

Maria João Guia *Editor*

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# The Illegal Business of Human Trafficking

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*To my son João Pedro,  
and my son Daniel Filipe,  
May the light of Justice and the defense of  
Human Rights always guide their lives*



# Foreword

Human trafficking is one of the most grievous crimes in the world. It involves many different types of offences, all of which prevent the victim from exercising his freedom of will. Crimes are perpetrated on the body of the victims: exploiting them sexually, obliging them to work under abject conditions, or removing body organs, among other forms of exploitation. This illicit activity is worth billions of dollars and is one of the most lucrative criminal businesses as weapon and drug trafficking.

I am very grateful, and I want to state that without the excellent contributions of the authors herein listed, this volume could not reach those who have never heard about this scourge or those seeking more information on this topic. In fact, most citizens do not know specifically what human trafficking is—it is perceived as a cross-border crime involving smuggling immigrants and pimping or slavery and kidnapping. But its contours are unmistakable and easy to identify once one becomes familiar with the phenomena described in the book. Globalisation and entrepreneurship, when used for criminal purposes, can impact all aspects of human trafficking. We should never forget that this horrendous crime has the target of obliging individuals to submit their body and will to doing something with no regard for their wishes. That is why victims are often characterised as the new slaves of the twenty-first century.

Society must be made aware that this crime could be happening next door. This is not an invented movie version of reality. It is happening near us and, because of the ignorance on this topic, most victims suffer their entrapment in silence, unless and until someone realises they are being abused and need help. It may be one of us, a son or a daughter or a mother or a father. It is happening nearby, and it is all too easy to fall into the clutches of criminal networks.

This book is a compilation of the reflections of 13 authors, who have discussed their thoughts with me during the course of several national and international conferences and workshops I have organised and on other occasions.

I will make a brief summary of the chapters in this book, and I thank the authors once again for all the energy they have put into their papers to make this book possible.



Our first authors from Portugal, Joanna Daniel-Wrabetz and Rita Penedo, open this book by questioning what makes a person, whether man, woman, or child, (more) vulnerable to human trafficking. They also reflect on what makes some places more susceptible to the occurrence of certain criminal phenomena such as trafficking in human beings. This chapter, focusing mainly on social vulnerability and social invisibility, argues that these questions can be considered within a socioecological model of vulnerability where geographical information systems are used as relevant tools to put this crime and its actors in a temporal and spatial context.

Joana Ruivo also from Portugal follows, addressing the complexity of human trafficking, analysing the contexts that create the victims and the gaps within the recipient countries' systems that allow for the development of the phenomenon, including the lack of integrative policies. Focusing on the available statistics, the author identifies the main victims (women and children) and the markets that thrive from what is considered to be one of the most profitable crimes in the world. Attention is drawn to the Schengen zone, where the absence of border controls, the quality of road accesses, and the availability of good communication lines provide the necessary tools for the development of this activity.

On a final note, the author describes the development of victim support networks throughout the years, highlighting the importance of NGOs in medical care, psychological and social assistance, financial aid, legal advice/support for victims, and the development of awareness campaigns inside the communities and in direct contact with potential victims. Drawing the attention of the reader to the work that still needs to be developed in this field, the author calls for stronger protection of the victims and for the creation of specialised networks and partnerships between GOs, NGOs, and police forces, promoting the participation of the victims in the investigations.

The third contribution is by João Paulo Orsini Martinelli, who explains how the concept of human trafficking surpasses mere legal devices and the scope of criminal law. Analysing a number of elements involved in this criminal phenomenon, the author outlines the existing legal definitions to conclude that the concept of human trafficking is only partly addressed in the legal sphere and that the slavery that surrounds the victims is often neglected. The author reflects on the broadness of concepts like consent, vulnerability, and autonomy and the dilemmas that such concepts raise when criminalising human trafficking, especially in the absence of coercion and fraud and when the victim's consent is obtained.

Drawing on the Brazilian Criminal Law, the author alerts us to the dangers of a legal system that is based merely on moral arguments and to the potential unwanted intromission of a "paternalistic State" in the private life of individuals, highlighting the need to distinguish actual victims from fully capable adults.

A fourth chapter (from Brazil) is written by Danilo Fontenele Sampaio Cunha, who focuses on the sexual exploitation of women by a male market to analyse the trafficking of Brazilian women, internationally and within an internal sex tourism

market. There, women with no name and no origin are reduced to a subspecies without rights, opportunities, or voice inside criminal organisations that bear a striking resemblance to organisations dealing in homicidal crimes for hire, displaying the same distorted definitions of loyalty and protection and similar asymmetric and hierarchical definitions of relationships that thrive on the notion of protection against justice. Adopting a very critical stance towards academic definitions and the concept of “free choice”, the author reflects on causes and legal definitions and explores the new Brazilian legislation.

The author calls for a change in the social perception of prostitutes, shaped by a sexist society, and stronger political measures, highlighting the importance of social prevention (greater access to education and health, stronger border controls, and awareness campaigns). On a final note, the author reflects about the possible legalisation or decriminalisation of prostitution and its consequences, wondering if the dignification of the sex industry will extend to the prostituted women or if “freedom of choice” vs. choice for survival will be analysed in greater detail.

This volume follows with Brazilian authors Márcio Anselmo and Guilherme Fernandes, who write a chapter presenting an overview of Brazilian Law and Brazilian policies designed to combat human trafficking, both internationally and internally, comparing them with international norms. Besides the existence of articles pertaining directly to human trafficking, the authors also stress the existence of other articles that contemplate relevant actions, as well as the implementation of action plans whose purpose is to formulate policies to prevent and combat trafficking in persons, such as the Brazilian National Policy for Combating Trafficking in Persons (2006) and the National Plan to Combat Trafficking in Persons (2008).

As noted by the authors, Brazil is identified as one of the major suppliers in the market of human trafficking for sexual exploitation, and certain limitations in the Brazilian Law call for a reformulation that meets with the international law on human trafficking and that effectively deals with the prevention and repression of human trafficking and connected crimes, in its multiple dimensions, not only for sexual exploitation but also for labour exploitation.

The next contribution is the chapter from Agustina Iglesias Skulj and Luz María Puente Aba, from Spain, who analyse the design and the implementation of policies against human trafficking in Spain, explaining how the *Plan to combat trafficking in women for sexual exploitation* sets forth measures to fight only certain elements of the phenomenon and revealing a number of problems in Spanish policies. From the ambiguity involving certain concepts to the lack of distinction between sex trafficking and prostitution (in a *genderisation* of the issue) and between trafficking and smuggling (resulting in a purely security-based approach and criminal prosecution) and even the complete neglect of other types of trafficking (male, child, labour), the creation of ideological frameworks based on moral views regarding gender, sex work, migration, and other issues, embedded with fears of foreigners, immigrants, criminals, terrorists, and so forth limits the creation of effective policies to combat human trafficking.

The authors identify an approach that is solely focused on sex trafficking, where police forces act without adequate identification procedures or protocols, where the

collaboration of the victims with justice is a weak point, and where victims are instrumentalised for prosecution purposes, and call for counter-trafficking policies that recognise the insufficiency of the current Plan and a wider economic, social, and political context where the residency and employment regulations in destination States assume their fair share of responsibility.

