documents... I would tell the person who brought me from Nigeria: “wait, I don’t work in the streets [sex work], let me work, if I had a [different] job, I would pay your money... every month...” but no documents, nothing, nothing...’.

Only when sex work was no longer useful to repay their debt and achieve their migration plan, did it become extremely hard to tolerate. For example, in Susan’s case, perceptions around sex work were charged with resentment as her conviction resulted in losing all the money she had earned and thus, she felt that: ‘So, any harm I did to my body, I have been suffering for nothing’. Susan’s narrative was similar to that of other incarcerated participants who explained that sex work was a compromise to achieve their migration plan and being arrested meant that they could not financially support their family anymore.

The women’s accounts were similar to those of identified victims whose migration plans to Europe were pursued through an indentured relationship with their

sponsors.³⁷ In previous research, Nigerian identified victims explained that they entered indentured agreements in order to help their family and overcome the socioeconomic hardship experienced in Nigeria. In this regard, Peano notes that Nigerian women's hopes for their migration should be considered 'a quest for personal success, measured mainly in economic terms and in their capacity, in turn, to support dependents or kin, which had to involve a certain degree of risk and luck'.³⁸ In practice, 'risk' in Nigerian women's migration represents dangerous travels through unauthorised routes as well as harsh and constraining relationships with their madams. However, migration projects could also represent 'luck' as they may prove successful. This was the case of Blessing, a convicted woman, who explained: 'I did my part, I bought a house in Nigeria, I built the house because the person gave me the opportunity to come here [to Italy]. It worked out, for me it was not bad!'. Blessing's story demonstrates how indentured sex work relationships may be an opportunity which luckily 'works out' and enables women to move both socially and geographically.

Madams' narratives challenge simplified representations of ruthless perpetrators who coerce naïve victims into movement and exploitation. These considerations are not meant to deny the exploitative and coercive nature of women's relationship to their sponsors, but to shed light on the fallacy of neatly polarising trafficking actors, as sponsors too had migrated through indentured relationships. Within this context, madams illuminated a 'trafficking' reality, which may not only be constraining and coercive but also enabling of livelihood goals. According to participants' narratives, Nigerian women have virtually no alternatives to attain such livelihood goals in Nigeria and thus, they may accept the risks and harsh conditions deriving from indentured relationships.

In line with participants' accounts, previous research has shown that Nigerian identified victims usually have some degree of agency, challenging the category of naïve and coerced women (what Hoyle *et al.* refer to as 'the ideal victim of trafficking').³⁹ In this research context, convicted participants illuminated their initial involvement in migration and sex work, which resembles that of many Nigerian identified victims.⁴⁰ Importantly, some of the identified victims I spoke with did not consider madams as ruthless criminals either. For example, Olo, highlighting the enablement aspect of her relationship with the sponsor, said: 'You are offered your opportunity, you can grab yours. It is your own business. Do you understand? At the same time, I am happy that I am here. If it was not

³⁷ Mai, 'Too Much Suffering', p. 2; Plambech, p. 2.

³⁸ Peano, p. 2.

³⁹ C Hoyle, M Bosworth, and M Dempsey, 'Labelling the Victims of Sex Trafficking: Exploring the borderland between rhetoric and reality', *Social & Legal Studies*, vol. 20, issue 3, 2011, pp. 313–329, <https://doi.org/10.1177/0964663911405394>.

⁴⁰ O'Connell Davidson, 2013, p. 3.

for the lady I would not be here.' Like their co-nationals, convicted participants voluntarily entered indentured relationships with their sponsors to migrate to Europe and financially support their family, as they were expected to by their communities. Madams' narratives further confirmed that sponsors' involvement, as well as that of other Nigerian women, is better understood within their individual desire and that of their family to achieve some mobility, rather than as part of ruthless criminal organisations' activities.

Bringing Somebody to Europe

Only one convicted participant, Joy, explained that she had decided to migrate to Europe for sex work because she wanted to *bring* other people to Italy as well as to make money out of it:

Joy: *But I asked many people, I want to go to Italy, I want to be peaceful, I want to make money.*

Researcher: *Ah, because you make more money [in Italy]?*

Joy: *Yes, to help somebody, to bring them here, to bring also my family.*

Similar to other convicted participants, Joy perceived indentured migration to Italy as the answer to her and her family's socioeconomic hardship. However, unlike other interviewed madams, she became involved and decided to migrate as part of her future plan to enable other family members' travel to Italy. According to her, facilitating relatives' mobility to Italy would directly improve their financial situation, too. Therefore, in Joy's case, indentured sex work migration would directly work as a livelihood strategy for her, either as migrant or sponsor, and for her family members, either by receiving Joy's remittances or by becoming migrants themselves.

Interviewed madams, similarly to the identified victims I interviewed, never employed the term 'trafficking' (or *tratta* in Italian) to refer either to their initial involvement or their activities as sponsors. Rather, they used phrases such as 'being helped' or 'being brought' as well as 'helping somebody' or 'bringing somebody' to Europe. For example, when explaining the events which led to her arrest, Amanda said, '[I told my mum] Mum, this is not about respect, if I am *bringing* your sister and her sons here, I will end up in prison and I will suffer!'. Similarly, Joy explained how indentured sex work migration relationships work: '*Bringing* somebody to Italy *helps also me* [because she earns money from it]. So, we can *help* each other; she *helps* me, I *help* her' [all emphases added]. Joy framed her actions within dimensions of help and enablement among social circles, resonating with other studies conducted with people smugglers from non-Western countries.⁴¹

⁴¹ F Adugna, P Deshingkar, and A Atnafu, 'Human Smuggling from Wollo, Ethiopia to Saudi Arabia: Askoblay criminals or enablers of dreams?', *Public Anthropologist*, vol. 3, issue 1, 2021, pp. 32–55, <https://doi.org/10.1163/25891715-03010003>.

Participants' tendency to refer to their actions in terms of 'helping somebody' or 'bringing somebody' to Europe, and to frame trafficking within the wider context of mobility enablement, may have worked as a strategy to undermine the criminal nature of their involvement and be perceived positively by the researcher. Resorting to such terminology assisted sponsors to successfully take distance from the potential harm and situations of violence that are associated with international sex work management and trafficking.⁴² Interviewed madams successfully denied responsibility for any harm experienced by migrants, while only shedding light on the enablement aspect of their actions and agreements.

Notwithstanding the role that social desirability may have played in participants' perceptions of trafficking, their accounts should also be understood as part of their desire of mobility and life in Italy. The women explained that they wanted to remain in Italy after their release from prison, supporting the fact that they initially entered indentured relationships as a response to their desire for a life in Europe. Interestingly, a few explained that the reason why they did not want to go back home was related to the fact that in Nigeria, there is 'no freedom'. In this regard, Joy explained: 'Too much mess in Africa. There is not electricity, there is not water, there is not food, no freedom as here in Italy'.

Talking about human trafficking as a way to achieve 'freedom' seems paradoxical if we consider that participants were interviewed inside a prison and that the crime is regarded as the deprivation of individuals' freedom. As O'Connell Davidson argues, the concept of human trafficking is grounded in the liberal tendency to perceive the world in terms of dualisms such as voluntarily/forced and free/enslaved.⁴³ Within this context, the definition of the phenomenon is inscribed in the post-Enlightenment notion that people are naturally born free and thus, any violation of individual freedom is understood as conducive to slavery. This way to understand human action informs a perception of migration where people on the move can be discerned as either forced to move by their traffickers in slavery-like situations or as agents who exercise self-sovereignty. However, such dualism does not take into account the many structural and social constraints within which people move, exercise agency, and make decisions. In this research context, these constraints were at least partly due to hostile migration regimes, which were found to impinge on participants' opportunities of social and geographical mobility.

⁴² N Mai 'Embodied Cosmopolitanisms: The subjective mobility of migrants working in the global sex industry', *Gender, Place & Culture*, vol. 20, issue 1, 2013, pp. 107–124, <https://doi.org/10.1080/0966369X.2011.649350>; O'Connell Davidson, 2013, p. 3.

⁴³ O'Connell Davidson, 2013, p. 3.

Rethinking Trafficking and Anti-Trafficking Interventions

As these research findings show, in the context of trafficking from Nigeria to Italy, madams' initial involvement was similar to that of identified victims who entered indentured relationships with co-nationals to achieve some geographical and social mobility. Interviewed Nigerian sponsors explained that they migrated to Europe with the help of madams themselves in order to support their family at home. Eventually, some convicted participants perceived indentured sex work migration as an opportunity to also enable their family members' geographical and social mobility under their management. However, as explained by madams, their arrest resulted in loss of income and thus, their further social immobilisation.

Such immobilisation was likely to be perpetuated after their release, as they will remain unauthorised migrants in Italy. Within this context, it is important to consider that in accordance with Art. 13 D.lgs. 286/98 *Testo Unico sull'Immigrazione* (Consolidated Act of Provisions Concerning Immigration), convicted participants are subjected to administrative expulsion because they are regarded as a threat to the social order. Thus, after being released, madams' migration status becomes even more precarious and their social position is further marginalised. As unauthorised migrants, they face exclusion from legal employment and governmental support, which they may find by entering new indentured sex work migration relationships with fellow countrywomen.

The impact that migration laws and anti-trafficking interventions have on perpetuating trafficking actors' geographical and social immobility as unauthorised migrant sex workers points to the need to re-think prevention policies. These research findings suggest a need to understand actors' involvement as deeply intertwined with their migration experiences and thus, the most efficient preventive measure would be understanding both madams and other Nigerian women as migrants and support them as such.

Instead of securitising the movement of the Immobilised Global Underclass⁴⁴ by dividing migrant sex workers into victims and perpetrators, the experiences of the research sample point to a need to design joint interventions to address Nigerian women's socioeconomic hardship in Nigeria and mobility aspirations in Europe. On the one hand, as socioeconomic hardship in Nigeria was found to be conducive for both interviewed madams and identified victims' indentured migration, one of the most effective ways to counter their involvement is to invest in Nigeria so that would-be migrants will be able to achieve the lives they desire

⁴⁴ K F Aas, "'Crimmigrant' Bodies and Bona Fide Travelers: Surveillance, citizenship and global governance", *Theoretical Criminology*, vol. 15, issue 3, 2011, pp. 331–346, <https://doi.org/10.1177/1362480610396643>.

for themselves and their families at home (if they wish).⁴⁵ Currently, US and European prevention actions mainly support awareness campaigns in countries of origin based on the assumption that would-be migrants are unaware of the risks of human trafficking and indentured relationships.⁴⁶ However, as this research shows too, individuals may be aware of the risky outcomes of migration but still choose to become involved as a way to overcome socioeconomic hardship at home where livelihood opportunities are almost absent due to a lack of resources and structural constraints.⁴⁷ Therefore, prevention interventions in Nigeria may benefit from investing funding to create more advantageous opportunities for citizens instead of only warning them about the potential risks of sponsored migration.

On the other hand, as migration plans and indentured relationships may also be a way for migrants to achieve personal success,⁴⁸ it is pivotal to work towards more open borders. In fact, strict migration regimes and crimmigration policies do not prevent trafficking but instead make individuals more vulnerable to it, as they are left to rely on informal migration enablers to move across borders.⁴⁹ Within current migration landscapes, indentured relationships provide individuals with the possibility to move beyond constraints imposed on their movement, even if affording an authorised life in Europe remains a restricted possibility for most of the Immobilised Global Underclass.⁵⁰ This was the context within which interviewed sponsors entered indentured relationships, both as migrants and madams.

This leads to two further reflections with regards to anti-trafficking policies, if European governments are still determined to fight indentured migration as a problem of traffickers rather than of strict migration regimes. In destination countries, an important anti-trafficking intervention would be to not immobilise already socially and geographically constrained individuals. Within strict and hostile migration regimes, unauthorised migrants can achieve some social mobility mostly when identified as trafficking victims (or granted asylum) through programmes

⁴⁵ N Mai, *The Psycho-social Trajectories of Albanian and Romanian Traffickers?*, ISET Working Paper 17, Institute for the Study of European Transformations (ISET), London Metropolitan University, 2010.

⁴⁶ K Sharapov, S Hoff, and B Gerasimov, 'Editorial: Knowledge is Power, Ignorance is Bliss: Public perceptions and responses to human trafficking', *Anti-Trafficking Review*, issue 13, 2019, pp. 1–11, <https://doi.org/10.14197/atr.201219131>.

⁴⁷ Andrijasevic and Mai, p. 1.

⁴⁸ R Andrijasevic, *Migration, Agency and Citizenship in Sex Trafficking*, Palgrave Macmillan, London, 2010; Hoyle *et al.*, p. 9; O'Connell Davidson, 2013, p. 3; Peano, p. 2; Testai, 'Debt as a Route', p. 2.

⁴⁹ Sharma, p. 4.

⁵⁰ *Ibid.*

of social protection.⁵¹ In accordance with Art. 18 D.Lgs 286/98, which regulates protection policies for victims of trafficking in Italy, identified victims are entitled to a residence permit and offered professional trainings in order to prepare them for the regulated labour market. However, those women who entirely repay their debt and are thus not under the control and at risk of violence by their traffickers, are not identifiable as victims. This is against the spirit of the 3P framework as it fails to recognise people's past victimisation and provide them support, thus becoming counterproductive to prevention and protection efforts. In fact, as Lo Iacono notes with regards to Nigerian trafficking actors, the moment after the debt repayment is the most crucial for sex workers who may identify new indentured relationships as a potential livelihood strategy in response to a lack of opportunities and access to social welfare.⁵² This was the case of my research participants who had exited indentured relationships by fully repaying their debt before becoming sponsors of co-nationals.

Lastly, it is pivotal to consider the applicability of the non-punishment principle for defendants with experiences of victimisation in trafficking. In accordance with Art. 8 of the EU Anti-Trafficking Directive 2011/36/EU, '[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'.⁵³ This provision absolves defendants of their criminal responsibility if they engaged in criminal activities under coercion by their traffickers. In other national contexts, such as Argentina,⁵⁴ Australia,⁵⁵ and the US,⁵⁶ defendants' past victimisation is regarded as grounds for mitigating circumstances when sentencing them.

However, the Italian 24/2014 D.Lgs, which relates to the prevention and repression of trafficking in human beings and the protection of victims, does

⁵¹ S A FitzGerald, 'Trafficked Women's Presentation of Self Before the German Courts', *European Journal of Women's Studies*, vol. 27, issue 1, 2020, pp. 57–71, <https://doi.org/10.1177/1350506818819112>; Hoyle *et al.*, p. 9.

⁵² Lo Iacono, p. 4.

⁵³ *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*, 5 April 2011.

⁵⁴ Chatzis, p. 2.

⁵⁵ Baxter, p. 4.

⁵⁶ A F Levy, 'Innocent Traffickers, Guilty Victims: The case for prosecuting so-called "bottom girls" in the United States', *Anti-Trafficking Review*, issue 6, 2016, pp. 130–133, <https://doi.org/10.14197/atr.201216613>.

not include such non-punishment provision.⁵⁷ Notwithstanding that madams interviewed in the research context did not state that somebody compelled them to sponsor fellow countrywomen's travel and sex work, the failure of Italian legislation to adapt to the EU Directive shows the legal polarisation between victims and criminals. Participants' experiences demonstrate how victimisation and offending overlap and cannot be understood as either fully coerced or free.⁵⁸ Instead, it becomes pivotal to consider the structural constraints and lack of opportunities, which may influence unauthorised migrants' agency.⁵⁹ In this case, Nigerian women's experiences of victimhood and offending were characterised by both elements of agency and compulsion, which were grounded in social expectations and livelihood strategies.

One way to address such a legal gap is to implement the non-punishment provision in each national context and expand the EU Anti-Trafficking Directive requirement of 'being compelled to do so' by aligning the factors that may contribute to people's compulsion to offend with the means referred to in the trafficking definition.⁶⁰ Factors influencing individuals' involvement in indentured relationships (both as migrants and sponsors) should not only be found in *traffickers'* coercion but also in structural constraints.⁶¹ The suggested interventions would be in line with human rights principles, which state that '[t]rafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in 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'.⁶²

In this way, prevention and protection goals can be met by addressing interviewed madams' past victimisation as well as the reasons for criminal involvement.

⁵⁷ Associazione per gli Studi Giuridici sull'Immigrazione (Asgi), *Osservazioni relative allo stato di attuazione in Italia della direttiva 2011/36UE relativa alla prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime e che sostituisce la decisione quadro del Consiglio 2002/629/GAI - Il decreto legislativo 4 marzo 2014 n. 24*, 2020, https://www.asgi.it/wp-content/uploads/2015/04/doc_LIBE.pdf.

⁵⁸ Lo Iacono, p. 4.

⁵⁹ Baxter, p. 4; Andrijasevic and Mai, p. 1.

⁶⁰ UN Human Rights Council, *Implementation of the non-punishment principle. Report of the Special Rapporteur on trafficking in persons, especially women and children*, A/HRC/47/34, 17 May 2021.

⁶¹ Chatzis, p. 2.

⁶² OHCHR, *Recommended Principles and Guidelines Principles and Guidelines on Human Rights and Human Trafficking* E/2002/68/Add.1, OHCHR, 2002.

Conclusion: Rebalancing the trafficking discourse

Human trafficking research is mainly generated in the field of victim assistance, and therefore, produces one-sided knowledge of the phenomenon. Such knowledge is mainly grounded in a standardised narrative of ‘ideal victimhood’, which practitioners often rely on to distinguish between ‘genuine’ and ‘deserving’ victims from unauthorised migrants.⁶³ For this reason, migrants have often been found to feel pressured to comply with the identity of fully-compromised victims, in order to be granted governmental support and avoid the risk of deportation, thereby perpetuating only one version of trafficking, which is inscribed in elements of exploitation and coercion.⁶⁴

This misbalanced understanding of the phenomenon is mirrored in anti-trafficking interventions that aim to prevent the crime from occurring, protect victims, and prosecute traffickers. However, as this paper shows, the accounts of women held responsible for trafficking illuminated a more nuanced reality where Nigerian sponsors’ and migrants’ involvement cannot be fully explained by either victimhood or actions perpetuated by ruthless criminal syndicates. Therefore, if governments aim to fight trafficking through the 3P framework, this research sample sheds light on the need to design more inclusive protection measures, such as non-punishment, provision of residence, and work permits.

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⁶³ Hoyle *et al.*, p. 9.

⁶⁴ FitzGerald, p. 12; Andrijasevic and Mai, p. 1; Hoyle *et al.*, p. 9.

Oblivious ‘Sex Traffickers’: Challenging stereotypes and the fairness of US trafficking laws

Amber Horning and Loretta J. Stalans

Abstract

In this paper, we explore third parties who unexpectedly fell within the legal definition of a sex trafficker. The anti-trafficking lobby and media stories frequently portray traffickers as organised, psychopathic, violent, and child kidnappers. We dismantle these depictions by showing the unexpected people who qualify as traffickers. This paper incorporates findings from two studies involving eighty-five third parties in New York City and forty-nine in Chicago. We analyse how teenagers, drivers, and boyfriends qualify as traffickers under US law. We find that two-thirds of them hold inaccurate views about the difference between sex trafficking and facilitating prostitution. Trafficking can be incidental or temporary, and traffickers in these samples were often oblivious to their legal status, potentially resulting in lengthy prison sentences. We conclude by calling for differential sentencing based on traffickers’ age, and awareness campaigns designed to alert third parties of the legal distinctions between pandering and sex trafficking.

Keywords: domestic sex trafficking, pimping, US sex trafficking laws, stereotypes

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Introduction

Many sex workers, ‘pimps’,¹ and even ancillary players in the sex trade in the United States have crossed the legal line and fall under the legal definition of sex trafficking (ST) per the *Trafficking Victims Protection Act* (TVPA) of 2000. The TVPA defined sex trafficking as the ‘recruitment, harboring, transporting, provision, or obtaining of a person for the purpose of a commercial sex act’ when ‘induced to perform a sex act through force, fraud or coercion’ (22 US Code 22 USC 7102(8)). The TVPA blurs pandering² and ST by expanding the definition of coercion to include psychological tactics, such as declarations of false love, establishing economic control, and inducing drug dependence.

The TVPA also posits that anyone younger than eighteen who sells sex with a third party is designated a trafficking victim, and the third party commits a ‘severe form of trafficking in persons’.³ This legislation created a broad definition of ST. In cases with the traditional dyads who sell sex, Farrell *et al.* found that half of the ST cases investigated by law enforcement involved a minor,⁴ and Lugo-Graulich’s study found that states with Safe Harbour laws⁵ had more ST prosecutions.⁶ However, ST legislation, even with safe harbour laws, still results in the prosecution of teenagers as sex traffickers if they facilitate teenagers who provide sex for money. In 2019, the FBI data revealed that 11 minors were

¹ We define a ‘pimp’ as someone who procured, facilitated, managed, or similarly contributed to commercial sex transactions. We acknowledge that ‘pimp’ is a contested, racialised term, but it is most recognisable. We use the term ‘third party’ whenever possible.

² Pandering laws vary across states. Merriam-Webster’s Dictionary of Law defines pandering as ‘The act or crime of recruiting prostitutes or of arranging a situation for another to practice prostitution.’

³ Defined in the TVPA as ‘sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to such an act has not attained 18 years of age’.

⁴ A Farrell, C Owens, and J McDevitt, ‘New Laws but Few Cases: Understanding the challenges to the investigation and prosecution of human trafficking cases’, *Crime, Law and Social Change*, vol. 61, no. 2, 2014, pp.139–168, <https://doi.org/10.1007/s10611-013-9442-1>.

⁵ State-level ‘Safe Harbor’ laws are designed to remove the punitive sanctions for young victims of commercial sexual exploitation.

⁶ K Lugo-Graulich *et al.*, *Prosecuting Trafficking in Persons Cases: An analysis of local strategies and approaches*, National Institute of Justice, Washington, 2020, retrieved 21 September 2021, <https://www.ojp.gov/pdffiles1/nij/grants/301296.pdf>.

prosecuted as sex traffickers and charged with involuntary servitude.⁷

Most states in the US have enacted laws on sex trafficking that are modelled after the TVPA, and most sex trafficking cases, except those involving interstate offenses, are prosecuted in state criminal justice systems. In 2005, Illinois implemented a similar law that introduced maximum sentences of thirty and fifteen years, respectively, for the trafficking or involuntary servitude of a minor or adult through fraud, force, or coercion. In 2018, New York enacted a law that established the crime of the sex trafficking of a child as a class B felony with a sentence of five to twenty years in prison; this statute applies to a person who is twenty-one years of age or older and profits from or advances a minor in engaging in sex for money or other valuables (s5988-B). Due to the TVPA's radically expanded definition, third parties caught in the legal sex trafficker net include teenage friends (except in New York), partners, and those formerly designated 'neighbourhood pimps', drivers, and hotel owners. These incidental and often oblivious traffickers are newly connected in the legal and popular imagination to modern-day global slavery rings, yet they challenge these stereotypes.

Previous research has argued that youth engaging in survival sex or facilitating friends' sex work challenge stereotypes of sex traffickers as violent or coercive.⁸ In this paper, we extend this prior work through examining third parties' views about what constitutes sex trafficking, and which background characteristics contribute to their inaccurate or accurate views. We also explore their identification with the terms 'pimp' and 'sex trafficker', and how they interpret these labels socially and legally. We conclude the analysis with a discussion of the necessity for public awareness campaigns and other deterrence efforts.

⁷ US Department of Justice, 'Crime in the United States: Human trafficking, 2019', 2019, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/additional-data-collections/human-trafficking/human-trafficking.pdf>.

⁸ A Horning, 'Peeling the Onion: Domestically trafficked minors and other sex work involved youth', *Dialectical Anthropology*, vol. 37, no. 2, 2013, pp. 299–307, <https://doi.org/10.1007/s10624-012-9289-3>; A Marcus *et al.*, 'Conflict and Agency Among Sex Workers and Pimps: A closer look at domestic minor sex trafficking', *The ANNALS of the American Academy of Political and Social Science*, vol. 653, issue 1, 2014, pp. 225–246, <https://doi.org/10.1177/0002716214521993>.

Literature Review

Caricatures of Third-party Facilitators

The TVPA acquired support through anti-trafficking narratives that created a homogenous and biased portrayal of third-party facilitators. For example, prostitution abolitionist feminists' anti-trafficking discourse characterised all prostitution as involving degradation and violence and claimed that third parties and sex traffickers are synonymous—regardless of whether sex workers' roles are voluntary.⁹ This discourse supports their demand for lengthy prison sentences for all facilitators and clients involved in the sex trade, regardless of age.

Further bolstering this anti-trafficking discourse, media stories supported a stereotype of 'pimps' and 'sex traffickers' as violent, coercive criminals who take unfair, exploitative fees.¹⁰ Media coverage disproportionality reported about sex traffickers from racial, ethnic, or immigrant groups, playing on the public's implicit racialised fears.¹¹ Indeed, the 'pimp' trope is probably the most globally recognised archetype for Black masculinity.¹² Moreover, dramas and documentaries of trafficking for sexual exploitation (TSE) have projected a singular 'rescue narrative' where a brutal man tricks or kidnaps a young, innocent girl, creating a narrative of women as saintly and men, especially Black men, as predatory. These films often contrast white Western men as 'heroes' and the 'villains' as 'dangerous brown men.'¹³

For the past decade, this anti-trafficking discourse and the enforcement of the TVPA and international law have developed a consensus around the idea that under-18 sex work is solely the fault of pimps, traffickers, and clients, and that under-18 sex workers are trafficking victims. Those who were formerly considered as pimps engaging in pandering may be charged as sex traffickers under the TVPA or international trafficking laws. These shifts in policing priorities due to anti-trafficking narratives were justified with weak data from self-promotional authors

⁹ M Farley, 'Risks of Prostitution: When the person is the product', *Journal of the Association for Consumer Research*, vol. 3, issue 1, 2018, pp. 97–108, <https://doi.org/10.1086/695670>; C A MacKinnon, 'Trafficking, Prostitution, and Inequality: The centrality of gender', in J Browne (ed.), *Why Gender?*, Cambridge University Press, Cambridge, 2021, pp. 306–327, <https://doi.org/10.1017/9781108980548.016>.

¹⁰ J Gulati, 'News Frames and Story Triggers in the Media's Coverage of Human Trafficking', *Human Rights Review*, vol. 12, no. 3, 2011, pp. 363–379, <https://doi.org/10.1007/s12142-010-0184-5>.

¹¹ *Ibid.*

¹² Horning, 2013; Marcus *et al.*

¹³ C Baker, 'Moving Beyond "Slaves, Sinners, and Saviours": An intersectional feminist analysis of US sex trafficking discourses, law and policy', *Journal of Feminist Scholarship*, issue 4, 2013, pp. 1–23.

(including ‘pimps’), advocates, police, and social work reports¹⁴ as opposed to studies showing that young people often voluntarily band together and engage in and facilitate survival sex. These distorted narratives potentially contribute to facilitators’ erroneous beliefs that they are not violating sex trafficking laws.

Typical Entrances into Third-party Work

Third-party facilitators report that family members, friends, or partners generally introduced them to the illicit sex trade.¹⁵ In Dank *et al.*’s study, one quarter of the participants were introduced to pimping through someone they knew, who requested their protection and assistance, so a sex worker ‘could act as both recruiter and mentor. . . who also taught them the business’.¹⁶ Moreover, third-party facilitators who saw themselves as managers rather than pimps were more likely to enter through social networks established within conventional work settings.¹⁷ These social influences might foster misinformation or unawareness that they are engaging in sex trafficking or pandering.

Methods

In both the New York City (NYC) and Chicago studies, the term ‘pimp’ was narrowly defined as an individual who manages and lives from the proceeds of one or more sex workers.¹⁸ While the data were collected between 2011 and 2014, there have been no significant changes to federal law since the TVPA, and these are the two most recent studies with third parties who were already charged or could have been charged with sex trafficking at one point throughout their changeable careers. For example, some started a mutual agreement arrangement

¹⁴ Horning, 2013.

¹⁵ T G Blanchette and A P da Silva, ‘Sympathy for the Devil: Pimps, agents, and third parties involved in the sale of sex in Rio de Janeiro’, in A Horning and A Marcus (eds.), *Third Party Sex Work and Pimps in the Age of Anti-trafficking*, Springer, Cham, 2017, pp. 15–47, https://doi.org/10.1007/978-3-319-50305-9_2; M L Dank *et al.*, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, Urban Institute, Washington, 2014, pp. 221–242; A Horning *et al.*, ‘Risky Business: Harlem pimps’ work decisions and economic returns’, *Deviant Behavior*, vol. 41, issue 2, 2020, pp. 160–185, <https://doi.org/10.1080/01639625.2018.1556863>.

¹⁶ Dank *et al.*, p. 141.

¹⁷ L J Stalans and M A Finn, ‘Self-narratives of Persistent Pimps and Those Anticipating Desistance: Emotions, conventional work, and moral profitability calculus’, *Victims and Offenders*, vol. 14, issue 5, 2019, pp. 647–669, <https://doi.org/10.1080/15564886.2019.1628148>.

¹⁸ R Weitzer, ‘Sociology of Sex Work’, *Annual Review of Sociology*, vol. 35, 2009, pp. 213–234, <https://doi.org/10.1146/annurev-soc-070308-120025>.

with sex workers, and the relationship changed into a coercive one, or vice-versa.

Table 1 provides background characteristics of the eighty-five and forty-nine men who were interviewed in NYC and Chicago, respectively. All interviewees discussed their business and personal relationships and roles with sex workers in qualitative in-depth interviews. Below is an outline of each study's methodological approach.

Table 1. NYC and Chicago sample characteristics

Characteristics	NYC Sample (N = 85)		Chicago Sample (N = 49)	
Race				
Black	74.1% (n = 63)		36.7% (n = 18)	
Latinx	25.3% (n = 13)		6.1% (n = 3)	
Asian			4.1% (n = 2)	
Multi-racial/Other	0.6% (n = 9)		4.1% (n = 2)	
White			49.0% (n = 24)	
Educational achievement				
High school dropout			10.2% (n = 5)	
High school graduate			24.4% (n = 12)	
HS grad with some college			20.4% (n = 10)	
College graduates			34.7% (n = 17)	
Missing			8.2% (n = 4)	
	Mean	Range	Mean	Range
Number of years pimping	6	1 to 30	8.5	1 to 40
Age started pimping/driving	17	9 to 37	26	12 to 51
Age at the time of interview	27	18 to 67	40.4	18 to 65
% of workers' earnings taken			50%	20 to 100%
Number of current sex workers	6	1 to 63	5.5	1 to 32

The New York City Study

Sample and Data Collection. Horning interviewed eighty-five third parties in 2011-2012 and used the term 'pimp' during the recruitment process because this population is often unfamiliar with other terms such as 'third party'. Horning

expressed the criteria to qualify in clear language to ensure that participants had actually procured, facilitated, managed, or otherwise contributed to commercial sex.

The majority of the interviews took place in courtyards in housing projects in East Harlem with people from these communities. Residents of these housing projects were at high risk for family poverty and the projects have seen high juvenile delinquency rates.¹⁹ East Harlem has long been an area of concentrated disadvantage, with many residents experiencing high relative deprivation levels.

Horning used snowball sampling, whereby two gatekeepers, who lived in these housing projects and formerly worked as third parties, facilitated access to the community. One limitation of snowball sampling is selection bias since the pool of participants is derived through a few initial contacts. It is typically used in non-probability fieldwork studies and works well with hard-to-reach populations and active offenders.²⁰ Participants were given the option to conduct the interviews inside or in a quiet corner in the courtyard where they were not audible to others. During the winter, Horning and their research team interviewed in the offices of non-profit organisations in Harlem. Semi-structured interviews were confidential and tape-recorded. Participants used pseudonyms and gave verbal consent for participation, following the protocol's Institutional Review Board's approval. Each interview lasted for about one hour and Horning paid participants USD 30 for their time.

Analytic approach. Horning asked participants about pimping and pimp identities. Specifically, they were asked if and how they identified as pimps. If they did not, they were asked how they would instead describe their role in the sex market. These questions sparked conversations about what constitutes a pimp and what constitutes a trafficker. Participants described their impressions of pimping and trafficking and how they were similar or distinct. They did not always understand the parameters of the legal label of sex trafficking or even pandering. Through these questions, Horning could tap into Goffman's 'looking glass' view, where participants described how they viewed themselves, how they thought others viewed them, and how they viewed those similar to them. In this interview setting, which enabled an active exchange, participants also reacted to the interviewers. Horning and their research team were acutely aware of this natural process that involves impression management and portrayals of the self that were probably

¹⁹ C J Barrett and M Welsh, 'Petty Crimes and Harassment: How community residents understand low-level enforcement in three high-crime neighborhoods in New York City', *Qualitative Sociology*, vol. 41, no. 2, 2018, pp. 173–197, <https://doi.org/10.1007/s11133-018-9377-z>.

²⁰ U Flick, *An Introduction to Qualitative Research*, 4th ed., Sage Publications, Thousand Oaks, 2009, pp. 9–18.

tailored to the interview context. To analyse the narratives, Horning searched accounts using keywords ‘pimping’, ‘trafficking’, ‘underage’, ‘slavery’, ‘mack’, ‘slim’, and ‘superfly’ to elucidate participants’ conceptions of pimping and trafficking and derived themes using these sensitising concepts.

The Chicago Study

Sample and Data Collection. Recruitment occurred primarily through advertisements on the job, escort, and massage sections of Backpage or Craigslist in 2013-14, and referrals from selected participants. Interviews occurred inside or outside of a café where participants selected private tables. Semi-structured qualitative interviews lasted for one hour and were audio-recorded. Interviewees verbally consented, used pseudonyms, and were paid USD 60, using an Institutional Review Board-approved protocol.

Analytic approach. Stalans analysed interviewees’ accounts of their views about pimping, TSE, and their management practices. Stalans asked participants about how ST compared to facilitating prostitution and allowed them to define their self-identities, with 32.7 per cent calling themselves pimps or other deviant labels (gang members, drug dealers) and 67.3 per cent using more pro-social identities such as manager, driver, or assistant manager. A trained research assistant and Stalans coded conceptions of how ST differed from prostitution into eight categories and resolved the few disagreements through discussion.

Results

The results are organised around three issues: 1) How interviewees label their role and see themselves; 2) their conceptions about ST and what differentiates those who held accurate knowledge of ST from those with inaccurate or incomplete knowledge; and 3) oblivious facilitators with mitigating circumstances that differentiate them from the violent, coercive stereotype underlying the TVPA.

Some participants knew ST laws; however, many were oblivious, defined as having incorrect or incomplete beliefs about what constituted ST, or unaware of how their status could change to violating ST laws.

Let’s Talk About Who’s Really a Pimp’

Third parties in both samples had ideas about what constitutes a pimp, drawing on direct experiences, imagination, and popular media culture. In NYC, we interviewed some of the participants at a health clinic. One day, several young

men suddenly came into the clinic's conference room. There were only two interviewers, and the day was ending. We announced that only two more people could be interviewed. One guy stated, 'Well, let's talk about who's really a pimp in here.' Some nodded in agreement, while others looked down nervously. They began to compare notes on the number of workers, earnings, how long they worked, and whether they cared for their workers. This discussion probably merited a focus group. Most pertinent was that the criteria for who qualifies were up for debate among third parties.

Several third parties were influenced by images of the pimps of the 1970s that still fuel popular imagination. The majority of the NYC sample was African American, followed by Latinx, and both groups drew on these examples. Notably, the older third parties referred to the pimp classics. The more seasoned ones drew from Blaxploitation pimp movies, such as *SuperFly*, *The Mack*, and others, such as Iceberg Slim's autobiography *Pimp: The Story of My Life*.²¹

When we asked Goya about his entrance into pimping, he admitted, 'I did homework before I did anything. I did homework, and I watched a lot of movies [later he referred to 'pimp' films].' Some older third parties tried to mirror the dynamics in these pimping guides. For example, Chicago Blue referenced films like *The Mack* or *Pimps Up Hoes Down*, and songs such as *Pimpin Ain't Easy*, and he even incorporated these titles into his everyday rhetoric. This focus was demonstrated in his self-introduction at the beginning of his interview.

Call me Chicago Blue. Big Daddy Chicago Blue. Pimpin' ain't easy. Slappin' and yo mackin', you know. When it comes to them hoers, you gotta put them bitches on the track. You know what I'm saying? They gotta go out there and get that money 'cause Daddy needs a new pair of shoes, baby. This is not a game.

Similarly, Anton was invested in a pimp identity and bragged that he attended what he called 'pimp club parties'. Anton said, 'We get dressed up, tell 'em what we got, see with these shoes.' Anton pointed to his shoes and he said to the interviewer, 'I paid 200 and something dollars for these shoes. I paid 300, 200 dollars for this, 200 dollars for shit like you know.' Then, Anton pointed to his watch and other jewellery and said to the interviewer. 'You got your watch on, you got your jewellery on, yeah.' The interviewer asked, 'Do they all work in the same club as you, or how do you meet?' Anton replied:

²¹ Iceberg Slim, *Pimp: The Story of My Life*, Cash Money Content, New York, 1969.

