Editorial: Traffickers

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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]

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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.

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[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.

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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

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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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