As the “war against human trafficking” gains momentum in the North American media, Edith Kinney analyses how pop culture is contributing to a social and legal construction of the phenomenon based on stereotypes about the victims and the perpetrators. This oversimplification of the dynamics behind trafficking and global movements into sensationalistic narratives of captivity, sexual violence, and criminality mischaracterises the complex political, social, and economic factors that shape exploitative migration and servitude. Using three case studies, the author explains how the popular media helps construct popular and political understandings of the phenomenon, shaping not only beliefs about what trafficking is but also the policies and practices of those who enforce anti-trafficking laws and promoting a law and order response to the issue while blurring the line between fact and fiction.

The author from USA further explains how these media portrayals of human trafficking reflect the “crimmigration” phenomenon, raising important questions about the effect of the media on legal consciousness and public discourses on sexuality that, ultimately, legitimate the exclusion, condemnation, or acceptance of certain groups of migrants. The author draws the reader’s attention to the fact that this promotion of tough enforcement actions on prostitution networks fails to address the “demand” that drives the phenomenon and the role of the American consumers in creating a market for cheap and exploited labour while justifying the expansion of the prison-industrial complex and the legitimisation and normalisation of crimmigration.

The eighth chapter, by Jessica Elliott (UK), starts by focusing on the drafting of the Council of Europe Convention on Action Against Trafficking in Human Beings in 2005, which suggests a more victim-focused, victim-centric approach towards the individuals who fall foul of this transnational phenomenon than has previously been the case. The more encompassing provisions of this Convention, when compared to the somewhat weaker provisions enshrined in the United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000, provide for various bespoke rights such as rest and recovery periods and temporary residence permits for those subject to its provisions. Of particular note, according to this paper, is Article 26 of the Convention, which provides for the “non-punishment” of victims when their involvement in unlawful activities can be attributed to the fact that they have been trafficked, namely that they were compelled to commit the relevant offence in the course of/as a result of having been trafficked. This provision of the Convention is drafted in nonbinding terms, and therefore ratifying States can decide exactly how they wish to proceed on this particular matter. Non-punishment can only be actively considered if the individual in question has at least been identified as a putative victim of trafficking—identification being dealt with by Article 10 of the Convention.

The author refers to the anti-trafficking framework in the United Kingdom as the National Referral Mechanism for the identification of victims and to two Crown Prosecution Service Protocols, which provide for prosecutorial discretion where victims of human trafficking have committed criminal offences as a result of having been trafficked. This chapter analyses, through the lens of the UK's implementation of the provisions in Articles 10 and 26 and a series of recent case law decisions by domestic courts, the applicability of both the Convention and these Protocols to victims of human trafficking, in order to determine whether such individuals are in fact being properly treated as victims or as criminals.

The ninth and final chapter, authored by Jorge Malheiros and Maria João Guia, focuses on the association of prostitution with human trafficking and questions the idea of “involuntary” vs. “voluntary” risk with regard to human trafficking. The contribution also presents real cases of Eastern European and Brazilian women who entered prostitution, as well as cases of these women as victims of human trafficking. After separating the elements that distinguish the two situations, the authors problematise the question of opportunity and decision when entering a life of prostitution, after reviewing the statements of a number of foreign women involved in prostitution in Portugal.

Law 60/2013, of 23 August,<sup>1</sup> recently amended<sup>2</sup> the Portuguese Criminal Code following the recommendations of Directive 2011/36/EU concerning the

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<sup>1</sup> Amending the *Criminal Code*, Law 5/2012, of 11 January, Law 101/2011, of 25 August, Law 45/2011, of 24 June: introducing amendments relating to recommendations in Directive 2011/36/UE concerning the prevention of and fight against the crime of human trafficking and the protection of its victims.

<sup>2</sup> In relation to the transposition of Directive 2011/36/UE, the amendment to the Portuguese Criminal Code has been recently published, under Law 60/2013, of 23 August, also amending three other legal provisions.

- a) To the Criminal Code, alterations have included making legal persons and similar entities (except the State) or other public legal persons and international organisations responsible for the crime of human trafficking, as well as single persons. In Article 160 of the Criminal Code, the text of the crime of human trafficking has also been improved, including new terms covering recruiting and new forms of exploitation, such as labour exploitation, forced begging, slavery, illegal adoption, and the exploitation of victims for other criminal activities. Penalties have also been raised with the inclusion of a new paragraph in the text of the crime of human trafficking (Article 160) when the life of the victim has been put in danger or specific violence has been used towards the victim or in cases where harm has been caused to the victim or caused by a professional or by a criminal association or network or where a victim's suicide ensues. The consent of the victim has also been reviewed, and in no case should it exclude the unlawfulness of the action.
- b) Amendments included in Law 5/2002, of 11 January, on measures to combat organised and economic crime, now list human trafficking as one of the crimes justifying such measures when it is carried out in an organised manner.
- c) Law 101/2001, of 25 August, is also amended to extend the legal regime of covert actions for the purpose of preventing and detecting crimes, to now include those involving human trafficking,
- d) Amendments to Law 45/2011, of 24 June, now provide that revenue accruing from crimes of trafficking in persons shall revert to the coordinating entity of the National Plan against

prevention of and fight against human trafficking and the protection of the victim (which in turn is currently and until 2015 being implemented on a wider front under Directive 2012/29/EU) of the European Parliament and of the council of 25 October 2012. These amendments focus especially on the improvement of the text of the crime itself, introducing the recruitment of victims and also previewing the exploitation of forced begging, the practice of other crimes (where new and emergent phenomena related to itinerant crimes can be included). It also includes the irrelevance of the victims' consent to the commission of the offence of human trafficking and takes forms of vulnerability into account. More measures have been taken recently in Portugal, such as the publication of the third National Plan Against Trafficking in Human Beings (PNCTSH), where a number of objective and effective measures are to be taken between now and 2017, but currently we are witnessing the construction and reinforcement of a large-scale networking of professionals and academics in the prevention of and fight against the crime of human trafficking.

My intention with this book is to raise international concern about the phenomena that are destroying the lives of many people, including children. If we wish for a better world, we should all be aware and act accordingly, contributing to its construction. I should remind the readers that this book includes articles from academics, professionals, and researchers. All of them have united their efforts to contribute to this cause. My deepest gratitude to them for their chapters; to those who invited me, for the opportunity; and to those who are reading this book, for the action you will take after knowing more about the subject.

Coimbra, Portugal

Maria João Guia

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Trafficking in Human Beings and shall be applied to supporting actions, measures, and programs to prevent trafficking of persons and to assistance and protection of victims.

# Acknowledgements

I would like to express my gratitude to João Pedroso, António Casimiro Ferreira and Alexandra Aragão for all the suggestions and comments on my projects and to Tokyo Foundation, where I feel very honoured to be a SYLFF fellow. I want also to call the attention to the CINETS networking (Crimmigration Control International Net of Studies—[www.crimmigrationcontrol.com](http://www.crimmigrationcontrol.com)), a project of my own, that is now shared by many academics and researchers to whom I want to show my deepest gratitude, with whom this book and many other projects are being issued. I would also like to express my gratitude to Leo Dana and Shahamak Rezaei for their challenge to gather this book and to Tânia Vasco, Clara Santos and David Wild for their cooperation on this book.