We usually meet up in different areas, like you know, when they have one of those pimp club parties in Harlem. Pimp club parties, like when you bring your two hoers with you. You ever watch the movie 'The Mack of the Year'? When you see Goldie when he brung his two best hoers in there. You bring your one hoe or two hoers. You bring the best one that makes that money. You hang out, you drink, show off, talk shit, you know what I'm saying.

The interviewer asked if Anton ever attended the national Players Ball, and he replied, 'We've been to the Players Ball. It's a beautiful thing. A beautiful time.' The Players Ball was inspired by the event featured in the Blaxploitation film *The Mack*. It became an annual, high-profile celebration of well-known pimps and their sex workers. Everyone dresses up, and the winners give speeches (four pimps in Chicago also attended 'players balls', with one winning second place). Alex, who came from a 'family of pimps and hoers', referenced Iceberg Slim's book: 'If you read the back of the book, it will tell you what inspired him to become a pimp. This friend of mine named [name], what inspired him to be a pimp, was my cousin.' Alex used this reference to show that his family is the real deal and known for pimping. Jamaica thought that many self-proclaimed pimps tried to emulate these films, and for him, pimping was much more straightforward. Jamaica stated: '*The Mack* is like a bible. *SuperFly* is like a Bible. Everybody wants to be Goldie; everybody wants to be Priest. The real thing—it's just about money.'

However, as did 67.3 per cent of the Chicago sample, some NYC third parties rejected the label of a pimp. For instance, we asked Samuel, 'Did you call yourself a pimp?' He replied, 'Nah, I never did like in the movies, ni#&*ers call themselves the Mack and all that. I ain't call myself shit.' John Baptista explained why he did not identify as a pimp:

I was never like, oh, I'm a pimp. [...] I'm making money 'cause these girls wanna have sex. I'm just getting them the guys. I guess that's what pimping is, but I never considered myself like a pimp.

He further explained who pimps were in his neighbourhood, showing that he did not consider himself similar because he lacked business cards, did not solicit strangers on the street, and was never arrested.

Alex said, 'I am a player. [...] because I played the game [term for pimping]', but for him, that was distinct from being a pimp. Nelson expressed distaste for the term pimp but viewed himself as a hustler. Marvin also expressed disdain: 'I don't like this pimp thing; I'm their manager. I'm trying to manage how you live your lifestyle and how you gonna do this lifestyle.' Finally, Blue Goose said he was a bodyguard and asserted: 'I would never say that I am a pimp.'

Across samples, some third parties did not call themselves pimps because they rejected labelling, found the term insulting, or believed their duties did not merit the term. A few third parties started work so young that it took them a while to realise that they were pimping; Samuel in the NYC sample who started at thirteen declared: 'I was young. So, I really didn't know what was going on. It was like I had a chance to get money from them [sex workers] [...]. I didn't know that it was illegal.' Many preferred a pro-social term for their facilitation. Younger NYC third parties felt that pimps only did street-based work or had a pimp lifestyle, and for many, this was below them. Billy said, 'Old pimps, they really used to watch their girls and made sure they were with them 24/7. I don't got time to be doing that!'

Many NYC third parties indicated they were not violent like other pimps. Legally, pandering does not require force, but several were aware of the typical pimp tropes. For example, Padro made a point to show that he was not this 'disrespectful type'. He said, 'I'm not the abusive type. I'm not gonna put my hands on her. You know, I'm not that type of person or pimp, whatever you wanna call it. I'm not into beatin' them, touching them, hitting them. Everything they do, they do because they wanna do it.' For some, it was showing that they were not disrespectful, or doing it differently and being 'good bosses'. For instance, Goya stated:

Nine times out of ten, these pimps wind up losing their girls because of mistreatment. You know, a person can only take that so much; you're a human being. You know? I thought that I could do things different, and I did. It worked out pretty good.

Stereotypes about Sex Trafficking Laws

We now turn to the analysis of the Chicago sample's views of how ST is defined. The majority noted that ST involved force or coercion (n=32; 71.1%), but only one-third noted that involvement of minors as sex workers constituted ST (n = 16; 35.6%). Although these elements were mentioned, many participants qualified their responses with inaccurate beliefs such as ST required movement across states or countries (33.3%), involved people from other countries (22.2%), involved organised crime (4.4%), or involved only street-based prostitution and not online solicitation (6.7%). Others held inaccurate beliefs about the involvement of minors (15.6%; n = 7). For example, John provided this reasoned analysis:

(Interviewer: What about minors? Like a 15-year-old who sort of falls in love with a 23-year-old, and he's struggling. And she thinks she loves him. So he says, well, help us out here. You need to do certain things. Is that ST or prostitution?) I don't know. It's not trafficking per se; it's more of taking advantage of the situation. I won't consider it trafficking 'cause the girl she has the choice in what she's doing, but when you're 15, you're so young and

naïve, you really don't know right from wrong. It's somewhere in the middle between prostitution and trafficking.

The sixteen Chicago pimps who correctly recalled that the involvement of minors violated ST laws all held accurate views, and some had accurate knowledge about punishment. For example, Teddy exclaimed: ‘You’ll do a federal fifteen years mandatory minimum, so you’ll be in there for thirty years maybe. (Interviewer: Have you ever managed minors?) Never. (I: Why?) Because the fall is forever.’ Several pimps or drivers verified sex workers’ age through licenses; for example, Jorge, a driver, asserted: ‘People know well, seventeen, you’re pimping—so I always make sure that they’re eighteen.’

Similarly, in the NYC study, some older third parties were aware of the lengthy punishment. Dred discussed that he would never work with underage sex workers again because it was too dangerous. Arroyo correctly acknowledged, ‘Just off the fact that you being a pimp, they can slay you. They can give you a whole lot of time in jail.’

Table 2. Accuracy of third parties’ views about sex trafficking: Connection to college education and experience in the sex trade

	Sex trafficking defined as coercion/		Differentiating sex trafficking from facilitating prostitution	
	Was not mentioned N = 11 24.4%	Was mentioned N = 34 75.6%	Accurate beliefs about minors or coercion/force (N=17; 37.8%)	Inaccurate stereotyped beliefs (N = 28; 62.2%)
College degree				
No	90.9% (10)	61.8% (21) ^T	47.1% (8)	82.1% (23) ⁶
Yes	9.1% (1)	38.2% (13)	52.9% (9)	17.9% (5)
Age started pimping				
19 or younger	45.5% (5)	17.6% (6) ^T	29.4% (5)	21.4% (6) ⁷
20 or older	54.5% (6)	82.4% (28)	70.6% (12)	78.6% (22)
Number of years pimping				
9 or fewer years	36.4% (4)	64.7% (22) ³	23.1% (6)	71.4% (20) ⁸
10 or more years	63.6% (7)	35.3% (12)	64.7% (11)	28.6% (8)

Pimp uses coercion: supplies drugs, uses violence, takes 75% to 100% of earnings, or possessive ownership				
No	18.2% (2)	52.9% (18) ⁴	58.8% (10)	35.7% (10) ⁹
Yes	81.8% (9)	47.1% (16)	41.2% (7)	64.3% (18)
Self-identifies as:				
Pro-social label (e.g. manager)	36.4% (4)	76.5% (26) ⁵	64.7% (11)	67.9% (19)
Pimp	63.6% (7)	23.5% (8)	35.3% (6)	32.1% (9)

Four individuals were not asked the question and did not provide information in the interview. Superscript indicates the probability that the categories of a subgroup (e.g., college education or not) are different on the outcome in the column with ^T $p < .10$; * $p < .05$; and ^{NS} $p > .05$. Please see footnote for statistical analysis.²²

Table 2 shows to what extent the inaccurate views of ST vary by background characteristics, self-identity, and coercive tactics. Interviewees' self-identity and coercive tactics were systematically coded in previous research.²³ Columns 1 and 2 show that participants were less likely to mention coercion or force if they were teenagers, had been pimping for more than ten years, and labelled themselves as pimps.

Moreover, pimps using extreme coercive tactics (i.e., 'Pimp uses coercion' in the table), compared to those who did not use these tactics, were less likely to mention force or coercion. Previous research on third parties in Canada also suggested that

²² Chi-square analyses, the appropriate statistical analysis, were used to compare whether the collected data for subgroups (e.g., college degree or not) were different on their stereotype accuracy than what would be expected by chance. Thus, the p-values at .05 indicate that there is a real difference in the data with only a 5 per cent chance that this claim is incorrect, whereas a not significant finding indicates that the subgroups do not differ and any variation is due to chance.

²³ L J Stalans and M A Finn, 'Consulting Legal Experts in the Real and Virtual World: Pimps' and johns' cultural schemas about strategies to avoid arrest and conviction', *Deviant Behavior*, vol. 37, issue 6, 2016, pp. 644–664, <https://doi.org/10.1080/01639625.2015.1060810>; L J Stalans and M A Finn, 'Defining and Predicting Pimps' Coerciveness Toward Sex Workers: Socialization processes', *Journal of Interpersonal Violence*, vol. 34, issue 21–22, 2019, pp. 4498–4521, <https://doi.org/10.1177/0886260516675919>.

third parties might perform comparisons to more violent and coercive pimps to resolve dissonance about their actions and distance themselves from more moral culpability.²⁴ For example, George, who sold sex workers to other third parties without their consent, explained:

There are different varieties of pimps, where some are more suave and smooth, then you got your guerrilla pimps that's gonna stand on you all the time, and be physical with you, yell at you, beat you. (Interviewer: And what would you call yourself?) I just call myself, you know, a man of leisure. My mind was born suave. I could talk to them, get in their head, and find out [...] what buttons to push.

Jihoo, a driver who transported non-citizen Korean sex workers from O'Hare Airport, illustrated the cognitive distancing, though not successful, from less desirable moral selves.

Morally, I know this is wrong. I was like, oh well, I can justify it to myself because I feel like this is their choice. [...] I got to find something else legitimate. [...] I consider myself of high character with morals [...] so I have a lot of guilt because of that.

In the NYC sample, several indicated that using physical force is not pimping. For example, Blue Goose asserted that a real pimp never uses force with sex workers, especially younger ones. He stated, 'If you gotta be a pimp to beat 'em and belt and all that man you ain't no pimp. You abuser. [...] I don't go around like these beating like some of these pimps they go around they got guys kidnap these girls, seventeen, sixteen years old.' For some, third parties who had underage workers were viewed as inferior for breaking the rules of professionalism and morality. Debonir discussed 'macks with little girls' and stated, 'You know a real player gonna deal with a grown woman.'

We also assessed the accuracy of their complete stereotype; thus, if interviewees believed that travelling from location to location was necessary to define ST, they were coded as holding an inaccurate stereotype. Although 75.6 per cent of the Chicago sample mentioned coercion/force as defining features, nearly two-thirds (62.2 per cent) held incomplete or inaccurate knowledge about ST. Columns four and five of Table 2 show that individuals were more likely to hold inaccurate stereotypes if they were not college-educated and had been pimping for nine years or less. The Chicago sample only had eleven individuals who started

²⁴ S Hannem, and C Bruckert, "'I'm Not a Pimp, but I Play One on TV': The moral career and identity negotiations of third parties in the sex industry", *Deviant Behavior*, vol. 38, issue 7, 2017, pp. 824–836, <https://doi.org/10.1080/01639625.2016.1197700>.

as teenagers, and slightly over half held inaccurate beliefs. DJay illustrated an inaccurate stereotype: ‘Sex trafficking, uh, you goin’ state to state. You see you got men that run hoes to Michigan, Kankakee to Minnesota; you got guys that do that and, uh, that’s the difference from me because [...] I’m just local.’

Additionally, Willie met the legal definition of sex trafficking of adult women through requiring a USD 2,000 exit fee and coercive tactics but declared:

Well, there’s a big difference. Prostitution is more localised where you have your set station, but trafficking you move them around the country or to different countries. It could be trafficked from China to LA and all over; that’s a trafficker, like a mule, a middleman, that sends them all around. (Interviewer: What do you participate in, prostitution or trafficking?) Prostitution because I’m not a gateway to another city.

Inaccurate ST views were also evident in the NYC sample, with only a few explicitly mentioning ST, and others confused TSE for pimping. For example, Chicago Blue attributed trafficking to Chinese men. He said, ‘Chinese men be doing that shit. Nah. We don’t do that. Put them in a big truck and keep them in there for slaves and have them selling VCRs. I mean DVD movies and all that. ‘Cause there’s a lot of them running around here right now.’ Mista Warbux never used the term ST. However, he attributed what legally constitutes trafficking to Caribbean and African cultures. He discussed how ‘grandmothers pimped out they daughters’ for rent and paying their bills, noting that the daughters are thirteen or fifteen and going out with men in their 20s and 30s. Mista Warbux felt this was backward and made a point to distinguish himself from this practice:

I always thought it was like, ‘Oh, that’s some ignorant down-South shit’, but it’s more than that. I see this like around the world kind of thing. There’s people that come from Caribbean cultures, people that come from African cultures, they’re selling kids for sex.

While both of these third parties may have qualified as traffickers in accordance with the TVPA at different points in their careers, they view traffickers as a different other, usually foreign-born and part of another culture where TSE is socially acceptable.

Some NYC third parties discussed ‘white slavery’, a term which is commonly used and references the *Mann Act* of 1910. Kelvin was acutely aware that he could face ST charges and discussed the legal problems associated with third-party work.

It’s a hard-ass lifestyle, and the thing about is when your girls get locked up and go to jail, you gotta pay for their lawyer, you gotta bail them out ‘cause you can’t let them sit in jail. [...] Sometimes you gotta pay them lawyer extra for them not to go back to jail. And if I got busted, I’d gotten life ‘cause it’s called ‘white slavery’.

Kelvin used the racially charged term ‘white slavery’, indicating that this is how he may be interpreted as an African American man who, on the surface, fulfils the public’s imagination of the new global outlaw, Black sex traffickers.

Problematic Oblivious Sex Traffickers

When boys are introduced to pimping through family mentoring, it sometimes involves TSE. In the Chicago study, Trey, a twenty-nine-year-old third party who used physical force and took 75 per cent of the earnings, began pimping at fifteen through his uncle’s mentoring. He had sex and fell in love with a twenty-four-year-old sex worker when he was fifteen. Trey stated: ‘I love her; if somebody hurts her, it kinda hurts. [...] If somebody hurts her, I would have to get rid of ‘em ‘cause she’s been around me ten-twelve years, plus she does whatever I ask her.’ A 2020 report by Shared Hope International discussed how many sex traffickers endured childhood victimisation, abuse, and TSE from their families;²⁵ however, this case raises additional vulnerabilities: family socialisation and adult sex workers who mentor and have intimate relationships with young boys.

Further highlighting the duress of family socialisation, John, now eighteen, began pimping at fifteen due to his father’s role-modelling, and they initially had teenage workers. However, he now only managed 19-22-year-olds. His mother fled with his younger siblings due to his father’s violence. John described his entry: ‘It all branched through him. If I’ve never seen my father do it, I probably would’ve never branched onto this. [...] I mean, of course, I know it’s wrong, but it makes us money, and it helps us eat; so, I have no wrong doing it.’

Some drivers illustrated unawareness that their actions violated the TVPA. A twenty-four-year-old driver, who started driving at sixteen for a family member, admitted they had some sex workers who were seventeen years old, which is defined as minors in the TVPA and Illinois sex trafficking law. Trevor, who was in a wheelchair, also drove girls to and from convention centres that a madam would bring up from Atlanta for four years and noted that the girls kept getting younger. He eventually quit because he obtained a legal job and did not want to be involved when it appeared that the girls were distressed. He stated, ‘So I feel like I rather to go to jail for something, drug trafficking, than prostitution.’

²⁵ C Raino *et al.*, *Responding to Sex Trafficking: Victim-offender intersectionality, A guide for criminal justice stakeholders*, Shared Hope International, 2020, retrieved 9 August 2021, https://sharedhope.org/wp-content/uploads/2020/01/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL.pdf.

New York City Study: Young friend groups and trafficking for sexual exploitation

Participants often started work with people they met in high school hallways or the neighbourhood. Debonir began when he was seventeen, and his first sex worker was in her 20s and initiated him into the sex trade. He said, ‘When you grow up, your mind is so spongy, you only seventeen, sixteen years old, and it grabs you and sometimes really hooks you.’ In many accounts, the beginning involved scenarios where they were underage or barely 18 themselves, with sex workers of similar ages. Typically, these juveniles banded together to survive. Tyrone discussed his entrance at seventeen: ‘One of my friends she was desperate for money at the time and I was working, and I knew people around here. [...] We was both desperate.’ Survival sex and third-party work were common in this sample; many struggled financially and were already friends.

The majority of these cases were based on mutual agreement. Steve went to high school with his first sex worker, and she said to him, ‘I’m trying to get some money.’ Steve said ‘I was like, all right, that’s perfect. Ha. Then from there, she got friends. [...] We got more girls, and our business grew.’

Sometimes the friend suggested the arrangement. For instance, Terrance started at 18, and he was working at the airport. He did not make enough money to pay bills. Terrance’s friend came over and said, ‘What do you want me to do? How can I help? How can we work together as a team?’ At the time, she was seventeen, and this qualified as ST in NY. In most other states, scenarios similar to this would render the third party subject to lengthy ST charges.

Another common scenario in this age group are boyfriends and girlfriends who venture into the commercial sex market. For example, Java started facilitating sex work for a girlfriend. They were both minors, but he turned eighteen. He described their financial situation as brutal; however, similar to other teenagers, they bought designer clothes. He said, ‘I’m still with her. I love her. Gonna have kids with her. She is the love of my life.’ Sometimes these dyads would also fall into ST because they used romance as a ruse. They spoke about what they called ‘swindling’ girls or using coercion or fraud to entice women into sex work in unsavoury ways. They chose girls who they thought were sexually promiscuous, referring to them as ‘slides’, ‘smuts’, ‘freaks’, or ‘hoes’. For instance, Peanut began third-party work at fourteen.

I met her in school my freshman year, [...] but I didn’t want to be in a relationship with her because I felt that all she wanted was sex from me. So it started like that. She came over to my house a couple of times; she was [...] diggin’ a couple of my friends, I told her my friends is feelin’ [liking] you, do what you do with them. She didn’t know I was getting paid for it when she first started. I told her a month into it.

Similarly, Wiley, who started at sixteen, stated, 'I just swindling 'em with words, ... calling 'em baby and stuff they like to hear. Telling 'em I love you when I really don't.' Instead of adults cajoling juveniles into sex work, the conversations were more often between similarly aged teens (*contra* prevailing, official pimp narratives).

Contrasting the Most Serious Forms of Trafficking for Sexual Exploitation

Ten Chicago pimps met the conditions for most severe forms of ST cases involving possessive ownership where workers were sold or bought, paid exit fees, and were subjected to physical force and psychological manipulation. For example, George explained when he used physical force:

When all else failed ..., then you have to let the other ones know, that it's not a game with you. I mean, I will get you. [...] You gonna get with me, then do it my way, or it's the highway. Or I'll sell you to another pimp. (Interviewer: Right, how much did you ever sell one?) Yeab, I had a couple that just really weren't working for me, so I get anywhere from like ten to fifteen thousand.

In the NYC sample, there were similarly severe cases. For instance, Sonny targeted runaways at Port Authority. He brought them to the 'Money House' in the Bronx. Once they arrived and began 'partying', Sonny and his friends subjected them to physical, psychological, and sexual assault. After a short time, they took them out the local stroll in Hunt's Point and trafficked them. He was one of the few in the sample who openly identified as a guerrilla pimp, one who regularly uses physical force. This type of TSE is more severe and harmful than the problematic cases involving teenagers working together, drivers, or teenagers mentored through family members and experiencing neglect or childhood sexual victimisation. Treating these cases as the same crime creates disparities and raises questions about justice.

Conclusion

Human trafficking scholars have discussed the focus on 'low hanging fruit' in human trafficking (HT) prosecutions. For example, Goździak questioned whether commercial sexual exploitation of children should even be subsumed under the HT category.²⁶ Farrell and colleagues have documented the multiple reasons for

²⁶ See, for example: E M Goździak, 'Low Hanging Fruit: How domestic minor sex trafficking erased foreign-born victims of child trafficking from anti-trafficking efforts in the United States', *Journal of Human Trafficking*, vol. 6, issue 2, 2020, pp. 226–233, <https://doi.org/10.1080/23322705.2020.1691821>.

the continuing low numbers of trafficking prosecutions at the state level in the US and the even lower numbers of successful convictions.²⁷

Many third parties qualified as traffickers in our studies are ‘low hanging fruit’: juveniles and young adults engaged in survival sex; teenage boys socialised into pimping by their family members or in sexually and emotionally intimate relationships with adult sex workers; or drivers who simply transport and protect sex workers. All could be convicted and sentenced to 15 years to life, despite a lack of knowledge that they were pandering, let alone trafficking.

Considering the high numbers of runaway and disenfranchised teenagers who engage in survival sex and third-party facilitation,²⁸ we recommend that younger third parties be spared from the lengthiest sentences. States, following New York’s example, should increase the age to qualify as a trafficker to twenty-one years old, especially given our knowledge of the typical scenarios among young people. Other scenarios where TVPA sanctions might be too harsh include men who entered through family socialisation and were victims of child sexual abuse. Additionally, states should consider differentiating drivers and allowing for different legal charges when drivers are not using force, coercion, or fraud when transporting adult sex workers. Legal code revisions need to reflect the degrees of involvement and mitigating circumstances.

Awareness campaigns are needed to inform the public, including those who might become involved in the illicit sex trade, about how sex trafficking is legally defined, the potential prison terms, and the range of persons labelled as sex traffickers. HT funds are spent depicting trafficking victims and raising support for the anti-trafficking movement²⁹ with little focus on educating or reaching would-be traffickers or potential jurors. Warning messages could be effective, especially on social media and platforms where sex is commonly sold. These could be especially effective for young people who may be less aware of the legal ramifications of their actions. These types of awareness campaigns would not necessarily deter all would-be traffickers, but they could at least alert those oblivious third parties at risk.

²⁷ A Farrell, C Owens, M DeLateur, and S Fahy ‘The Prosecution of State-Level Human Trafficking Cases in the United States’, *Anti-Trafficking Review*, issue 6, 2016, pp. 48–70, <https://doi.org/10.14197/atr.20121664>.

²⁸ R Curtis *et al.*, *The Commercial Sexual Exploitation of Children in New York City*, Center for Court Innovation, New York, 2008; M L Dank *et al.*

²⁹ T G Blanchette, A P de Silva, and A R Bento, ‘The Myth of Maria and the Imagining of Sexual Trafficking in Brazil’, *Dialectical Anthropology*, issue 37, no. 2, 2013, pp. 195–227, <https://doi.org/10.1007/s10624-013-9296-z>.

It is even more pertinent to have other vital dialogues about lack of opportunities, insufficient access to resources, and the reasons why youth engage in survival sex and its facilitation. Such dialogues and awareness might stimulate future research to assess whether the public supports the widening of the sex trafficker net or prefers resources to be directed toward prevention efforts that address societal barriers contributing to the involvement in the illicit sex trade.

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Sex Traffickers: Friend or foe?

Haazreena Begum Abdul Hamid

Abstract

This article addresses the knowledge gap surrounding human traffickers in Malaysia. Based on qualitative interviews with women identified as victims of trafficking, it explores the women's perception of their traffickers and their migration experience. The article asserts that the term 'trafficker' is complex and misunderstood by scholars, states, and state officials; and that trafficked persons may not necessarily detest their traffickers or even regard them as having caused them harm. Instead, traffickers are sometimes considered 'helpers' or people who provide work opportunities and a prospect of a better life. However, this form of relationship is considered exploitative by Malaysian legislation.

Keywords: helpers, sex traffickers, sex work, traffickers, trafficking, victims of trafficking

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Introduction

Human traffickers are commonly depicted in the media and popular culture as violent and brutal men.¹ The trafficker is controlling, manipulative, cruel, and can subjugate an individual or force them into sex work.² Trafficked persons, on

¹ C N Baker, 'An Intersectional Analysis of Sex Trafficking Films', *Meridians*, vol. 12, issue 1, 2014, pp. 208–226, <https://doi.org/10.2979/meridians.12.1.208>.

² M Wilson and E O'Brien, 'Constructing the Ideal Victim in the United States of America's Annual Trafficking in Persons Reports', *Crime, Law and Social Change*, vol. 65, no. 1-2, 2016, pp. 29-45, <https://doi.org/10.1007/s10611-015-9600-8>.

the other hand, are portrayed as weak, naïve, and defenceless.³ This is the case in Malaysia too, where the media regularly portray trafficked women as weak, passive, scared, powerless, and defenceless, and traffickers as members of a gang or organised crime group. These victim-offender stereotypes shape discourses around sex work and trafficking in Southeast Asia today.

The ‘ideal’ victims of trafficking for sexual exploitation are commonly portrayed as innocent young girls from foreign countries who are manipulated, lied to, kidnapped, and forced into sexual exploitation.⁴ Stereotypes of trafficking victims are created by the state to satisfy societal beliefs that sex work can only be forced upon women, or obtained through coercion. However, studies have shown that globalisation, migration policies, unemployment, low wages, gender inequalities, and poverty are the main push factors that drive women to migrate and engage in sex work.⁵ Typically, migration occurs from rural areas to cities and from less developed to more developed countries.⁶

Malaysia is one of the main destination countries for migrants from Southeast Asia, South Asia, and the Middle East because of its economic opportunities, relative political stability, and strong national security. The country has high reliance on migrant workers in 3D (dangerous, dirty, and difficult) jobs in construction, plantations, automotive maintenance, manufacturing, cleaning services, and others. For female migrants, push factors such as poverty, the gender pay gap, and the lack of economic opportunities in countries of origin are among the main reasons for migrating to Malaysia. UN Women estimates that women accounted for 37.35 per cent of the total number of migrants in Malaysia in 2015, with most originating from Southeast Asian countries such as Indonesia, Thailand, Vietnam, Cambodia, and the Philippines.⁷

The influx of women from Southeast Asian countries is mainly attributed to the higher wages and better quality of life. In 2015, 40 per cent of Indonesians lived below the international poverty line (USD 1.90 per day), and the majority were

³ Baker.

⁴ S Rodríguez-López, ‘(De)Constructing Stereotypes: Media representations, social perceptions, and legal responses to human trafficking’, *Journal of Human Trafficking*, vol. 4, issue 1, 2018, pp. 61–72, <https://doi.org/10.1080/23322705.2018.1423447>.

⁵ J A Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’, *The American Journal of International Law*, vol. 108, issue 4, 2014, pp. 609–649, <https://doi.org/10.5305/amerjintelaw.108.4.0609>.

⁶ V Samarasinghe, *Female Sex Trafficking in Asia: The Resiliency of Patriarchy in a Changing World*, Routledge, New York, 2008.

⁷ S Jha *et al.*, *Women Migrant Workers in The Asean Economic Community*, UN Women, Bangkok, 2017.

women living in rural areas.⁸ Poverty and inequality in Indonesia are associated with both a lack of well-paying jobs and the low value of the Indonesian currency.⁹ Factory workers in the manufacturing industry can only earn a monthly average of IDR 942,506.80 (USD 62.51),¹⁰ compared to the minimum wage in Malaysia, which is USD 270 per month (since 1 January 2019).¹¹ Those in the sex trade are able to earn up to MYR 20,000 (USD 6,000) a month.¹² The International Labour Organization states that sex work is usually better paid than most of the options available to young, often uneducated women.¹³ For single mothers with children, it is often a more flexible, remunerative, and less time-consuming option than factory or service work. Thus, heads of household in Indonesia have become aware of the income potential in overseas sex work and encourage their daughters to migrate to Malaysia for sex work.¹⁴

Similarly, in Thailand, daughters are expected to contribute financially to support their parents, and sex work provides relatively high economic rewards. Empower Foundation reports that sex workers in massage parlours could earn an average of USD 2,000 per month (including tips), and often send money back home to their families in rural areas.¹⁵ In Malaysia, newspaper reports suggest that sex workers could earn between MYR 450 (USD 106) for 45 minutes to MYR 7,000 (USD 1,653) per night. The worker would be entitled to 60 per cent of the amount while the remaining 40 per cent would be paid to the employer.¹⁶ Thus, women become attracted to the lucrative remuneration sex work offers to fulfil cultural

⁸ P P Aji, *Summary of Indonesia's Poverty Analysis*, ADB Papers on Indonesia, Asian Development Bank, Manila, 2015.

⁹ *Ibid.*

¹⁰ N.a., 'Indonesia Average Monthly Wages in Manufacturing', Trading Economics, 2019, retrieved 15 May 2019, <https://tradingeconomics.com/indonesia/wages-in-manufacturing>.

¹¹ *Ibid.* Before 1 January 2019, the minimum wage was MYR 900 (USD 221) in Peninsular Malaysia or an hourly rate of MYR 4.33 (USD 1.06). Foreign workers (other than domestic servants) are also entitled to the minimum wage.

¹² N Koswanage, 'Foreign Prostitutes Rent Malaysian Husbands for Visas', *Reuters*, 23 March 2010, <https://www.reuters.com/article/us-malaysia-prostitutes/foreign-prostitutes-rent-malaysian-husbands-for-visas-idUSTRE62M0MD20100323>.

¹³ N.a., 'Sex Industry Assuming Massive Proportions in Southeast Asia', International Labour Organization (ILO), 19 August 1998, retrieved 16 May 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007994/lang-en/index.htm.

¹⁴ R Elmhirst, 'Labour Politics in Migrant Communities: Ethnicity and women's activism in Tangerang, Indonesia', in R Elmhirst and R Saptari (eds.), *Labour in Southeast Asia: Local processes in a globalized world*, Routledge Curzon, London, 2004.

¹⁵ ILO, 1998.

¹⁶ N H Basri, 'Perangkap Seks Wanita Asing', *Kosmo Online*, 31 March 2018, <https://www.kosmo.com.my/jurnal/perangkap-seks-wanita-asing-1.638432>.

expectations of them as contributors and breadwinners for their families.

In addition to contributing to the household financially, women in the region are expected to maintain the traditional notion of the ‘good dutiful daughter’ or ‘self-sacrificing mother’ through acts of gifting and remittance.¹⁷ They are expected to conform to strict moral codes while still being family breadwinners—an impossible paradox for many women. These circumstances often compel women to migrate within or outside the country for better economic opportunities. However, women are generally less able than men to secure legal migration as they are often unable to meet the administrative demands of receiving states—for instance, where qualifications and skill sets are concerned—which renders them especially vulnerable to irregular migration. Traffickers exploit women in this situation as irregular migrant women are considered low risk, able to generate lucrative profits, and less likely to raise alarm if they are deceived and exploited. Zimmerman and Watts note ‘not all women who have been trafficked are traumatised, consider themselves victims, detest their captors, or wish to escape or go home.’¹⁸ Some may view their traffickers as ordinary individuals who are part of their workforce, and willingly work closely with them to make a living.

In this article, I analyse the accounts of trafficked women provided through qualitative interviews and compare them with existing literature. I demonstrate that women do not always view their traffickers as criminals or abusers but, instead, as helpers who allowed them to migrate and find work to support their families.

In the next section, I outline the context of sex work and human trafficking for sexual exploitation in Malaysia, including the most relevant legislation. Following that, I describe the methodology of my study and the main themes in the study participants’ accounts of their traffickers. Finally, I provide a brief discussion of these findings and a conclusion.

Sex Work, Sexual Exploitation, and Trafficking

While there is no internationally accepted definition, a ‘migrant sex worker’ is generally a person who moves from one place to another, within or across state borders, and who engages in any form of sexual service in exchange for money, food, shelter, or resources. A trafficked sex worker is a person who has been

¹⁷ S Molland, “‘I am helping them’: “Traffickers”, “anti-traffickers” and economies of bad faith’, *The Australian Journal of Anthropology*, vol. 22, issue 2, 2011, pp. 236–254, <https://doi.org/10.1111/j.1757-6547.2011.00135.x>.

¹⁸ C Zimmerman and C Watts, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, World Health Organization, West Sussex, 2003, p. 3.

forced, coerced, or deceived for the purpose of commercial sexual exploitation.¹⁹

Exploitation has different meanings to different individuals but for the purpose of this article is understood as the wrongful use of a person in order to generate income or gratification.²⁰ According to Munro, exploitation also includes a person who is unfairly used, or whose position of vulnerability is taken advantage of in order to under-reward their role within a given transaction.²¹ Therefore, sexual exploitation is ‘an actual or attempted abuse of a position of vulnerability, power, or trust, for sexual purposes, including (but not limited to) profiting monetarily, socially or politically from the sexual exploitation of another.’²²

A trafficker is a person who has committed an offence of trafficking in persons as defined by article 3 of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol). In Malaysia, Section 12 of the *Anti-Trafficking in Persons and Migrant Smuggling Act 2007* (ATIPSOM) criminalises any act of trafficking in persons for the purpose of sexual exploitation, and section 16 treats the consent of trafficked persons as irrelevant.²³ The term trafficker refers to a person who traffics another by way of threat, force, coercion, abduction, fraud, deception, abuse of power, or of a position of a vulnerable individual for the purpose of sexual exploitation (see s.13 ATIPSOM). A trafficking victim is ‘any person who is the victim or object of an act of trafficking in persons’ (s.2 ATIPSOM). This broad definition gives enforcement officers significant discretion, which has led to the misidentification of victims and the conflation of voluntary sex work with trafficking. It also allows for significant conflation of trafficking with offences relating to ‘[e]xploiting any person for the purpose of prostitution’, captured in the Malaysian Penal Code.²⁴ Although there are several provisions available, authorities tend to apply the trafficking legislation as if sex workers were foreigners, arguably in a bid to lift its ranking in the US *Trafficking in Persons Report* (TIP Report). The TIP Report highlights the number of prosecutions and convictions of traffickers that states

¹⁹ W Chapkis, ‘Trafficking, Migration, and the Law: Protecting innocents, punishing immigrants’, *Gender & Society*, vol. 17, issue 6, 2003, pp. 923–937, <https://doi.org/10.1177/0891243203257477>.

²⁰ V E Munro, ‘Exploring Exploitation: Trafficking in sex, work and sex work’, in M Della Giusta and V E Munro (eds.), *Demanding Sex: Critical reflections on the regulation of prostitution*, Ashgate, UK, 2008, pp. 83–98.

²¹ *Ibid.*, p. 85.

²² World Health Organization, *WHO Sexual Exploitation and Abuse Prevention and Response: Policy and procedures*, WHO, 2017, retrieved 9 August 2021, https://www.who.int/about/ethics/sexual-exploitation_abuse-prevention_response_policy.pdf, p. 4.

²³ *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007*, Laws of Malaysia Act 670 (as at 15 April 2016).

²⁴ *Penal Code*, section 372

secure each year to determine if the country has effectively made efforts to combat human trafficking.

In terms of the legality of sex work in Malaysia, section 8 of the *Immigration Act* 1959/63 prohibits a visa or permit to be issued to any foreign sex worker, or those who intend to work in the sex trade.²⁵ Sex work is also illegal and criminalised under the Penal Code.²⁶ Despite prohibitions on sex work, the employment of migrant sex workers continues to flourish. As a result, the United Nations Office on Drugs and Crime and the US TIP Report categorise Malaysia as a destination, transit, and source country for ‘sex trafficking’ in Asia.²⁷

In response to such categorisation, the police have intensified their raids on establishments that are suspected to offer sexual services with the aim of ‘rescuing’ women from the sex trade. Local media reported that 25,086 such raids had been conducted between June 2013 and June 2017. Within that period, 51,594 migrants were arrested for being involved with sex work. The highest number of arrests are of individuals who originated from Vietnam (19,342), Thailand (14,591), China (9,602), Indonesia (3,867) and the Philippines (1,126).²⁸ In contrast, the prosecution and conviction rates of traffickers in Malaysia have been relatively low over the years. In 2020, only 20 individuals were prosecuted and convicted out of 277 investigations conducted, compared against 2,229 ‘victims’ formally identified by the authorities. Conviction rates were also low in 2019, when only 50 individuals were convicted out of 281 investigations conducted (compared to 1,305 formally identified victims).²⁹

Methodology

This article uses a postcolonial feminist approach in the qualitative methods of semi-structured interviews and participant observation. A postcolonial feminist approach demonstrates the diversity of postcolonial subjects’ experiences and

²⁵ *Immigration Act 1959/63*, Laws of Malaysia 155 (1959/63).

²⁶ *Penal Code, Act No. 574 as of 2015*.

²⁷ K Kangaspunta, *et al.*, *Global Report on Trafficking in Persons 2020*, United Nations Office on Drugs and Crime (UNODC), New York, 2020; US Department of State, *Trafficking in Persons Report 2021—Malaysia*, US Department of State, Washington, D.C., June 2021, retrieved 5 July 2021, <https://www.state.gov/reports/2020-trafficking-in-persons-report/malaysia>, pp. 369–373.

²⁸ Basri.

²⁹ US Department of State, 2020.

conditions under which they live.³⁰ Thus, it was important to acknowledge the traditional, patriarchal ideas about women's roles and male privilege in their countries, which are often reinforced through social practices, culture, and religious teachings. I understand these issues well, as I am myself a Malay Muslim woman who originates from and has lived in Malaysia for most of my life. For the greater part of my life, I was taught to believe that men were the superior sex, and that as a woman, I must adhere to patriarchal religious norms. I was also taught in schools and religious classes to prioritise my family's needs over my own. I am accustomed to religious practices, moral codes, and laws among Southeast Asian Muslim women.

To explore the characteristics and behaviour of traffickers, in this article, I analyse interviews I conducted with 29 migrant women who were held in a trafficking shelter in Kuala Lumpur, Malaysia, in 2016. For a person to be admitted to this shelter, a court must issue a protection order according to section 51 of ATIPSOM. In this study, all the women were given an initial 21-day protection order (suspected trafficking victims) and a subsequent 90-day protection order (certified trafficking victims) by the court. The women were categorised by the state as trafficked, and all had their cases pending in courts. Their recruiters, pimps, managers, and employers had been charged with committing trafficking offences under the ATIPSOM.³¹

I conducted the interviews with the women over a period of four weeks (15 April to 15 May 2016) and I had obtained ethics approval from Victoria University of Wellington, New Zealand to conduct this study. The women originated from Vietnam ($n=12$), Thailand ($n=5$), Indonesia ($n=8$), Laos ($n=1$), Myanmar ($n=1$), Bangladesh ($n=1$), and Nigeria ($n=1$). Their ages ranged from 18 to 44 years, and all were 'rescued' by police and immigration officials from massage parlours, brothels, entertainment centres, and private dwellings throughout Peninsular Malaysia. To ensure confidentiality and anonymity, I use pseudonyms for the women, while I refer to the traffickers as 'Boss', 'Captain', *Ibu* (mother), *kakak* (big sister/sister) and *koko* (big brother)—the way the women referred to them.

I interviewed twelve participants in Malay, Indonesian, or English because they could converse in those languages, while the remaining 17, who spoke either Thai or Vietnamese, were interviewed with the use of interpreters. Interpreters were carefully selected to ensure that they could interpret idioms, nuances, and metaphors during the interviews. All three interpreters were women of dual nationality—Vietnamese/Malaysian or Thai/Malaysian—and each had experience

³⁰ R K Mishra, 'Postcolonial Feminism: Looking into within-beyond-to difference', *International Journal of English and Literature*, vol. 4, issue 4, 2013, pp. 129–134.

³¹ Some of these individuals are still at large and have not been arrested.

interpreting Vietnamese or Thai to English and Malay and vice versa in court proceedings. I found them through government agencies and NGOs that assist victims of trafficking.

The purpose of the interviews was to understand the women's experiences of being 'trafficked' and whether they identified as 'victims'. However, for the purpose of this article, only questions relating to traffickers and their relationships with their traffickers will be discussed. The women received a small gift in the form of a pen and notebook after the interview as a gesture of appreciation. I transcribed the interviews using NVivo and coded and categorised the data into themes and sub-themes.³² The codes were framed around meanings of choice, coercion, deception, exploitation, trafficking, traffickers, and harms. I retrieved all the text coded with the same label to understand women's migration experience. After retrieving the text codes, I proceeded to analyse the data. Coffey and Atkinson recommend three steps in analysing the codes: 'noticing relevant phenomena, collecting examples of those phenomena, and analysing those phenomena in order to find commonalities.'³³ I used this method to examine the perspectives of different research participants while highlighting the similarities and differences in their experiences. I divided the participants into two categories: those who were deceived or coerced into migrating to Malaysia to work in the sex trade, and those who made their own choices and were willing to become sex workers.

Friend Not Foe

The recruitment process normally involves the initial invitation to migrate by a friend, acquaintance, partner, or family member ('recruiters'). Some of the women in my study arranged their own passports and travel tickets, while others were assisted by friends, neighbours, relatives, or work agents before travel. Twenty-seven out of the 29 participants entered Malaysia using a valid passport and were given a one-month 'social visit pass' or a 'tourist visa', which do not allow them to work. All twenty-seven were unaware of these restrictions and were not informed by their recruiters of the risk they faced if they engaged in sex work or any other gainful employment in Malaysia. The remaining two women entered Malaysia using different channels. One participant, Mon, had a student visa, while another, Fon, did not have a passport and entered Malaysia through the jungle bordering Thailand and Malaysia, guided by a friend of her trafficker.

³² V Braun and V Clarke, 'Using Thematic Analysis in Psychology', *Qualitative Research in Psychology*, vol. 3, issue 2, 2006, pp. 77–101, <https://doi.org/10.1191/1478088706qp0630a>.

³³ A Coffey and P Atkinson, *Making Sense of Qualitative Data. Complimentary research strategies*, Sage, Thousand Oaks, 1996.

Twenty-eight women were recruited in their hometowns by friends or acquaintances (14), boyfriends (2), sisters (2), neighbours (4), cousins (1), work agents (3) and social media acquaintances (2). Most recruiters were from their hometown or were residing in the same country, but those who recruited the women through social media claimed to be working in Malaysia.

Thirteen of the women stated that they voluntarily migrated to Malaysia to engage in sex work, and did not indicate any form of deceit, threat, coercion, or harm during migration or at work; fourteen women shared that they had been coerced or deceived and subjected to exploitative working conditions once they started working. This was established through questions that asked the women whether they voluntarily migrated and wanted to engage in sex work. The remaining two participants (Da and Mon) were trafficked for different purposes: Da from Vietnam was trafficked for the purpose of domestic labour. She worked as a cleaner and cook at a massage parlour and was not involved in sex work. Mon was trafficked by an agent who promised to enrol her in a nursing programme in a private college in Malaysia. According to Mon, her agent charged her exorbitant fees in exchange for a student visa and placement at a Malaysian college. She travelled from Bangladesh using a student visa but failed to secure a place for the programme. Mon was arrested at a brothel while she was visiting a friend who worked there, and Da was arrested together with the sex workers at the massage parlour.³⁴

In some cases, debt bondage became a method of control, and the participants had no choice but to engage in sex work. In other cases, participants cooperated with their traffickers because they were more concerned about sending money back home to their families. For example, Fon said:

*My Boss allows me to go out during my off days, but I didn't run away from the brothel because I do not have a passport and I am scared of being arrested. I needed to work to pay my debt and support my family.*³⁵

In fact, poverty, irregular immigration status in Malaysia, and dependency on their traffickers made all the women vulnerable to exploitation; they also had very limited knowledge of their rights, employment status, and what assistance they might be able to access in Malaysia. However, the women did not seem perturbed with such factors when they were allowed to keep their passports, had freedom of movement, and had some control over their working conditions. However, the

³⁴ Women found working in establishments that provide sexual services are generally categorised by police as sex workers even if they were not engaged in sex work. Both Mon and Da were categorised as trafficking victims by the police because they were arrested at a massage parlour and a brothel as sex workers.

³⁵ Interview, Fon, 30 April 2016.

women were officially viewed as needing to be ‘rescued’ because they worked in massage parlours, brothels, or nightclubs. For example, Mickey from Laos said:

I used to earn about MYR 400 [USD 94] to MYR 500 [USD 118] per week working as a masseuse and could send remittance money to my family. I was allowed to keep my passport and move about freely. I was ‘living my life’ and was happy working in the massage parlour until I was rescued by the police. The Captain was kind to me and buys me food all the time. He let me do what I want. I don’t understand why they [police] needed to rescue me from my workplace.³⁶

Kim had a similar story. When asked if she felt victimised in any way, or if she wanted to be rescued, Kim laughed and said:

I do massage and sex work and the massage centre pays me well. I don’t want to be rescued. I don’t know who my Boss is. I only spoke to one Chinese man whom I called Captain. When the police raided my workplace, I gave them my passport, but they still arrested me. They also arrested Captain and my other friends.³⁷

For Putri, migrating to Singapore and later to Malaysia was the only way to earn enough money to support her family in Indonesia. When asked if she was trafficked, she replied:

I don’t have a boss but my kakak (a friend she works with and refers to as her ‘big sister’) has done this job for a long time and recommended me to some of her customers. The customers will call my sister and she will make arrangements for me to meet the customer. I used to get SGD 90 [USD 66] per shot. That was good money.³⁸

In this instance, it was clear that her friend whom she referred to as her ‘big sister’ was also connecting her with the clients, but there was no indication that she was forced to do the job or had to pay any amount of money to her friend. When asked about her migration to Malaysia, Putri said:

I worked in Johor, in a hotel... There’s a Chinese man who would help find customers for me. I could earn MYR 80 [USD 19] for a single shot. The Boss [Chinese man] would deduct the rental for the room before giving me my cut. For example...if I get 5 customers, I will get about MYR 300 [USD 71] after deducting MYR 100 [USD 24] for the room rent. Lucky he can

³⁶ Interview, Mickey, 30 April 2016.

³⁷ Interview, Kim, 19 April 2016.

³⁸ Interview, Putri, 20 April 2016.

*find customers for me, otherwise, I don't know how to find any.*³⁹

Here, Putri used the term 'help' as she regards her Boss as someone who is helping her to earn money by soliciting for sex. When asked if she was being forced to do sex work, she replied:

*No, I consider myself a freelance sex worker although I have a Boss who finds customers for me. When I was working in Kuala Lumpur, I could get between 7 to 10 customers per day. I think the customer pays MYR 148 [USD 35] for my services and MYR 50 [USD 12] will be deducted by the Captain for each customer I get. I am not sure if the deduction is for my lodging in the massage parlour or to pay the police.*⁴⁰

When asked about her payment and if she was under any debt bondage, she said:

*No, I am not. The customer pays to the Captain, I just write the days that I work and the times. The Captain is nice to me, and he works at the counter. I am allowed to borrow money. For example, if I have worked for a week, I am allowed to remit money to my family, otherwise he will give me my salary once a week or when I want to return home.*⁴¹

When asked about her Boss at her Kuala Lumpur workplace, she said:

*I do not know who the Boss is as the Captain speaks to him on the phone. I do not need to work when I have my period and they allow me to go back to Batam, Indonesia during that time. I could also keep my own passport.*⁴²

Putri identifies as a voluntary freelance sex worker and said she was in complete control of her life and able to leave her workplace and job anytime she wanted to. In fact, neither Putri, nor Fon, Mickey, or Kim indicated that they were victimised. They did not report having suffered any form of coercion, force, fraud, deceit, or exploitation. However, they were still categorised as victims of trafficking because of the nature of their work, which is presumed to include sexual intimacy with customers. Since trafficked women's consent is irrelevant under law (see s.16 ATIPSOM), enforcement officers tend to regard all sex workers as potential trafficking victims and carry out massive raid operations to 'rescue' them from their workplaces. Given this, persons whom the women regard as 'Bosses' will likely be charged with trafficking them for the purpose of sexual exploitation.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

The Relationship with the Trafficker

Out of the 29 women I interviewed, 21 narrated no negative feelings towards their traffickers, while the remaining eight described some harmful experiences which made them fearful of their traffickers. Despite the differences in experience and perceptions, the fact that most of the women are foreigners, dependant on their traffickers for work and income, and are socially and linguistically isolated makes them situationally vulnerable and easy to manipulate. This situational vulnerability together with pre-existing vulnerabilities such as poverty, unemployment, and family problems in their home countries makes it easier for traffickers to control and subjugate women.⁴³

The Trafficking Protocol definition requires an ‘act’, via a set of ‘means’ for the purpose of exploitation. Means such as force or deceit were not used against most of these women, but it is likely that traffickers abused their position of vulnerability to traffic them. To prove trafficking by means of ‘abuse of a position of vulnerability’, there should be credible evidence that establishes the existence of a position of vulnerability on the part of the victim, and an abuse of that position by the trafficker for the purpose of exploiting the victim.⁴⁴ Although the study did not interview traffickers, the accounts of the women demonstrate the relationship between the women and their traffickers, and whether they identify their traffickers as dangerous or harmful individuals. For example, Tammi said:

My neighbour in Indonesia offered me a job as a waitress in a restaurant in Klang. I needed the money because my family was poor. However, I was shocked to discover that I had to work as a prostitute when I arrived in Malaysia. My bosses were Ab Kong and Ibu. Their house was used as a brothel. Ibu is Ab Kong's girlfriend. Ab Kong is nice and did not force me to work but Ibu was very strict. I had to work from 10 am to 1 am next morning every day. I wanted to run away on the first day I arrived in their house, but Ibu kept the door and iron door grill locked at all times. Ibu was unsympathetic with me even though I was bleeding from my vagina and anus after having intercourse with multiple clients. She keeps reminding me that I needed to work to settle my debts amounting to MYR 5,000 [USD 1,179]. I need to serve at least 75 customers before I am allowed to return home. I was supposed to get MYR 50 [USD 12] per customer, but I was not paid a single cent while I was working. However, she [Ibu] is okay with food and does not restrict me from eating anything I want. She also made sure that I applied a soothing

⁴³ A T Gallagher and M McAdam, *Issue Paper: Abuse of a position of vulnerability and other ‘means’ within the definition of trafficking in persons*, UNODC, 2013, https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf.

⁴⁴ *Ibid.*

*balm on my vagina before and after having intercourse to reduce the pain.*⁴⁵

Mei-Mei from Indonesia, however, revered her trafficker and suspected that her friend reported them to the police. She said:

*I was offered to work in Malaysia by a friend who knows a work agent in Jakarta, Indonesia. The agent is a married couple, but I liaised more with the kakak [the woman whom she calls big sister]. I was told that I was going to work in a massage parlour, but I only learnt that I had to engage in sex work when I arrived in Malaysia. I was told that I would receive MYR 60 [USD 14] per customer, but I only received MYR 30 [USD 7] per customer. It's okay as long as I get paid. Koko [the trafficker whom she calls big brother] is a nice guy. He is my agent here. I can reject clients if I don't feel comfortable with them, and I can ask to be transferred to another outlet if I am not happy with my workplace. Koko is married and has a son. He takes me to stay in his house when I have my period.*⁴⁶

When asked about what she does in Koko's home, she said:

*Well, like any normal family, I cook, clean, and watch TV. Sometimes I watch TV together with Koko's family and I like playing with his little son. I can't go out on my own because Koko is afraid that the police will arrest me because I don't have a work permit. I think it is my friend Lala who reported us to the police, otherwise I could still have continued working. Koko is very understanding. I can reject customers if I want, and he takes me to the clinic whenever I am sick. I can also ask to be transferred to another outlet if I don't have enough customers.*⁴⁷

Nisa from Indonesia also describes one of her traffickers as being soft-spoken and kind. She said:

*I didn't like Ibu [the female trafficker], but her boyfriend was kind and soft-spoken. He would take me out to the shopping mall and buy me cosmetics and clothes.*⁴⁸

⁴⁵ Interview, Tammi, 9 May 2016.

⁴⁶ Interview, Mei-Mei, 11 May 2016.

⁴⁷ *Ibid.*

⁴⁸ Interview, Nisa, 9 May 2016.

Tang Mo from Thailand only had positive things to say about her employer too:

I used to work at a restaurant in Sg Petani and I only got paid MYR 1,000 [USD 236] per month. It was too little. I was offered to work at a club by a Thai lady who happens to be my Boss's wife. She is my friend and I treat her like my sister. I was happy working at this club as my salary was MYR 2,500 [USD 590] per month. My Boss did not deduct anything. He was really nice. He doesn't disturb me or order me around. My Boss is a Chinese Malaysian, but he can speak Thai well. It is up to us if we want to work or not. If we do not want to work, he will not scold us. I could keep my passport, but I do not have a work permit. I used to commute to the Malaysian-Thai border every month to get my tourist visa renewed. I heard that he got beaten up by someone. I hope he is okay.⁴⁹

In the case of Emi, she felt thankful to her friend for introducing her to the job in Malaysia. She said:

I am a divorcee and have three children back in Indonesia who are being looked after by my neighbour. I was working at Indomaret [Indonesian retail convenience store] and I could only earn MYR 300 [USD 71] per month, which is too little and could not cover my expenses. A friend of mine had a difficult life like me but managed to improve her financial status after working in Malaysia. She offered me to work in Malaysia and paid for my travel expenses. I arrived in Malaysia and worked at a massage parlour where I could earn MYR 45 [USD 11] per customer.⁵⁰

When asked if she had to repay her friend, she quickly said:

No! We are best of friends! She is like my kakak. We had a hard life together way back, very hard life. I have to accept this [present condition] as my fate. My best friend never asked me to repay her expenses. She was just trying to help me get a job and earn good money. It doesn't matter that she does not work at the massage parlour anymore.⁵¹

When asked about her employers, she replied:

The Boss is quite a nice man. He is a Chinese man, and there is also a woman. They are husband and wife and own the massage parlour. They allow me to rest when I am tired. I have no complaints about them.⁵²

⁴⁹ Interview, Tang Mo, 11 May 2016.

⁵⁰ Interview, Emi, 19 April 2016.

⁵¹ *Ibid.*

⁵² *Ibid.*

The above examples demonstrate how women felt about their ‘traffickers’. Their accounts range from someone who is kind and helpful, to someone who is strict, possessive, and unsympathetic. Even the traffickers who were described as unsympathetic, however, were still seen as having some good values and characteristics. Many described their traffickers as ‘helpers’ rather than criminals. In any case, the women’s accounts challenged the stereotypical perception of an ‘ideal’ trafficker by showcasing the variety in traffickers’ behaviour and demeanour.

Conclusion

This article contributes to the limited, but growing, literature, which shows how people convicted of trafficking or prosecuted as traffickers can play the role of ‘helpers’ to women who migrate in search of a better life. Most of the women in the study viewed their traffickers as ordinary individuals who were part of their professional network and assessed them in accordance with their behaviours. Some of them mentioned acts of kindness and generosity even though they may have suffered some harm too.⁵³ Many considered that their traffickers provided them with access to a type of work that generates far more income than other waged labour available to them in their home country. The complexities, costs, and bureaucracy involved in regular migration and work in another country mean that traffickers may be the only people who can assist poor people trying to improve their lives by working abroad.

Further, studies have shown that sex workers often reside on the premises they work in, or in some cases, adjacent to the trafficker’s family home. Here, traffickers and sex workers live together over short and sometimes extended periods of time. At times, sex workers take part in household activities which extend beyond their work duties, such as cooking, cleaning, and watching television together.⁵⁴ A ‘fictive family ethic’ is therefore created and reinforced in the women’s daily lives.⁵⁵ In my research too, many of the women lived in their workplace and had formed a type of attachment and familial relationship with their traffickers whom they normally referred to as *koko* (brother), *kakak* (big sister/sister) or *ibu* (mother). Therefore, they resented attempts by the authorities to prosecute their traffickers. Even in instances where women had agreed to a certain amount of deduction of their fee to be paid to their traffickers, they described these deductions as consensual, conscious, and voluntary. Some also saw their debt simply as an

⁵³ In the case of Tammi and Nisa.

⁵⁴ As in the case of Mei. See also: Molland.

⁵⁵ Molland, p. 243.

upfront payment that had to be repaid.⁵⁶ After all, many of them might not have been able to afford their travel fare to Malaysia.

Despite the Penal Code containing a range of provisions against ‘exploiting any person for the purpose of prostitution’ (s. 372 (1) and (2)), law enforcers tend to charge actors as traffickers, or as responsible for trafficking-related activities under ATIPSOM, particularly when such activities involve foreign women. This can be attributed to three factors. First, the stereotypes that position trafficking victims as foreign women who were forced or coerced to migrate and engage in the sex trade; second, the approach towards sex work in Malaysia that positions sex workers as victims; and third, the political pressure on the government due to the poor ranking in the US *Trafficking in Persons Report*,⁵⁷ which consistently places Malaysia in Tier 2, Tier 2 Watch List, or Tier 3. As a result, voluntary sex workers are transformed into ‘victims of trafficking’, and pimps and employers are transformed into ‘traffickers’ through state laws and policies.

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⁵⁶ For example, Tammi.

⁵⁷ J Schönhöfer, ‘Political Determinants of Efforts to Protect Victims of Human Trafficking’, *Crime, Law and Social Change*, vol. 67, issue 2, 2017, pp. 153–185, <https://doi.org/10.1007/s10611-016-9643-5>.

Traffickers' Use of Substances to Recruit and Control Victims of Domestic Trafficking for Sexual Exploitation in the American Midwest

Erica Koegler, Claire Wood, Lilly Bahlinger, and Sharon D. Johnson

Abstract

This paper describes how traffickers use substances to recruit and control victims of domestic trafficking for sexual exploitation, as reported by service providers working with trafficking survivors in the American Midwest. This data was derived from interviews with 15 service providers in a major metropolitan area. Findings revealed consistencies with previous literature and new insights into the trafficker-substance use dynamic. Traffickers' use of substances with victims was pervasive when trafficking was for the purpose of sex but not other labour. There were several examples of how traffickers use substances for victim exploitation and recruitment. These include using substances to ensure a victim is in a euphoric mood prior to sex work, to reward victim sex work productivity, and to initiate withdrawal effects to demonstrate the traffickers' supreme control. Novel findings include how and why traffickers might deny victim use of substances and how they might give substances to victims without the victim's knowledge. Implications for how these findings can be utilised for victim treatment and for future research are discussed.

Keywords: substance use, human trafficking, perpetrators, American Midwest

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Introduction

There is limited evidence documenting how traffickers operate, what their motives are, and how they recruit and control victims. Specifically, how traffickers use substances has not been the focus of much prior research. The handful of

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studies that focused in part on this potential relationship identified substances as tools used by traffickers to recruit, control, or further enmesh victims.¹ Illicit activities, including the selling, smuggling, and production of drugs, sometimes via gang activity, is a prominent typology of trafficking for sex and other labour.² Furthermore, criminal justice and prosecutorial research on the intersection of human trafficking and drug-related charges is mixed. Organised crime and gangs engaging in both trafficking of drugs and people have been linked in the United States (US).³ Prosecutors may find human trafficking cases too difficult to achieve conviction and thus convict human traffickers of lesser charges, such as drug-related offenses.⁴ A longitudinal review of online sources identified extensive overlap of trafficking and drug charges; 28 per cent of traffickers had also been charged with possession of drugs and 12 per cent had been charged with distribution of drugs.⁵ However, another study, focused on traffickers across labour sectors in four US locations, found that traffickers frequently engaged in other criminal offences such as the use of weapons, sexual abuse, smuggling, fraud, and attempted murder, but only rarely with drugs or drug trafficking.⁶ Farrell *et al.* also found that only 2 per cent of the alternate state charges prosecutors used against suspected human traffickers were drug-related charges.⁷ To address this gap and seeming discrepancy in the research literature, we examined how substances are used by human traffickers.

Early work examining traffickers identified four trafficker typologies, which were divided by labour and sex trafficking: 1) organised labour exploitation for

¹ E Veldhuizen-Ochodničanová, E L Jeglic, and I Boskovic, ‘Separate Routes, Similar Crimes? Conceptualising differences between domestic and international sex traffickers in the United States’, *International Journal of Law, Crime and Justice*, vol. 62, 2020, 100395, <https://doi.org/10.1016/j.ijlcrj.2020.100395>; B Anthony, *On-Ramps, Intersections and Exit Routes: A roadmap for systems and industries to prevent and disrupt human trafficking*, Polaris, 2018.

² Anthony.

³ L Shelley, ‘The Relationship of Drug and Human Trafficking: A global perspective’, *European Journal on Criminal Policy and Research*, vol. 18, no. 3, 2012, pp. 241–253, <https://doi.org/10.1007/s10610-012-9175-1>.

⁴ A Farrell, M J DeLateur, C Owens, and S Fahy, ‘The Prosecution of State-Level Human Trafficking Cases in the United States’, *Anti-Trafficking Review*, issue 6, 2016, pp. 48–70, <https://doi.org/10.14197/atr.20121664>.

⁵ D Roe-Sepowitz, ‘A Six-Year Analysis of Sex Traffickers of Minors: Exploring characteristics and sex trafficking patterns’, *Journal of Human Behavior in the Social Environment*, vol. 29, issue 5, 2019, pp. 608–629, <https://doi.org/10.1080/10911359.2019.1575315>.

⁶ C Owen, *et al.*, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, Urban Institute, Washington, DC, 2014.

⁷ Farrell *et al.*

profit; 2) family-based domestic servitude; 3) sex trafficking of US citizens; and 4) sex trafficking of foreign-born victims.⁸ Traffickers' use of substances was discussed in two of these typologies: organised labour exploitation for profit and sex trafficking of US citizens. Traffickers may take advantage of US victims' vulnerabilities, such as an existing substance use disorder (SUD), or they may facilitate drug addiction in domestic or foreign-born victims to coerce labour or sex. Further work expanded knowledge of two of these trafficker typologies by statistically examining distinctions between traffickers in 73 cases of domestic and 41 cases of international trafficking for sex in the US. Traffickers who exploited domestic victims were significantly more likely to, a) recruit women who were already addicted to drugs, and b) use dependence on drugs as a tool to control or enmesh victims.⁹ In other research classifying types of traffickers of women for sex, 23% (n=5) of the primary traffickers were drug dealers.¹⁰ Traffickers may strongly encourage or even force a survivor to use some form of substance in order to prolong their exploitation.¹¹ In a 2013 case, *US vs. Fields*, a convicted trafficker had not only supplied prescription pills to young women he deceptively recruited, but he intentionally increased victim dependency on the substances to use fear of withdrawal symptoms as a coercive mechanism for victims to earn money for him by selling sex.¹²

Existing research on how traffickers have used substances has largely focused on minors exploited for sex, or on unclear distinctions between trafficking and commercial sexual exploitation. Any US minor who sells or exchanges sex can be considered a survivor of sex trafficking in accordance with the US federal definition. Such research has found widespread use of substances among victims,

⁸ N Busch-Armendariz, M Nsonwu, and L Cook Heffron, 'Understanding Human Trafficking: Development of typologies of traffickers PHASE II', *IDVSA Journal Articles*, 2009.

⁹ Veldhuizen-Ochodničanová, *et al.*, 2020.

¹⁰ A Ravi, M R Pfeiffer, Z Rosner, and J A Shea, 'Identifying Health Experiences of Domestically Sex-Trafficked Women in the USA: A qualitative study in Rikers Island Jail', *Journal of Urban Health*, vol. 94, no. 3, 2017, pp. 408–416, <http://doi.org/10.1007/s11524-016-0128-8>.

¹¹ A C Duncan and D DeHart, 'Provider Perspectives on Sex Trafficking: Victim pathways, service needs, & blurred boundaries', *Victims & Offenders*, vol. 14, issue 4, 2019, pp. 510–531, <https://doi.org/10.1080/15564886.2019.1595241>; J G Raymond, D M Hughes, and C J Gomez, 'Sex Trafficking of Women in the United States', in L Territo and G Kirkham (eds.), *International Sex Trafficking of Women & Children: Understanding the global epidemic*, Looseleaf, Flushing, 2001, pp. 3–14; J G Raymond *et al.*, *A Comparative Study of Women Trafficked in the Migration Process*, Coalition Against Trafficking in Women, 2002.

¹² Office of Public Affairs, 'Convicted Sex Trafficker Sentenced to More Than 30 Years in Prison', The United States Department of Justice, 29 January 2014, <https://www.justice.gov/opa/pr/convicted-sex-trafficker-sentenced-more-30-years-prison>.

that substance use makes youths vulnerable to pimps, and that pimps have used substances to recruit youths into trafficking.¹³ This relationship is so pervasive that a systematic review of health outcomes for child survivors of commercial sexual exploitation and human trafficking found that 26 out of 27 studies included substance use or abuse outcomes, including several that found victims to be at increased risk for substance use compared to non-victims.¹⁴

A review of 25 medical records of US minors trafficked for sexual exploitation demonstrated that 92 per cent reported using drugs or alcohol to their medical provider; for 20 per cent, drugs or addiction were related to their recruitment into trafficking.¹⁵ However, examination of medical records for 51 UK minors who were trafficked for various forms of labour exploitation found that only 18 per cent had a history of substance misuse.¹⁶ Another study (where 41 per cent of participants had sold sex as minors) identified five techniques pimps used to recruit women and girls into street-based sex work: love, debt, drugs, violence, and authority.¹⁷ Traffickers were reported to use drugs in two ways. First, women who entered the sex trade at a young age were often addicted to drugs.¹⁸ In fact, participants reported sleeping with and being ‘turned out’ (i.e. to have sex for money) by drug dealers. In this case, women would engage in sex work to meet

¹³ E Bath, *et al.*, ‘Substance Use, Mental Health, and Child Welfare Profiles of Juvenile Justice-Involved Commercially Sexually Exploited Youth’, *Journal of Child and Adolescent Psychopharmacology*, vol. 30, no. 6, 2020, pp. 389–397, <https://doi.org/10.1089/cap.2019.0057>; M C Cook, *et al.*, ‘Exploring Mental Health and Substance Use Treatment Needs of Commercially Sexually Exploited Youth Participating in a Specialty Juvenile Court’, *Behavioral Medicine*, vol. 44, no. 3, 2018, pp. 242–249, <https://doi.org/10.1080/08964289.2018.1432552>; M A Kennedy *et al.*, ‘Routes of Recruitment: Pimps’ techniques and other circumstances that lead to street prostitution’, *Journal of Aggression, Maltreatment & Trauma*, vol. 15, issue 2, 2007, pp. 1–19, https://psycnet.apa.org/doi/10.1300/J146v15n02_01; J L Moore *et al.*, ‘Trafficking Experiences and Psychosocial Features of Domestic Minor Sex Trafficking Victims’, *Journal of Interpersonal Violence*, vol. 35, no. 15–16, 2020, pp. 3148–3163, <https://doi.org/10.1177/0886260517703373>.

¹⁴ PT D Le, N Ryan, Y Rosenstock, and E Goldmann, ‘Health Issues Associated with Commercial Sexual Exploitation and Sex Trafficking of Children in the United States: A systematic review’, *Behavioral Medicine*, vol. 44, issue 3, 2018, pp. 219–233, <https://doi.org/10.1080/08964289.2018.1432554>.

¹⁵ Moore *et al.*

¹⁶ L Ottisova *et al.*, ‘Psychological Consequences of Child Trafficking: An historical cohort study of trafficked children in contact with secondary mental health services’, *PLoS One*, vol. 13, no. 3, 2018, e0192321, <https://doi.org/10.1371/journal.pone.0192321>.

¹⁷ Kennedy *et al.*

¹⁸ *Ibid.*

the financial needs of their addiction.¹⁹ Second, pimps recruited women by giving them gifts, including drugs, for which they were then threatened and indebted to repay via sex work.²⁰

Literature on how traffickers use substances with adult survivors is less pervasive. In a systematic review demonstrating the extensive violence and negative comprehensive health impacts of trafficking on survivors of all ages and countries, only four of 37 papers specifically discussed substance misuse.²¹ However, these four were unclear about traffickers' role in such misuse. One of these studies was a matched cohort study from London comprised largely of adult survivors who were not more likely than matched non-survivors to have substance misuse issues.²² Incarcerated women survivors of trafficking for the purpose of sexual exploitation in the US, who were recruited from a substance use unit, reported use of illicit substances at varying points in their lives (i.e. before, during, and after being trafficked) and that substance use was the most common way to cope with the trauma they experienced.²³ Notably, women described how both substance use and traffickers impeded their access to healthcare.²⁴

Some research suggests family members or intimate partners may traffic a victim in order to support their own substance abuse.²⁵ For example, one study found that 72.8 per cent of minors reported a history of familial drug or alcohol problems, while 59.4 per cent of adults reported family substance use.²⁶ The extent to which

¹⁹ *Ibid.*; E E Riley-Horvath, 'Substance Use Treatment Needs for Survivors of Commercial Sexual Exploitation of Children', Walden Dissertations and Doctoral Studies, 2019, <https://scholarworks.waldenu.edu/dissertations/6803>.

²⁰ Kennedy.

²¹ L Ottisova *et al.*, 'Prevalence and Risk of Violence and the Mental, Physical and Sexual Health Problems Associated with Human Trafficking: An updated systematic review', *Epidemiology and Psychiatric Sciences*, vol. 25, no. 4, 2016, pp. 317–341, <https://doi.org/10.1017/s2045796016000135>.

²² S Oram *et al.*, 'Characteristics of Trafficked Adults and Children with Severe Mental Illness: A historical cohort study', *The Lancet Psychiatry*, vol. 2, issue 12, 2015, pp. 1084–1091, [https://doi.org/10.1016/S2215-0366\(15\)00290-4](https://doi.org/10.1016/S2215-0366(15)00290-4).

²³ A Ravi, M R Pfeiffer, Z Rosner, and J A Shea, 'Trafficking and Trauma: Insight and advice for the healthcare system from sex-trafficked women incarcerated on Rikers Island', *Medical Care*, vol. 55, issue 12, 2017, pp. 1017–1022, <https://doi.org/10.1097/mlr.0000000000000820>.

²⁴ Ravi *et al.*, 'Identifying Health Experiences'.

²⁵ Duncan and DeHart; Anthony.

²⁶ R J Clarke, E A Clarke, D Roe-Sepowitz, and R Fey, 'Age at Entry into Prostitution: Relationship to drug use, race, suicide, education level, childhood abuse, and family experiences', *Journal of Human Behavior in the Social Environment*, vol. 22, issue 3, 2012, pp. 270–289, <https://doi.org/10.1080/10911359.2012.655583>.

traffickers exploit their own family members or others to feed their own SUD is not well understood.²⁷

Prior research examining characteristics of human traffickers is scarce, with information about traffickers' use of substances even more so. The aim of this study was to explore patterns of how substances were used by traffickers, as reported by providers of services to trafficking survivors in the American Midwest. The US federal definition was used for this research, although we acknowledge various interpretations of the legal definition among providers. In accordance with the *Trafficking Victims Protection Act* (TVPA) 2000, severe trafficking in persons is defined 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 subjection to involuntary servitude, peonage, debt bondage, or slavery'. The definition distinguishes 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'. The World Health Organization's definition of substance abuse is applied in this study: 'the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs' which 'can lead to dependence'.²⁸

Methods

The data for this study was derived from interviews with service providers in a major metropolitan area in the US Midwest. These service providers had all engaged with diverse survivors of human trafficking and thus could draw on experiences across their caseloads. Interviews were conducted with providers to preserve the survivors' identities and prevent them from unnecessarily recalling traumatic experiences.

This study was born out of a collaboration between researchers and a large non-profit anti-trafficking programme.²⁹ The collaboration identified preliminary evidence indicating problematic substance use for 14 out of 213 human trafficking tips made to the agency (unpublished data) over a decade. Substance use was not intentionally recorded. Therefore, it was suspected that substance use may affect a larger proportion of those who were trafficked. An exploratory qualitative

²⁷ Anthony.

²⁸ World Health Organization, *Understanding and Addressing Violence Against Women: Human trafficking*, World Health Organization, No. WHO/RHR/12.42, 2012.

²⁹ E Kogler, A Mohl, K Preble, and M Teti, 'Reports and Victims of Sex and Labor Trafficking in a Major Midwest Metropolitan Area, 2008–2017', *Public Health Reports*, vol. 134, no. 4, 2019, pp. 432–440, <https://doi.org/10.1177/0033354919854479>.

study was conducted with the goal of understanding the intersections of human trafficking and substance use, as understood by providers who have worked over time with diverse survivors of human trafficking.

This study utilises the consolidated criteria for reporting qualitative research (COREQ) guidelines.³⁰ We selected participants purposively in collaboration with the anti-trafficking programme, which had developed extensive contacts over years of serving foreign and domestic-born survivors of human trafficking via US federal funding. The partnering agency identified fifteen key informants from fifteen agencies who had worked directly with survivors over several years in the metropolitan area. We sent emails to invite key informants to participate and inform them of the research objectives. We used snowball sampling at the conclusion of each interview and asked participants if they could provide the name and contact information of others in the area who could provide relevant insights.

Fifteen key informants from 12 organisations participated in 13 one-time interviews. Three organisations primarily served children, three others primarily served adults, and the remaining served both children and adults. Five participants worked in social service organisations, four in law enforcement or legal services, three in health, and three in human trafficking-specific services. More participants' organisations primarily worked with victims of trafficking for sexual exploitation (10) than other labour (1) or all forms of trafficking (4), which is a reflection of the availability of services in the area. The average age of participants was 38.5 years (range 25-59) and they had worked with survivors of trafficking for an average of eight years (range 2-26). All but one participant were women. Nine were white and six were Black, Asian, or multi-racial.

The first author, a cis gender female assistant professor with training in qualitative research, conducted all interviews privately at the key informants' workplace or another space selected by the participant. One interview took place in a public space. Participants and the researcher did not have prior relationships. The interviews used a semi-structured interview guide; substance use-specific questions can be seen in Appendix 1. Interviews lasted approximately 60-90 minutes and were audio-recorded and transcribed. We did not return transcripts to participants. The interviewer wrote field notes during and after the interviews. No new themes emerged after the eleventh interview.

³⁰ A Tong, P Sainsbury, and J Craig, 'Consolidated Criteria for Reporting Qualitative Research (COREQ): A 32-item checklist for interviews and focus groups', *International Journal for Quality in Health Care*, vol. 19, issue 6, 2007, pp. 349-357, <https://doi.org/10.1093/intqhc/mzm042>.

We utilised a qualitative content analysis³¹ for this study, specifically a mix between a conventional and a directed approach.³² Substance use-related data was extracted from the interview transcripts. Two researchers immersed themselves in the data and independently open-coded the data. Researchers met several times to organise codes into categories, achieve consensus, and draft and refine a codebook. The two researchers independently abstracted data by codes for one interview in ATLAS.ti, using the codebook, resolved discrepancies, and then abstracted data for two more interviews and resolved any remaining discrepancies. Researchers identified several themes for how traffickers use substances. Themes were highly interrelated and are thus presented collectively to convey the constructs most succinctly. Themes with some participant quotations that exemplify them are presented below.