# Abbreviations

ACPO	Association of Chief Police Officers of England
AIDS	Acquired Immunodeficiency Syndrome
APAV	Portuguese Association for Victim Support (Associação Portuguesa de Apoio à Vítima)
CCAA	Autonomous Communities of Spain
CECRIA	Brazilian Reference Center for Studies and Actions in Favour of Children and Adolescents (Centro de Referência, Estudos e Ações Sobre Crianças e Adolescentes)
CEIJUSCRIM	Brazilian Center for Interdisciplinary Studies in Criminal Justice (Centro de Estudos Interdisciplinares em Justiça Criminal)
CICO	Spanish Organized Crime Intelligence Center (Centro de Inteligencia contra el Crimen Organizado)
CINETS	Crimmigration Control International Net of Studies
CIS	Commonwealth of Independent States
CPMI	Mixed Parliamentary Commission of Inquiry (Comissão Parlamentar Mista de Inquérito)
CPS	Crown Prosecution Service
CSE	Children Sexual Exploitation
DHS	Department of Homeland Security
ECA	Brazilian Child and Adolescent Statute (Estatuto da Criança e do Adolescente)
ECHR	European Court of Human Rights
ECPAT	End Child Prostitution, Child Pornography and Trafficking Children for Sexual Purposes
EUROPOL	European Police Office
GIS	Geographic Information System
GRETA	Group of Experts on Action against Trafficking in Human Beings
HIV	Human Immunodeficiency Virus
ICE	U.S. Immigrant Customs Enforcement
ILO	International Labour Organization



IOM	International Organization for Migration
JCHR	Joint Committee on Human Rights
NGO	Nongovernmental Organisation
NRM	National Referral Mechanism
OSCE	Organization for Security and Co-operation in Europe
PREVIE	Program for the Voluntary Return of Immigrants from Spain (Programa de Retorno Voluntario de inmigrantes desde España)
SEF	Serviço de Estrangeiros e Fronteiras (Portuguese Foreign Nationals and Borders Service)
STD	Sexually Transmitted Disease
SWAT	Special Weapons and Tactics
THB	Trafficking in Human Beings
UKBA	United Kingdom Border Agency
UKTHC	United Kingdom Human Trafficking Centre
UNODC	United Nations Office on Drugs and Crime

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She was appointed as a SYLFF fellow in 2012 and founded the CINETS network ([www.crimmigrationcontrol.com](http://www.crimmigrationcontrol.com)), which has been one of her academic priorities. Her research interests include immigration and crime, crimmigration, human trafficking, the rights of victims in criminal processes, the rights of immigrants, and incarceration.

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Kinney's current research projects explore the sexual politics of crime and security in local and transnational areas.

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**Joana Ruivo** holds a master's degree in Psychology and is a psychoanalytical trainee in psychotherapy. Over the last 4 years, she has worked directly with immigrant crime victims in a Portuguese NGO—the Portuguese Association for Victim Support (APAV). More recently, she joined the Brazilian Consulate in Lisbon as a psychologist, where she maintains the support provided to Brazilian

citizens residing in Portugal. This psychological support is particularly oriented to Brazilian citizens with severe social needs, victims of domestic violence, racial discrimination, and human traffic, among many others.

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# Chapter 1

## Trafficking in Human Beings in Time and Space. A Socioecological Perspective

Joana Daniel-Wrabetz and Rita Penedo

**Abstract** What makes a person, whether man, woman, or child, (more) vulnerable to human trafficking? What makes some places more propitious to the occurrence of certain criminal phenomena such as THB?

The present chapter argues that these questions can be considered within a socioecological model of vulnerability where the geographical information systems are used as relevant tools to put this crime and its actors in a temporal and spatial context.

### 1.1 From Vulnerability and Invisibility to Formal Recognition

Questions related to social invisibility and vulnerability have been, throughout the last decades, at the core of several studies related to trafficking in human beings. The multiple attempts to define “vulnerability” and “special vulnerability” have to be seen in connection with the extreme difficulty to identify victims of trafficking.

Some of the factors that contribute to the proliferation of trafficking are not just linked to a question of poverty or border controls. Relevant factors exist both at the places of origin and the places where the exploitation takes place (Daniel-Wrabetz 2010, p. 45).

Although the poverty factor is frequently cited as one of the main causes for trafficking, according to Mike Dottridge “(. . .) most people in dire poverty are not trafficked, demonstrating that poverty is a context, but not the specific cause”

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(Dottridge 2008, p. 114); therefore, poverty should not be taken as a synonym for vulnerability, as it might become extremely limiting (Daniel-Wrabetz 2010, p. 46).

In the UNODC Background Paper for the Vienna Forum 2008, Michèle Clark proposes a definition of vulnerability as “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities” (Clark 2008, p. 8).<sup>1</sup>

If vulnerability is a critical indicator, not only for the victim’s identification but also for the development of prevention policies and practices (UNODC 2008) despite the progresses made, its definition still remains non-consensual, especially when there are conceptual differences between what can be **vulnerability to trafficking and vulnerability to other forms of exploitation or victimization** (ICCLR 2011, p. 18).

This issue is particularly important for professionals responsible for the formal identification of THB, such as law enforcement agents and magistrates, and it is closely linked to the consensus on the definition of victims of trafficking and the association between THB and its connected crimes.

According to the European Commission, this difficulty affects the main needs of the victims of trafficking: respect and recognition, assistance, protection, access to justice and compensation. The difficulties in the identification of the perpetrator, on the other hand, are also observed in the low numbers of prosecutions and convictions: “the comparable data showed a decrease in the number of convictions on trafficking in human beings, from 1534 in 2008 to 1445 in 2009 and 1144 in 2010”(European Commission 2012, p. 9).

The Directive 2011/36/EU, in its Art. 2.2, defines a position of vulnerability as “a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”, *and* the EU Strategy 2012–2016 highlights that the vulnerability factor is shaped by the victim’s gender (types of exploitation) and based on “(. . .) poverty, lack of democratic cultures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination” (European Commission 2012). In this respect, vulnerable groups are identified and focused on women and children, especially early school leavers, unaccompanied children, and children with disabilities, as well as people in the Roma community.

Taking the above definition as a starting point, how could it be implemented in the context of data collection? The answer has to be given through the inclusion of the following indicators, fundamental to THB analysis: gender; poverty; social and cultural exclusion; limited education; political instability, war and conflict; social, cultural and legal frameworks; movement under duress and demand.

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<sup>1</sup>For a more in-depth study about vulnerability in the context of trafficking, see the essay by Clark (2008).

Indicators tend to be addressed in an isolated theoretical and empirical framework, ignoring the spatial environment. In order to challenge this tendency, the vulnerability factor has to be addressed in all its complexity, taking also into consideration the following three main categories:

- *personal (preexisting) vulnerability*: e.g., a person's physical or mental disability, youth or old age, gender, pregnancy, culture, language, belief, family situation;
- *situational (created or maintained) vulnerability*: e.g., legal status in one given territory or social, cultural or linguistic isolation;
- *circumstantial (created or maintained) vulnerability*: e.g., a person's unemployment or economic destitution.

There are other possible correlations. Cho's study (2012), for instance, while showing the importance of the above-mentioned factors, has tested its "accepted explanatory determinism". To the author "(...) crime prevalence robustly explains human trafficking prevalence both in destination and origin countries. [Also] geographical locations and cultural practices influence human trafficking outflows" (Cho 2012, pp. 3, 14).<sup>2</sup> A more controversial finding was that Cho's empirical results did not confirm gender discrimination as a push/pull factor of human trafficking. All of the gender-related indicators (female literacy, years of schooling, female labour force participation rates, and indices on women's economic, social and political rights) did not turn out to be significant in determining either inflows or outflows of human trafficking (Cho 2012).

Another aspect that can affect fixed typologies/categories is the subjects' profile now perceived as a fluctuating typology.

According to EUROPOL specialists, there are **victims** who escape the usual stereotype—"Greater freedom of movement and travel, low cost international transport and global communication links, combined with previously unavailable opportunities to work overseas and self-confidence are all contributory factors in the recruitment by traffickers of persons who would not normally be thought of as vulnerable."<sup>3</sup>

R. Surtees study<sup>4</sup> states that the profile of **traffickers and recruiters** in South-Eastern Europe appears to be diverse and not coincident with the usual social representation. There is a presence of both sexes (traffickers) and sometimes a non-conscious involvement in a crime (recruiters may believe they are finding legitimate jobs for family members and acquaintances).

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<sup>2</sup> Conclusions based on extreme bounds analysis (EBA)—method to check the statistical significance of the effect of a factor in all possible specifications, with different combinations of other factors.

<sup>3</sup> *Trafficking in Human Beings in the European Union: A Europol Perspective*, June 2009, cited in Daniel-Wrabetz (2010), p. 47.

<sup>4</sup> Cited in Goodey (2008). See Surtees (2008), pp. 39–68.

The complexity of factors involved in the detection (potential) and identification (official/formal confirmation) of victims of trafficking can be pondered in the analytical axis of the existence of vulnerability and the abuse of that vulnerability (UNODC 2012b) or, in other words, between preexisting or maintained vulnerability. The same paradigm can be extended to offenders as they can assess opportunities (the strategic context) and contexts in which opportunities create offenders (the emergent context) (Morselli et al. 2010).

These dimensions can be associated with a status of social (in)visibility (the Other—processes of social exclusion and stigmatisation) and explained by community and institutional processes of social cohesion or anomie (adaptation, resistance, or resilience to the consequences of social transformations) in a given time and space.

Overall, since the late 1990s, international organisations and States started to produce national and comparative assessment reports. During the most recent years, scientific production regarding THB has started to increase, even though a systemic and comprehensive knowledge is still very small, especially if supported on a quantitative approach.

Although trafficking in human beings is frequently, but not exclusively, transnational in its nature, it is a local and regional occurrence with local and regional impact.

The opacity of the THB phenomenon (namely because its victims are in the fringes of society) reviewed in both scientific and political discourses, shows three important stages as a sociological problem.

### **1.1.1 Formal Level: Political and Legal Recognition**

At a macro level there are Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (most commonly known as the UN Palermo Protocol), with 117 Signatories and 163 Parties,<sup>5</sup> and the Council of Europe Convention on Action against Trafficking in Human Beings, with a total of 2 signatures not followed by ratifications and 42 ratifications/accessions.<sup>6</sup>

At a national level and as stated in the UNODC Report, “by 2012, 134 countries and territories had enacted legislation criminalizing trafficking” (UNODC 2012a).

### **1.1.2 Operational Level: Identification and Quantification**

Trafficking in human beings is an underreported, under-detected and, therefore under-prosecuted crime (Goodey 2008). Contributing to this are all intervening

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<sup>5</sup> Status at October, 3, 2014.

<sup>6</sup> Status at October, 3, 2014.

actors: legislator, victims and witnesses, law enforcement agencies, Prosecutor's Office, courts, etc. It is known, for example, that trafficking for sexual exploitation may be misidentified as sexual exploitation and that all forms of trafficking involving foreigners might be identified as smuggling. Therefore, the analysis of connected criminality is of special relevance to the comprehension of THB.

Quantifications are often based on estimates—"The latest estimates from the International Labour Organization of June 2012 covering the period 2002–2011 put the number of victims of forced labour, including forced sexual exploitation, to 20.9 million at a global level, with an estimated 5.5 million children being trafficked.<sup>7</sup> However, this estimate is also believed to be conservative" (European Commission 2012, p. 2). Also relevant is the fact that THB is not a single offence but a cycle, a process (Machado 2010) (recruitment, transportation, and exploitation), that is constantly adapting and changing according to the dynamics of demand and supply.

### 1.1.3 Informal Level: Individual and Community Recognition

THB is sometimes closely associated with strong moralising stigmas supported on social representations of certain behaviours (sexuality/prostitution), xenophobia (immigration/the stranger), and the issue of consent (legally irrelevant to prove the crime, but not from the perspective of the individual and the community). Moreover, the imposed boundaries within spaces of social interaction/isolation, many of these already favourable to anonymity and social stereotyping, reinforces social invisibility and vulnerability and differentiated assessments/perceptions of risk.

In the specific case of Portugal, if until 2007 THB was not considered in judicial and political terms, since then important legal and political initiatives have been made, visible in the modification of the Penal Code, the new Immigration Law, Three National Plans and, since 2008, the creation of a National Rapporteur and an Observatory on Trafficking in Human Beings:

- Until 2007, the Penal Code (1982) criminalised only trafficking for sexual exploitation (Article 217). In 2007, all forms of trafficking in human beings (including trafficking for forced labour, removal of organs and other forms of trafficking) were considered criminal offences.<sup>8</sup> In August, 2013 and in consequence of the transposition of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 160 was altered. Since then trafficking includes sexual exploitation, labour exploitation, extraction of organs,

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<sup>7</sup> The report states that human trafficking can be regarded as forced labour, and so the estimates capture the full realm of human trafficking for labour and sexual exploitation.

<sup>8</sup> Article 160 *Trafficking in Persons*, Law 59/2007.

slavery, forced begging, or the exploitation of other criminal activities. Amongst other alterations, this legal norm foresees the punishment of those who knowingly use the victims services.

- According to the new Immigration Law no. 29/2012, of August 9,<sup>9</sup> *on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, who cooperate with the competent authorities* (Articles 109–115), victims of trafficking are granted a reflection period of a minimum of 30 and a maximum of 60 days and residence permits are granted on a case-by-case basis for a period of 1 year and are renewable under specific conditions. One of the innovations of this second amendment is the criminalisation of the employment of irregular migrants and the reinforcement of the combat of sham marriages.
- Portugal adopted its Third Action National Strategy/Action Plan against Trafficking in Human Beings (2014–2017) in 2013. This Plan, with a total of 53 measures, focuses on four main areas: prevent, raise awareness, knowledge and research; educate, train and qualify; protect, intervene and empower; investigate criminally.
- **The Observatory on Trafficking in Human Beings**<sup>10</sup> is mandated to produce, collect, analyse and disseminate information on trafficking in persons and other kinds of gender violence. The main tasks include:
  1. to produce and collect information on human trafficking and other forms of gender violence,
  2. to promote the development of software applications to support information gathering and treatment,
  3. To support political decisions in its intervention areas when requested.

THB is now an autonomous crime, and its definition follows the international and European harmonisation recommendation; victims have rights; Three National Action Plans have established a national strategy involving all relevant stakeholders, and the Observatory acts as recommended by the EU Action Plan against THB where monitoring systems are concerned.

The national monitoring system is a harmonised methodology and common technological platform collecting data from law enforcement agencies, NGOs and, from 2013, labour inspectors, the Economic and Food Safety Authority, and the Prosecutor's Office<sup>11</sup> with the following objectives:

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<sup>9</sup>Second amendment to the Immigration Law 23/2007 of July 4 which transposed the Council Directive 2004/81/EC.