Findings

Providers were asked about victims' or survivors' use of substances; however, many responded about the actions of traffickers. Providers who mainly interacted with survivors of labour trafficking, not for the purpose of sexual exploitation, reported that substance abuse was not a common element of control. However, providers who interacted with survivors trafficked in the sex trade shared a number of examples that align with the recruitment and exploitation stages of trafficking, as conceptualised by Zimmerman *et al.*³³ A summary of themes as well as the stage in the trafficking process that the theme may be most relevant to can be seen in Table 1.

³¹ S Elo and H Kyngäs, 'The Qualitative Content Analysis Process', *Journal of Advanced Nursing*, vol. 62, no. 1, 2008, pp. 107–115, <https://doi.org/10.1111/j.1365-2648.2007.04569.x>.

³² H-F Hsieh and S E Shannon, 'Three Approaches to Qualitative Content Analysis', *Qualitative Health Research*, vol. 15, no. 9, 2005, pp. 1277–1288, <https://doi.org/10.1177/1049732305276687>.

³³ C Zimmerman, M Hossain, and C Watts, 'Human Trafficking and Health: A conceptual model to inform policy, intervention and research', *Social Science and Medicine*, vol. 73, no. 2, 2011, pp. 327–335, <https://doi.org/10.1016/j.socscimed.2011.05.028>.

Table 1. Interrelated themes of how traffickers used substances with victims and the stage of the trafficking process where they may be most impactful.

Themes	Stages of the trafficking process
Coercing or forcing victim substance use For fun or to feel good	Exploitation Recruitment
Controlling: ‘They want as much control as possible.’ Trafficker as supplier Controlling mood and performance Unknowingly to the victim Addiction Rewarding	Recruitment, Exploitation Exploitation Exploitation Recruitment, Exploitation Exploitation

The recruitment stage was often initiated with the trafficker being the supplier of drugs. Providers echoed two trajectories of how traffickers supplied substances to victims during both the recruitment and exploitation stages in order to gain control; they either identified an addicted individual or got a non-addicted individual addicted. As one participant explained:

Either they find a girl who’s already addicted and then they become the supplier, and that’s a nice way to be able to control somebody. Or you’re asking a girl to do something that they’re uncomfortable with or embarrassed or ashamed or whatever and so you offer them something to make them more comfortable and then, ... you have somebody that’s addicted and now it’s easy to control them.

When asked if substances were offered or supplied by the trafficker, two providers from different agencies responded with the exact same words, ‘That’s how they keep them in the life. That’s their source’. One further indicated that sex work is a way for victims to pay for these drugs. Participants consistently reported that for victims who used substances, traffickers regularly facilitated the acquisition of substances. Traffickers who exploited victims for the purpose of sex supplied substances to victims as a key tool to maintain their control and ensure a system that enabled traffickers to keep victims working for them. Traffickers ensured victims stayed with them by providing the substances victims sought, which might also allow traffickers and victims to see it as a reciprocal relationship.

When asked if traffickers ever forced victims to take drugs, one provider noted that there is intense pressure put onto the victim by the trafficker, and in some cases, victims are told that they have to use substances. The use of substances to coerce victims was not always immediate as one participant indicated that some victims would be resistant to substance use; but with time, their resistance waned as use became more appealing and then progressed to habitual use. In addition to traffickers consistently offering substances over time, another way that participants spoke about coerced use of substances was, 'it could be introduced as a fun thing to do' by traffickers. This was particularly true for alcohol. What was once fun could become exploitation by a trafficker as victims find themselves in situations where they deem they have no alternative but to continue complying with the desires of the trafficker.

Several providers explained how traffickers usually did not physically force victims to use substances, but that it was often a subtler force through mental coercion, for instance with threats of abandonment. Boyfriend-style traffickers might use substances to control or manipulate victims into sexual acts by telling victims that the substances will make them comfortable, relaxed, and numb to the experience. In some situations, the trafficker had control to manipulate and ensure performance by the victim by promoting a state of euphoria. Promoting mood was also achieved when traffickers were giving substances to victims without their knowledge. Four participants spoke about traffickers using drugs when a victim did not know about it. Providers also reported how traffickers could use substances as a reward for their participation or meeting a quota or as a way to ensure compliance.

There were ways that coercion would be considered force from the victim's perspective since victims may not have a choice. One provider indicated that victims comply with traffickers because the alternative is threatened loss of life. As the provider explained, 'If you don't have the ability to make your decision on whether or not you can use that drug or whether or not you can walk out the door, if he says, "do it", your option is do it or die. You do it'. When traffickers did physically force victims to use substances, it was clearly a 'strong-arm type' of approach. In such cases, one provider discussed how traffickers could use the physical nature of addiction to initiate withdrawal effects as a demonstration of their control.

When victims come into the trafficking situation with an established addiction to substances, this addiction can play an important role in how traffickers reward victims with substances to control them. When traffickers supply substances to those with an addiction, victims may be resistant to getting out of 'the life', and this works in the trafficker's favour. Control, supplying substances to victims, and addiction were entangled, which added to the situation being difficult to exit.

Another interesting dynamic in the exploitation of victims involves traffickers not allowing victims to use substances. Some participants reported situations in which a trafficker did not allow or supply hard substances to victims, mostly because it impacted their profit, especially if the trafficker serviced a higher-end clientele. In one case, the trafficker forbade substance use, to further manipulate a victim by telling her he had ‘empowered’ her from addiction.

Relationships between traffickers, victims, and the illegal nature of substances could be complex. Many providers reported that it was common for victims to live with drug dealers, while it was less common for victims to live with drug growers or manufacturers. Some providers reported that traffickers may also deal drugs. Offering a different perspective on the complexity of relationships, one participant described how both victim and trafficker may have vulnerabilities for substances or addiction and trafficking, noting that they often come from similar marginalised socio-economic backgrounds, ‘a broken home, a broken society’, that leads to the development of survival skills to figure out how the trafficker will get his next meal or support his own drug use. Despite the similar vulnerabilities between traffickers and victims, the provider noted that victims ‘just get the shorter end of the stick every time’.

Discussion and Conclusions

Substances were reported as a way for traffickers for the purpose of sexual exploitation to coercively or forcefully control the mood and body of victims. Traffickers were frequently victims’ drug dealers and would exploit individuals who were already addicted via the provision of substances in exchange for the profit of commercial sex. Traffickers could also introduce substances as something fun to do during the recruitment process or supply substances in a way that the victim became addicted, and dependant on the trafficker, over time. Our findings provide new insight into how traffickers may use substances to control victims throughout the exploitation stage, for example, to ensure a victim is in a euphoric mood prior to going on a date, to provide substances as a reward after the victim has met the demands of the trafficker, or to make a victim withdraw from substances just to demonstrate the traffickers’ supreme control. Novel findings include how and why traffickers may *not* use substances to control victims and that traffickers gave victims substances without their knowledge.

Several of our findings are consistent with prior research. First, traffickers’ use of substances with victims was pervasive when trafficking was for the purpose of sex but not other labour. This connection was also seen in longitudinal programmatic data from the National Human Trafficking Hotline; however, a notable factor connecting substance use and trafficking may be a trafficker leveraging victims’ vulnerability and desperation for income regardless of the

purpose of exploitation.³⁴ Although Shelley's work³⁵ introduced the potential use of substances by traffickers for the purpose of sex and other labour, this has not been demonstrated elsewhere.³⁶ It is not clear if traffickers' use of substances for victims exploited for sex, but less so labour, is a real phenomenon or more a product of complicated power, wealth, and race dynamics that may be at play, which results in increased prosecution of traffickers for the purpose of sex compared to other labour. Further research into traffickers' use of substances in a range of labour sectors is warranted.

Notably consistent with the literature,³⁷ we also found that substances have been used as a recruitment method and to control victims, particularly for individuals with pre-existing SUD as a vulnerability. Traffickers have used drugs to keep youth compliant to their demands.³⁸ Previous literature has documented traffickers as victims' drug dealers.³⁹ The National Human Trafficking Hotline reported many cases where the trafficker starts as the drug dealer but then coerces the victim to start selling sex or engaging in other labour to pay off drug use-related debts or earn new substances.⁴⁰ Other research has demonstrated that 16 per cent of commercially sexually exploited women began trading sex to support their addiction, some of whom reported being 'turned out' (made to enter the sex trade) by drug dealers.⁴¹ Survival sex in exchange for drugs is a known pathway into trafficking and a coercive mechanism traffickers use to maintain control over victims via threats of arrest due to drug use, loss of their supply of drugs, and inability to afford drugs without the trafficker.⁴² Further research into the intersections of traffickers being a victim's drug dealer is needed.

Use of substances for fun during the grooming process has been noted in the literature⁴³ but has not been a focus point. For traffickers that exploit victims

³⁴ Anthony.

³⁵ Shelley.

³⁶ Owens *et al.*; Farrell *et al.*

³⁷ Busch-Armendariz *et al.*; Veldhuizen-Ochodničanová *et al.*; Anthony.

³⁸ Roe-Sepowitz; Moore *et al.*; J A Reid, A R Piquero, and C J Sullivan, 'Exploring the Impact of Alcohol and Marijuana Use on Commercial Sexual Exploitation Among Male Youth Using Parallel-Process Latent Growth Curve Modeling', *Journal of Crime and Justice*, vol. 38, issue 3, 2015, pp. 377–394, <https://doi.org/10.1080/0735648X.2014.965588>.

³⁹ Ravi *et al.*, 'Trafficking and Trauma'.

⁴⁰ Anthony.

⁴¹ Kennedy *et al.*

⁴² Duncan and DeHart.

⁴³ S C Parker and J T Skrmetti, 'Pimps Down: A prosecutorial perspective on domestic sex trafficking', *The University of Memphis Law Review*, vol. 43, 2012, pp. 1013–1045.

who are their intimate partners, it has been noted that using substances together facilitates a form of trauma-bonding or Stockholm Syndrome that enables a closeness and even a sense of fun in the shared dependency and danger.⁴⁴ A novel finding, as indicated by one participant, looks beyond the dichotomy of the 'bad trafficker' and 'poor victim', but rather considers that both victims and traffickers exist in broken societies where a mix of substance use and trafficking becomes a survival skill. Two other novel findings have rarely been documented in the literature but are noted. First, one book chapter referenced a quote from a survivor who indicated that a drug was used as a reward when she met her quota.⁴⁵ Second, fear of withdrawal has been documented as a coercive mechanism used by traffickers to trap victims.⁴⁶

Reports in this study that some traffickers did not allow victims to use hard drugs is contrary to other research that has examined the utility of substances in promoting and maintaining control over victims. While the denial of substance use is a controlling behaviour, it presents an interesting dynamic between the trafficker and victim, especially if addiction is avoided or addressed during the course of the relationship. Traffickers may feel they have more entitlement to victims if they have helped them overcome addiction, which may make it more difficult for a victim to recognise the abusive situation as there is also an element of caring.

The findings here are provided with the caveat that there are likely other factors that were not explored as this effort was not intended to focus on traffickers' behaviour. We also acknowledge that, while providers work closely with victims of trafficking, their perspectives do not represent the actual experiences of victims and certainly not those of traffickers. Therefore, we recognise that these findings are limited in the ability to make direct practice implications, but they do contribute to the limited knowledge available regarding traffickers' modus operandi. Future research should be conducted directly with traffickers to explore how they report using substances themselves and with victims.

While there is evidence in the literature indicating that traffickers use substances to control and manipulate victims, to our knowledge, no studies have focused specifically on this issue. Similarly, our own exploratory research intended to focus on how substances were used by survivors rather than traffickers. However, this

⁴⁴ Anthony.

⁴⁵ E K Hopper, 'Trauma-Informed Treatment of Substance Use Disorders in Trafficking Survivors', in M Chisolm-Straker and H Stoklosa (eds.), *Human Trafficking is a Public Health Issue*, Springer, Cham, 2017, pp. 211–230, https://doi.org/10.1007/978-3-319-47824-1_12.

⁴⁶ Y Omar, G Austgen, and N Moukaddam, 'Care Management of Trafficked Persons with Substance Use Disorders', in J H Coverdale, M R Gordon and P T Nguyen (eds.), *Human Trafficking: A treatment guide for mental health professionals*, APA Publishing, Washington, DC, 2020, p. 133; Anthony.

research demonstrates that examining traffickers' use of substances warrants further attention and investigation.

This research has several implications. First, given the vulnerability of those with SUD to be targeted and manipulated by traffickers, treating SUD is likely a critical step in breaking the cycle of control by traffickers. Need for treatment of SUD among survivors of trafficking has been noted,⁴⁷ as have barriers to treatment (e.g. sobriety requirements for entry, being kicked out for relapse), which must be addressed.⁴⁸ Given the overlap in SUD, extensive trauma, and other mental health disorders experienced by survivors, interventions that integrate treatment for trauma and SUD are needed.⁴⁹ One such evidence-based programme that integrates treatment of trauma and substance use is Seeking Safety, which incorporates case management, acknowledges environmental factors, and does not require individuals to relive their trauma.⁵⁰ Other integrated group treatment models recommended for survivors of trafficking include: Trauma Recovery and Empowerment Model, Addiction and Trauma Recovery Integration Model, Trauma Addiction Mental Health and Recovery, and Trauma Affect Regulation: Guide for Education and Therapy.⁵¹

It is imperative that integrated treatment utilises survivor-informed tenants of care in a clinician's general approach (e.g. be empathetic not sympathetic), history taking (e.g. interview patient alone), physical exam (e.g. survivor-led pace of exam), and response (e.g. collaborate with multidisciplinary team).⁵² Additionally, clinicians must avoid diagnostic overshadowing, which means that they cannot ignore patients' concerns (e.g. for exploitation or other health ailments) because of mental illness.⁵³ The timing of treatment is important, with consideration of the individual's complex situation, as availability of SUD treatment may prevent an individual from becoming trafficked. Immediate needs, such as housing and case management, may need to be met first to support SUD treatment and reduce relapse.⁵⁴

⁴⁷ Duncan and DeHart; Cook *et al.*

⁴⁸ L B Gerassi, 'Barriers to Accessing Detox Facilities, Substance Use Treatment, and Residential Services Among Women Impacted by Commercial Sexual Exploitation and Trafficking', *Behavioral Medicine*, vol. 44, no. 3, 2018, pp. 199–208, <https://doi.org/10.1080/08964289.2017.1384360>.

⁴⁹ Hopper; Omar *et al.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² H Stoklosa, M MacGibbon, and J Stoklosa, 'Human Trafficking, Mental Illness, and Addiction: Avoiding diagnostic overshadowing', *AMA Journal of Ethics*, vol. 19, issue 1, 2017, pp. 23–34, <https://doi.org/10.1001/journalofethics.2017.19.1.ecas3-1701>.

⁵³ *Ibid.*

⁵⁴ Omar *et al.*

Still, research into treatment for substance use among trafficking survivors is scant. Preliminary reporting of a systematic review examining access to substance use treatment for survivors of trafficking for sex found only three studies, which identified facilitating factors to be programmatic (e.g. decreased wait times), provider-related (e.g. cultural competence), and individual (e.g. legal and medical problems).⁵⁵ Additional research and efforts are needed to ensure substance use treatment for survivors.

Second, this research highlights the potential for integrating additional components related to trafficking or vulnerability to trafficking into school-based prevention and training with youths. The construct of harm reduction has been around for decades,⁵⁶ and is in direct contrast to ineffective abstinence-based school-based prevention models (e.g. D.A.R.E.).⁵⁷ Increasingly, there have been efforts to integrate harm reduction-based education programmes both into sexual and substance use related education in schools.⁵⁸ As it relates to substance use, harm reduction models operate with radical acceptance and compassion, with a focus on practical strategies to minimise the harm and the negative consequences associated with substance use, rather than condemning or exaggerating substance use and its impact.⁵⁹ Emerging programmes modelled after a harm reduction philosophy, like Safety First developed by the Drug Policy Alliance,⁶⁰ have demonstrated positive outcomes for students (e.g. increased knowledge related to drugs, harm reduction, and practical strategies to reduce negative consequences of substance use, such as reversing an opioid overdose). However, rigorous peer-reviewed research on this programme is nascent. Integrating curriculum components involving discussions of substance use, vulnerability to trafficking, and control tactics, when done in a way that is non-stigmatising, aligns with harm reduction goals to reduce negative consequences of substances while still acknowledging that use can be normative.⁶¹

⁵⁵ N Hallett, 'Experiences of Female Sex Trafficking Survivors Who Have Accessed Treatment for Substance Use: A systematic review', *University of Southern Maine Digital Commons*, 2020.

⁵⁶ G A Marlatt, 'Harm Reduction: Come as you are', *Addictive Behaviors*, vol. 21, no. 6, 1996, pp. 779–788, [https://doi.org/10.1016/0306-4603\(96\)00042-1](https://doi.org/10.1016/0306-4603(96)00042-1).

⁵⁷ S Ennett, N Tobler, C Ringwalt, and R Flewelling, 'How Effective is Drug Abuse Resistance Education? A meta-analysis of project DARE outcome evaluations', *American Journal of Public Health*, vol. 84, no. 9, 1994, pp. 1394–1401, <https://doi.org/10.2105/ajph.84.9.1394>.

⁵⁸ C Moraff, 'Can Harm Reduction Finally Take Root in America's Schools?', *Filter*, 7 November 2017, <https://filtermag.org/harm-reduction-america-schools>.

⁵⁹ National Harm Reduction Coalition, 'Principles of Harm Reduction', n.d., <https://harmreduction.org/about-us/principles-of-harm-reduction>.

⁶⁰ Drug Policy Alliance, 'Safety First', 8 October 2019, <https://drugpolicy.org/resource/safety-first-real-drug-education-teens>.

⁶¹ Hopper.

Finally, with consideration of traffickers with single or a few victims, and their use of substances with victims, as a society, we must consider the conditions that exist that lead to such problematic survival behaviour.

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Appendix 1

Now I'm going to ask about the use of substances (first alcohol then drugs) among trafficking *survivors* you have worked with:

Alcohol

Describe any knowledge you have of *survivors* you have worked with using alcohol? Which types of alcohol are/were used?

Describe any knowledge you have of *survivors* you have worked with abusing alcohol?

Describe when and how *survivors* use/abuse alcohol (before, during, after trafficking)?

About what percentage of *survivors* you have worked with use and/or abuse alcohol?

What is your understanding of the reasons some *survivors* have NOT used/abused alcohol?

Drugs

Describe any knowledge you have of *survivors* you have worked with using drugs? Which types of drugs are/were used?

Describe any knowledge you have of *survivors* you have worked with abusing drugs?

Describe when and how *survivors* use/abuse drugs (before, during, after trafficking)?

About what percentage of *survivors* you have worked with use and/or abuse drugs?

What is your understanding of the reasons some *survivors* have NOT used/abused drugs?

Based on data from human trafficking tips (partner organisation), *victims/survivors* have reported using substances in the following ways. Please explain if/how you have seen this occurring with *survivors* you have worked with?

- Needing substance abuse treatment services
- Living with drug growers/makers
- Employer/trafficker offering/supplying substances
- Trafficker/abuser forced *victim* to take drugs
- Exchanging sex for drugs
- Parent or stepparent forced *victim* to exchange sex for drugs

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‘It’s About Survival’: Court constructions of socio-economic constraints on women offenders in Australian human trafficking for sexual exploitation cases

Alexandra L. A. Baxter and Dr Nerida Chazal

Abstract

Women make up more than half of the offenders convicted for human trafficking for sexual exploitation in Australia since 2005. This article explores how courts construct the financial motivations for women’s offending to examine how gendered structural constraints are considered in Australian trafficking cases. We explore data from the sentencing remarks and appeal transcripts from the ten cases of women convicted for human trafficking and analyse the two most recent cases to explore how women’s financial considerations are underpinned by the gendered socio-economic pressure of supporting family members. Using data from interviews with Australian judges and anti-trafficking experts, we examine the relationship between structural constraints and women’s agency and the relative weight each of these factors are given in sentencing women trafficking offenders. In doing this, we explore the overlap between victimisation and offending and the tensions between structural constraints and agency, arguing that the former must be taken into consideration when sentencing women trafficking offenders.

Keywords: human trafficking for sexual exploitation, structural constraints, agency, choice, women offenders, victim-offender overlap, sentencing

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Introduction

In Australia, between 2005 (when it ratified the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*) and 2019, sixteen individuals have been charged with human trafficking-related offences

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involving sexual exploitation (HTSE).¹ Ten of these are women, meaning that 63 per cent of offenders convicted of HTSE in Australia are women. The United Nations Office on Drugs and Crime (UNODC) has consistently reported ‘that women feature highly among those prosecuted and convicted for offences related to trafficking of persons, especially when compared with other areas of crime’.² UNODC also notes that there is a strong link between previous involvement in the sex industry and future involvement in trafficking networks.³ As such, women traffickers are particularly prevalent in HTSE. The percentages of women trafficking offenders has remained consistently high over the past decade,⁴ and an increasing body of literature has recognised that women play a prominent role as both victims and offenders of HTSE.⁵ These statistics challenge traditional representations of traffickers as being male organised crime figures who prey on women as their vulnerable victims,⁶ as this data shows women are not *solely* the victim of these crimes, but also facilitators of trafficking, and often both. Consequently, it is important to understand the factors that drive both women’s victimisation and offending.

In this article, we examine the sentencing remarks and appeal transcripts of women convicted of HTSE offences in Australia, as well as data from interviews with key Australian judges and anti-trafficking experts, to explore how courts construct socio-economic structural factors in women’s lives. Specifically, we look at the gendered nature of these factors, considering the support of dependents and familial burden as key elements in women’s offending. To begin, we explore the

¹ A L A Baxter, ‘When the Line between Victimization and Criminalization Blurs: The victim-offender overlap observed in female offenders in cases of trafficking in persons for sexual exploitation in Australia’, *Journal of Human Trafficking*, vol. 6, issue 3, 2019, pp. 327–338, <https://doi.org/10.1080/23322705.2019.1578579>.

² I Chatzis *et al.*, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A case law analysis*, United Nations Office on Drugs and Crime, Vienna, 2020, retrieved 18 January 2022, https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf, p. 5.

³ *Ibid.*

⁴ See the *Global Report on Trafficking in Persons* from 2009 to 2018, <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

⁵ Chatzis *et al.*; E Veldhuizen-Ochodnicanova and E L Jeglic, ‘Of Madams, Mentors and Mistresses: Conceptualising the female sex trafficker in the United States’, *International Journal of Law, Crime and Justice*, vol. 64, 2021, pp. 1–13, <https://doi.org/10.1016/j.ijlcrj.2020.100455>; M Wijkman and E Kleemans, ‘Female Offenders of Human Trafficking and Sexual Exploitation’, *Crime, Law and Social Change*, vol. 72, 2019, pp. 53–72, <https://doi.org/10.1007/s10611-019-09840-x>.

⁶ E O’Brien, ‘Human Trafficking Heroes and Villains: Representing the problem in anti-trafficking awareness campaigns’, *Social and Legal Studies*, vol. 25, no. 2, 2016, pp. 205–224, <https://doi.org/10.1177/0964663915593410>.

concepts of agency and structural constraints and outline the methodology for the project. We then collate the data from the ten women convicted of HTSE offences since 2005 and examine the tensions between structural constraints and agency in these cases. Finally, we analyse two recent Australian cases, *The Queen v Lay Foon Khoo* and *R v Kanbut*, both of which involve defendants who had familial responsibilities and financial burdens that underpinned their offending and victimisation. These cases demonstrate that the socio-economic disadvantage women face is often acknowledged during sentencing, but that underlying narratives of choice dominate court-constructed narratives (CCN) of women's offending. The overlap of victim/offender roles in HTSE indicates a need to re-examine conceptualisations of structural constraints and agency in women's pathways to both victimisation and offending. This discussion highlights that the complexity of this situation requires a rethinking of the structural constraints that contribute to women's offending, even in situations where they have not been identified as a victim of trafficking prior to their offending.

Methods

The data collection was conducted by the primary author as part of a broader research project examining how courts construct the agency of women offenders in Australian HTSE cases. Initially, the primary author reviewed publicly available, Commonwealth prosecuted cases. To locate these cases, they undertook a search on the Commonwealth Department of Public Prosecutions (CDPP) website, as the CDPP acts as the prosecutorial body on all Australian Commonwealth cases. This search provided a list and summary of all Commonwealth human trafficking and slavery cases. From this list, they extracted those cases which fit the parameters of the research—cases involving women HTSE offenders. Once they identified these cases, they searched the sentencing remarks via a Google search, as these are publicly accessible documents. From the sentencing remarks, they identified the judges who sentenced these women. The primary author then conducted semi-structured qualitative interviews with six judges who were related to at least one of the identified cases. They further conducted interviews with five Australian anti-trafficking experts to supplement the interviews with the judges. Thematic content analysis (TCA) was undertaken by the primary author to identify and group different themes. During this process, the identified themes⁷ were thematically coded. A TCA was then undertaken to analyse the primary

⁷ The four main themes identified were: individual level, situational constraints in the women's lives; constraint imposed by judges; systemic-level constraints; and additional constraints imposed by judges due to systemic constraints. This article examines the first theme relating to structural constraints at the individual level as constructed by judges.

identified themes and their meaning.⁸ One of the main themes that emerged from this project relates to the key role that socio-economic constraints, underpinned by the need to support dependents, play in women's victimisation and their consequent offending. As such, for this article, we re-analysed the larger data set to focus on the aspect of financial motivations, in regard to the oft-cited driver of the financial burden of familial support. To explore how a woman's agency in relation to the constraint of familial financial burden is constructed by Australian courts in cases of HTSE in which women were identified as offenders, we analyse two recent cases in Australia.

The article seeks to explore how these factors are considered by courts through the lens of judges in relation to tensions between structural constraints and agency. Examining CCN is an important element in understanding how women trafficking offenders are sentenced and in improving responses to trafficking. However, we acknowledge that CCN represent a very small portion of trafficking cases in Australia, as many instances of trafficking are not detected and an even smaller proportion of detected cases reach the stage of prosecution and conviction.⁹ There have been criticisms of the framing of HTSE as a primarily criminal justice issue,¹⁰ and there are limitations to the heavy focus on prosecution in trafficking cases.¹¹ Acknowledging these limitations, it is still important to understand how women's agency and the structural constraints they face are represented and considered in the cases that do reach the stage of conviction.

Tensions between Structure and Agency in Trafficking for Sexual Exploitation

Agency and choice are key yet contested concepts in understandings of HTSE. The amount of agency and choice an actor is portrayed as having is determined by the role they play in the trafficking 'story'. Dominant trafficking narratives clearly

⁸ H Joffe and L Yardley, 'Content and Thematic Analysis', in D F Marks and L Yardley (eds.), *Research Methods for Clinical and Health Psychology*, SAGE Publications, London, 2004, pp. 56–68.

⁹ S Lyncham, C Dowling, and S Bricknell, 'Estimating the Dark Figure of Human Trafficking and Slavery Victimisation in Australia', *Australian Institution of Criminology Statistical Bulletin*, 2019, p. 16.

¹⁰ D Davy, 'Justice for Victims of Human Trafficking in Australia? Issues associated with Australia's criminal justice response to trafficking in persons', *Contemporary Justice Review*, vol. 20, issue 1, 2017, pp. 115–131, <https://doi.org/10.1080/10282580.2016.1262773>.

¹¹ M Segrave, S Milivojevic, and S Pickering, *Sex Trafficking and Modern Slavery: The Absence of Evidence*, Routledge, London, 2019.

delineate roles of ‘victims’, ‘villains’, and ‘heroes’,¹² and these archetypes dictate the amount of agency an individual is perceived to have in their experience of trafficking. As per Christie’s ‘ideal victim’ paradigm,¹³ victims are often constructed as having minimal, or constrained choice when it comes to their work in the sex industry and their cross-border migration. Indeed, radical and neo-abolitionist scholarship on trafficking argues that sex work is never a ‘choice’ under the patriarchal power structures that shape the global sex trade.¹⁴ In the context of victimhood, it is widely recognised that poverty and socio-economic pressures contribute to trafficking by creating the conditions under which vulnerable individuals are forced or coerced into migrating and working in the sex industry, making them susceptible to exploitation.¹⁵ Bales, for example, states ‘many if not most trafficking victims fall prey to this practice because they seek a better life or enhanced economic opportunities.’¹⁶

Within these constructions of trafficking, agency is often removed from the vocabulary of victimhood. This position emphasises the role of structural constraints, such as socio-economic disadvantage, in shaping a victim’s engagement in sex work or cross-border travel. An overreliance on these constraints limits the amount of agency afforded to victims in overarching trafficking narratives. However, evidence demonstrates that many women actively choose sex work and migration, or knowingly enter into situations where they are required to pay off large debts.¹⁷ Despite this, agency is often considered incompatible with understandings of victimhood and the ‘ideal victim’ in cases of HTSE.¹⁸ In addition, a focus on disadvantage in countries of origin can obscure the broader structures that contribute to vulnerabilities, such as harsh border regimes, unequal opportunities, and exploitative labour practices in both countries of origin and

¹² O’Brien.

¹³ N Christie, ‘The Ideal Victim’, in E A Fattah (ed.), *From Crime Policy to Victim Policy: Reorienting the justice system*, Palgrave Macmillan, London, 1986, pp. 17–30.

¹⁴ L Gerassi, ‘A Heated Debate: Theoretical perspectives of sexual exploitation and sex work’, *Journal of Sociology and Social Welfare*, vol. 42, issue 4, 2015, pp. 79–100.

¹⁵ J R Barner, D Okech and M A Camp, ‘Socio-Economic Inequality, Human Trafficking and the Global Slave Trade’, *Societies*, vol. 4, no. 2, 2014, pp. 148–160, <https://doi.org/10.3390/soc4020148>.

¹⁶ K Bales, ‘What Predicts Human Trafficking?’, *International Journal of Comparative and Applied Criminal Justice*, vol. 31, issue 2, 2007, pp. 269–279, p. 269, <https://doi.org/10.1080/01924036.2007.9678771>.

¹⁷ L M Agustín, ‘The Disappearing of a Migration Category: Migrants who sell sex’, *Journal of Ethnic and Migration Studies*, vol. 32, issue 1, 2006, pp. 29–47, <https://doi.org/10.1080/13691830500335325>.

¹⁸ M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, *Anti-Trafficking Review*, issue 4, 2015, pp. 56–79, <https://doi.org/10.14197/atr.20121544>.

destination.¹⁹ This focus facilitates the construction of destination countries as the ‘heroes’ or ‘saviours’ of the trafficking story, a trope that is strengthened through the framing of trafficking as a criminal justice issue which destination countries must fight with prosecutions and punishments for trafficking offenders and through stricter migration policies.²⁰

The result of these narratives is that, from a victimological perspective, women’s backgrounds and socio-economic constraints are considered important factors in understanding trafficking victimisation. However, when it comes to offending, structural factors are discarded in favour of agent-centric explanations. As agency is often seen as incompatible with victimhood, so too are structural constraints incompatible with offending. One example is the market-based, organised crime perspective, which applies rational choice theory to trafficking offences to explain how offenders weigh up the costs and benefits of trafficking in a detached and calculated way with a purely profit-driven approach. For example, Bales states, ‘many traffickers are involved in other transnational crimes. Criminal groups choose to traffic in persons, in part, because it is high-profit and often low-risk, because unlike other “commodities”, people can be used repeatedly, and because trafficking in persons does not require a large capital investment’.²¹ This approach aligns with the proliferation of rhetoric of trafficking as a transnational crime, and the consequent focus on pursuing prosecution as a priority in countries such as Australia.²²

Depictions of offenders who choose to exploit vulnerable victims sustain the overarching trafficking discourse and popular imagery associated with anti-trafficking campaigns.²³ This fits with the ‘female villains and exploited agents’ narrative identified by Maciotti *et al.*²⁴ However, as Ajzenstadt highlights, relying too heavily on agency to explain offending minimises the role of structural constraints in shaping an offender’s worldview and consequent choices.²⁵ A dichotomous approach to agency (i.e., an offender has unconstrained agency while the victim has no or minimal agency) does not reflect the realities of

¹⁹ Segrave, Milivojevic and Pickering.

²⁰ *Ibid.*

²¹ Bales, p. 269.

²² Segrave, Milivojevic and Pickering.

²³ O’Brien.

²⁴ P G Maciotti *et al.*, ‘Framing the Mother Tac: The racialised, sexualised and gendered politics of modern slavery in Australia’, *Social Sciences*, vol. 9, issue 11, 2020, pp. 192–219, <https://doi.org/10.3390/socsci9110192>.

²⁵ M Ajzenstadt, ‘The Relative Autonomy of Women Offenders’ Decision Making’, *Theoretical Criminology*, vol. 13, issue 2, 2009, pp. 201-225, <https://doi.org/10.1177/1362480609102879>.

trafficking victimisation and offending. Recent research has demonstrated that the line between victimisation and offending in trafficking is often blurred.²⁶ In Australia, for example, five of the ten women convicted of HTSE offences were prior victims of human trafficking. Viewed through this lens, it is apparent that more nuanced understandings of agentic and structural factors are required.

Literature on offending women highlights the need to explore familial burden as considerable structural constraint in offenders' lives that forms part of a wider background defined by broad socio-political constraints. As Hindelang, Gottredson and Garofalo highlight, structural constraints pose limitations on an individual's behaviour and level of choice.²⁷ They can shape an individual's daily life, including decisions to engage in criminal or deviant behaviours or responses to victimisation.²⁸ Oppressive structures reshape and confine women's goals.²⁹ A lack of viable economic opportunities resulting in a lack of financial security, coupled with a financial burden to support family, fuels the migration of women in search of better work opportunities. This process, combined with societal and cultural norms, which act to reinforce gender inequalities, render them vulnerable to the trafficking process, both victimisation and offending.³⁰

Socio-Economic Constraints of Women Defendants in Australian HTSE Cases

Examining the ten women convicted of HTSE in Australia, eight sentencing remarks discussed the socio-economic constraints and financial factors associated with the women's backgrounds and offending. The two remaining cases did not explicitly mention socio-economic factors and provided scant information on the offenders' backgrounds. These cases were some of the earliest HTSE convictions in Australia and less was known about the patterns of offending

²⁶ Baxter.

²⁷ M J Hindelang, M R Gottredson and J Garofalo, *Victims of Personal Crime: An empirical foundation for a theory of personal victimization*, Ballinger, Cambridge, 1978.

²⁸ J J Turanovic, T C Pratt and A R Piquero, 'Structural Constraints, Risky Lifestyles, and Repeat Victimization', *Journal of Quantitative Criminology*, vol. 34, 2016, pp. 251–274, <https://doi.org/10.1007/s10940-016-9334-5>.

²⁹ D T Meyers, 'Feminism and Sex Trafficking: Rethinking some aspects of autonomy and paternalism', *Ethical Theory and Moral Practice*, vol. 17, no. 3, 2014, pp. 427–441, <https://doi.org/10.1007/s10677-013-9452-1>.

³⁰ W M Konstantopoulos *et al.*, 'An International Comparative Public Health Analysis of Sex Trafficking of Women and Girls in Eight Cities: Achieving a more effective health sector response', *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, vol. 90, no. 6, 2013, pp. 1194–1204, <https://doi.org/10.1007/s11524-013-9837-4>.

relevant to prosecution and sentencing. Overall, 60 per cent of sentencing remarks discussed a woman's financial burden to support family members, combined with economic disadvantages in the context of their offending, as indicated in Table 1 below. Table 1 provides the legal citation for the sentencing remarks pertaining to each woman offender and highlights whether the narrative within the sentencing remarks stated she was a prior victim of HTSE, and whether she experienced an economically disadvantaged background and a financial burden to support her family.

Table 1: Key facts relating to the ten convictions involving women HTSE offenders in Australia.