<sup>10</sup>To know more, please read the Decree-Law at [http://www.otsh.mai.gov.pt/cms/files/conteudos/Decree-Law%20n%20229\\_2008.pdf](http://www.otsh.mai.gov.pt/cms/files/conteudos/Decree-Law%20n%20229_2008.pdf).

<sup>11</sup>Overall, more than 20 organisations are data providers.

1. to collect quantitative and qualitative data from different entities with activities related to trafficking in human beings (of a criminal, judicial, prevention, and support nature);
2. to retrospectively and prospectively analyse data, in order to generate knowledge on the phenomenon and its criminal and social dynamics and trends;
3. to make the results easily accessible to all interested parties;
4. to improve policies, plans, and control measures of the phenomenon.

The Portuguese national monitoring system, a structured and integrated system (Penedo and Santos 2010), aims to analyse THB in all dimensions and in its full extent in *time and space*.<sup>12</sup> This premise is backed up by the idea that phenomena—either social or criminal—do not occur randomly within these two dimensions. Understanding the influence of *time and space as structural elements* enables the understanding of THB in its context and in its meaning (social representation). In other words, “no social fact makes any sense abstracted from its context in social (and often geographical) space and social time. Social facts are located” (Abbot 1997, p. 1152).

Consequently, it is not only a matter of knowing *how* to collect *which* data, but especially of understanding the *main purpose* of data collection. What kind of answers are we looking for? Is it only to know what happened in the past in statistical terms? . . . we be bolder and use it in a prospective way, trying to answer questions such as: **why are there some places where the occurrence of the phenomenon—either as source or destination—is/will be more frequent? What are its main features? What makes a person, whether man, woman, or child, (more) vulnerable to human trafficking?**

In the report conducted by E.V. Tiurukanova and the Institute for Urban Economics for the UN/IOM Working Group on Trafficking in Human Beings (Moscow 2006), researchers were able to identify *At-Risk Groups Based on Different Criteria*. Although the aim of this study was to address the THB situation in the Russian Federation, it can also be applied to other contexts, as a general characterisation of potentially vulnerable groups is provided:

*Age:*

- *Children and adolescents under 18 years*
- *Young adults between 18 and 25 years finishing education*
- *Young women under 30 years*

*Place of Residence:*

- *Small towns, villages*
- *Migrants from villages to small towns and from small towns to big cities*

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<sup>12</sup> These two sociological concepts are fundamental to understand modernity and social transformations. Of reference are the works of Pierre Bourdieu (*social organisation of time and space*), Norbert Elias (*construction of subjectivity*), and Anthony Giddens (*duality of structure*).

*Education:*

- *Low level of education or no education*
- *Interrupted secondary education (secondary school not completed)*
- *No professional (higher or vocational secondary) education or professional education not completed*

*Employment:*

- *Unemployed including unemployed school, college and children's homes "graduates"*
- *Having no permanent job, depending on casual work for a living*
- *Migrants in temporary employment*
- *Women engaged in commercial sex work*
- *Women (and sometimes men) engaged in the entertainment and modelling industries*
- *Students, especially those studying away from home, living in student accommodation who are recruited during vacation periods, etc.*

*Behavioural Attitudes:*

- *Intending to migrate and willing to do so illegally*
- *Motivated to work or marry abroad and willing to contact recruitment agencies providing jobs abroad*
- *"Mail-order brides"/wedding agencies*
- *Psychologically inclined to risk-taking, have suffered violence including rape, etc.*

*Affiliation to Socially Vulnerable or Marginal Groups:*

- *Children from at-risk families, such as low-income families, families with problems of alcoholism, dysfunctional families, victims of domestic violence*
- *Children left without parental care, children abandoned at maternity hospitals*
- *Young women and girls from at-risk families*
- *Drug addicts*
- *Those raised in children's homes, or without families, etc.*
- *Single mothers with limited resources to support themselves and their families*
- *Mothers who have a number of children*
- *Migrants, including migrants from CIS countries*
- *The homeless, individuals without a housing registration*
- *Those who are HIV positive*

*Ethnic Groups:*

- *Members of ethnic groups which do not belong to the general population of the region, especially ethnic minorities*
- *Ethnic groups from the poorest countries (for example, Tadjik migrant in Russia)*
- *The most criminalised ethnic groups, or those perceived as the most criminalised: These groups are more likely to be classified as targets rather*

*than as at-risk groups. For example, Gypsies or Chechens to whom crimes connected with human trafficking and kidnapping are often attributed (UN/IOM Working Group on Trafficking in Human Beings 2006, p. 30).*

This typology provides both a profile of types of vulnerability and a categorisation of risk (vulnerable) groups according to a set of variables. This information can be particularly useful if used in association with the “push and pull factors”, generally referred to by researchers and THB experts. Push and pull factors have been identified not only for potential victims but also for criminal networks, as shown in Tables 1.1 and 1.2.

According to the study of Morselli on The Mobility of Criminal Groups:

Criminal groups are the product of offenders’ adaptations to the constraints and opportunities surrounding them. Such groups are self-organizing and emergent in settings where there are considerable vulnerabilities to exploit across a variety of cross-border, cross-market, and cross-industry contexts. (. . .)

Research on the spatial mobility patterns of offenders does not identify push and pull factors per se, but it does guide us in suggesting that criminal groups that do mobilize elsewhere are likely specialized in a given market and should be therefore targeted as such. The combination of these two patterns confirms the challenges facing any criminal group that may be intent toward expanding their criminal activities over a wider geographical range. The bottom line is that achieving such an expansion is much more difficult than often believed in popular circles largely because no single criminal group can realistically do everything and be everywhere all the

(Morselli et al. 2010, p. 4).

While clearly important, the classification of pull and push factors alone does not explain it all, especially if established in a single casual meaning, excluding the variables/indicators of their location over time and space.

**Table 1.1** Push and pull factors for potential THB victims

Push factors	Pull factors
High unemployment	Improved standard and quality of life
Labour market not open to women and gender discrimination	Better access to higher education
Lack of opportunity to improve quality of life	Enforcement of minimum standards and individual rights
Sexual or ethnic discrimination	Better employment opportunities
Poverty	Demand for cheap labour
Escaping persecution, violence, or abuse	Demand for commercial sexual services
Escaping human rights violations	Higher salaries and better working conditions
Collapse of social infrastructure	Demand for workers within the sex industry and higher earnings
Other environmental conditions, including conflict and war	Established migrant communities/diasporas

Sources: Table contents taken from Europol (2011)

Table by Joana Daniel-Wrabetz and Rita Penedo



**Table 1.2** Push and pull factors for potential criminal networks

Dimensions	Push factors	Pull factors
Criminal market research	Increased law enforcement Increased competition from criminal groups (selection effect)	Mass demand Access to supply Lax law enforcement High impunity/corruption Proximity to trafficking routes Porous borders Presence of brokers and facilitators
Research on ethnic-based criminal groups	Legitimation of group Increased socioeconomic status Decreasing cultural marginalisation Increased enforcement in country of origin or against a specific group	Individualist value system Legitimation of previous groups (ethnic succession theory) New opportunities for cross-border crime (e.g., immigrant diasporas in consuming countries, open borders) Ethnic group’s criminal reputation Local ties and kinship networks
Research on criminogenic conditions in legitimate settings	Displacement by credible authority	Lax security/enforcement/high impunity Poorly regulated economic sectors Overlaps between upper and under-world actors Low skill trade Low technology and professionalisation High number of unemployed disenfranchised workers Lack of conventional products and services (emergence of black markets and private protection needs)

Source: Contents by Morselli et al. (2010), p. 3–4  
Table by Joana Daniel-Wrabetz and Rita Penedo

We support the perspective that placing THB in its context of offence/victimisation will ultimately contribute to a better understanding of THB as a complex phenomenon. A **socioecological approach** and the usage of a **geographical information system**, not only to collect and analyse data, but to promote a contextualised understanding of the phenomenon will ultimately advance from a retrospective to a prospective approach and not only improve an early identification of potential THB victims, but ultimately develop strategies at the local level in order to prevent its occurrence.

## 1.2 The Context Paradigm: The Socioecological Approach

One important premise of the socioecological approach is that **some social changes have a high potential for social disjunction within social systems.**

*Social change* is the structural transformation of political, social, cultural and economic systems and institutions during a specific period. Some important factors in modern social change are the expansion of industrial capitalism, urbanisation and demographic growth (Giddens 1992). A *social system* is a society, community, or subsystem within a society, and *social disjunction* is the community's structural (in) ability to maintain self-regulation or social rules/social control.

The concepts of social disorganisation and anomie (Durkheim 1897; Merton 1957; Sampson and Groves 1989; Shaw and McKay 1942) are thus of relevance. A social system can be "(...) described as socially organized and integrated if there is an internal consensus on its norms and values, a strong cohesion exists among its members, and social interaction proceeds in an orderly way. Conversely, the system is described as disorganized or anomic if there is a disruption in its social cohesion or integration, a breakdown in social control, or malalignment among its elements" (Akers and Sellers 2004, p. 159).

Social systems must therefore be analysed in its contexts i.e., an interdependent system characterised by social interactions (geographical, social, cultural, political, economic opportunities and/or constraints) between people and their environment over a period of time. In this context, the notions of *system resistance* and *system resilience* are fundamental: the first refers to the coping capacity of the system prior to an event—combination of all the strengths, and the second to the degree to which a system is capable to return to its normal conditions afterwards (Rashed et al. 2007).

Despite the fact that a socioecological approach to crime is not a novelty,<sup>13</sup> "crime has an inherent geographical quality and is not randomly distributed – thus, spatial in nature, studied in its underlying spatial processes and therefore, mapped (Chainey 2011)"<sup>14</sup>, so far it has not been applied to the THB phenomenon.

In this "kind-of-places explanations theories" (Silva 2004) that gather theoretical contributes from sociology (e.g., structuralism, functionalism, symbolic interaction, and the Chicago school), human geography, and social psychology, the **sustainable human development** perspective is also to be considered as it is important to structure anti-trafficking policies (Laczko and Danailova-Trainor 2009). Through the dimensions of social justice and economic development, welfare, access to knowledge, empowerment, sustainability, human rights (and, within these, civil, political, social, economic and environmental rights), and safety regarding crime and violence, the nonfulfilment of human development, in all its dimensions, can exacerbate the risk of emergence of deviant and criminal behaviours and the vulnerability of certain social groups.

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<sup>13</sup> The first studies started in the late nineteenth century across Europe and afterwards in the USA, with the Chicago School theorists, namely the works of Park and Burgess, who imported concepts of natural ecology to the social analysis of urban growth, and Shaw and McKay Social Disorder Theory.

<sup>14</sup> This last idea is stated in Curtis and Mills (2010)—in reference to ecological disasters.

According to the World Development Report 2011, multiple stresses raise the risks of violence: “Economic, political, and security factors can all exacerbate the risks of violence. Some of these factors are domestic, such as low incomes, high unemployment, and inequality of different sorts. Some factors may originate outside the state, such as external economic shocks or the infiltration of international drug cartels or foreign fighters” (International Bank for Reconstruction and Development/The World Bank 2011, p. 73).

This Report refers to these triggers of violence as “security, economic, and justice stresses”<sup>15</sup> (International Bank for Reconstruction and Development/The World Bank 2011, p. 73). Often related, they rarely exist in isolation.

The socioecological approach does not declare that social disruption caused by social changes has a direct link to the existence of crime, but that a particular context may show a set of socioecological indicators that can explain the occurrence and/or prevalence of certain phenomena, such as crime.

As a multifaceted phenomenon, THB can be explained in a variety of perspectives. A literature review shows us that THB tends to be analysed as a matter of:

- transnational organised crime/national security (Bruckert and Parent 2002),
- human rights (Gallagher 2008),
- globalisation (Belser and Danailova-Trainor 2006),
- gender discrimination (Goodey 2004),
- (forced) labour (Plant 2004),
- (illegal) migration and border issues (Tailby 2001<sup>16</sup>; Aronowitz 2011).

Applying a geographic-determined knowledge to the study of THB vulnerability will allow the detection of profiles based on socioecological indicators, that is to say, profiles arise from the nexus between the individual social and symbolic interactions (perpetrators, victims, and witnesses) and their ecological environment (Machado 2010). These will demonstrate why THB “(…) occur[s] more frequently (with greater probability) in certain social and physical contexts than in others, because the former possess characteristics which, under various conditions, can be regarded as congruent with or premise – or even predictive – of this criminality” (Machado 2010, p. 14).

Looking at offenders, Taylor and Harrell discuss the influence of physical environmental features on crime. Reflecting on social structures and action, the authors discuss how these features “(…) affect potential offenders’ perceptions about a possible crime site, their evaluations of the circumstances surrounding a potential crime site, and the availability and visibility of one or more natural guardians at or near a site” (Taylor and Harrell 1996, p. 9). Consequently, it is a

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<sup>15</sup> For more information, please see Table 1.1 Security, Economic, and Justice Stresses from the World Development Report 2011 on p. 74.

<sup>16</sup> This paper argues that “smuggling” and “trafficking” in human beings are similar concepts. Although in theory there are some important points of distinction, in practice the boundary between these concepts can become blurred.

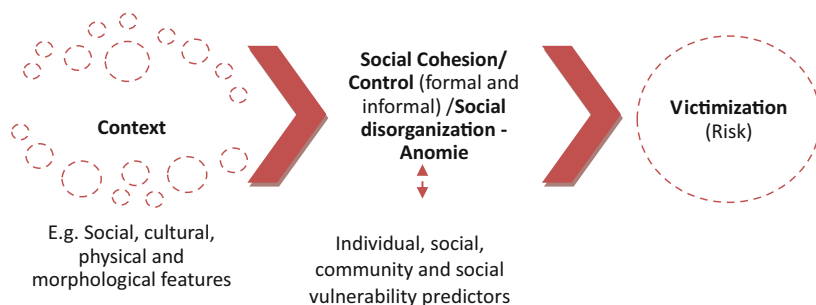
matter of an *opportunity* context where an evaluation is made regarding the possibilities provided by a real or perceived assessment (rational choice perspective) that involves evaluations of effort, risk and rewards:

- *How easy will it be to enter the area?*
- *How visible, attractive, or vulnerable do targets appear?*
- *What are the chances of being seen? If seen, will the people in the area do something about it?*
- *Is there a quick, direct route for leaving the location after the crime is committed?* (Taylor and Harrell 1996, pp. 20–21)

In the same line of Morselli, we assume that opportunities “matter more than the group itself [and that] problems concerning geographical locations, criminal markets, and legitimate industries that are vulnerable to organized crime are persistent and stable over time. Groups that seize such opportunities, on the other hand, are transient and more than often short-lived. Thus, preventing the environmental problems that persist over time and from one criminal group to the next is a more effective approach than repressing one group at a time” (Morselli et al. 2010, p. 2).