Woman Offender	Case Citation	Prior Victim of HTSE	Economically Disadvantaged Background	Financial Burden to Support Family
DS	The Queen v DS [2005] VCC (NB: judgment not available)	Yes	Unknown	Unknown
Wei TANG	R v Tang, Wei [2006] VCC 637	No	Yes	Unknown
Somsri YOTCHOMCHIN	R v Sieders & R v Yotchomchin [2006] NSWDC 184	No	Yes	Yes
Sarisa LEECH	DPP (Cth) v Ho & Leech [2009] VSC 495	Yes	Unknown	Unknown
Kanokporn TANUCHIT	R v McIvor and Tanuchit [2010] NSWDC 310	Yes	Yes	Unknown
Namthip NETTHIP	R v Netthip [2010] NSWDC 159	No	Yes	Yes
Watcharaporn NANTAHKHUM	R v Watcharaporn Nantahkhum SCC149 of 2010	Yes	Yes	Yes
Chee Mei WONG	R v Chee Mei Wong	No	Yes	Yes
Lay Foon KHOO	The Queen v Lay Foon KHOO [2017] 2105 of 2016	Yes	Yes	Yes
Rungnapha KANBUT	R v Kanbut [2019] NSWDC 931	No	Yes	Yes

Poverty and disadvantage were specifically discussed in six of the cases, as identified in the table above. One anti-trafficking expert interviewed suggested many women who were trafficked, ‘were trying to make money, save money and send it home to siblings or children. That’s where they transferred their power to ... saving other people in their family’.³¹ Reflected in the sentencing remarks, financial burdens formed structural socio-economic constraints that shaped offending. As another anti-trafficking expert stated:

*Women are forced to make money to survive, or sometimes, they are forced to stay with violent partners who are continuing to exploit them, even using them to engage other women to be able to exploit them, for financial reasons.*³²

In considering these structural constraints, it is important not to deny women agency. Outside the court, these offenders were survivors, using the tools and knowledge they possessed to improve their lives after experiencing significant constraints. One expert with experience with cases of HTSE concluded during an interview that in these cases ‘it’s about survival ... it was about a need to provide money for family members [and] extended families.’³³

During an interview, one judge considered poverty a large motivating force for the victims choosing to undertake sex work in the cases analysed. This judge suggested that a woman’s decision to come to Australia under contract was ‘the impact of poverty on people. They willingly came to earn money’.³⁴ This judge could also see the impact of poverty on the offenders and their decision to exploit others, rather than be the one exploited:

*[People] become the trafficker just out of economic necessity ... A person comes over here as a slave, she then works very hard and builds up money, and I suppose she opens a brothel herself and says, well, I’ll do the same thing. I’m sure that’s how it has happened. She’s realised that she’s been able to make her way, **not the normal recommended way** but ... **when you’ve come from a place of poverty that’s what happens, isn’t it** [emphasis added].³⁵*

This judge, therefore, thought poverty and disadvantage largely motivated both the victims and offenders in a similar way as they were often from the same geographical area and experienced similar constraints. Consequently, interviews

³¹ Interview, Participant Three, Melbourne, 29 August 2018.

³² Interview, Participant Four, Melbourne, 18 June 2018.

³³ Interview, Participant One, Melbourne, 1 March 2018.

³⁴ Interview, Judge Three, Melbourne, 5 April 2018.

³⁵ *Ibid.*

with the judges, including the extracts above, illuminate a strong understanding of the victim-offender cycle in these cases and, in interviews, attention is given to the relative force of structural constraints and women's agency.

However, while an offender's socioeconomic background gives context to offending in court, a nuanced understanding of the centrality of constraining structures is absent in sentencing. For example, the author of the pre-sentencing report tendered in *Namthip Netthip's* sentencing stated:

The offender presented as a person who has chosen to earn a living on the fringe of society, appearing to take an amoral view of her profession [sex work] as the best available means to provide for her family. She appears to have few external resources, but for years has displayed an apparently consistent level of internal fortitude ...

She has displayed a lifelong commitment to her birth family, and has, by her account, been driven by the need to financially support her parents and later her daughter.³⁶

Here, although the financial burden *Netthip* faced is acknowledged, her choices are prioritised over this constraint. In addition, an offender's previous experience of victimisation tended to heighten her culpability with some judges. For example, when interviewed, one judge stated:

You reckon a person who has been through it wouldn't then subject others to it. I'm not saying that it's aggravated by the fact that they've been previously [a victim], but it's certainly not a factor that is going to reduce a matter ... you would ask yourself, if you had been in slavery yourself, why would you impose it on anyone else?³⁷

Similarly, another judge stated:

She had experienced that herself and then to put that on somebody else is, is more serious, is more culpable. So, on the one hand, her experiences justified some sympathy but on the other hand those experiences should have led her to reject that imposition on others [emphasis added].³⁸

Given the enduring prominence of 'choice' as an explanation for offending, offenders' social and economic constraints and their burdens for supporting

³⁶ *R v Netthip* [2010] NSWDC 159, para. 21.

³⁷ *Ibid.*

³⁸ Interview, Judge Six, Canberra, 20 March 2020.

dependents rarely mitigated sentences. The key mitigating factors for sentencing in these cases were an offender's compliance with police and their level of remorse. For example, the appellate judges who re-sentenced DS stated there were significant mitigating circumstances that operated in her favour. These included '... [her] plea of guilty, her remorse and contrition, and the obviously significant help that she has provided to the police and immigration authorities'.³⁹ These acts entitled DS to a 50 per cent reduction in her sentence. In addition, despite often experiencing socio-economic disadvantage and familial burden, women may be constructed as more culpable as they should have known better. This construction corresponds with Maciotti *et al.*'s study which found that 'white Australian male partners involved in the exploitation of sex workers in several slavery cases in Australia (including Queen vs. Wei Tang, Somsri, and Tanuchit) received more lenient sentences than their spouses'.⁴⁰

Case Studies: Women offenders and socio-economic constraints

Lay Foon KHOO

Lay Foon Khoo was born and grew up in Malaysia. She was charged with one count of organising or facilitating the entry of Ms Lai into Australia, involving deception about the fact that Ms Lai would be required to provide sexual services. Hardship was a prominent element of Lay Foon Khoo's life from the moment she was born. During sentencing, the judge described Khoo's harsh upbringing:

*Your background has been a very distressing one and it's been a very hard life you have led. You were born in prison because of your parents being imprisoned for drug trafficking. You've spent the first three years of your life in that environment.*⁴¹

After she moved out of this environment, Khoo lived with her older sister, uncle, aunt, and grandmother, who raised her. However, her life did not improve. Khoo's family treated her badly due to the circumstances of her birth. Khoo was beaten and because her mother worked in the sex industry, she was bullied at school.⁴²

In addition to the abuse Khoo suffered as a child, the sentencing judge stated all three of Khoo's primary relationships were abusive. Her first husband gambled, cheated on her, and was violent towards her. Her second husband was also abusive,

³⁹ *R v DS* [2005] VSCA 99, p. 8.

⁴⁰ Maciotti *et al.*, p. 9.

⁴¹ *The Queen v Lay Foon KHOO* [2017] 2105 of 2016, p. 438.

⁴² *Ibid.*, p. 439.

and her partner at the time of sentencing was reportedly abusive as well. The sentencing judge acknowledged the burden of care placed upon Khoo during her relationship with her second husband:

*This was also an abusive relationship and you were forced to support your second husband's former wife and two children as well as your family and assist him with business dealings.*⁴³

When Khoo's second marriage ended, she was left with no money and attempted to sell her jewellery to raise the funds to travel to Australia.⁴⁴ This would indicate Khoo had endeavoured to come to Australia prior to meeting Kathy Wong, the woman who eventually arranged her travel. These circumstances, however, left her vulnerable to those who recruited her to work in Australia: Kathy Wong and Danny Cai.

While in Malaysia, Khoo commenced a friendship with Danny Cai and Kathy Wong, who informed Khoo of the prospect of coming to Australia to earn money as a sex worker. Danny Cai was a relation of Ms Cai, for whom Khoo worked once in Australia. Wong told Khoo she could earn a good income in Australia and offered to organise her travel and work arrangements. When Khoo told Wong she did not know anything about sex work, Wong told her that she would teach her. As Khoo needed to earn money to support her family financially, she agreed to come to Australia to work in the sex industry. However, she was not informed of the requirement to pay back fees associated with her travel costs and visa until after she arrived in Perth, nor was she aware she would not be able to retain possession of her passport.⁴⁵ Khoo's legal representation argued her choice was made in desperation:

*When Ms Khoo was setting herself up to come to Perth to work as a prostitute, that wasn't an easy choice for her to make. It wasn't something that she wanted to do, but she was in a desperate situation. She had the good fortune to have her husband able to look after the children back in Malaysia, but she needed to earn money.*⁴⁶

This illustrates the impact of the financial burden placed upon Khoo, which resulted in her accepting work in the sex industry, so she could earn the income she needed to support her family.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, p. 430.

⁴⁶ *Ibid.*

Shortly after Khoo arrived in Australia, she began working for Ms Cai in her brothel. The sentencing judge suggested Ms Cai provided great assistance to Khoo, such as accommodation, clothing, and hygiene products, among other things. After Khoo ceased working at the brothel, she reportedly felt an obligation to Ms Cai. Using the term ‘pay back’, Khoo allegedly felt that she needed to repay Ms Cai’s favour by recruiting Ms Lai to work at Ms Cai’s brothel.⁴⁷ Upon her arrival, Khoo and her partner picked Ms Lai up from the airport and bought her a sim card, groceries, and some personal hygiene products before taking her to the brothel where she was to work. This was like the treatment Khoo received from Ms Cai after she arrived in Australia. Ms Lai worked at the brothel for seven days before contacting the police.

The sentencing judge accepted there may have been a degree of pressure on Khoo by Ms Cai when she first arrived in Australia. Nonetheless, the judge further suggested that this pressure no longer existed as the fact Khoo was arranging for women to come from Asia to work for her demonstrated the friendship that now existed.⁴⁸ However, this view does not take into account the power imbalance between Khoo and Ms Cai considering Khoo worked for Ms Cai in a situation where she was required to repay the costs associated with her travel and her passport had been taken from her. Khoo referred to Ms Cai as the Lady Boss throughout the arrangements for Ms Lai to come to Australia. The judge’s belief that a friendship now existed between Khoo and Ms Cai aligns with the ‘choice’ narrative and does not consider the coercive elements stemming from Khoo’s own victimisation by Ms Cai.

Khoo did not plead guilty, nor did she personally give evidence at the trial. The judge referred to a psychological report tendered during sentencing that suggested Khoo was ‘unable to acknowledge wrongdoing and unable to demonstrate an understanding of how [her] conduct [had] harmed the victim...’. The sentencing judge stated: ‘I accept that that’s in part because of the harsh treatment that you’ve received throughout your life and the circumstances of how you came to be working at the brothel in Australia ...’.⁴⁹ Khoo was therefore sentenced to a total of four years imprisonment. Khoo’s sentence could be considered especially harsh considering this case involved only one victim, who was exploited for six or seven days, in conjunction with Khoo’s own experiences as a trafficking victim and the socio-economic constraints she faced, which were both acknowledged by the judge.

⁴⁷ *Ibid.*, p. 426.

⁴⁸ *Ibid.*, p. 435.

⁴⁹ *Ibid.*, p. 439.

Rungnapha KANBUT

Rungnapha Kanbut was born and grew up in Southern Thailand. The court did not consider Kanbut to be a victim of trafficking. However, the sentencing remarks reveal that her significant socio-economic constraints were considered during sentencing. The sentencing judge referred to a psychiatric report in which Kanbut stated ‘her family suffered significant financial challenges and often did not have enough money for food’.⁵⁰ The judge stated during sentencing that after Kanbut was born, her family moved into their maternal grandmother’s small house where they lived with three aunts and one uncle, as her mother was unable to care for both Kanbut and her sister. Kanbut left school when she was 7 years old to help her mother care for her newborn sibling. When Kanbut was 13 or 14 years old, she began gruelling work as a farm hand, during which time she got up at 4 am to walk to the rubber plantation to begin work.⁵¹ Kanbut migrated to Australia because she wanted to provide a better life for her two older children, whom she had with her first partner in Thailand. Her actions in relation to her children were like those regarding her family when she was young; she did all she could for them to ensure they had the best life possible. However, Kanbut found the cultural differences between Thailand and Australia difficult to negotiate at times. A particular aspect of Thai culture, as noted in the sentencing remarks, is the practice of families relying on and helping each other when required. After Kanbut immigrated to Australia, four members of her family also came: her two children, her cousin, and her sister. All four depended heavily on Kanbut and, continuing her Thai cultural practice, she did everything she could to ensure each were cared for.

Kanbut’s daughter provided the first of six character references in support of Kanbut. In summarising this, the sentencing judge suggested Kanbut ‘found it difficult living in Australia compared to Thailand principally because of the lack of family support’,⁵² as in Thai culture, ‘the community supports each other very much’.⁵³ Ms Barton, the daughter of Kanbut’s ex-partner, was another of the six people who provided the court a reference in support of Kanbut. In summarising this reference, the sentencing judge stated Kanbut ‘was a hard worker and had always been focused on providing for her family’.⁵⁴ Furthermore, Kanbut ‘had a strong work ethic that is driven by wanting to provide for her family’.⁵⁵ Ms Barton could not believe Kanbut had been found guilty of the charges, suggesting ‘it

⁵⁰ *R v Kanbut* [2019] NSWDC 931 para. 76.

⁵¹ *Ibid.*, para. 77.

⁵² *Ibid.*

⁵³ *Ibid.*, para. 110.

⁵⁴ *Ibid.*, para. 120.

⁵⁵ *Ibid.*, para. 125.

is relevant to think of the cultural differences and difficulty for some people immigrating to Australia'.⁵⁶ Dr Bloomfield, Kanbut's youngest son's paediatrician, provided a report detailing some of her son's medical issues. From this report, the sentencing judge summarised Kanbut's ex-partner and father of her youngest son, 'has experienced difficulties financially with employment and his health [and] has a limited capacity to provide continuous care... [As a result], this has increased the demands on [Kanbut] who is effectively his sole carer...'.⁵⁷ Kanbut's daughter stated (as summarised by the sentencing judge) that her mother had had a very tough life:

*She had sacrificed her education so that her sister who had health problems could go to school. [Kanbut] worked in any way she could to help the family survive. She would find fruit and vegetables to sell at the markets, cook and do housework, cleaning and washing clothes. When it came to her own children she applied this same selflessness and did everything she could to give her children the best life and education possible.*⁵⁸

Each character reference from Kanbut's friends and family highlights that Kanbut felt the burden of supporting her family financially, even when she was young.

Regarding Kanbut's offending, she was one person participating in a larger organisation that operated between Australia and Thailand. Unlike Khoo, Kanbut was not involved in the recruitment of the two victims. However, she did manage the victims once they arrived in Australia. Kanbut explained where, when, and how each would work and organised their transport to and from the brothel. She was therefore charged with two counts of intentionally possessing a slave and two counts of exercising over a slave any powers attaching to the right of ownership, namely the power to use, in relation to two victims.⁵⁹ Kanbut's legal representation argued she had 'provide[d] the victims with somewhere to live and provide[d] them with items for work'.⁶⁰ Additionally, while they agreed that she had a hands-on role in the operation, they argued further that 'she was not without compassion for the victims',⁶¹ with which the sentencing judge agreed.⁶² These claims support the victims referring to Kanbut as 'mother tac', which translates into someone who looks after the contracted women.

⁵⁶ *Ibid.*, para. 126.

⁵⁷ *Ibid.*, para. 161.

⁵⁸ *Ibid.*, para. 106.

⁵⁹ *Ibid.*, para. 2.

⁶⁰ *Ibid.*, para. 213.

⁶¹ *Ibid.*, para. 218.

⁶² *Ibid.*, para. 272.

However, the prosecution argued that Kanbut's 'conduct was planned and premeditated'.⁶³ Further, she exploited the freedoms of two vulnerable women for her own financial gain. Similarly, the sentencing judge in *R v Watcharaporn Nantabkhum* suggested that '...the offence [in this case] was primarily committed for greed'.⁶⁴ This judge, like the judge sentencing Kanbut, prioritised greed as the motivation for their actions, rather than framing their actions as a response to the socio-economic constraints they experienced, as discussed throughout the sentencing remarks. This aligns with the 'choice' narrative often applied to offenders. As Kanbut did not cooperate with law enforcement, nor show any remorse for her actions, she was not entitled to any reduction of her sentence. As a result, she was sentenced to eight years imprisonment.

Maciotti *et al.* suggest, '[a]ccording to Rung's⁶⁵ defence counsel, Mr Clarke, the whole case was "a-washed with consent." Instead, for the prosecution the victims' consent to the slavery-like conditions was to be found irrelevant in the determination of whether they had been enslaved, a definition which was then accepted by the judge'.⁶⁶ This highlights a difference between the way agency is viewed in relation to victims and offenders. Because the victim's consent cannot be pointed to as a defence by the offender, the victim's agency is denied, and the offenders' agency is heightened. Similar to Khoo's sentence, 'Rung's eight-year long sentence [...] could be seen as harsh in comparison to these when taking into account the number of victims involved'.⁶⁷

Conclusion

Narratives that depict trafficking in terms of clearly defined victims and villains reinforce the division between those who have agency (offenders) and those who do not (victims). This dichotomous view of the victim/offender, structural constraint/agency divide does not reflect the realities of trafficking for sexual exploitation. As this analysis has shown, a large proportion of women offenders have also been victims of HTSE (50 per cent of Australian cases), and many women have experienced significant socio-economic constraints and familial burdens that have shaped their pathways to both victimisation and offending. While many judges are aware of the constraints women face, the narrative of choice and agency dominates sentencing. One judge explained the reason behind this:

⁶³ *Ibid.*, para. 192.

⁶⁴ *R v Watcharaporn Nantabkhum* SCC149 of 2010, p. 10.

⁶⁵ Rung is short for Rungnapha Kanbut.

⁶⁶ Maciotti *et al.*, p. 11.

⁶⁷ *Ibid.*, p. 8.

*What quite often happens in the sentencing process, you'll get perhaps a psychologist's report or a pre-sentence report from community corrections, which will give you either in great detail, or not so much detail, information about the person's background and life. In a lot of cases, you never hear from the defendant/the perpetrator. So, you're going on second-hand information given to these other people.*⁶⁸

This highlights the need for offenders' voices to be included during trials and sentencing. Offending women's voices and experiences are notably absent in trafficking case adjudications, which leads to narrative tropes and imagery of victims and villains that misrepresent the complex socio-economic constraints and financial burdens women experience. While these constraints can influence women's offending, this does not mean women's agency has been removed. Therefore, the inclusion of women's own narratives can improve the understanding of the ways they exercise agency despite the powerful ability of these constraints to structure their offending. Considering this, these socio-economic constraints should be viewed as mitigating elements in the women's sentencing.⁶⁹ To facilitate a greater understanding of the impact of socio-economic structural constraints and previous victimisation in HTSE cases, judges need specific training on the complexities of the lives of women who have been identified as offenders. This is a scenario which needs to be openly addressed as part of the training, such as professional development programmes for judges and other criminal justice actors.⁷⁰

In acknowledging the role that structural constraints, such as familial financial burden, play in shaping women's offending, it is also important to avoid removing women's agency altogether. For both victims and offenders, recognising that women make considered choices to better their circumstances is key to understanding the complexities of human trafficking. Doing so will shed light on the structural forces and global inequalities that contribute to trafficking while also incorporating nuanced understandings of gendered structural constraints when

⁶⁸ Interview, Judge Two, Sydney, 26 June 2018.

⁶⁹ This article discusses women's offending and the socio-economic constraints they face, as discussed during sentencing. This is not to say that male offenders do not face a similar financial burden to support their families, but further research is required in this area. If this was shown to be the case, this should similarly be considered by judges during sentencing.

⁷⁰ It is important to note that the socio-economic constraints discussed within the sentencing remarks originated in the offender's country of origin and therefore, to alleviate these, greater economic opportunities need to be provided to women in these countries. However, as this article speaks specifically to the way that Australian judges construct these elements, the recommendations have centred around judges and the sentencing process.

exploring women's offending in HTSE. This point is supported by criminologists such as Ajzenstadt who argues that 'women's involvement in crime should be further analysed with the context of their gendered social positioning, which produces the framework for their individual decisions and their attempts to exercise control over their behaviour.'⁷¹ As this analysis has shown, women do have agency in shaping their lives. However, they make choices within socio-economic constraints, influenced by structural factors at both a micro and macro level that lead them to become both victims and offenders of trafficking for sexual exploitation.

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⁷¹ Ajzenstadt, p. 202.

The Constitutional Limits of Anti-Trafficking Norms in the Commonwealth Caribbean

Dr Jason Haynes

Abstract

Trafficking in persons is a crime and a human rights violation that affects most states across the globe, including those in the Commonwealth Caribbean. Therefore, in the last twenty years, governments have rushed to enact anti-trafficking laws with a level of alacrity the international community has never seen before. While the enactment of these laws is both necessary and desirable, some have pushed the limits of what is constitutionally permissible in a free and democratic society. This article demonstrates that some of the prosecution provisions of anti-trafficking norms enacted by Caribbean governments have encroached or threaten to encroach upon the constitutional rights of accused persons. It concludes that unconstitutional provisions of regional anti-trafficking laws need to be addressed by regional governments as a matter of urgency, as they can potentially be challenged by traffickers with the result being that, if successfully challenged, traffickers may escape liability for crimes they have committed on mere technicalities.

Keywords: traffickers, rule of law, separation of powers, constitutionality, fair trial, Caribbean

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Introduction

Trafficking in persons is a criminal activity which thrives in situations of poverty, social and political instability, corruption, disenfranchisement, and discrimination with far-reaching implications for both individuals and

societies.¹ Its effects are felt in all countries across the globe, including those in the Commonwealth Caribbean.² Whether operating alone or as part of an enterprise, traffickers typically capitalise upon individual and societal vulnerabilities to recruit, transport, threaten, or coerce people into situations of exploitation.³ In the Commonwealth Caribbean, these persons are principally subject to sexual exploitation, forced labour, and servitude.⁴

In response to external pressures arising from the threat of sanction via the United States *Trafficking in Persons* reports,⁵ Caribbean governments enacted *sui generis* anti-trafficking legislation⁶ that prohibits trafficking in persons. Kempadoo argues that ‘the Trafficking in Persons (TIP) report (...) has the most direct influence on the region because it has more “teeth” than the UN Protocol.’⁷ Likewise, in Adair’s view,

¹ A P Mano, ‘An Innovative Approach to Sex Trafficking Research: The methodological advancement of Attride-Stirling’s thematic network analysis’, *International Annals of Criminology*, vol. 55, issue 1, 2017, pp. 40–59, <https://doi.org/10.1017/cri.2017.4>.

² M John, ‘A Critical Approach to Understanding Human Trafficking in the Caribbean’, *The International Journal of Human Rights*, vol. 24, issue 10, 2020, pp. 1666–1680, <https://doi.org/10.1080/13642987.2020.1762577>.

³ J Haynes, *Caribbean Anti-Trafficking Law and Practice*, Bloomsbury Publishing, London, 2019, chapter 6; see also: K Cruz, J O’Connell Davidson, and J Sanchez Taylor, ‘Tourism and Sexual Violence and Exploitation in Jamaica: Contesting the “trafficking and modern slavery” frame’, *Journal of the British Academy*, vol. 7, issue s1, 2019, pp. 191–216, <https://doi.org/10.5871/jba/007s1.191>.

⁴ K Kempadoo, ‘The War on Human Trafficking in the Caribbean’, *Race & Class*, vol. 49, issue 2, 2007, pp. 79–85, <https://doi.org/10.1177/03063968070490020602>.

⁵ K Adair, ‘Human Trafficking Legislation in the Commonwealth Caribbean: Effective or effected’, in D S Berry and T Robinson (eds.), *Transitions in Caribbean Law: Lawmaking constitutionalism and the confluence of national and international law*, Caribbean Law Publishing, Kingston, 2013.

⁶ Antigua and Barbuda *Trafficking in Persons (Prevention) Act* 2010 (Act 12/2010); Bahamas *Trafficking in Persons (Prevention and Suppression) Act* 2008; Barbados *Trafficking in Persons Prevention Act* 2016; Belize *Trafficking in Persons (Prohibition) Act* 2013; Dominica *Transnational Organized Crime (Prevention and Control) Act* 2013; Grenada *Prevention of Trafficking in Persons Act* 2014; Guyana *Combating of Trafficking in Persons Act* 2005 (Act 2/2005); Jamaica *Trafficking in Persons (Prevention, Suppression and Punishment) Act* 2007; St Kitts and Nevis *Trafficking in Persons (Prevention) Act* 2008 (Act/32 2008); St Lucia *Counter-Trafficking Act* 2010 (Act 7/2010); St Vincent and the Grenadines *Prevention of Trafficking in Persons Act* 2011; Trinidad and Tobago *Trafficking in Persons Act* 2011 (Act 14/2011).

⁷ Kempadoo.

The exercise of US hegemony, through its blacklisting and sanctioning process under the United States TVPA [Victims of Trafficking and Violence Protection Act] 2000, is the single most powerful stimulant in effecting the introduction of statutory regimes against human trafficking in the region. To satisfy the US' minimum requirements, the Acts transplanted the Palermo Protocol and the Convention Against Transnational Crime. There was no meaningful assessment of the phenomenon in the Caribbean, an essential pre-requisite for good law making. Further, the interaction between the domestic legislative process and international standards in these countries resulted in statutes that are not tailored for the Caribbean region. Rather, they embody carbon copies of the international standards, with their peculiarities and deficiencies.⁸

These pieces of domestic legislation now criminalise trafficking in persons along the internationally prescribed definition consisting of the 'acts', 'means', and 'purpose'; stipulate stringent penalties; and prescribe a range of other measures aimed at confiscating the proceeds of the crime, and forfeiting the instrumentalities used in the commission of the offense. Recent legislation has also introduced judge-only trafficking trials, and even gone as far as prescribing the use of witness anonymity orders and related special measures in trafficking in persons cases. Amidst the ambience of self-congratulation, widespread international praise, and public appreciation of these measures, there has been very little said about the extent to which some of the prosecution provisions of regional anti-trafficking laws are compatible with the constitutional rights of accused persons. Drawing on a comparative analysis of Commonwealth Caribbean anti-trafficking legislation, which I completed for the monograph *Caribbean Anti-Trafficking Law and Practice* (Bloomsbury Publishing) in 2019,⁹ in this paper, I argue that, as a result of the region's rushed implementation of provisions on prosecutions, the constitutional rights of accused persons have been or are likely to be encroached upon. I conclude that several of the prosecution provisions are incompatible with not only the implied constitutional norms of supremacy of the constitution, separation of powers, and the rule of law, but also the fair trial rights of accused persons.

⁸ Haynes, chapter 6.

⁹ *Ibid.* Chapter 2 of the monograph outlines the methodology used for selecting the relevant laws and cases analysed in this paper.

Background and Context

The twelve independent Commonwealth Caribbean countries with which this article is concerned¹⁰ have legal systems that are, in general, based on the English Legal System. Guyana and St Lucia represent slightly nuanced legal traditions in that, in the case of the former, there is a strong Roman–Dutch legal heritage that complements its common law tradition, while, in the case of the latter, remnants of the French civil law legal tradition operate alongside the common law. However, the legal nuances in Guyana and St Lucia are largely inconsequential given that anti-trafficking legislation in both countries closely aligns with the English legislative tradition.

As constitutional democracies, Commonwealth Caribbean countries adhere to the supremacy of the constitution (as opposed to parliamentary supremacy) and the doctrine of separation of powers. With respect to human trafficking, this means that the responsibility for devising and enforcing policy lies with the executive and the mandate to enact legislation with the legislature, while the judiciary, as an independent arm of the state, is charged with the responsibility of applying anti-trafficking law to individual cases. Because the respective territories and islands also adhere to the rule of law, anti-trafficking laws must necessarily be free from vagueness and uncertainty, and comply with myriad constitutional norms, including the right to a fair trial.

The Judicial Committee of the Privy Council (JCPC) is the highest appellate Court for the majority of the independent Commonwealth Caribbean countries, with the exception of Barbados, Belize, Dominica, and Guyana, whose final appellate court is the Caribbean Court of Justice (CCJ), with headquarters in Trinidad and Tobago. In most cases, however, the majority of trafficking cases, unless appealed, will either be adjudicated upon in the magistrate’s court, which is at the lowest end of the hierarchy of courts, or, more commonly, in the High Court, which is positioned just below the Court of Appeal.

Each of the independent Commonwealth Caribbean jurisdictions has a written constitution which contains a supremacy clause,¹¹ as well as a Bill of Rights section which, generally, begins with a preamble that speaks to due process of the law or protection of the law. While a number of older cases from the JCPC

¹⁰ Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago.

¹¹ For example, section 1 of Barbados’ constitution: ‘This Constitution is the supreme law of Barbados and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.’

suggested that the preamble is merely aspirational and therefore not intended to confer justiciable rights,¹² the CCJ, in a landmark judgment rendered recently, *Nervais and Severin v The Queen*,¹³ arrived at the conclusion that protection of the law, a phrase mentioned in the preamble of Barbados' constitution, is indeed justiciable. The court eschewed a narrow interpretation of this provision. Relying on the dicta of Wit JCCJ in *A-G v Joseph and Boyce*,¹⁴ the court considered that 'the right to protection of law requires therefore not only law of sufficient quality, affording adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power. It also requires the availability of effective remedies.'¹⁵

The court in *Nervais* further noted that the protection of the law or due process is an inherent part of the concept of the rule of law, and that therefore,

no person, not even the Queen or her Governor-General, is above the law. [The rule of law] further imbues the Constitution with other fundamental requirements such as rationality, reasonableness, fundamental fairness and the duty and ability to refrain from and effectively protect against abuse and the arbitrary exercise of power. It is clear that this concept of the rule of law is closely linked to, and broadly embraces, concepts like the principles of natural justice, procedural and substantive 'due process of law' and its corollary, the protection of the law. It is obvious that the law cannot rule if it cannot protect.¹⁶

In short, then, according to the CCJ in *Nervais*, 'protection of the law is therefore one of the underlying core elements of the rule of law which is inherent to the Constitution. It affords every person, including convicted killers, adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.'¹⁷

Apart from the rule of law, another important principle of Commonwealth Caribbean constitutionalism, which, as discussed below, may be infringed by some of the prosecution provisions of anti-trafficking laws, is the doctrine of separation of powers, which, according to the CCJ, envisages a separation between the

¹² See, generally: T Robinson, A Bulkan and A Saunders, *Fundamentals of Caribbean Constitutional Law*, Sweet & Maxwell, 2015.

¹³ [2018] CCJ 19 (A).

¹⁴ [2006] CCJ 3 (A).

¹⁵ *Nervais* (n 6) [44].

¹⁶ *Ibid.*, [20].

¹⁷ *Ibid.*, [45].

legislative, judicial, and executive branches of government.¹⁸ Furthermore, apart from the rule of law and separation of powers, some of the prosecution provisions of regional anti-trafficking laws encroach or have the potential to encroach upon a number of expressly enumerated rights of accused persons, namely:

- Protection of right to life;
- Protection of right to personal liberty;
- Protection from inhuman treatment;
- Protection from deprivation of property;
- Protection against arbitrary search or entry;
- Protection of law; and
- Protection of freedom of movement.

While these rights are not absolute, any limitations imposed in respect of the exercise of these rights must be reasonably required or demonstrably justified in a free and democratic society. Courts will subject the measures pursued by said law to the test of whether they serve a legitimate aim; are rationally connected to the aim they seek to achieve; are proportionate; and strike a fair balance between the rights of the accused in question and the countervailing interests of the state.¹⁹ The test of proportionality is assessed by reference to what is necessary and least restrictive in the circumstances.

The Constitutionality of Anti-Trafficking Laws

A review of Caribbean anti-trafficking legislation does not reveal reversals of burden of proof, the imposition of the death penalty, high thresholds for obtaining bail, presumption of guilt rather than innocence, nor infringements of the right to practice one's profession or occupation. However, as I detail later, some pieces of regional anti-trafficking legislation include imprisonment for remainder of a perpetrator's life and hefty fines.

In what follows, I interrogate the ways in which some of the prosecution provisions of regional anti-trafficking laws encroach or threaten to encroach upon the prescribed fair trial rights of accused persons.

¹⁸ The CCJ, in *BCB Holdings Limited and The Belize Bank Limited v The Attorney General of Belize* [2013] CCJ 5 (AJ).

¹⁹ *Benjamin v Minister of Information and Broadcasting* [2001] 1 WLR1040.

Anti-Trafficking Offenses and the Rule of Law

The obligation to criminalise trafficking in persons is expressly provided for in a number of international instruments, including the UN Trafficking Protocol,²⁰ the American Convention on Human Rights,²¹ the Convention on the Rights of the Child,²² and the Convention on the Elimination of All Forms of Discrimination Against Women.²³ In this context, as intimated above, several Commonwealth Caribbean states have enacted specific legislation aimed at criminalising human trafficking and related practices.

The domestic anti-trafficking legislation in the Commonwealth Caribbean is largely compliant with international law insofar as the definition of human trafficking is concerned. The respective countries' TIP legislation prohibits the *acts* of recruitment, transportation, transfer, harbouring, or receipt of persons where they are engaged in by *means* of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power, the abuse of a position of vulnerability, or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the *purpose* of exploitation.

Although 'exploitation' is not exhaustively defined in most regional jurisdictions, there are some, such as Belize,²⁴ The Bahamas,²⁵ and Guyana,²⁶ whose legislation uses exhaustive language to define 'exploitation'. The use of the phrase 'exploitation means' instead of 'exploitation includes' in these three countries effectively means that although traditional forms of exploitation, such as slavery and practices similar to slavery, forced labour, servitude, sexual exploitation, or exploitation of the prostitution of others, and the illicit removal of organs are accounted for, uncertainty arises as to whether their legislation is meant to cover the evolving dynamics of human trafficking, including the trafficking of persons for exploitation in criminal activities, such as the cultivation and production of cannabis, the trafficking for the purpose of obtaining welfare

²⁰ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime* (Trafficking Protocol), 15 November 2000, Art. 5(1).

²¹ *American Convention on Human Rights*, 22 November 1969, 1144 UNTS 123, Art. 6.

²² *UN Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Art. 6.

²³ *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, Art. 6.

²⁴ s 2 Belize TIP Act.

²⁵ s 2 Bahamas TIP Act.

²⁶ s 2(e) Guyana TIP Act.

benefits, and trafficking of children for the purposes of adoption,²⁷ among others. Notwithstanding this, however, it appears that the legislation in countries like Antigua and Barbuda, and Trinidad and Tobago, expressly contemplate ‘any illegality activity’²⁸ and the ‘transport of illegal items’,²⁹ respectively. Trinidad and Tobago’s anti-trafficking legislation also contains a nuanced form of exploitation, namely trafficking for ‘ritual purposes’, which is defined in section 3 of the TIP Act to mean the use of a victim or the victim’s body parts or blood for the conduct of spiritual, religious, or occult practices or such other ceremonies and rituals.

There have been no judicial challenges in the region on the narrow question of whether the criminalisation provisions contained in the respective pieces of legislation are unconstitutional. In other jurisdictions like Canada, the argument has been raised, albeit unsuccessfully, that, in attempting to criminalise human trafficking, the legislature had enacted vague and over-broad provisions that lack the necessary quality of legal certainty, thereby contravening the rule of law. In the Ontario Supreme Court case of *R v D’Souza*,³⁰ the defendant contended that because the Criminal Code of Canada did not define certain terminology used in respect of human trafficking, it should be struck down for being unconstitutional. The Court, however, adopted a pragmatic approach, finding that:

It is not at all unusual for a criminal offence to include terminology that is not defined by the legislators. We rely upon the courts, with input from litigators and counsel, in an adversarial process, to interpret the meaning of certain words and to decide whether a given accused’s conduct falls within the scope of the offence in question.³¹

The Court then addressed the question of whether the terms used in the impugned legislation, which are similar to those used in Commonwealth Caribbean anti-trafficking legislation, were unduly complicated such that they were uncertain. To this question, the Court’s response was that:

The words used have common, ordinary meanings that are generally well known to the citizenry. In the simplest language possible, ‘recruit’ means to enlist or get someone involved.

²⁷ Note that this is covered by s 12 of the Belize TIP Act.

²⁸ s 2 Antigua and Barbuda TIP Act.

²⁹ s 2 Trinidad and Tobago TIP Act.

³⁰ *R v D’Souza* 2016 ONSC 2749.

³¹ *Ibid.*, [141].

‘Transport’ means to take from A to B. ‘Transfer’ means to hand over. ‘Receive’ means to take or accept. ‘Hold’ means to keep or maintain. ‘Conceal’ means to hide or keep secret. ‘Harbour’ means to shelter. To exercise ‘control, direction or influence over’ means to affect. To ‘facilitate’ something means to make it easier. ‘Benefit’ means an advantage or gain.³²

Aside from confirming that, once the essential elements of human trafficking are ascertainable in advance, there can be no argument that the principles of fundamental justice are compromised,³³ the Court also found, quite instructively, that ‘it is relevant but not necessary that the complainant felt exploited or that s/he was, in fact, exploited’.³⁴ In short, once there is sufficient evidence that goes to establishing the ‘acts’ and ‘means’ element, proof only of an attendant intention to engage in exploitation is required.

While, on the facts of *R v D’Souza*, the court did not find that a constitutional breach was established by the claimant, the court’s dicta on the rule of law and its relation to anti-trafficking laws is instructive. The court noted that if anti-trafficking laws are impermissibly vague, they will effectively ‘mock the rule of law and scorn an ancient and well-established principle of fundamental justice: No one may be convicted or punished for an act or omission that is not clearly prohibited by a valid law.’³⁵ It accepted that it is a fundamental requirement of the rule of law that a person should be able to predict whether a particular act constitutes a crime at the time they commit the act; that is, ‘the essential elements of the crime must be ascertainable in advance.’³⁶

Although extant Commonwealth Caribbean anti-trafficking laws do not appear to encroach upon the requirements of the rule of law, since they clearly stipulate what conduct will constitute trafficking in persons, the *R v D’Souza* case reminds us that if and when regional legislators are seeking to amend or enact new anti-trafficking laws in future, they must ensure that the constitutional requirements of certainty, predictability, and clarity are fully complied with. It will also be interesting to see how Caribbean courts treat controversial aspects of the ‘means’ element, namely ‘abuse of a position of vulnerability’. Notably, this issue did not

³² *Ibid.*, [146].