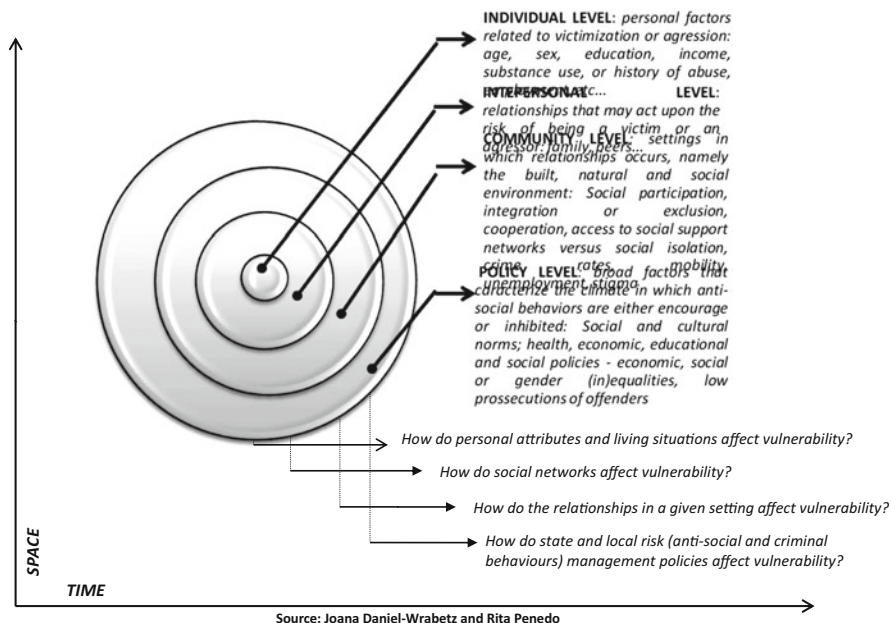
The territory is not a blank sheet, and THB is “strongly associated with specific places of risk, transport hubs, border areas, certain industries, remote and rural areas, schools, hotels, and entertainment or tourist districts, and red light districts” (ICCLR 2011, p. 19). The analysis of the territory appropriation (again *lived* and *perceived*—its social representation and social identities) is of pertinence to comprehend the social relations between people, socialisation/antisocial behaviours, social practices and dynamics (migration, segregation, mobility. . .), inclusion and exclusion processes (cooperation and conflict), and feelings of (in)security—all these in relation to the physical and morphological typology (LNEC 2007). This is the plural disciplinary focus of socioecology and can be summed up in Figs. 1.1 and 1.2.

Based on Bronfenbrenner’s model (1994) and framed within the dimensions of *time* and *space*, there are four interdependent levels of observation associated with



Source: Joana Daniel-Wrabetz and Rita Penedo

Fig. 1.1 Generic process of THB vulnerability. Source: Joana Daniel-Wrabetz and Rita Penedo



**Fig. 1.2** Levels of observation of the socioecological approach. *Source:* Joana Daniel-Wrabetz and Rita Penedo

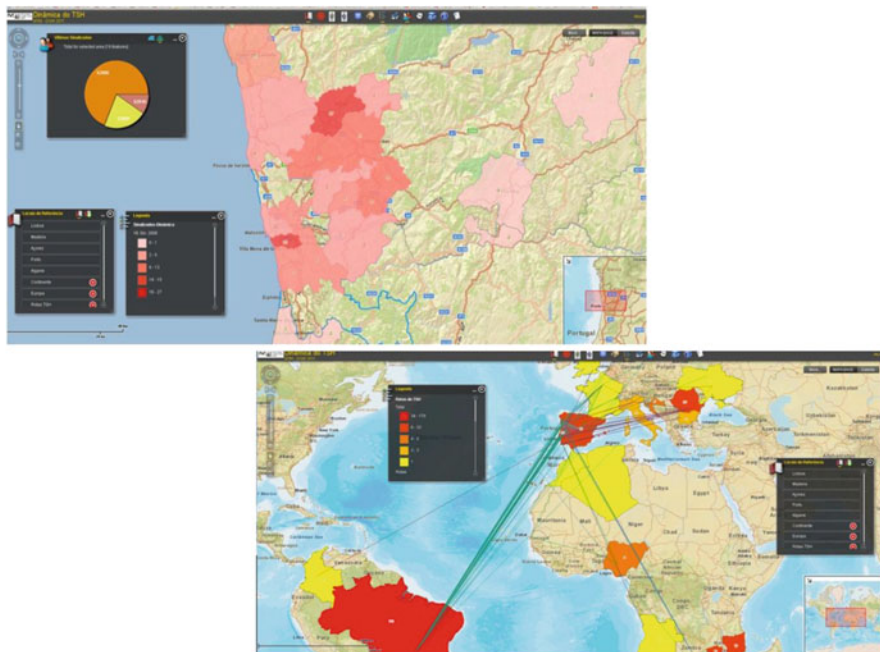
the socioecological approach, each one questioning how these levels can affect vulnerability (see Fig. 1.2).

Having in mind the particular nature of THB and the conceptual and theoretical socioecological approach, the adoption of multidisciplinary methodologies and collaborative work is fundamental. *Geographic information systems* (GIS) are, for these reasons, an ideal tool as they assemble in one system elements (data and information) relevant to a systemic comprehension of THB (Vieira et al. 2008).

Reinforcing the idea that spatial and temporal dimensions are important to understand social, antisocial and criminal phenomena, they are also relevant to plan strategic preventive actions, a possibility given by GIS tools.

While undoubtedly benefiting from modern technological developments, the premise of mapping social/criminal patterns and regularities over time is not new. In 1854, during the London (Soho) cholera outburst, physician John Snow mapped the locations of the deceases of water pumps. By means of spot maps and statistical analysis, he concluded that the reason was a pump with contaminated water in a specific street. His discovery influenced public health policies. The Home Office, 157 years after, uses crime mapping not only for internal analysis and strategic planning but also as an information source open to the public.

By means of overlaying criminal and non-criminal data sets (such as demographic census, criminal activity locations, social infrastructures. . .), the GIS tool “moves us [merely] from exposure to the specific presence of key players who



**Fig. 1.3** Portuguese monitoring system THB module. *Source:* Observatory on trafficking in human beings, Directorate General of Internal Affairs

might participate in the crimes that we see developing in these areas. It also includes an assessment of the likelihood that victims will appear in this location. Most importantly, addressing vulnerability means focusing on the extent to which we can do something about reducing the likelihood that crime will occur based on the exposure factors” (Brunschot and Kennedy 2009, p. 136).

Within the Observatory of Trafficking in Human Beings,<sup>17</sup> the GIS module will be a crucial part of the national monitoring system. Information of geographic and socio-criminal nature allows the identification of potential thematic and geographic correlations associated with the phenomenon of THB, both nationally as well as internationally (see Fig. 1.3).