³³ *Ibid.*, [34].

³⁴ *Ibid.*, [130]; see also s 19(a) Antigua and Barbuda TIP Act; s 14(a)–(b) Grenada TIP Act; s 12(a)–(b) Turks and Caicos TIP Ordinance.

³⁵ *R v D’Souza* (n 25) [35].

³⁶ *Ibid.*

arise in *R v D'Souza*, but arose in the Dutch Supreme Court case of *LJN*.³⁷ In that case, six Chinese irregular migrants, desperate for work and afraid of being discovered by authorities, approached a Chinese restaurant owner. They were provided accommodation and work that paid well below the statutory minimum wage. The District Court initially ruled that the claimants' situation did not constitute an 'abuse of a position of vulnerability' because this term implies that the perpetrator takes the initiative, whereas, on the facts, it was the victims who had taken the initiative by begging the restaurant manager for a job. The Court of Appeal upheld this decision, noting that 'abuse of a vulnerable position' requires a certain initiative and positive action on the part of the perpetrator, thereby resulting in weaker or vulnerable position of the victims being consciously abused. The case was appealed to the Supreme Court, which took the view that it was not necessary for the perpetrator to take initiative. It also disagreed with the lower court that the perpetrator must 'intentionally abuse' the vulnerable position of the victims. The Supreme Court held that 'conditional intent' is sufficient; that is, it is enough that the perpetrator was aware of the state of affairs that must be assumed to give rise to power or a vulnerable position.³⁸

Moreover, it will certainly be interesting to see whether Caribbean courts adopt a broad interpretation of 'exploitation' since regional legislation uses the phrase, 'exploitation includes, at a minimum ...', or a narrow approach such as in the recent English decision of *The Queen on the application of Y v Secretary of State for the Home Department*,³⁹ a case in which the Court refused to regard kidnapping as a form of exploitation.

Mode of Trial, Sentencing, and the Supremacy of the Constitution

In general, the anti-trafficking legislation of the respective independent Commonwealth Caribbean jurisdictions imposes sentences in respect of persons who have been convicted of trafficking-related offenses that are robust, ranging from five years' imprisonment in the case of St Lucia to life imprisonment in the case of Barbados. Although, in some cases, these sentences are augmented by, or can be substituted for, fines, in general, the sanctions are not only consistent with the penalties imposed for similar offences in countries like the United Kingdom, but also appear to be commensurate with the seriousness of trafficking-related

³⁷ Supreme Court, 27 October 2009, LJN: B17099408.

³⁸ A T Gallagher and M McAdam, *Abuse of a Position of Vulnerability and Other 'Means' Within the Definition of Trafficking in Persons*, Issue Paper, United Nations Office on Drugs and Crime, Vienna, 2013, p. 34.

³⁹ [2021] EWHC 2155.

offences.⁴⁰ Indeed, in an Antiguan High Court case, *Cheryl Thompson v The Attorney General of Antigua and Barbuda*,⁴¹ the Court rejected the argument made by a Jamaican businesswoman, who was charged with the trafficking of women for sexual exploitation in her nightclub, that the penalty provisions in Antigua and Barbuda's TIP Act were in breach of the rule of law in that they were 'arbitrary, intimidatory or unreasonable'. Instead, the Court held that:

[T]he penalties set out in these sections are expressed in terms of the maximum sentence, the trial Judge would have the discretion to tailor the sentence to meet the justice of each case. The provisions provide penalties designed to deter those who may be inclined to commit such offenses.⁴²

While the robust nature of existing penalties prescribed for trafficking-related offenses does not appear to offend the rule of law, the fact that hefty penalties may be imposed by magistrates, as opposed to High Court judges, in some Caribbean jurisdictions seemingly offends the principle of constitutional supremacy. In this connection, in the Antigua Eastern Caribbean Supreme Court case of *Cheryl Thompson*,⁴³ the question arose as to the constitutionality of various provisions of Antigua and Barbuda's TIP Act, which purported to confer summary jurisdiction to magistrates to impose sentences of up to 25 years on persons convicted of trafficking-related offenses. The claimant argued that the maximum periods of imprisonment that could have been imposed under the TIP Act by magistrates were in excess of the maximum period of imprisonment that magistrates could impose under the Misuse of Drugs Act and similar Acts, and that, in any event, the sentencing powers conferred on the magistrates' court by the TIP Act were without precedent in any other democratic common law jurisdiction. The claimant contended that the jurisdiction that the Supreme Court has traditionally exercised in imposing severe sentences of imprisonment had effectively been altered by the TIP Act in a manner that was unconstitutional.

In finding for the claimant, the Court held that trafficking-related offenses are serious offenses, and that, although these offenses were relatively new to the statute books of Antigua and Barbuda, Parliament considered the offenses so serious as to provide penalties for their violation that are comparable to life

⁴⁰ Note that Article 2(b) of the UN *Convention on Transnational Organized Crime* 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'.

⁴¹ *Cheryl Thompson v The Attorney General of Antigua and Barbuda* ANUHCv 2011/0830.

⁴² *Ibid.*, [36].

⁴³ *Ibid.*

sentences. In this regard, the Court had no doubt that the trial of these serious criminal offences formed a significant part of the jurisdiction that has historically characterised the High Court. To this end, the Court concluded that the provisions of the TIP Act were in conflict with section 47 of the Constitution (which specifies the manner in which Parliament could lawfully alter the Constitution). Having regard to section 2 of the Constitution (the supremacy clause), the Court held that the impugned provisions were inconsistent with the Constitution, and that, accordingly, the Constitution had to prevail. As such, the TIP provisions were, to the extent of the inconsistency, rendered void. Citing the now infamous Commonwealth Caribbean constitutional case of *Hinds and Others v The Queen*,⁴⁴ the Court concluded that:

[I]f the jurisdiction to try these offenses were to remain with the Magistrates Court, the individual citizen could be deprived of the safeguard, which the makers of the Constitution regarded as necessary, of having important questions affecting his civil or criminal responsibilities determined by a court, composed of judges whose independence from all local pressure by Parliament or by the executive was guaranteed by a security of tenure more absolute than that provided by the Constitution for judges of inferior courts.⁴⁵

Against the backdrop of this judgment, Antiguan and Barbudan legislators were forced to enact the *Trafficking in Persons (Prevention) (Amendment) Act 2015*,⁴⁶ which amended sections 15–18 and 21–27(4) of the main TIP Act so that they now confer jurisdiction on the High Court, rather than the magistrates' court, to impose severe sanctions for trafficking-related offences.

In Grenada, some of the existing penalty provisions raise similar concerns in that they purport to confer summary jurisdiction on magistrates to impose sanctions of up to 20 years' imprisonment on persons convicted of trafficking-related offences in a manner that is arguably unconstitutional. By way of example, section 16 of Grenada's TIP Act empowers magistrates to impose a sentence of 20 years' imprisonment in respect of a person convicted of making, obtaining, giving, or possessing fraudulent travel documents for the purpose of committing a trafficking offence. In the same vein, sections 18 and 20 respectively purport to confer jurisdiction on magistrates to impose a sentence of 20 years' imprisonment for the offences of knowingly leasing or sub-leasing one's house or room or building for the purposes of facilitating trafficking or publishing or advertising

⁴⁴ *Hinds and Others v The Queen* (1975) 24 WIR 326 (PC).

⁴⁵ *Cheryl Thompson v The Attorney General of Antigua and Barbuda* (n 46) [46].

⁴⁶ Act 13/2015.

or broadcasting material that promotes trafficking and harbouring or interfering with the arrest of a trafficker. Because of the constitutional implications of these provisions, Grenadian legislators are well advised to amend these provisions as a matter of urgency, in order to avoid the exigencies of constitutional litigation.

Mandatory Minimum Sentences and the Guarantee Against Inhuman and Degrading Treatment

Another issue with which legislators in The Bahamas, Guyana, and Trinidad and Tobago must contend is the question of the constitutionality of the mandatory minimum sentences imposed by their respective TIP Acts in relation to persons convicted of certain trafficking-related offences. For example, under section 3 of The Bahamas TIP Act, where the offence of human trafficking is found to have been committed, a magistrate, on summary conviction, may impose a term of imprisonment of *not less* than three years and no more than five years, while a judge is obliged to impose *not less* than five years on conviction on information.⁴⁷ Similarly, under section 3 of the Guyana TIP Act, a term of imprisonment of *not less* than three years and not more than five years is contemplated for human trafficking on summary conviction, and *not less* than five years' imprisonment on indictment. Meanwhile, in Trinidad and Tobago, under sections 16 and 17 of their TIP Act, a term of *not less* than 15 years' imprisonment is contemplated for the trafficking of an adult, while *not less* than 20 years' imprisonment is contemplated under section 18 for child trafficking.

Although these provisions have not been challenged to date in regional courts, similar mandatory minimum sentencing provisions found in other legislation have been challenged in Commonwealth Caribbean courts for being inconsistent with the guarantee against cruel and unusual punishment. This issue arose in *Attorney General of Belize v. Zuniga*⁴⁸ a case in which the CCJ considered a pre-emptive challenge to the mandatory minimum penalty prescribed by a Belizean law even before there was a conviction under this law. In this connection, the court was called upon to assess whether the mandatory minimum punishment set out in the law would be grossly disproportionate in its application to likely offenders. The court explained that it would not wait for an actual case to arise before it could realistically consider whether these penalties were indeed grossly disproportionate. It noted that the Constitution fully entitles a litigant with appropriate standing not to await the full brunt upon him of a measure whose unconstitutionality is looming on the horizon.

⁴⁷ The expression 'on information' in relation to trial or conviction refers to proceedings in the Supreme Court before judge and jury. See *The Attorney General v Hall* [2016] UKPC 28.

⁴⁸ [2014] CCJ 2 (A.J.)

While the court did not find that mandatory minimum sentences are *per se* unconstitutional, it did note that:

It is a vital precept of just penal laws that the punishment should fit the crime. The courts, which have their own responsibility to protect human rights and uphold the rule of law will always examine mandatory or mandatory minimum penalties with a wary eye. If by objective standards the mandatory penalty is grossly disproportionate in reasonable hypothetical circumstances, it opens itself to being held inhumane and degrading because it compels the imposition of a harsh sentence even as it deprives the court of an opportunity to exercise the quintessentially judicial function of tailoring the punishment to fit the crime.⁴⁹

(...) a mandatory penalty unduly puts all the emphasis on the punitive and deterrent factors of sentence, and precludes the traditional consideration of subjective factors relating to the convicted person. This is precisely one of the circumstances that justifies a court to regard a severe mandatory penalty as being grossly disproportionate and hence inhumane.⁵⁰

In short, the court was concerned that mandatory minimum sentences deprive it of an opportunity to tailor the punishment to fit the crime. In this connection, if the mandatory minimum sentence bears no reasonable relation to the scale of penalties imposed by other domestic legislation for far more serious offences, they will be deemed by the court as arbitrary, and thus characterised as being grossly disproportionate, inhumane, and therefore unconstitutional.

The key message from the CCJ appears to be that mandatory minimum sentences, such as those imposed by some of the region's anti-trafficking legislation, are open to constitutional challenge on the ground that they may constitute an arbitrary restriction on liberty or represent inhuman and degrading punishment, a right which is expressly provided for in the relevant constitutions.⁵¹

⁴⁹ *Ibid.*, [61].

⁵⁰ *Ibid.*

⁵¹ s 17(1) The Bahamas Constitution; s 141(1) Guyana Constitution; s 5(2)(b) Trinidad and Tobago Constitution.

Forfeiture of Assets and the Guarantee Against the Deprivation of Property without Compensation

Commonwealth Caribbean anti-trafficking laws,⁵² Proceeds of Crime Acts, and anti-money laundering legislation⁵³ provide for the forfeiture or confiscation of assets linked to trafficking-related offences. More specifically, the respective TIP Acts typically empower prosecutors to apply to the court for a forfeiture order in respect of the property, including money, valuables, and other movable or immovable property, of a person convicted of a trafficking-related offence that was used or obtained in the course of the offence and any benefit gained from the proceeds of the offence. Where such an order is granted, this property is forfeited to the Crown, from which, *inter alia*, restitution might be paid to trafficked persons.

The question of the constitutionality of the forfeiture provision contained in Antigua's TIP Act arose for consideration in the case of *Cheryl Thompson v The Attorney General of Antigua and Barbuda* discussed earlier. Here, the claimant, who was convicted of trafficking women for the purpose of sexual exploitation, argued that the forfeiture provision had the effect of compulsorily depriving her of her property, in contravention of section 9 of Antigua's Constitution which provides that no property shall be compulsorily taken possession of or acquired, except for public use and on payment of fair compensation within a reasonable time. However, section 9(4)(a)(ii) of the Constitution appeared to justify the acquisition of such property in the following terms:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section –

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right

(ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law.

⁵² s 37 Antigua and Barbuda TIP Act; s 7 Bahamas TIP Act; s 10 Barbados TIP Act; s 37 Belize TIP Act; s 38 Grenada TIP Act; s 7 Guyana TIP Act; s 7 St Kitts and Nevis TIP Act; s 9 St Lucia TIP Act; s 12 St Vincent and the Grenadines TIP Act; s 24 Trinidad and Tobago TIP Act.

⁵³ s 7, schedule 1 Bahamas *Proceeds of Crime Act*, 2018; s 2, schedule (3) Grenada *Proceeds of Crime Act* (Act 6/2012); s 2, schedule 2 Guyana *Anti-Money Laundering Act* 2009; schedule 2(16) Jamaica *Proceeds of Crime Act* 2007; ss 3 and 41 St Kitts and Nevis *Proceeds of Crime Act*, CAP 4.28; s 3, schedule (22) St Lucia *Proceeds of Crime Act*, CAP 3.04; s 16(1)(a) schedule 7(3) St Vincent and the Grenadines *Proceeds of Crime Act* 2013; s 2, schedule 2(3) Trinidad and Tobago *Proceeds of Crime Act*, CAP 11:27.

In rejecting the claimant's submission and finding that the forfeiture provision did not offend section 9 of the Constitution, the Court concluded that:

Section 9 of the Constitution clearly contemplates the existence of statutes dealing with the taking of possession of property, interest or right by way of forfeiture in consequence of breach of the law. *Such provisions are not inconsistent with or in contravention of section 9 (1) as long as the provision is reasonably justifiable in a democratic society.* No allegation has been made that the provision is not reasonably justifiable in Antigua and Barbuda.

The court adopts the reasoning of Kerr, LCJ and find that *the forfeiture proceedings in the Act are akin to the asset recovery proceeding and are civil in nature.* Its primary purpose is to recover proceeds of crime; it is not to punish in the sense normally entailed in a criminal sanction. Furthermore, even if the proceedings are to be regarded as imposing a penalty, this is not sufficient to classify the proceedings as criminal for purposes of section 15 of the Constitution, which section provides certain protection for a person 'charged with a criminal offence'. Accordingly, the court finds that *the forfeiture provisions of the Act do not violate sections 9 or 15 of the Constitution.*⁵⁴

It seems, therefore, that the civil forfeiture provisions of regional anti-trafficking legislation are likely to be constitutional.

Trial by a Judge Alone and the Right to a Fair Trial

High Court proceedings, in most countries in the region, take place before a judge (arbiter of the law) and a panel of jurors (trier of facts). The exception to this general approach in relation to human trafficking is Jamaica, which in 2018 amended its *Trafficking in Persons (Prevention, Suppression and Punishment) Act* by inserting section 4(10)(b), which now provides that where a person is charged with human trafficking, they shall be tried before a judge of the circuit court *without* a jury. This amendment was passed against the backdrop of a retrial which was ordered in the case of *R v Hermalinda Parker et al.*,⁵⁵ in circumstances where, at the end of that trial, the jury returned a unanimous 'not guilty' verdict, but it was later revealed that, in fact, three jurors had voted 'guilty' and the other three 'not guilty'. The Office of the Director of Public Prosecutions expressed that the irregularity inherent with jury trials was a symptom of issues faced in the

⁵⁴ *Cheryl Thompson v The Attorney General of Antigua and Barbuda* [54], (emphasis added).

⁵⁵ *R v Hermalinda Parker et al.* HCC 126/11.

prosecution of complex cases involving criminal networks, gangs, and trafficking cases that expose jurors and witnesses to a high risk of intimidation and influence, and therefore recommended that such matters should be tried before a judge alone in the circuit court.⁵⁶ Opposition Senator Lambert Brown expressed concern with the proposed amendment, noting that the law should not be changed just because of one unfortunate case and that in any event, there was no evidence that a judge-only trial would lead to more convictions. In addition, he argued, the amendment would ‘rob citizens of their right to a trial by their peers’.⁵⁷ Senator Brown’s concerns not only raise procedural questions, but constitutional questions, namely the extent to which it is constitutionally permissible for a trafficking case to be decided upon by a judge alone without the assistance of a panel of jurors. An interesting point to note in this connection is that from as far back as 1980, the Judicial Committee of the Privy Council had already ruled in *Trevor Stone v The Queen* that constitutional provisions ‘do not confer any entrenched right to trial by jury for criminal offences’.⁵⁸

In short, although Jamaica’s decision to amend its TIP Act to require trial by a judge alone in respect of trafficking cases appears to be out of the norm, it is certainly not an isolated approach, and, having regard to the *Trevor Stone* case, cannot be regarded as unconstitutional.

Witness Anonymity and the Right to a Fair Trial

In small jurisdictions like the Commonwealth Caribbean, criminality, including human trafficking, is quickly becoming sophisticated through, among others, the operation of organised criminal groups. A persistent challenge faced by the criminal justice system is ensuring the safety of witnesses who are fearful that their cooperation with the police and prosecuting authorities will lead to reprisals from accused persons or their associates. Although, as pointed out by Lord Bingham in *R v Davis*,⁵⁹ the problem of witness intimidation is not new, it is nonetheless, as he aptly recognised, a serious problem, which necessitates ‘urgent attention by Parliament’.⁶⁰ Parliamentary intervention in the Caribbean was necessary because, as pointed out by Lord Rodger in *R v Davis*, although ‘the common law is capable of developing to meet new challenges’, it has, unfortunately, not ‘responded to

⁵⁶ ‘House Approves Amendments to Trafficking in Persons Act’, *Jamaica Observer*, 2 February 2018, https://www.jamaicaobserver.com/latestnews/House_approves_amendments_to_Trafficking_in_Persons_Act.

⁵⁷ ‘Senate passes Trafficking in Persons Act’, *Jamaica Gleaner*, 24 February 2018, <https://jamaica-gleaner.com/article/news/20180224/senate-passes-trafficking-persons-act>.

⁵⁸ *Trevor Stone v The Queen* Privy Council Appeal No 11 of 1979.

⁵⁹ *R v Davis* [2008] UKHL 36.

⁶⁰ *Ibid.*, [27].

the challenge [of witness intimidation] at any time over the last few hundred years by allowing witnesses to give their evidence under conditions of anonymity'.⁶¹

Several Commonwealth Caribbean countries have passed witness anonymity legislation in the last two decades, which raise important constitutional questions related to the right to a fair trial.⁶² One of the main differences between the applicable witness anonymity legislation in Antigua and Barbuda, Dominica, and St Vincent and the Grenadines, on the one hand, and that which exists in St Kitts and Nevis, on the other, is the fact the latter contains a specific safeguard inuring to the fair trial of the defendant, while the others do not. St Kitts and Nevis' Witness Anonymity provision reads,

Section 20 (3) Nothing in this section authorises the court to require –

(a) the witness to be screened to such an extent that the witness cannot be seen by –

(i) the judge or other members of the court (if any);

(ii) the jury (if there is one); or

(iii) any interpreter or other person appointed by the court to assist the witness;

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) to (iii).

Antigua and Barbuda, Dominica, and St Vincent and the Grenadines' witness anonymity legislations do not contain these safeguards, and thus raise questions as to their constitutionality. The Bahamian case of *Bruce Colebrooke v R*⁶³ is instructive in this regard. In that case, contrary to section 11 of the *Criminal Evidence (Witness Anonymity) Act*, 'Alpha', the anonymous witness, was allowed to give his evidence without the appellant, or the judge or jury being able to see him. On appeal, the appellant argued, and the Court accepted, that the judge erred in law when she

⁶¹ *Ibid.*, [44].

⁶² s 15(2)(e) Antigua and Barbuda Constitution; s 20(2)(e) The Bahamas Constitution; s 18(2)(e) Barbados Constitution; s 8(2)(e) Dominica Constitution; s 8(2)(e) Grenada Constitution; s 144(2)(e) Guyana Constitution; s 16(6)(d) Jamaica Charter of Rights and Fundamental Freedoms 2011; s 10(2)(e) St Kitts and Nevis Constitution; s 8(2)(e) Constitution of St Lucia; s 8(2)(e) St Vincent and the Grenadines Constitution; s 5(2)(h) Trinidad and Tobago Constitution.

⁶³ *Bruce Colebrooke v R* SCCrimApp No 151 of 2015.

allowed Alpha to testify while completely screened from herself and the jury. In finding that this was a material irregularity substantially affecting the merits of the case, the Court of Appeal opined that:

It must be remembered that the jury will be required to assess the truthfulness or otherwise of a witness from the demeanour of such witness while he testifies. Thus, it is crucial that the jury have the opportunity to observe the witness as he gives his evidence.

(...) any conditions put in place by Parliament ostensibly to ensure fairness to the accused while allowing a deviation from the accepted procedure should be strictly observed by the Court. Inasmuch as a party must be able to ask questions of a witness which go to the witness' credit, it is an important part of such questioning to see how the witness reacts to the various questions posed, for example, does he flinch or get fidgety when a particular line of questioning is pursued.

It must be borne in mind that the power to order that a witness testify anonymously goes contrary to the normal procedure whereby a witness' identity is known to all of the participants in the trial. That enables the opposing side to question the witness on any possible animus or interest the witness may have which motivates the evidence given so the jury can properly evaluate the quality and reliability of the evidence.⁶⁴

It seems that once appropriate fair trial safeguards are respected, witness anonymity orders are not *per se* unconstitutional, as explained in *Attorney General v Leroy Smith and Tony Smith*:

[A]lthough the Anonymity Statutes have amended the common law in relation to the appearance of witnesses at trials, with proper safeguards to ensure fair proceedings built into the legislation, as in the case of the *Anonymity Act*, they are not in breach of Article 20(1) of the Constitution which guarantees a fair trial to a person accused of a crime.⁶⁵

⁶⁴ *Ibid.*, [25-27].

⁶⁵ SCCrApp No 95 of 2014 [31].

Conclusion

This article has argued that although the passage of anti-trafficking legislation in the Commonwealth Caribbean is a welcome development, such legislations, because of their rushed implementation resulting from the United States' threat of sanctions, should not escape scrutiny because they raise important constitutional questions. Specifically, this article has contended that some of the prosecution provisions of anti-trafficking laws encroach or threaten to encroach upon established constitutional norms relating to the supremacy of the constitution, separation of powers, and the rule of law, which embody the accused's right to a fair trial. It concludes that the legislature and, more importantly, the courts, have an important role to play in safeguarding the constitutional rights of those accused of trafficking-related offenses. It is important that the issues discussed here are addressed as a matter of urgency as they have the potential to work to the advantage of traffickers who may escape liability, even if on a technicality, if relevant provisions of anti-trafficking laws are struck down as being unconstitutional by courts subsequent to their conviction.

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Human Traffickers' Fair Trial Rights and Transnational Criminal Law

Thomas Harré

Abstract

The right to a fair trial is enshrined in international and domestic law around the world. This article makes the simple argument that the focus on the rights of victims of human trafficking and efforts to increase the rate of prosecutions of human traffickers should not come at the cost of alleged traffickers' rights to a fair trial, as a failure to uphold fair trial rights places them at risk of unfair prosecution. I consider the extent to which the transnational criminal legal regime regulating human trafficking at the international level provides for these fair trial rights, suggest that the fundamental purposes of transnational criminal law exist in a state of tension against the aims of the international human rights regime, and conclude that further empirical research on the legal experiences of human traffickers is necessary.

Keywords: transnational criminal law, fair trial rights, human traffickers, rule of law

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Introduction

There is a division in the international law of human trafficking known as the '3Ps': protection of trafficked persons; prevention of human trafficking; and prosecution of traffickers. This trisection is not equal: it privileges the interests of the state over the interests of victims¹ of trafficking, and the fair trial rights of traffickers.

¹ Throughout this paper, I use the terms 'victim' and 'defendant' (as opposed to terms such as 'survivor' or 'perpetrator') as they carry specific legal connotations.

This may be seen as a sleight of hand. With public attention squarely on victims of trafficking, we must not lose sight of the traffickers, who are rights holders too. Like any person facing a criminal charge, alleged traffickers are entitled to a fair trial. What then is a fair trial? Put simply, ‘a fair trial is one where the rights a defendant possesses can be effectively deployed.’² Without the confidence that a conviction is ‘safe’,³ it is not possible to be sure that justice is being served—both to traffickers and to victims of trafficking. In this paper, I draw traffickers squarely into the frame and argue that it is through actively upholding and prioritising alleged traffickers’ fair trial rights that we can be confident that justice is served.

Blackstone’s ratio—that it is better for ten guilty people to walk free than one innocent person be found guilty—dates back centuries.⁴ The principle relates to an accused person’s basic and irreducible right to a fair trial,⁵ and more broadly, the rule of law. This right must not be overridden by other concerns, for example, victim protection. Here, I argue for what I hope is an uncontroversial point: upholding the rule of law is a core tenet of a functioning democracy, and an important feature of the core human rights treaties which states have agreed upon.⁶ It protects the integrity of the criminal justice system as a whole and the rights of individuals specifically.

² P Morrissey, ‘Applied Rights in International Criminal Law: Defence counsel and the right to disclosure’, in G Boas, W A Schabas, and M P Scharf (eds.), *International Criminal Justice: Legitimacy and coherence*, Edward Elgar Publishing, Cheltenham and Northampton, 2012, <https://doi.org/10.4337/9781781005606.00010>, pp. 68–104, p. 69.

³ This is a way of describing a conviction, which has been entered following a fair investigation and trial. A useful analysis of the connection between ‘fairness’ and ‘safety’ in the context of the United Kingdom’s criminal law is found in: I Dennis, ‘Fair Trials and Safe Convictions’, *Current Legal Problems*, vol. 56, issue 1, 2003, pp. 211–237, p. 211, <https://doi.org/10.1093/clp/56.1.211>.

⁴ W Blackstone, *Commentaries on the Laws of England in Four Books. Notes selected from the editions of Archibald, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Barron Field’s Analysis, and Additional Notes, and a Life of the Author by George Sharswood. In two volumes*, J.B. Lippincott Co., Philadelphia, 1893, p. 359.

⁵ Recognised by the Judicial Committee of the Privy Council in *R v Horse* [2005] UKPC 30, at [43].

⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Art. 7, Art. 10, Art 11; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966.

Human trafficking is a ‘crime of international concern’,⁷ often involving multiple states. In cases where each state implicated has sufficient capacity to fairly investigate and prosecute alleged traffickers, the issues I raise in this paper may fall aside. However, if a state’s capacity to respond to human trafficking is compromised, or if the rule of law is weak; or if rights are not adequately applied; or if there is some other incentive on a state to prosecute, then—as Gallagher has noted—there is an increased risk of unfair prosecution.⁸

Defendants are often glossed over in analyses of human trafficking, but they should not be overlooked, for they are a fundamental component of the factual matrix.⁹ This paper presents an alternative framing of the human trafficking narrative, one which centres on the rights of an alleged trafficker. In the remainder of the paper, I first refocus attention on alleged traffickers through a discussion of the relationship between complainant and defendant in criminal law. Second, I situate the international normative framework of human trafficking within the context of transnational criminal law. Third, I explore the tension between transnational criminal law and a defendant’s fair trial rights in human rights law. Lastly, I sketch a blueprint outline of basic fair trial rights that apply to alleged human traffickers.

At the outset, I make some preliminary observations: I am writing from the perspective of defence counsel, trained and practicing in the New Zealand common law legal system, where prosecutions take place within an adversarial structure. In the context of New Zealand’s limited experience of prosecuting human traffickers, I have not defended alleged traffickers in court. However, I have seen first-hand the disastrous consequences of officials’ failures to properly identify and respond to instances of human trafficking. My views and analysis are undoubtedly influenced by this background. This discussion on fair trial rights of those charged with trafficking offences is not intended to diminish the harm done to victims of human trafficking. I acknowledge that victimhood is a layered and nuanced concept; I am focused here on the aspects of victimhood which relate specifically to criminal legal proceedings. The criminal justice process involves the balancing of competing bundles of rights belonging to defendants and complainants. Justice can only be achieved when convictions are fairly entered.

⁷ M C Bassiouni, ‘The Source and Content of International Criminal Law: A theoretical framework’, in M C Bassiouni (ed.), *International Criminal Law Vol. 1: Crimes* (2nd ed.), Transnational Publishers, Ardsley on Hudson, New York, 1999, p. 4.

⁸ A T Gallagher, ‘Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice’, *Anti-Trafficking Review*, issue 6, 2016, pp. 1–11, <https://doi.org/10.14197/atr.20121661>.

⁹ See A Choi-Fitzpatrick, ‘The Good, the Bad, the Ugly: Human rights violators in comparative perspective’, *Journal of Human Trafficking*, vol. 2, issue 1, 2016, pp. 1–14, <https://doi.org/10.1080/23322705.2016.1136166>.

Finally, I note that while some jurisdictions (such as the United Kingdom and Australia) have tended toward the subsumption of the offence of human trafficking within the broader rhetoric of modern slavery, I have maintained a conceptual distinction between the two. I focus solely on human trafficking as defined by the UN Trafficking Protocol.¹⁰

To date, it seems little direct attention has been given to this topic.¹¹ I see this paper as a starting point in a broader discussion of the role played by traffickers in the criminal justice process, and future empirical work should refine these arguments. Through these reflections, I hope to contribute toward a wider discussion on the relationship between the individual and the state in transnational criminal law.

Drawing the Defendant Back into Focus

Much has been written about the importance of victim identification in cases of human trafficking. An identified victim is a person who may be summonsed to court and who may have their evidence tested through cross-examination by the defendant. Effective, accurate, and rapid identification protects victims, but also assists in the maintenance of fair trial rights.

In law, there is a relationship between offender and victim; the commission of an offence against a person creates a bond between the two. In the context of a prosecution for human trafficking, the formal identification of a trafficked person implies the existence of a trafficker. However, the process of identification can also carry risk to the victim. A misidentification places them at risk of being unfairly prosecuted and punished for offences they may have committed as a result of their trafficking.¹² The rule of law must provide a safeguard to both

¹⁰ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000 (Trafficking Protocol).

¹¹ I acknowledge the work of others who have made reference to the rights of defendants under transnational criminal law. See, for instance: N Boister, 'Human Rights Protections in the Suppression Conventions', *Human Rights Law Review*, vol. 2, issue 2, 2002, pp. 199–227, <https://doi.org/10.1093/hrlr/2.2.199>; A T Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, Cambridge, 2010; T Ward and S Fouladvand, 'Human Trafficking, Victims' Rights and Fair Trials', *Journal of Criminal Law*, vol. 82, issue 2, 2018, pp. 138–155, <https://doi.org/10.1177/0022018318761680>.

¹² J Elliott, '(Mis)Identification of Victims of Human Trafficking: The case of R v O', *International Journal of Refugee Law*, vol. 21, issue 4, 2009, pp. 727–741, <https://doi.org/10.1093/ijrl/eep023>.

traffickers and trafficked persons alike. Advancing victim protection requires—by necessity—the protection of fair trial rights of defendants.

The distinction between offender and victim is not always clear.¹³ Cases of human trafficking may be obscured by offending by victims themselves,¹⁴ or through officials taking alternative routes to prosecution.¹⁵ The principle of non-punishment of victims is now recognised in international law,¹⁶ as well as in the domestic law of some states. However, at its heart, application of this principle relies on the rapid, accurate, and effective identification by law enforcement and other agencies of a person as a victim, as well as prosecutorial discretion, applied fairly by experienced prosecutors. As a matter of legal procedure, the proper identification of victims of trafficking helps to bring the defendant into focus.

It is a simple observation that actors responsible for victim identification are (in many countries) unelected and unaccountable; their decisions are not easily amenable to oversight or review. This is a weakness in a system which is focused on prosecuting. It is a crack through which victims of trafficking may slip, and a fault line that may lead to unfair prosecutions of people as traffickers where there is no evident victim. Upholding fair trial rights of those accused of trafficking is a safeguard against unfair prosecution and unsafe or wrongful conviction. Consider the implications of an individual's status as a defendant: in criminal law, the person who makes a complaint is a complainant. They are not

¹³ A point recognised by the former United Nations Special Rapporteur on trafficking in persons; see *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo*, A/HRC/20/18, 6 June 2012, para. 24.

¹⁴ It is now well recognised that victims of trafficking may be compelled to commit criminal offences by their traffickers. See, for example: V Brotherton *et al.*, *Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory study and good practice examples*, Anti-Slavery International, London, 2014; Interpol, 'Types of Human Trafficking', n.d., retrieved 11 January 2022, <https://www.interpol.int/en/Crimes/Human-trafficking/Types-of-human-trafficking>.

¹⁵ For examples of this in a New Zealand context, see: C Stringer, *Worker Exploitation in New Zealand: A troubling landscape*, Human Trafficking Research Coalition, Auckland, 2016; C Stringer, D H Whittaker, and G Simmons, 'New Zealand's Turbulent Waters: The use of forced labour in the fishing industry', *Global Networks*, vol. 16, issue 1, 2016, pp. 3–24, <https://doi.org/10.1111/glob.12077>.

¹⁶ See Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, 'Implementation of the Non-Punishment Principle', A/HRC/47/34, 17 May 2021; R Piotrowicz and L Sorrentino, *Policy and Legislative Recommendations Towards the Effective Implementation of the Non-punishment Provision with Regard to Victims of Trafficking*, OSCE, Vienna, 2013.

necessarily a victim.¹⁷ In terms of the criminal justice process, that person becomes a ‘victim’ (and the defendant becomes an ‘offender’) once the charges against the defendant are proven.¹⁸ In other words, on one level, the status of victimhood is obtained upon conviction, following the testing of evidence through a fair trial process.¹⁹ Put another way: a victim may be a complainant, but a complainant is not necessarily a victim (in respect of a defendant) until the offence is proven. I acknowledge that this is a particularly legalistic approach that is unlikely to fully account for the harm suffered by a victim, but it has important implications for the fair trial rights of a person charged with human trafficking—particularly with respect to the presumption of innocence. This is because it cannot be fairly said that a person is a *victim* of specific offending, without by necessity implicating an offender.

In a prosecution for trafficking in common law jurisdictions, the role of the victim is set aside to a certain extent.²⁰ In effect, it is the State which decides whether to commence or continue a prosecution. The State appropriates what is originally a dispute between individuals. As the Secret Barrister has put it:

The victim is no longer a victim; she is, in the properly neutral language of the court, a complainant. The existence and extent of her suffering will be doubted, the subject of debate and analysis by strangers; her agonies reduced to writing and legally pasteurized into admissible, artificial evidence. Her involvement is both peripheral and central; she is not represented—the prosecution barrister is not ‘her barrister’; ... Yet she will personally carry the success or failure of the proceedings. Her evidence will usually

¹⁷ This is the approach generally adopted in New Zealand law. In *R v McDonald* [2015] NZHC 511, Whata J held (in the context of sexual violence offending): ‘I am satisfied that Parliament’s intended meaning of complainant is: Persons upon whom or with whom [a specified sexual offence] has been, or is alleged to have been, committed’ (at [48]). This reasoning was referred to with approval by the Supreme Court of New Zealand in *Ellis v R* [2020] NZSC 137. See also Black’s Law Dictionary (Thomson Reuters 10th ed.), p. 1798: Victim: ‘a person harmed by a crime, tort, or other wrong’.

¹⁸ See for discussion: M Conklin, ‘Victim or Complaining Witness: The Difference Between Guilty and Not Guilty’, *San Diego Law Review*, vol. 57, issue 2, 2020, pp. 423–432.

¹⁹ The *Victims Rights Act 2002* (NZ) defines victim as ‘a person against whom an offence is committed by another person’. Offence is defined as ‘an offence against an enactment’. It includes an alleged offence.

²⁰ K D’Adamo, ‘Prioritising Prosecutions is the Wrong Approach’, *Anti-Trafficking Review*, issue 6, 2016, pp. 111–113, <https://doi.org/10.14197/atr.20121668>.

be crucial; she will be compelled under pain of imprisonment to attend court to deliver it. And, if the verdict is not guilty, she will feel responsible.²¹

Casting victims of trafficking in this light demonstrates the role that they play in supporting a prosecution,²² and the prosecutorial goals of the state—goals which are focused on crime suppression and border control.²³ In the next section, I consider these goals in greater detail.

Human Trafficking as a Crime of Transnational Criminal Law

I approach the issue of human trafficking through the lens of transnational criminal law, i.e. ‘the indirect suppression by international law through domestic penal law of criminal activities that have actual or potential trans-boundary effects’.²⁴ I suggest that in respect of the international legal regime regulating state responses to human trafficking, the issue is best understood in terms of transnational criminal law (as opposed to, for example, a human rights issue²⁵). This particular analysis is founded on the normative standards created by two main legal instruments that set out the core international obligations incumbent on states: The *United Nations Convention against Transnational Organised Crime* (UNTOC) and the Trafficking Protocol supplementing it.

Analysis of these broadly ratified treaties shows four central classes of obligation which are imposed on States Parties. These are to:

²¹ The Secret Barrister, *Stories of the Law and How It's Broken*, Pan Macmillan, London, 2018, p 158.

²² For an interesting discussion on the tension between victims’ rights and the interests of the prosecution, see B L Gershman, ‘Prosecutorial Ethics and Victims’ Rights: The prosecutor’s duty of neutrality’, *Lewis & Clark Law Review*, vol. 9, issue 3, 2005, pp. 559–579.

²³ J C Hathaway ‘The Human Rights Quagmire of “Human Trafficking”’, *Virginia Journal of International Law*, vol. 49, no. 1, 2008, pp. 1–59. See also M Jovanovic, ‘International Law and Regional Norm Smuggling: How the EU and ASEAN redefined the global regime on human trafficking’, *American Journal of Comparative Law*, vol. 68, issue 4, 2020, pp. 801–835, <https://doi.org/10.1093/ajcl/avaa030>.

²⁴ N Boister ‘Transnational Criminal Law?’, *European Journal of International Law*, vol. 14, no. 5, 2003, pp. 953–976, p. 955, <https://doi.org/10.1093/ejil/14.5.953>.

²⁵ As to the distinction, see F Tulkens ‘The Paradoxical Relationship between Criminal Law and Human Rights’, *Journal of International Criminal Justice*, vol. 9, issue 3, 2011, pp. 577–595, <https://doi.org/10.1093/jicj/mqr028>. Tulkens elaborates on the observation that human rights are both a sword and shield in respect of the application of the criminal law.

1. Cooperate with other States Parties to investigate and prosecute human trafficking;
2. Criminalise the offence of human trafficking as defined by the Trafficking Protocol;
3. Establish jurisdiction over offenders on a range of bases; and
4. Implement the rule to extradite or prosecute alleged traffickers.

These central pillars of the transnational criminal law of human trafficking require positive action by states parties. With the ultimate aim being suppression of cross-border criminality²⁶ via the facilitation of successful prosecutions, states must meet their primary obligations to criminalise, prosecute, punish, cooperate, and strengthen border controls.²⁷ Throughout the text of these instruments, the protection of victims is a secondary purpose, and the rights of defendants feature only on the sidelines. This is consistent with other areas of transnational criminal law. As Robert Currie has argued, transnational criminal law operates to the exclusion of the ‘provision of basic procedural protections for the individuals being investigated and prosecuted’.²⁸ In this respect, UNTOC (and, I would add, the Trafficking Protocol) marginalises the rights to privacy, liberty, property, and fair trial of individuals charged with trafficking.²⁹ This point is also made by Steven Koh, who has argued that the benefits of promoting criminal accountability come at the cost of potentially undermining the rights of defendants through the possibility for misuse of extradition processes and

²⁶ D Ireland-Piper, ‘Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine’, *Utrecht Law Review*, vol. 9, no. 4, 2013, pp. 68–89, <https://doi.org/10.18352/ulr.243>.

²⁷ As to which, see: A T Gallagher and P Holmes, ‘Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the front line’, *International Criminal Justice Review*, vol. 18, issue 3, 2008, pp. 318–343, p. 320, <http://doi.org/10.1177/1057567708320746>. Neil Boister has suggested the core purposes of transnational criminal law are substantive criminalisation and procedural cooperation. See: N Boister, ‘Further Reflections on the Concept of Transnational Criminal Law’, *Transnational Legal Theory*, vol. 6, issue 1, 2015, pp. 9–30, p. 17, <https://doi.org/10.1080/20414005.2015.1042232>.

²⁸ R Currie, ‘The Protection of Human Rights in the Suppression of Transnational Crime’, in N Boister and R Currie (eds.), *Routledge Handbook of Transnational Criminal Law*, Routledge, Abington, 2015, pp. 27–40. See further: M C Bassiouni, ‘An Appraisal of the Growth and Developing Trends of International Criminal Law’, *Revue Internationale de Droit Penal*, vol. 46, issue 1–2, 1975, pp. 3–31.

²⁹ Boister, 2002, p. 211.

disclosure regimes.³⁰

The privileging of state interests in the Protocol emerges because the instruments are not themselves rights-focused. Transnational criminal law focuses, in broad-brush terms, on the ‘mechanics of investigation and extradition’.³¹ Thus, the net result—when applied in a prosecution against a person accused of human trafficking—is not a rights-protective system, but rather one that focuses on facilitating successful prosecutions of traffickers.³²

This is hardly a novel conclusion: there is a well-documented set of narratives underpinning the global anti-trafficking regime which privileges States’ intolerance for irregular migration and prioritises securitisation.³³ The consequence is that rights of individuals are marginalised in favour of the foreign and domestic policy aims of States.³⁴ In the next section, I consider the scope of fair trial rights applying to a defendant facing charges of human trafficking.

³⁰ S A Koh, ‘Foreign Affairs Prosecutions’, *New York University Law Review*, vol. 94, no. 3, 2019, pp. 340–401, <https://doi.org/10.2139/ssrn.3398955>.

³¹ *Ibid.* p. 345. I acknowledge that the Protocol also makes recommendations to states parties about protection of victims, including facilitation of the return of victims to their home country; consideration of the physical safety of trafficked persons; protection of the privacy and identity of victims of trafficking; and provision of housing, counselling, and material assistance.

³² I acknowledge the argument that globally, there is a low rate of convictions for trafficking. This is understandable, given the well-known difficulty in quantifying cases of human trafficking. As to quantity of prosecutions, see the critique provided in: M McAdam, ‘Not All Prosecutions Are Created Equal: Less counting prosecutions, more making prosecutions count’, *Anti-Trafficking Review*, issue 6, 2016, pp. 123–125, <https://doi.org/10.14197/atr.201216611>.

³³ On dominant discourses in human trafficking, see: S Kneebone and J Debeljak, *Transnational Crime and Human Rights: Responses to human trafficking in the Greater Mekong Subregion*, Routledge, Abington, 2012; Gallagher, 2010.

³⁴ It is telling that in 2000, fewer than 10 per cent of states had criminalised human trafficking. By 2015, approximately 75 per cent had criminalised the offence. (See: B A Simmons, P Lloyd, and B M Stewart, ‘The Global Diffusion of Law: Transnational crime and the case of human trafficking’, *International Organization*, vol. 72, issue 2, 2018, pp. 249–281, <https://doi.org/10.1017/S0020818318000036>.) As of August 2020, 169 out of the 181 states parties to the Trafficking Protocol had criminalised human trafficking through domestic legislation. (See: K Kangaspunta, *et al.*, *Global Report on Trafficking in Persons 2020*, United Nations Office on Drugs and Crime (UNODC), New York, 2020, p. 61.)

The Rights of a Defendant Facing Charges of Human Trafficking

As Amal Clooney and Philippa Webb observe: ‘the right to a fair trial is at the heart of human rights protection because without this one right, all others are at risk’.³⁵ However, as noted above, the transnational criminal law of human trafficking does not explicitly prescribe a suite of rights for defendants, those rights being cognate to the core aims of the transnational criminal legal regime. Consequently, as Tom Obokata notes,

[Fair trial rights] must be supplemented by international human rights law. In addition to widely debated and scrutinised human rights such as the right to liberty and security, and prohibition against torture, inhuman, or degrading treatment, an important issue in the context of law enforcement against transnational organised crime is the use of special investigative techniques such as controlled delivery, surveillance, interception of communications, and undercover operations, and their impact on one’s right to privacy.³⁶

To make the point again: the transnational criminal law of human trafficking is a crime suppression regime, not a human rights one.³⁷ It is a regime in tension with the goals of the international human rights regime, which exists as a ‘sword and shield’ against excesses of state power.³⁸ To the limited extent that the rights of defendants are referenced in transnational criminal law, they fall as a corollary to the fundamental goal of suppressing organised crime and human trafficking globally. For example, while UNTOC provides that legal defences remain available,³⁹ and that a person subject to extradition is to be treated fairly,⁴⁰ it steps back in other regards: disclosure of exculpatory material

³⁵ A Clooney and P Webb, *The Right to a Fair Trial in International Law*, Oxford University Press, Oxford, 2020, p. 1.

³⁶ T Obokata, ‘The Value of International Law in Combating Transnational Organised Crime in the Asia-Pacific’, *Asian Journal of International Law*, vol. 7, issue 1, 2017, pp. 39–60, p. 53, <https://doi.org/10.1017/S2044251315000193>.

³⁷ A T Gallagher, ‘Trafficking in Transnational Criminal Law’, in R W Piotrowicz, C Rijken and B H Uhl (eds.), *Routledge Handbook of Human Trafficking*, Routledge, Abington, 2017.

³⁸ Tulkens.

³⁹ Art 11(6).

⁴⁰ Art 16(3).

may be made to a defendant.⁴¹ Through the savings clause of the Trafficking Protocol, a nod is given to the applicability of the wider human rights regime, albeit this is framed in terms of the protection of victims of trafficking, with particular emphasis placed on the principle of non-refoulement.⁴²

It is only in the non-binding commentary on UNTOC and the Trafficking Protocol, produced by the United Nations Office on Drugs and Crime (UNODC), that stronger statements on defendants' rights are set out in the context of human trafficking. For example, in the 2009 'Model Law' on human trafficking, it was said (in relation to the issue of victim consent to exploitation) that:

The above does not remove the right to a defence. ... [T]he irrelevance of consent if one of the means is used should not be interpreted as imposing any restriction on the right of the accused to a full defence and to the presumption of innocence. It should also not be interpreted as imposing on the defendant the burden of proof. As in any criminal case, the burden of proof is always on the prosecution, in accordance with domestic law, except where the national law provides for specific exceptions to this rule.⁴³

Somewhat curiously, the revised 'Model Law', published in 2020, removes this reference.⁴⁴ Given the interpretive value of the 'Model Law' (which originally synthesised the text of the instruments, the Travaux Préparatoires, and the UNODC's Guide for the Implementation of UNTOC and its Protocols⁴⁵), my view is that this may represent a consolidation of the aims of the transnational criminal regime, away from international human rights law.

⁴¹ Arts 18(5) and 19. This is a significant drawback. On the importance of the right to full disclosure, see: S Zappalà, 'The Rights of Victims v. the Rights of the Accused', *Journal of International Criminal Justice*, vol. 8, issue 1, 2010, pp. 137–164, <https://doi.org/10.1093/jicj/mqq001>.

⁴² Art 14.

⁴³ United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons*, UNODC, Vienna, 2009 ('Model Law'), p. 27. This language draws on the text of the travaux préparatoires to the Convention. See: Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, A/55/383/Add.1, 3 December 2000, at [68].

⁴⁴ See United Nations Office on Drugs and Crime, *Model Legislative Provisions against Trafficking in Persons*, United Nations, Vienna, 2020.

⁴⁵ United Nations Office on Drugs and Crime, *Legislative Guide for the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, UNODC, Vienna, 2004.

The UNODC position is contrasted by that taken by the Office of the High Commissioner for Human Rights. While the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* makes only a single reference to a defendant's rights (suggesting that the identity and privacy of trafficked persons 'should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial'⁴⁶), the Commentary to those guidelines goes further.⁴⁷ Nonetheless, it is the UNODC which carries the mandate for implementation of the Protocol, and states parties will be primarily guided in their efforts to ratification by the work of that agency. As an addendum to this, it is important to acknowledge that recent UNODC work has engaged more deeply with the human rights implications of human trafficking issues.⁴⁸

To reiterate a core point of this paper, the legal provisions for the rights of defendants in transnational criminal law come secondary to the interests of states (and victims). I acknowledge there are counter-arguments to this proposition: for example, that transnational criminal law is simply a blueprint to guide domestic penal legislation and policy. However, in the context of transnational criminal law (which has been described as a 'creature of a loosely aligned pluralist Vattelian society of states where sovereignty and self-interest [are] the dominant values'⁴⁹), it might be thought that these loose provisions are insufficient to protect an individual defendant from the application of the overwhelming mass of the coercive machinery of not just one State, but potentially several operating cooperatively to secure a conviction. The context, content, and detail of the rights referred to are not contained within the transnational criminal law of human trafficking; but rather are found in domestic, regional, and international human rights law.⁵⁰

Against the provisions in UNTOC and the Trafficking Protocol, I ask, what then are the component elements of the right to a fair trial? Tom Bingham, writing extrajudicially, has made the point that the concept of fairness is not static, but evolves over time.⁵¹ The Universal Declaration of Human Rights provides a useful departure point for identifying the salient features of the right to fair

⁴⁶ United Nations, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, at 6.6.

⁴⁷ United Nations, *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, November 2010, HR/PUB/10/2.

⁴⁸ M McAdam, *UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants*, UNODC, Vienna, 2021, pp. 68–73.

⁴⁹ Boister, 2015, p. 10.

⁵⁰ Boister, 2002, p. 214.

⁵¹ Tom Bingham, *The Rule of Law*, Penguin, London, 2010, p. 90.

trial. Article 7 provides for equality before the law; article 10 mandates a fair and public hearing by an independent and impartial tribunal; and article 11 provides for the presumption of innocence.⁵²

Article 9 of the International Covenant on Civil and Political Rights⁵³ provides for freedom from arbitrary arrest and detention; the right to be promptly informed of charges laid; the right to be promptly brought before a judicial officer; the right to a trial without undue delay; the right to apply for bail; the right to test the lawfulness of detention; and the right to compensation for unlawful arrest or detention. Article 14 elaborates further: everyone is to be equal before the law, and entitled to 'a fair and public hearing by a competent, independent and impartial tribunal'. Everyone is to be afforded the presumption of innocence. Article 14 refers to certain minimum standards of criminal procedure, including the right to be told the nature of the charges against one; to have adequate time and resources to prepare a defence; to be tried without undue delay; to have access to counsel; and to cross-examine prosecution witnesses.

This is by no means the only statement of these rights; the general principles are found in regional instruments and in the domestic law of many states. But in our focus on fair trial rights in the context of human trafficking, where does this take us?

I return to the point made earlier. In any jurisdiction with a strong rule of law, prosecuting a defendant on the basis of a straightforward factual matrix, there can be a high degree of confidence in the fairness of proceedings. However, transnational crime generally, and human trafficking specifically, is not necessarily simple. Take a hypothetical case where an alleged trafficker (operating in country A) attempts to traffic a person (living in country B) into a different country (country C).⁵⁴ The implication for defendants is they are liable to be caught in a jurisprudential grey area: while a court in country C may well have the ability to exercise jurisdiction over the alleged offending, there may be limited constitutional guarantees available to that defendant.⁵⁵

⁵² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Art. 7, Art. 10, Art 11.

⁵³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966.

⁵⁴ This is not beyond the realms of possibility. See this analysis in relation to the exploitation of Indonesian workers by Korean fishing companies in New Zealand's exclusive economic zone: C Stringer, G Simmons and D Coulston, 'Not in New Zealand's Waters, Surely? Labour and human rights abuses aboard foreign fishing vessels', New Zealand Asia Institute Working Paper Series (No 11-01), 2011.

⁵⁵ In terms of this point in the Canadian context, see R J Currie, 'Charter without Borders: The Supreme Court of Canada, transnational crime and constitutional rights

This has important implications for a person who may be charged with human trafficking. In any prosecution brought by a state, there is a general inequality of arms between defendant and prosecutor. For example, a defendant may be restricted in their ability to access disclosure under varying criminal procedure regimes; and the rules of evidence may vary—as may the ability to compel attendance of witnesses. Whereas the State has access to the diplomatic and law enforcement machinery necessary to build and prosecute its case, the defence is not so endowed. In some jurisdictions, actions of state officials acting abroad may not be subject to the same constitutional guarantees as would apply to actions taken domestically.⁵⁶

Conclusion

Human rights organisations have enthusiastically adopted the issue of human trafficking. Efforts to protect victims have led to the development of principles such as the principle of non-punishment of victims and an expansion of the forms of exploitation recognised by courts.⁵⁷ There is now recognition that ‘victims have a right to a fair opportunity to participate in a fair trial of anyone whom they and/or the state accuse of violating their rights.’⁵⁸ However, the trite point to be made is that the right to a fair trial incorporates fairness to victims as well as defendants, fairness to the prosecution and fairness to the defence. As I have suggested, this is an issue that would benefit from further empirical research.

UNTOC and the Trafficking Protocol are instruments which privilege state interests above the interests of individuals. To the extent that individuals feature, it is as objects to be offered a degree of protection by the subjects of international law, and, to put a cynical gloss on it, as a means to the end of ensuring successful prosecutions.

Despite the tension between transnational criminal law and human rights law, the two regimes must work together: the success of the suppression regime requires promotion of fair trial rights; prosecutions are effective when they result in safe

and freedoms’, *Dalhousie Law Journal*, issue 27, 2004, pp. 235–264.

⁵⁶ In the New Zealand context, see: *Smith v R* [2020] NZCA 499, [91] (noting the open question as to the extraterritorial applicability of the New Zealand Bill of Rights Act 1990).

⁵⁷ See *V.C.L. and A.N. v The United Kingdom* (Applications nos. 77587/12 and 74603/12), 16 February 2021.

⁵⁸ Ward and Fouladvand, p. 143.

verdicts; safe verdicts are returned when a trial is fair.⁵⁹ It has been said that ‘a person charged with having committed a criminal offence should receive a fair trial and that, if he cannot be tried fairly for that offence, he should not be tried for it at all’.⁶⁰ In broad-brush terms, this is not a radical proposition. The trial process is a crucible in which evidence is tested against the fundamental presumption of innocence, and weighed against the standard of ‘beyond reasonable doubt’. Fairness throughout is critical to ensure the safeness of a resulting verdict.

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⁵⁹ A T Gallagher and R Surtees, ‘Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?’, *Anti Trafficking Review*, issue 1, 2012, pp. 10–30, <https://doi.org/10.14197/atr.201211>.

⁶⁰ *R v Horseferry Road Magistrates’ Court, ex parte Bennett* [1994] 1 AC 42, p. 68.

Short Articles

Migration, Trafficking, and the Greek Economy: A comment on ‘the trafficker next-door’

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In the early 2000s, Greece’s response to the question of migration took a distinctively punitive direction.¹ In alignment with the global prohibition regime established with the UN *Convention on Transnational Organized Crime* and its associated protocols on human trafficking and migrant smuggling, the Greek government undertook two key legislative initiatives: firstly, a new law on organised crime (OC), Law 2928/2001, whose primary focus had previously been terrorism; secondly, a law specifically targeting human trafficking, Law 3064/2003, echoing the wording of the UN Trafficking Protocol. The latter law associated human trafficking with OC by inserting trafficking in the list of crimes included in the former, consolidating the connection between migration and OC in public discourses that had gradually emerged throughout the 1990s.

This development has arguably had a twin effect: firstly, by bringing the question of migration under the conceptual umbrella of OC, it reinforced the nationalist overtones of the related policy debates; secondly, by endorsing this overtly punitive framework, it effectively prevented the development of more humane policy approaches towards irregular migration, including approaches focused on cases of exploitation involving violence and extreme abuse in the context of human trafficking itself.

¹ G Papanicolaou, ‘The Sex Industry, Human Trafficking and the Global Prohibition Regime: A cautionary tale from Greece’, *Trends in Organised Crime*, vol. 11, no. 4, 2008, pp. 379–409, <https://doi.org/10.1007/s12117-008-9048-7>.

Greece's case has been made more complex by the fact that the country was suddenly transformed to a destination country for migrants only in the early 1990s. Prior to that, it had traditionally been a source country, largely unfamiliar with the presence of migrants beyond small numbers of mostly EU citizens settling in its territory. Significantly, the country lacked a legislative framework for the receipt and integration of migrants, as it suddenly began to receive large numbers of predominantly irregular migrants, initially from neighbouring Albania and then from other Balkan and eastern European countries.

The influx of migrant workers provided a unique opportunity to satisfy demand for cheap labour in several productive sectors of the Greek economy. This was particularly true for agriculture, where migrants formed a waged-labour workforce for the first time. Migrant labour also assumed a key role in manufacturing, construction, and services, as low wages enabled enterprises in these sectors to sustain competitiveness under conditions of Greece's increasing exposure to international economic pressure.²

In the absence of a robust migration policy, the question of how migrants were becoming available as a workforce remained largely unasked by both Greek authorities and the general population. For the better part of the 1990s, the accepted stereotypical narrative of migrants simply crossing Greece's porous borders was complemented by the lack of acknowledgement of both human trafficking and smuggling issues. At the time, even the scholarly study of migration revolved around the question of the contribution of the new migrants to the economy—overall, a positive net effect: for example, studies suggested migration had a neutral effect on unemployment and wage levels, and a positive effect on real disposable income for better-off Greek households.³

The invisibility of the situation of migrants and blindness to their exploitation may arguably be attributed to the extent of the shadow economy in Greece, estimates of which have ranged between 25 and 30 per cent of its GDP.⁴ Important in this context is the structure of particular economic sectors, such as small manufacturing, entertainment (bars, night-clubs, etc.), and agriculture, where the extent of the informal economy is significant. Enterprises in these sectors are also characterised by illegal practices related to terms of employment, minimum

² P Linardos-Rylmon, 'Forms of Internationalization and Issues in Immigration Policy', in K Kasimatis (ed.), *Immigration Policies and Strategies of Integration*, Gutenberg, Athens, 2003, pp. 283–305.

³ A Sarris and S Zografakis, 'A Computable Equilibrium Assessment of the Impact of Illegal Immigration on the Greek Economy', *Journal of Population Economics*, vol. 12, issue 1, 1999, pp. 155–182, <https://doi.org/10.1007/s001480050095>.

⁴ M Baldwin-Edwards, *Southern European Labour Markets and Immigration: A structural and functional analysis*, MMO Working Paper 5, Panteion University, Athens, 2002.

wages, and social security contributions. In this respect, migrants were added to, or replaced, the Greek workforce experiencing these practices.⁵

These circumstances largely explain Greece's prolonged indifference to trafficking and exploitation of migrant labour. The principle of least regulation made sense at a time when intensive exploitation of migrant workers was instrumental to revitalising sectors of the economy that suffered most from the economic downturn of the 1980s and the restructuring of the 1990s. At the beginning of the 2000s, the advent of the OC and irregular migration nexus, and the subsequent growth of research focus on this basis, had the net effect of making visible how extensive and diffused the exploitation of migrant labour had become.

Our research in the past fifteen years has been concerned with the social organisation of illicit markets and the investigation of how illicit entrepreneurship meshes with legitimate economic practices.⁶ While not denying the very real possibility of severe harm to migrants, in much of our research, the key issue that emerges is precisely the pervasive exploitation of migrant labour in the context of common economic practices, and *not* the presence of OC structures: the OC framework, by instituting a higher threshold for constructing a 'human trafficking case', effectively obscures situations that would naturally fall within the sphere of labour market and social policies rather than criminal law enforcement. Consider the following indicative cases, which would be highly unlikely to be prosecuted, yet very clearly demonstrate exploitation on the basis of the migrant's position of vulnerability:

- **The Greek part-time farmer:** Alex⁷ is a 60-year-old retired police officer living in Peloponnese. Since the beginning of the 1990s, he has employed undocumented migrants primarily from Albania to pick olives from his olive grove. He employs them because 'the Albanians are very hard-working, there are no Greeks who would work on the olive trees...'. Alex pays his employees EUR 40 a day and provides a meal for them at the end of the day. He accepts that the workers should be paid more, but nevertheless considers the amount of EUR 40 quite large. Whether the workers are undocumented or not is irrelevant to Alex.
- **The Romanian intermediary:** Livi is a 35-year-old Romanian who has been living with seven of his compatriots in a village in Peloponnese. Livi uses his better grasp of the Greek language and better relationship with the local farmers to act as an intermediary between Greek

⁵ S Sakellariopoulos, *Greece After the Political Changeover*, Livanis, Athens, 2001.

⁶ G A Antonopoulos and G Papanicolaou, *Unlicensed Capitalism, Greek style: Illegal markets and 'organised crime' in Greece*, Wolf Legal Publishers, Nijmegen, 2014.

⁷ In these examples, we do not use the real names of the individuals involved.

employers and his compatriots. He arranges employment contracts and receives a percentage of the payment from each of his compatriots for the ‘brokerage’. When work is abundant, he selects the job depending on payment and the effort required. As a result, his earning from this activity can be as much as four times higher than those of his fellow Romanians.

- **The Greek public construction subcontractor:** Costas is a 29-year-old who works with his father, a public construction subcontractor. In the summer of 2009, Costas and his father worked on the construction of a public road employing Albanian workers on an ad hoc basis. They paid them EUR 40 a day for their work. According to Costas, ‘this is an extremely low payment for the work they do since they work for much longer than 8 hours a day and they work under extremely harsh conditions with the temperature on the tarmac reaching as high as 60°C’.

It is important to note that the situations seen in the examples above could all be legally construed as cases of human trafficking under Law 3064/2003. Yet, clearly, there is a discrepancy between the certainty with which the law and official discourses refer to the threat OC presents and the bulk of situations that could be construed as cases of OC. Our point is that current approaches towards human trafficking view these phenomena in isolation from the context in which they occur. Traffickers (real or not) are active in the wider processes linking migration and labour markets, and it is imperative to examine the objective significance of (clandestine) migratory movements for the destination contexts to assess their role and the impact of their activities. Additionally, the fact that these individuals often rationalise their activities as a service⁸ is perhaps an indicator of the objective role they play in channelling migrant labour. In some respects, and contrary to the idea that their role is largely parasitic, they make a functional contribution to both migrants and the economy, as far as they represent a factor of organisation in an otherwise chaotic process.

Human trafficking, and the role of the trafficker in particular, must be approached within the context of a political economy framework. Understanding the role ‘traffickers’ play for particular sectors of the economy in destination countries for migrant labour is a requisite for interventions to prevent and address not only criminal conduct where it exists, but also harmful situations emerging from economic structures, power relations in the labour market, and deficient social policies.

⁸ J A Winterdyk and G A Antonopoulos, ‘Techniques of Neutralizing the Trafficking of Women: A case study of an active trafficker in Greece’, *European Journal of Crime, Criminal Law & Criminal Justice*, vol. 13, no. 2, 2005, pp. 136–147, <https://doi.org/10.1163/1571817054300602>.

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Questioning the Notion of Financial Gain as the Primary Motivation of Human Traffickers

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Observations

The organisation my wife and I lead is a sustainable social enterprise that raises funds for various projects promoting human flourishing, one aspect of which is to understand the relative effectiveness of current anti-trafficking strategies. We undertake awareness-raising and advocacy activities in our local community of urban Australia, as well as networking with anti-trafficking organisations internationally to refine theories of change and generate innovative ideas for anti-trafficking interventions.

In the course of that grassroots work, I have become interested in beliefs about and attitudes towards traffickers. At conferences and in private and public discussions, I have noticed recurring claims about traffickers that, while rarely argued for, nevertheless seem influential. One such claim may be loosely stated as 'the primary motivation of traffickers is financial gain'.

In this article, I briefly examine this claim. I point out some problems with that understanding and suggest that more research is required before we allow that claim to be given too much weight in decision-making about strategies, public policy, or funding.

An early prompt to investigate this subject was a comment by a reviewer about a journal article I wrote. The reviewer dismissed my claim that we know little about traffickers' motives, by responding that 'People exploit others for profit. This is well known throughout the literature.' That view is not anchored in the UN's definition of human trafficking, which only requires the motivation to be

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‘for the purpose of exploitation’,¹ not ‘for profit’, so where did this additional belief originate from? In part, the idea of profit is implied by the context in which the UN’s definition was developed. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* is connected to the UN’s *Convention against Transnational Organized Crime*, a convention whose definition of an ‘organized criminal group’ describes its purpose as being ‘to obtain, directly or indirectly, a financial or other material benefit.’² But a profit motive is often imputed to trafficking without empirical evidence to support the claim.

For instance, one academic claims, without argument, that ‘Human trafficking is economically motivated’ and ‘Human trafficking involves coteries of individuals utilizing the vulnerability of others as a mode of financial gain.’³ Examples can also be found among anti-trafficking practitioners and organisations. For instance, Polaris claims that ‘Human trafficking is the business of stealing freedom *for profit*’⁴ and ‘At its core, human trafficking has two elements: power and profit.’⁵ They interpret ‘profit’ primarily in financial terms and note that something of material value must be exchanged in order for an act to be considered as trafficking.

This belief in the centrality of profit as a motive for traffickers may not be universal but I have read and heard it with sufficient frequency to think that it is widely accepted. Even recent material from the United Nations Office on Drugs and Crime (UNODC) claims that ‘Human Trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, *with the aim of exploiting them for profit*.’⁶ By implication, if the conduct does not have profit as its aim, then it does not count as trafficking.

The reason I raise this issue is twofold. First, beliefs about traffickers’ motives exert significant influence on policy, law making, and the strategic planning of anti-trafficking interventions. For example, a recent report from the European

¹ United Nations General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, 15 November 2000.

² *United Nations Convention against Transnational Organized Crime*, 15 November 2000, article 2(a).

³ E Denton, ‘Anatomy of Offending: Human trafficking in the United States, 2006–2011’, *Journal of Human Trafficking*, vol. 2, no. 1, 2016, pp. 32–62, <https://doi.org/10.1080/23322705.2016.1136540>.

⁴ ‘Human Trafficking’, Polaris, retrieved 20 April 2021, <https://polarisproject.org/human-trafficking> (my emphasis).

⁵ ‘Understanding and Reporting Human Trafficking’, Polaris, <https://www.youtube.com/watch?v=9S6AkR4np6g>.

⁶ ‘Human Trafficking’, UNODC, n.d., <https://www.unodc.org/unodc/en/human-trafficking/Human-Trafficking.html> (my emphasis).

Commission claims that human trafficking ‘brings enormous revenues to criminals’ and that ‘Traffickers abuse the vulnerable situation of individuals *to gain profit*’.⁷ Based on such assumptions, the Commission encourages member states to increase the use of financial investigations and prioritise interventions that remove the profits of organised crime.

Second, the simplistic claim that the primary motive of traffickers is financial gain seems unlikely to be universally true. Certainly a few research studies have explicitly reported cases where financial motives were central,⁸ but others have noted more varied and complex motives such as cultural norms that undervalue human life,⁹ loyalty and fear,¹⁰ and psychopathology.¹¹ Generalising the profit motive as though it applies to all traffickers seems unwarranted.

As noted by UNODC, the attribution of ‘financial gain’ includes payment in kind and other material gain rather than merely money.¹² Even with such a broad understanding, however, court records for 140 closed human trafficking cases in the USA showed that 42 per cent of the accused did not knowingly benefit

⁷ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025*, European Commission, Brussels, 14 April 2021, https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_on_combatting_trafficking_in_human_beings_2021-2025_com-2021-171-1_en.pdf (my emphasis).

⁸ See, for example: N Levenkron, *‘Another Delivery from Tashkent’: Profile of the Israeli trafficker*, Hotline for Migrant Workers, Tel Aviv, 2007, https://hotline.org.il/wp-content/uploads/Another_Delivery_From_Tashkent_Eng.pdf; M Shively *et al.*, *Human Trafficking Organizations and Facilitators: A detailed profile and interviews with convicted traffickers in the United States*, National Institute of Justice, November 2017; E I Troshynski and J K Blank, ‘Interviews with Human Traffickers: Perceptions of sex and violence’, E C Heil and A J Nichols (eds.), *Broadening the Scope of Human Trafficking Research: A reader*, 2nd Edition, Carolina Academic Press, Durham, 2019.

⁹ S Tiefenbrun, ‘Child Soldiers, Slavery, and the Trafficking of Children’, SSRN Scholarly Paper, 1 October 2007, <https://doi.org/10.2139/ssrn.1020341>.

¹⁰ R Broad, ‘“A Vile and Violent Thing”: Female traffickers and the criminal justice response’, *The British Journal of Criminology*, vol. 55, no. 6, 2015, pp. 1058–75, <https://doi.org/10.1093/bjc/azv072>.

¹¹ A Hargreaves-Cormany *et al.*, ‘A Typology of Offenders Engaging in the Sex Trafficking of Juveniles (STJ): Implications for risk assessment’, *Aggression and Violent Behavior*, vol. 30, 2016, pp. 40–47, <https://doi.org/10.1016/j.avb.2016.06.011>.

¹² UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners: Module 14*, United Nations Office on Drugs and Crime, Vienna, 2009, p. 5, https://www.unodc.org/documents/human-trafficking/TIP_module14_Ebook.pdf.

financially or by receiving something of value from their offence.¹³ The most recent *Global Report on Trafficking in Persons* concludes that ‘Recruiting victims may be no more profitable than an annual average salary in a legitimate business.’¹⁴ If many traffickers *do not attain* significant financial gain, is it reasonable to assert that their *motivation* is nevertheless to gain financially? What amount of profit, monetary or otherwise, is sufficient to warrant such an assertion? What does it mean to do something ‘for profit’? Can it be that many cases of human trafficking involve an exchange of money, but that the financial aspect is not the primary motivation? If that were the case, then making trafficking unprofitable may not prevent it.

Another reason for doubting that traffickers abuse the vulnerable situation of individuals to gain profit (or any other single motivation) generalises to all traffickers is the diversity of the forms of abuse and exploitation that fall under the umbrella of human trafficking. Take, for example, the forced recruitment of child soldiers: is financial gain as significant a motivation as ideology? In the case of forced marriage, although money often changes hands, is that as significant a motivation as cultural norms that devalue young women? To the extent that live-streamed sexual exploitation of children depends on a person who pays to direct the abuse remotely, is the financial transaction as important as the sexual pathology of the abuser? In the case of bonded labour in India, profit is essential to the business model, but a more fundamental motivation may be the caste-based ‘myth of paternalism’ that legitimises this business model.¹⁵

Future directions

These observations highlight a need for further research into the primary motivation of human traffickers. Such research could start with more extensive data gathering about the financial aspects of known trafficking cases. But more importantly, we will need to apply current models of the psychology of human behaviour, and the motivational aspects of criminology more thoroughly to human trafficking. Modern psychology has noted that human behaviour is a

¹³ A Farrell, C Owens, and J McDevitt, ‘New Laws but Few Cases: Understanding the challenges to the investigation and prosecution of human trafficking cases’, *Crime, Law and Social Change*, vol. 61, 2013, pp. 139-168, p. 150, <https://doi.org/10.1007/s10611-013-9442-1>.

¹⁴ UNODC, *Global Report on Trafficking in Persons*, United Nations Office on Drugs and Crime, Vienna, 2020, p. 14, <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

¹⁵ A Choi-Fitzpatrick, *What Slaveholders Think: How contemporary perpetrators rationalize what they do*, Columbia University Press, New York, 2017, p. 12.

function of both the person and their environment.¹⁶ Accordingly, a common distinction in psychological literature is between internal and external sources of motivation.¹⁷ Those distinctions need to be applied in the context of human trafficking:

What can we deduce from the varied research showing that many traffickers were themselves trafficked previously? Do they become traffickers in order to generate profit or because of the dehumanising impact of their own abuse and the complex psychology between them and their own abusers?¹⁸ A similar question can be asked in the light of research showing the centrality of family networks in trafficking.¹⁹ When people are raised in contexts where trafficking has been normalised, they may generate profit and they may behave in ways that are *intended* to generate profit, but does that lead inevitably to the conclusion that financial gain is the primary motivation?

To what extent do ideologies, sexual pathologies, personal and communal identities, experiences of prior abuse, enculturated values, survival, social status, and the will to control others, interact with financial factors to drive traffickers' behaviour? We need research that goes beyond what traffickers *do*, to a deeper understanding of what traffickers *think*. Motivations cannot be deduced solely from outcomes, and consequently we need to interrogate the internal working of the trafficking mind if we hope to design interventions that change traffickers' behaviour.

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¹⁶ K Lewin, *Principles of Topological Psychology*, McGraw-Hill Book Company, New York, 1936, p. 12.

¹⁷ See, for instance: L Deckers, *Motivation: Biological, psychological, and environmental*, 5th edition, Routledge, New York, 2018.

¹⁸ See, e.g.: Broad.

¹⁹ See, e.g.: K B Warren, 'Troubling the Victim/Trafficker Dichotomy in Efforts to Combat Human Trafficking: The unintended consequences of moralizing labor migration', *Indiana Journal of Global Legal Studies*, vol. 19, no. 1, 2012, pp. 105–20, <https://doi.org/10.2979/indjglegstu.19.1.105>.

Trafficker Profile According to US Federal Prosecutions

Alyssa Currier Wheeler

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In June 2021, the Human Trafficking Institute (HTI) completed its review of every federal human trafficking prosecution in the United States since Congress enacted the *Trafficking Victims Protection Act* (TVPA) in 2000. Data collected through this exhaustive analysis of court documents, press releases, and news articles provide insight into who is implicated in trafficking crimes, how they are connected to their victims, and at what point they become traffickers.¹ This article focuses on the latest information from 2020, bolstering more limited datasets with twenty-year trends.

Who Are Human Traffickers?

A universal human trafficker profile does not exist. Under both international and United States (US) law, traffickers can be corporations or other legal entities, or they can be private persons.² Even when looking exclusively at US federal prosecutions—a relatively small subset of all human trafficking data—it is clear that private individuals who traffic can be of various ages, genders, nationalities, and races; members of criminal networks or lone actors.

¹ K Feehs and A Currier Wheeler, *2020 Federal Human Trafficking Report*, Human Trafficking Institute, June 2021, retrieved 15 July 2021, <https://www.traffickinginstitute.org/2020-federal-human-trafficking-report>.

² UN General Assembly, *United Nations Convention Against Transnational Organized Crime*, 15 November 2000, Article 10(1); 18 U.S.C. § 1591 (e)(6).

Corporate Traffickers

The TVPA authorises prosecutors to charge both individuals and entities as traffickers.³ However, since 2000, prosecutors have charged only nine entities—less than one per cent of all defendants. In contrast, every year, plaintiffs sue hundreds of corporations, hotels, websites, farms, and other entities for sex trafficking and forced labour, which indicates some entities are, indeed, engaged in these forms of exploitation.

Demographics

The vast majority of defendants in federal human trafficking prosecutions in the United States are natural persons. The average defendant in 2020 was a 36-year-old man. In fact, 81 per cent of all defendants in human trafficking cases in 2020 were men, including 82 per cent of defendants in sex trafficking cases. Women are much more likely to be defendants in forced labour cases, comprising 43 per cent in 2020. The US data on defendants' gender track with global trends insofar as governments everywhere prosecute more men than women. In 2018, men made up 63 per cent of trafficking offenders prosecuted worldwide.⁴

US federal data on defendants' nationality and race are extremely limited due to how demographic information is categorised and reported in public records. With these limitations in mind, the data indicate that, since 2000, at least 55 per cent of all defendants in federal human trafficking cases have been US citizens or lawful permanent residents, and at least 15 per cent have been foreign nationals.⁵ Moreover, public sources related to these prosecutions, constrained as they are by few and ambiguous categories,⁶ have identified defendants of all races and ethnicities.

³ 18 U.S.C. §§ 1589, 1591.

⁴ K Kangaspunta *et al.*, *Global Report on Trafficking in Persons 2020*, United Nations Office on Drugs and Crime, 2021, p. 37, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

⁵ The remaining 30 per cent of defendants' nationality is unknown.

⁶ The Federal Bureau of Prisons classifies all inmates' race as either Asian, Black, Native American, or White, and all inmates' ethnicity as either Hispanic or Non-Hispanic. See https://www.bop.gov/about/statistics/statistics_inmate_race.jsp.

Criminal Networks

Finally, despite popular perceptions of large-scale human trafficking rings,⁷ only about five per cent of prosecuted human trafficking cases in 2020 involved exploitation directed by gangs or organised crime groups. Instead, most cases involve individual traffickers acting as ‘pimps’, operating without direction from or connection to a larger criminal network, some even exploiting victims within their own families.

How Are Traffickers Connected with Their Victims?

Before a person becomes a trafficker, they often have a pre-existing relationship with the victim, including as an employer, partner, friend, or someone else the victim trusts. In sex trafficking cases in 2020, at least 43 per cent of defendants knew one or more of their victims prior to trafficking them. Of these defendants, 31 per cent knew at least one victim as a social media contact, 21 per cent as a spouse or intimate partner, 13 per cent as a migrant smuggler, 10 per cent as a friend or classmate, and seven per cent as a drug dealer.

Turning to 2020 labour trafficking cases, at least 57 per cent of defendants knew one or more of their victims prior to trafficking them. Co-defendants in one case (representing thirty-five per cent of these defendants) were religious leaders to their victims. Additionally, 16 per cent of defendants in forced labour cases were smugglers to their victims; 14 per cent were extended family, including partners of parents or guardians; and 11 per cent were friends or classmates.

Less commonly, defendants in human trafficking cases were, *inter alia*, victims’ fellow gang members, parents or legal guardians, mutual friends, or landlords.

When Does Someone Become a Trafficker?

It can be difficult to discern at what point a person transitions from a social media contact, smuggler, or friend to trafficker. This difficulty is due, in part, to the fact that the nature of coercion a trafficker uses to compel a victim to perform labour or commercial sex acts is highly personalised. Accordingly, the legal determination differs based on the type of human trafficking and unique fact patterns underlying each prosecution.

⁷ A Rajan, *et al.*, *Countering QAnon*, Polaris, February 2021, p. 3, retrieved 15 July 2021, <https://polarisproject.org/wp-content/uploads/2021/02/Polaris-Report-Countering-QAnon.pdf>.

Sex Traffickers of Children

For perpetrators of commercial sexual exploitation of children (CSEC), the threshold for criminal prosecution hinges on whether a defendant knew, recklessly disregarded, or had reasonable opportunity to observe that the victim who engaged in a commercial sex act was under the age of 18.⁸ In 2020, 55 per cent of defendants in sex trafficking cases were charged in prosecutions involving exclusively child victims, and victim age was the sole grounds for 53 per cent of sex trafficking charges filed. In the United States, both sellers and buyers of CSEC can be criminally culpable for sex trafficking.⁹ Accordingly, most of these defendants became traffickers either by facilitating CSEC or being a buyer of commercial sex who engaged or attempted to engage in CSEC.

Sex Traffickers of Adults and Labour Traffickers

In the context of trafficking in persons for the commercial sexual exploitation of adults or labour trafficking of victims of any age, coercion is key. The point at which a person becomes a trafficker under US federal law is when they use coercive tactics sufficient to compel a person to engage in labour or commercial sex. In 2020 human trafficking prosecutions, this usually meant defendants began withholding pay from or physically abusing their victims. Indeed, defendants withheld pay to control their victims in 75 per cent of sex trafficking cases and 74 per cent of forced labour cases. Similarly, defendants employed physical abuse in 59 per cent of sex trafficking cases and 65 per cent of labour trafficking cases. Another common method of coercion were threats of physical abuse, used by defendants in 44 per cent of sex trafficking cases and 61 per cent of labour trafficking cases.

Between the commercial sexual exploitation and labour trafficking contexts, there are some notable differences in the coercive tactics used against victims. In 2020, defendants induced or exploited a victim's substance dependency in 48 per cent of sex trafficking cases, compared to just 10 per cent of forced labour cases. Conversely, defendants in labour trafficking cases threatened victims with deportation in 29 per cent of cases, withheld victims' immigration documents in 41 per cent of cases, and took advantage of victims' language barriers in 16 per cent of cases. By comparison, defendants utilised each of these methods of coercion in just two per cent of sex trafficking cases.

⁸ 18 U.S.C. § 1591(a)(2), (c).

⁹ In 2015, the US Congress added the terms 'patronizes' and 'solicits' as prohibited acts under 18 U.S.C. § 1591(a)(1) with the express intent of providing criminal liability for human trafficking for buyers of commercial sex with adults who have been trafficked by force, fraud, or coercion, or with children. The text of the amendment is available at <https://www.congress.gov/bill/114th-congress/senate-bill/178>.

Traffickers Who Are Victims

In some circumstances, individuals engaged in trafficking conduct may also be victims themselves, or might have been trafficked in the past. The federal case data on this phenomenon is extremely limited.¹⁰

Since 2000, at least two per cent of defendants in sex trafficking cases were adults (all women) who provided commercial sex while assisting their employer or ‘pimp’ in facilitating commercial sex transactions between buyers and human trafficking victims. Such an arrangement between a pimp and a so-called ‘bottom girl’ indicates those two per cent of defendants may have been victims either prior to or during their alleged trafficking offenses.

Conclusion

This brief exploration of the data pertaining to defendants in federal human trafficking cases gives a glimpse into a world that is usually hidden. The data reveal how entities and individuals of various backgrounds employ coercion to exploit victims, turning from trusted employers, social media contacts, and friends to traffickers. Collecting this and other detailed defendant data enables HTI to share in-depth analysis of fact patterns and trends to inform and enhance the anti-trafficking response of justice sector professionals and victim service providers. Further analysis of defendant demographics as they correlate with conviction and sentencing trends will provide even more meaningful insights.

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¹⁰ HTI collects data on whether sex trafficking defendants were sex workers because of the known phenomenon of victims becoming exploiters in this particular context. There is not a parallel data point for HTI to track in labour trafficking cases.

Traffickers and Victims: Opposite sides of the same coin?

Helen Leung, Crystal Yeung, and Patricia Ho

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Hong Kong Dignity Institute (HKDI) provides direct assistance to victims of trafficking and seeks to break cycles of exploitation through institutional change. Drawing from first-hand testimonials of over 30 individuals we have assisted since 2019 and insight from our civil society partners, in this article, we outline our observations of traffickers and their *modus operandi* in three prevalent trafficking scenarios in Hong Kong. Our experience suggests that trafficking networks are composed of a complex and fluid interplay of actors with blurred emotional lines between the traffickers and victims. We conclude that anti-trafficking efforts in Hong Kong are hampered by difficulties in identifying traffickers given the elusive nature of their activities.

‘Traffickers’ within a Web of Actors

Many trafficking networks are composed of a web of interconnected actors that enable and perpetuate exploitation. For example:

1. Individuals trafficked as migrant labourers are often referred by relatives or neighbours to employment agencies adept at processing fake work contracts and evading legal oversight. This leads to debt bondage situations once the individuals arrive in Hong Kong and realise they have taken heavy loans to secure a job that does not exist. Usually, the referring parties are genuine in helping the victims and did not receive a ‘cut’ for their referral. As for the victims, they generally wish to return home immediately upon discovering the scam but are trapped in Hong Kong for years, saddled with debts or prosecuted for immigration offences related to their trafficking experience, resulting in double victimisation. One victim who

was referred to a fraudulent employment agent by her neighbour said: ‘...*it doesn't matter what happens anymore. I just want to go home to see my daughter and son. They are 12 and 10. I haven't seen them in almost two years. They have no one else.*’¹

2. Individuals trafficked for sexual exploitation may be introduced by friends to fraudulent agents who falsely promise work abroad waitressing in the food and beverage industry. These agents collude with corrupt immigration officers in the victim's home country and arrange for sham entertainment visas to be stamped on the victims' passports at specific airport counters before the victims board flights to Hong Kong.² The victims find themselves in a foreign land at the hands of *mamasans*, pimps, and local gangs eager to exploit them for profit. Due to the lack of practicable alternatives, the victims become coerced into sex work. Almost always, the victims' families back home do not know or remain wilfully blind to the fact that the victims have had to sell sexual services for money.

3. Victims of criminal exploitation for drug trafficking frequently come from difficult circumstances. For example, they are usually individuals who navigate or are susceptible to personal, societal, or financial pressures for reasons such as mental incapacitation, the demands of single parenthood, or destitution. Recruiters befriend the victims and then pass them along a series of handlers for grooming. After securing their victims' loyalty, the handlers employ pressure or deceit to make the victims carry drugs overseas (hence the nickname ‘bird’) or pick up drug parcel deliveries at Hong Kong post offices. These victims, having been used as drug mules, are abandoned the moment they are arrested.

The stratification and broad spectrum of actors involved in these scenarios beg the question: who are the traffickers?

Traffickers as Relatives and Friends

Although trafficking can occur through physical force and restraint, it is commonplace for traffickers to recruit and control victims through emotional blackmail and by creating dependency. Traffickers can often be relatives, neighbours, friends, or lovers of the victims since they know and are well placed to exploit their trust. In turn, the victims, usually marginalised individuals with intersecting vulnerabilities, may be drawn by lucrative job offers or the promise of friendship, love, and belonging:

Z made me his target and slowly separated me from my family and friends. Away from all information and... help. And when I was all alone, he went for the kill. From that point on he was in charge of

¹ Conversation with a trafficked foreign domestic worker, 17 December 2020.

² Interview with the Head of Lost and Found Refuge, Hong Kong, 7 April 2021.

*me. He showed me my room and locked the door as he left. I just don't know what... happened to my sense of reasoning... Somehow I felt... I owed Z something and [was] obliged to do whatever I was asked. [emphasis added]*³

Through emotional manipulation, victims come to regard their traffickers as rescuers. For example, there are instances where drug traffickers who share the same religious beliefs as their recruits will conduct intense overnight prayer sessions together and ask for God to protect recruits in their future endeavours. This is a highly effective covert method for building attachment and loyalty. Traffickers may even father children with their female recruits. Some exonerated female drug mules suspect that their children's father set them up to traffic drugs.

Simultaneously enticed by the assurances of rewards, fearful of rejecting their traffickers (who may withdraw affection or become abusive), and facing circumstantial pressures, recruits will usually carry out the tasks or 'favours' instructed by their traffickers. As these subtle tactics appear outside the stereotypical notion of victimisation, authorities often misperceive victims' actions as voluntary. This leads to an under-identification of victims and impunity for traffickers.

Traffickers as Former Victims

Organised trafficking networks are adaptive and may operate on several planes of hierarchies involving frequent promotions, demotions, and role transferrals. Victims may gradually or inadvertently 'rise up' the ranks upon being assigned new roles or becoming socialised to the traffickers' norms. According to one victim:

*The first time was so difficult, after arriving... I realised I owed my agent a lot of money for arranging my visa. I worked every day, first serving men at bars, and later in motels. The other girls gave me advice and their friendships made life easier... I vowed never to return. A year later, my mother became ill and my mortgage was at risk. I had no choice but to return to sex work. It was easier the second time. **Although it was not my first choice, it was my choice, and I knew what to expect. I felt I had become hardened. I even showed the new girls around.** [emphasis added]*⁴

In trafficking for sexual exploitation, it is a *mamasan's* former victimisation that allows her to empathise with the person's financial desperation and attraction towards a protective dominant female figure. *Mamasans* act as maternal figures to the women they oversee and are skilled at persuading them to remain in exploitative circumstances. If women express their desire to leave, their *mamasans* would shame

³ Letter from a former drug lord, 7 December 2020.

⁴ Interview with a sex worker, 16 September 2020.

them for being selfish in abdicating their responsibilities. This is possible partly because the stigma attached to sex work makes it shameful for women to reveal their situations to their families back home. In turn, the perpetrators become the women's families; and to leave one's family, albeit a dysfunctional and cruel one, is considered the ultimate act of betrayal. An emotional debt is hard to square,⁵ and often, women seeking to leave will change their mind numerous times.

Conclusion and Recommendations

As illustrated, a black-and-white conceptualisation of traffickers fails to reflect the complex realities of human trafficking. As is the case of Hong Kong, an inaccurate understanding of trafficking operations has impeded the development of sound anti-trafficking legislation and policies.⁶ Accordingly, we offer the following recommendations:

1. Assess culpability of agents in the intermediate space between traffickers and victims. The extent and degree of an agent's conduct, intent, knowledge, participation, and profiteering are relevant considerations, and criminal law provides precedents to determine their accountability. For example, different sentences are prescribed for 'principal perpetrators', 'accessories' (such as those who aid, abet, counsel, or procure a crime), and perpetrators who act in a 'joint criminal enterprise'.⁷ Equitable principles and prosecutorial discretion also exist to provide avenues of mitigative recourse.
2. Observe international guidelines on the non-punishment principle for trafficked individuals so that victims are not penalised or punished for illegal acts they commit as a direct result of being trafficked.⁸ Despite Hong Kong's acknowledgement of this general principle,⁹ it is rare for even partial prosecutorial immunity to

⁵ Iceberg Slim, *Pimp: The Story of My Life*, Cash Money Content, New York, 1969.

⁶ Given the number of TIP victims HKDI has come across, we find the Hong Kong Government's TIP screening mechanism inadequate. In 2020, only three of 6,912 individuals screened by the Government were recognised as victims. See: Response to Access to Information Request by Security Bureau, 25 January 2021, retrieved 3 November 2021, https://accessinfo.hk/en/request/tip_screening_q4_of_2020#incoming-1574.

⁷ *HKSAR v Chan Kam Shing* FACC 5/2016.

⁸ UN Human Rights Council, *Implementation of the non-punishment principle: Report of the Special Rapporteur on trafficking in persons, especially women and children*, 17 May 2021, A/HRC/47/34; ICAT, Issue Brief 08, 'Non-Punishment of Victims of Trafficking', 2020.

⁹ Department of Justice, Prosecution Code 2013, S. 18 on human exploitation cases, at: <https://www.doj.gov.hk/en/publications/pdf/pdcode1314e.pdf>.

be granted to victims seeking to report their traffickers. Law enforcement and prosecutors should take measures to reduce victims' fear of self-incrimination and retaliation by perpetrators, which bar victims from seeking help to escape their circumstances and facilitate criminal processes against traffickers.

3. Target prohibited practices by employment agencies and other businesses that play a role in enabling or perpetuating human trafficking. This requires investing resources to train enforcement authorities to competently patrol and prosecute illicit activities by employment agencies, financial institutions, moneylenders, travel agencies, and commercial establishments that facilitate trafficking operations.

4. Reduce opportunities for trafficking networks to target vulnerable individuals. This can be achieved by creating decent work opportunities, providing accessible and affordable public services, strengthening labour protections, and providing trauma-informed care that restores their sense of agency. Whilst the redistribution of equality and dignity in society is not an easy task, society benefits when exploitation is eradicated, crime rates are reduced, and people are empowered to channel their potential in positive and productive ways.

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Interview: Raised in Pimp City: Urban insights on traffickers, trafficking, and the counter-trafficking industry

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Armand King was involved in human trafficking¹ for over a decade. The journal Editor, Borislav Gerasimov, and the Special Issue Guest Editor, Marika McAdam, conducted this interview with him to better understand his motivations and experiences during this period of his life as well as his views on counter-trafficking.²

Borislav Gerasimov: Can you tell us about your experience with trafficking?

Armand King: My experience started around 1997-98, when I was 16 years old going on 17. I'm from San Diego, California, from an impoverished and marginalised community of primarily Black and brown individuals. When I started, this was the cool thing to do in my peer group. Most of the people I knew, both girls and guys, were merged into this lifestyle together. Before that, there was heavy gang involvement, Bloods and Crips, and before that there was a government-induced Black Plague, we call it the crack epidemic, where drugs were forced on our communities by government officials, by the CIA... The system had pushed drugs which was the beginning of how we got into trafficking. We

¹ Technically, Armand was a prostitution facilitator, or a 'pimp'. However, this activity is considered as 'sex trafficking' under the United States *Trafficking Victims Protection Act* of 2000 and Armand identifies as having been involved in 'domestic urban sex trafficking'.

² The interview was conducted on 16 July 2021 (15 July in Armand's time zone) over Zoom. It was recorded, transcribed, and edited for brevity and clarity by the Editors. The edited transcript was sent to Mr King for approval before publication. The recording was deleted after this process.

were already in a bad state as a community forced into poverty, red-lining, all of these different things and I'm just a product of that. My generation came from parents who were heavily impacted by the war on drugs, by gang involvement... And without any solutions or opportunities or resources being brought in, we didn't know what to do.

Trafficking was a new term for us; we called it pimping and prostitution then. And it was okayed by the media, by the music we were listening to, by our moms even. We were 16-17-year-old boys and girls—you don't really understand life, you don't understand what you're doing. We saw pimping and prostitution on the HBO special *Pimps Up, Ho's Down*. I was a kid and we came home from school and watched this at 3 pm in the afternoon, and it just sparked us—we saw Black men and women that were prosperous, or at least to a 16-year-old boy they looked happy. Now as a 40-year-old man, they look miserable. But as a 16-year-old boy you don't understand life; none of my friends had fathers, we did not have a positive male role model in our life. All the men in my community were pimps, drug dealers, and gang members. So we didn't feel what we were doing was wrong. You know something's not right but we did not think like the way it is now, like 'evil trafficker, burn him at the stake' and all that. No, we were actually accepted by our communities, our mothers benefited off of what we were doing, and they were happy we weren't drug dealers or gang members. And you didn't see a bunch of beat-up women, like those images nowadays—no, you saw women with Gucci bags and nice dresses driving Lexus or Mercedes. So, on the outside it seemed good but actually we were damaging ourselves but nobody was there to tell us that.

And we had a code of conduct, we had ethics. It was passed down since the 70s and it was, we used to say, 'by choice not force'. Not that people were not hit or abused, but we didn't look at that as a good thing. I've never hit a woman in my life and I was involved in 'the game' for over 10 years. And if you had to hit a woman, if you could not just use your mouth, your communication skills—this is what is now called 'coercion', so it fits in there—but if you couldn't do that and you had to put your hands on a woman, you were known as a weak man. We would say 'it's not a contact sport, hands behind your back, we promote peace'.

In that community where I was from you weren't allowed to have minors—if you had a minor, you would have got beat up. It did happen, but these people were the exception, not the rule, and they stayed quiet, because they would be exiled. One of my friends that I grew up with just got a charge for having a 14-year-old girl and he's been banished from the city—his best friends, his crew, they will not talk to him. He lives across the country right now because his reputation is damaged. That's how far we go with this minor stuff.

BG: Were you prosecuted or convicted, and if so, for what crimes?

AK: Everybody in law enforcement knew it was happening and nobody cared—it wasn't a target item. If you weren't a gang member or a drug dealer, they didn't care about you. Police and law enforcement were dating the girls and, if not paying, they were raping them. We used to even say that what we were doing was the lesser evil. Because we lived under gang members and people were literally killing each other, behind a colour they were wearing or a street name. So we came from that and right before that, we came from strung-out aunties, parents, we were the crack babies, and we watched that destroy our community. So what we were doing was actually getting money, people were dressing nice, had nice cars and not just us but the girls we were with it. It seemed like the better of the very few options we had.

But yes, I went to federal prison, I did three years of probation. I have two felonies now but not for trafficking—I was in there for cannabis which is now legal in the United States and rich people are getting richer off of it, and I can't enter the industry because I have a felony for the same thing they're getting rich off of. So, a whole lot of sense is being made with this American system that we claim to be better. For 10 pounds I did three years in prison—first time ever been in trouble with the law.

But they didn't care about trafficking or pimping, it was a slap on the wrist. That's why we thought it was the best thing for us to do. For gangbanging you would go to jail, you could die; selling drugs—you will go to jail forever.

Marika McAdam: You use the term 'pimp'—can you explain what, in your view, is the difference between a trafficker and a pimp?

AK: Now that I've been in this movement since 2014, the two are interchangeable. Had you asked me or another pimp before if they were a trafficker, they would have said 'hell no! Those are people who are out of this country and are bringing in foreign women in tankers'. We would think something like that, like the movie *Taken*. That would be a trafficker. Or a drug trafficker smuggling in people, and we were like, no these are the girls that are just as poor as me, grew up with me, and this is our way to make money to survive. That would have been my definition before, just a pimp, a manager. And it wasn't a bad thing—girls were looking for a pimp, they would not even mess with you if you weren't a pimp.

And then you have every rapper possible and those weren't just the guys' influences, they were the girls' influences too. We had Snoop Dogg—internationally known, worldwide respected—he went from a gangster rapper to all of a sudden, a pimp rapper. And so did a lot of other people. That was like validation, that's what you wanted to achieve and to be. A pimp was not a bad word. And I believe that's a lot of the reason why the terminology changed to trafficker. And they don't

use the word pimp anymore. Pimp was an easy pill to swallow—you had MTV ‘Pimp My Ride’, you had Nelly, ‘Pimp Juice’, you had Jay-Z with ‘Big Pimpin’... We had pimping even in rich socioeconomic communities and it wasn’t a bad word anywhere.

The term changed around 2012. I found out in 2014 about this trafficking stuff and I was like ‘What is that? Oh, that’s what it is!’ Before that, if you got arrested, it was pimping and pandering, now you don’t really hear that anymore, it’s human trafficking charges you’re getting. So you hear human trafficking and it is just so hard, it doesn’t sit right with you. But if I heard ‘a gang member was trafficking minors’—I’d be like, kill him! I don’t even need to hear the story or know what the situation was—if I just heard gangster, trafficker, minor—kill him!

The terminology changed so the mind would change. And now they started going after those same Black people they used to target. Police used to call us by our pimp names on the blade, on the tracks, they knew who we were and they would pull us over. They knew what was going on, but their marching orders weren’t to arrest us. If they didn’t find drugs or guns or you weren’t on some type of supervision from law enforcement, they’d let you go. Even that was like a path validation—the police don’t even care. Keep going, you’re making a thousand dollars a night, why stop?

BG: Do you think that trafficking for sexual exploitation should be treated differently to other forms of trafficking?

AK: There are many different forms of trafficking. And unfortunately, the human trafficking movement puts them all into one box, and that alone is preventing us from coming up with solutions because there may be some similarities here and there, but they’re totally different. There’s familial trafficking, child trafficking, international trafficking.. Where I come from is primarily, you know, the Black community that you’ll see with stereotypical pimps from the streets.

And let me start off with saying I’m only an expert at the type of trafficking I was involved in—domestic urban human trafficking that comes from inner city communities in America and in Canada. So why I say they need to be dealt with differently is because I’ve been around enough to hear the problems, and other forms of trafficking, and they’re totally different from the problems that I come from. I know how to address this problem of urban domestic trafficking, but those same solutions would not be applied to familial trafficking, for example. The bulk of the solutions for the trafficking I come from is about poverty reduction. Ending poverty, giving more opportunity and resources to these kids that are still getting involved—that would change the whole dynamics. It’s not that the pimp or the prostitute want to do this. They may try to trick themselves later to make it okay but when they’re 10, 11, 12 years old, their ambition is not to be a pimp or a prostitute—something in their life path made that avenue seem okay.

And if they weren't coming from these impoverished marginalised communities, impacted by systemic racism and white supremacy, if they had other options, they would have done something else. Now in these communities, kids are trying other things. My generation, we didn't have older pimps to look at and think 'oh that's bad, that's wrong'. We saw drugs and we thought 'yeah we're not doing that', we saw gangs and 'oh yeah, we're not doing that'. But we didn't see the pimp and prostitution culture, we actually brought that in. Now you have kids that are 14-15 that do have a whole generation to look at, and they're like 'hell no'. There are some still going that route just like there are some selling drugs... our biggest problem now is kids dying off drugs, the opioid epidemic is killing us. And we still have gangs... All those issues are stemming from the root problems of poverty, racism, and lack of opportunities.

MM: There are different views in the international counter-trafficking community about whether sex work should be criminalised, decriminalised, or legalised. What is your view and why?

AK: I don't know. I've been in these debates. I've heard both sides, and I can hear one person who makes a good argument and I'm in agreement, and then someone else on the opposite side makes good arguments, and I'm in agreement. Personally, I don't know what's better. I have friends that are still in the game today, they don't have a pimp or anything, and they're not okay. No one wants to do this, you know, but they're in it.

I have home girls who are pushing for legalisation. I have one friend, she has several degrees from San Diego State University, doing a PhD right now. She was in for 14 years and now she's just a scholar and she's pro-sex work. And we have great debates about it, she's a debater. But personally, I don't know, my fight is to save lives and help people from even going down that path so we don't have to debate about it.

Selling your body should never even be an option on the table but unfortunately it is. And until we end poverty, which unfortunately is one of the biggest problems ever, there's always going to be someone who realises, 'I can sell my body'. Even women who aren't 'prostitutes' or sex workers, may have a guy that's paying their rent or are going out with him just because he's giving them financial benefits. It's an exchange, and it's based in poverty, in need. To answer your question, I don't have a stance.

BG: What do you think is an appropriate punishment for the kinds of activities you were engaged in, which are now called trafficking? Is it jail time, or something else in addition to, or instead of, jail time?

AK: First of all, who's the one to say what an appropriate punishment is for what someone else does? I don't know any person who's never done anything

wrong and which wrong is more wrong than the other wrong? Who's casting that opinion? Only God can judge me.

Like I said, I've never hit a woman. I called myself the businessman pimp—I would sit down with a piece of paper and we would draw out the plan. Poor guy, poor girl, this is what we're going to do. If the girl said yes then we move forward. If she said no, then okay—someone else may say yes. The last time I was in the game, I had stopped already, and a girl came and got me. Should she get punished for getting me into the game? These days I know more girls that get guys into the game to be their pimp, they call it boyfriend-girlfriend pimping. Should those girls be punished? It's not my place to say. I've gone to prison, you know, because of this plant that grows from the ground, but God might have put me in prison to sit down and think about other things. I've lost many of my friends, they're dead right now. Last week a friend of mine was pimping on the blade in Houston, Texas, and was shot in the head by a girl pimp.

I don't know how much more punishment, and who is that person or entity that's to cast punishment, definitely not the United States of America, this country that I stand in right now, which is stolen land: there were people that lived here that you don't even see anymore, they were annihilated. They were put in concentration camps that they still live on, and are forced to watch America grow as they're impoverished. The number one trafficked women in America are Indigenous women that don't even get headlines, they don't even get talked about, right? African, Black people were brought over here, to this country. This country was founded on labour and sex trafficking. So who's making these laws that are to be punished by—the person that brought us here, the largest kidnapper, rapist, and trafficker ever known to man, is that the person that's casting my punishment?

So, to answer your question, the punishment that I should receive is punishment I've got enough of, and only God can judge me. We talk a lot but he hasn't shown me where my metre is, if my good has outweighed my bad yet. But my life right now is dedicated towards helping others—women that were in the game. The first girl I've ever seen, first ever trick, she works for my organisation now. She was there for 20 years, you know, saved her life. So, hopefully I've turned the tables around and I'm actually on the good side.

MM: You're currently working to prevent trafficking. Counter-trafficking is so much about victims and how to address vulnerability to being victimised, but not how we address vulnerability to becoming a trafficker. What is your approach, what are your key messages and to whom?

AK: When I started, people were asking me, why are you helping traffickers? And I tell them, if I can prevent a 'trafficker', a pimp, and change them, I may have saved a hundred women. There are multiple ways we do that as an organisation—the middle schools, preteens, that is the most crucial age group to reach to prevent

them from going into ‘the life’; we call that the ‘wannabe’ stage. So, we have a class for them to talk and to train them before they even go down that path. For the ones that are in, we reach out to them—male and female—we have two different programmes, and we show them they have other options.

My biggest tool to prevent somebody and get them out is, I tell them that when I was in the game you might have got a slap on the wrist. Now, you might get 50 years for just posting wrong on Facebook, for talking about pimping. You don’t even have to actually have a victim; you could just talk about it on social media and get a charge. So, showing them that makes them think twice, or at least they know that with this path, you can go to jail forever.

It’s about providing opportunities and we had to build as an organisation, to be able to provide opportunities and resources to keep someone from going into this life, and we’ve been extremely successful with both boys and girls. It’s prevention. And providing other options. Where I grew up, you didn’t see other things you could do—you know they exist but you don’t believe in yourself. We’ve been put into this place before I was born. It’s a generational curse. It was forced on our DNA. And it’s rooted in slavery. We were taught that we were nothing, worthless, we don’t even see ourselves as anything other than low-lives. It’s been pressed on us by media, it’s been pushed on us since we were born... So maybe I know I could be a doctor, I know it’s possible for me to be a lawyer, but I don’t believe that’s for me, I believe I can only do what’s in this box—selling drugs, pimping, gangbanging, nothingness.

In my community, we’re dealing with the remnants of something that was pushed on us. And then who do you blame? If somebody turns off the light in the room and I trip and fall and break something, do you blame the person that tripped and fell and broke something or do you blame the person that turned the lights out in the first place? My job is to unveil and take that blindfold off and show other opportunities. And it’s hard. It’s a fight because this has been for generations.

It’s well documented: we literally had the head of our FBI, J Edgar Hoover, who was strategically in the 70s going after Black leadership and killing them—in his own words and writing—looking to stop the next Black Messiah. Martin Luther King, Malcolm X, Black Panther movement, strategically taken out when we had an empowerment movement coming. This was system-left kids in the streets. Then we have this emergence of Bloods and Crips and magical drugs that just appear; crack cocaine—there has yet to be a documentary where you see a Black man or woman that owned a plane or train bringing in this massive amount of cocaine. But I do know of the CIA bringing it in, I do know of Nixon allowing this to come in—the biggest drug dealer ever.

We’ve had horrible presidents—Reagan, Bush, Trump. You asked about punishment—who’s gonna punish *them* for what they did? Now we have an

opioid epidemic blowing up right now—where’s that coming from? We have the United States military... when I was in the military, my recruiter said ‘when you go to Panama, there’s going to be a line of women at the barracks you could just date’. Who’s the trafficker, who’s the buyer? Buyers are not being targeted at all, because you’re going to get judges, senators, businessmen—you got to be able to afford sex, to be a buyer, and that’s not us, that’s not the poor people of this country. The poor are the ones selling it.

BG: You spoke a lot about racism, lack of economic opportunities, and other structural issues. What should governments do, what should NGOs do, in your opinion, to reduce trafficking?

AK: Multiple things. One is to listen to the people who actually went through it. Not that everybody that’s been through it needs to be a leader or a speaker, you know, but there are leaders out there that have lived experience—listen to them.

For prevention, we have to reach the kids, we have to reach them before they get into it. And not sugar-coat stuff; especially in this day and age, they need to know it raw, because if you give it to them in baby language, they’re going to go on YouTube and have 1,000 other people tell them the other stuff. So, tell them the real stuff so they’ll know what they’re facing and not get blindsided when they go out there.

And create opportunities and resources. Like I said earlier, we have to end poverty. If we put a dent on poverty, we’ll put a dent on trafficking—nobody wants to be a pimp or a prostitute when they grow up, nobody. And as long as that option is still on the table for poor people, they’re going to use it, whether they have a ‘trafficker’ or not, there’s going to be a woman that sells her body or a man that sells his body, or finds a way to sell this other person’s body for money because that’s all we are left with.

I’ve been around a lot of trained professors, trained law enforcement, we’ve had productive group meetings with scholars and with people with lived experience who are given the information. I’m so tired of giving that information. Nothing is happening with it. It’s 2021! I got in this movement in 2014, the ball hasn’t moved an inch. No offence to you guys, but I’m still answering the same questions, we’re still talking about the gaps in services... Come on! There’s been answers forever and not just with this. I’ve been listening to Tupac addressing every social issue we have, with the problem and solutions—these answers have been there. Martin Luther King in the 60s was talking about issues that are right here right now. We’ve had the scholars, we’ve had the solutions. What government and NGOs should do is *act* on these solutions. But it takes money, and those with the funds have to give to the right people and empower them to bring the solutions to life. It’s going to take finances, policy. It’s going to take power and the poor people don’t have it. The government is talking about ending trafficking and they should

put their money where their mouth is.

MM: There are a lot of us who are making a living from the counter-trafficking industry. Do you think we can do better to work ourselves out of a job, or is trafficking here to stay?

AK: It's not going anywhere. You got the lawyers, you got the paralegals you got the judges, you have the people in the jailhouse. This is an industry. People's livelihoods are being funded by crime. If everybody stopped committing crime today, this country would go bankrupt. We don't have another industry—we hardly produce anything. Everything in America is made in China. What is our industry? We have more prisons than anywhere on this earth combined. We have more inmates in this 'free country' than the entire world's prisons combined. If crime was to stop today there'd be so many people unemployed, it'd be ridiculous. So who is benefiting off of poor people placed in a position where of course they're going to commit crime?

The solutions have been there. Why aren't they implemented? They don't want them to be implemented. Keep locking up Black and brown people, and poor whites. Keep locking them up, keep this system going. That's why there's privatised prisons and investment banks have stock in prisons. These big corporate businesses would not invest if they didn't think they were going to get a return on their investment. Otherwise, the system continues. These conferences make thousands of dollars to go around and talk about trafficking and they pick the most outrageous stories of this one individual who went through the worst. That's not everybody, but people are donating, things are happening, but there's been no solutions implemented. They're playing with lives. Systems are playing with lives.

Meanwhile, my team, we have work to do because we have lives to save, and we have solutions and we're going to implement them at the level we can and with the funding we have.

Fuelled by his experiences in the streets, **Armand King** co-founded the non-profit Paving Great Futures and now works to guide others out of the systemic prison pipeline. His life mission now is detouring individuals from the many socio-economic pitfalls faced by the underserved communities in San Diego. He is the author of *Raised in Pimp City: The uncut truth about domestic human sex trafficking* (Bowker, 2019). Email: mr.armandking@gmail.com

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ANTI-TRAFFICKING REVIEW

Guidelines for Contributors

We welcome submissions from a diverse range of actors, including academics, practitioners, trafficked persons and advocates. The *Anti-Trafficking Review* particularly welcomes contributions from those with direct experiences and insights to share.

The *Anti-Trafficking Review* is aimed at a wide readership. It therefore encourages submissions that are in clear, jargon-free English with appropriate but not excessive citation.

Articles should be previously unpublished and should not be under consideration for publication elsewhere. All articles go through a rigorous double-blind peer review process.

Please refer to the journal's website (www.antitraffickingreview.org) for the journal's full style guide and guidelines for contributors.



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anti trafficking review

The Anti-Trafficking Review promotes a human rights-based approach to anti-trafficking. It explores trafficking in its broader context including gender analyses and intersections with labour and migrant rights. It offers an outlet and space for dialogue between academics, practitioners, trafficked persons and advocates seeking to communicate new ideas and findings to those working for and with trafficked persons.



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