The focus of this module is to collect pertinent data (qualitative and quantitative, criminal and non-criminal) using common harmonised methodologies that include a geographical context of the locations (or network of routes and locations that build a framework of the “crime scenes”) of the events and a detailed description of

<sup>17</sup> Portugal has other programmes that use the GIS methodology, such as the *Safe Fuel Supply*, developed by the Ministry of Interior, in cooperation with associations from this sector, with the objective of reducing criminality in this public space by improving information and geo-reference systems, alerting systems in case of crime, improving efficiency in law enforcement cooperation, training professionals and other actors involved, promoting uniform registration of the situations in order to improve statistical data and monitoring of this criminality.

the phenomena being reported, particularly the information provided by victims. These events include proactive police initiatives and other reports provided by NGOs that result from victims' descriptions.

Once the location of the sites is made, we need to question which layers (variables) would help to add context to the map. A series of spatial relations and intersections are performed automatically, e.g. distance to the next urban area or rural areas, time of travel, distance to night entertainment locations, as well as to police stations, hospitals, shelters, and a socioeconomic description of the area. Afterwards, a context is developed, for example, if a site is located in an isolated dwelling in a remote location, in a rural area, next to an international border, or near a night entertainment cluster, etc., allowing a systematic classification of the phenomena at a large scale and highlighting the patterns of the THB phenomenon.

By visualising the phenomena on a cartographic display at *global*, *macro* (national), *meso* (community), and *micro* levels (neighbourhood, street, block),<sup>18</sup> GIS offers an indispensable viewpoint over the criminal, social, and antisocial activities anchored in its physical and morphological system. In other words, it helps to explain how the social geography of an environment is connected to its criminal geography.

Vulnerability to crime and to THB in particular (criminogenic conditions) is hard to observe, and although crime statistics can be viewed as an attempt to measure it (Brunsdon et al. 1995), it is necessary to build it by integrating/crossing other types of data and levels of observation. The socioecological approach, as well as GIS, is multilevel in its nature, allowing a broad conceptual and methodological pathway to explore the modelling of THB vulnerability.

Identifying THB patterns will help to develop models of vulnerable areas and groups, either at origin, where recruitment occurs, or at destination, where exploitation is already taking place. This information is essential to assist all relevant actors in the planning of intervention measures based on knowledge at different but interconnected levels: operational, tactical, investigative and strategic policing, crime reduction and victim support.

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<sup>18</sup> Global, macro, meso, and micro levels—understood not only as geographic scales but also as social levels of observation (as seen on Fig. 1.2).

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# Chapter 2

## The Fragilities of Human Trafficking Victims

Joana Ruivo

**Abstract** Human trafficking is a phenomenon that can affect all of us, but vulnerable groups like migrants, women, and children are more likely to become victims of this crime.

Trafficking of human beings is a complex crime with an enormous capacity for adapting to changing circumstances. This chapter raises questions such as what we can do to keep up with the new ways and methods of the criminals and what needs to be done to combat human trafficking. But one thing is sure, governments, civil society, and universities—they all have responsibilities in terms of prevention as well as in supporting of the victims.

### 2.1 Introduction

It should be understood that human trafficking constitutes a crime in the majority of countries. It is a transnational phenomenon with a number of features and occurring in a variety of situations. The complexity of this crime is stated in its several definitions.

However, and despite its complexity, we will state the most complete and widely accepted definition set out in the Palermo Protocol. According to the United Nations protocol, human trafficking is

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (UN 2000, p. 2).

Human trafficking is a phenomenon that can affect all of us. Traffickers and recruiters take advantage of the social and economic fragilities of countries, seeking

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their victims among those with financial difficulties in countries with high rates of unemployment and poverty, as well as lower levels of education. Very often they lure their potential victims with the promise of an improved social status resulting from well-paid jobs in foreign countries (Jorge-Birol [nd](#)).

Vulnerable groups like migrants, women, and children are more likely to become victims of this crime. Many countries with developed economies (such as European countries) are dependent on migrant labour. However, a number of these countries do not have specific integrative policies for immigrants, which pushes them into becoming undocumented. The lack of integrative policies makes immigrants even more likely to become victims of human trafficking.

Regarding the victim's gender and age, in 2006, 66 % of the identified human trafficking victims were women and 22 % were children (UNODC [2009](#)). The data presented in this UN report underlines what was written in 1989 in the United Nations Convention on the Rights of the Child ([1989](#)). The enormous vulnerability of children was clearly recognised, as well as their inalienable right to protection from any form of abuse, violence, or neglect.

Despite the complexity of this phenomenon, human trafficking continues to be largely associated with sexual exploitation. According to the Global Report on Trafficking in Persons from UNODC ([2009](#)), sexual exploitation is considered to be the most common form of exploitation (79 %). Even though we can produce statistical reports on this matter, we know that it is almost impossible to fully understand this situation. According to the same report, only 18 % of human trafficking victims were exploited for their labour. The authors themselves stress that this data may be a misrepresentation because “forced labour is less frequently detected and reported than trafficking for sexual exploitation” (UNODC [2009](#), p. 51).

In fact, the International Labour Office (ILO) claims that over the past few years, the most common form of exploitation was actually labour (ILO [2009](#)). They estimated that for each victim of sexual exploitation, there were nine victims of labour servitude.

As far as statistics are concerned, it is very hard to have full access to information. This difficulty increases if we take into account that very often—if not in the majority of situations—victims do not perceive themselves as victims and they do not realise that they are being subjected to human trafficking. Regardless of all the good work developed by governments, NGOs, police forces, and academic researchers, we still lack a global understanding of this human rights violation.

## **2.2 Human Trafficking: The Economic Impact**

After drug and gun trafficking, human trafficking is the third most lucrative crime worldwide and is the fastest growing economic crime. In 2008, the ILO indicated that human trafficking had annual profits of US\$32 billion (ILO [2008](#)). And unlike drug and gun trafficking, human trafficking is relatively safe for the traffickers

themselves, since the trafficked merchandise is not a product and therefore it is more difficult for authorities to spot what is happening.

This criminal economy is no different from other forms of business and is particularly easy to run within the European Union and, more specifically, in the Schengen zone. For obvious reasons, this situation constitutes such a major concern to the Member States that in the Stockholm Programme we can find the following statement:

The Union must reduce the number of opportunities available to organised crime as a result of a globalised economy, in particular during a crisis that is exacerbating the vulnerability of the financial system, and allocate appropriate resources to meet these challenges effectively.

(European Council 2009, p. 48)

Like in any other organisation, the nonexistent border controls, the good road access, as well as good communication lines, provide human traffickers with the means to spread their business and therefore raise their profits.

In Portugal, human trafficking victims are mainly immigrants that fall into these organised networks when seeking better living conditions. According to the ILO (2007), the economic sectors in Portugal that make more profits through labour exploitation are construction, domestic service, and restaurant business. These three economic areas are the most likely to receive victims since the hiring mechanisms are too informal, making it more difficult for the authorities to recognise a trafficking situation (ILO 2007; Peixoto 2007).

## 2.3 Human Trafficking Victims

It is very complicated to find a simple definition for human trafficking victims, since we need to understand several different aspects of the crime itself. However, we can start from the basics and look within the European legislation where we can find the following definition of a victim:

victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.

(Council of the European Union 2001, p. 2)

Creating a victim profile is statistically possible, but we always have to keep in mind the complexity involved in human trafficking, which can consequently limit this analysis.

### 2.3.1 *Immigrants*

According to UNODC (2006), the majority of victims come from countries with poor social and economic conditions. Human trafficking victims are often enticed

by the prospect of better living conditions based on good job offers and good salaries, especially victims from countries with high levels of poverty and lower rates of education. Because of this, human trafficking is very close to the immigration phenomenon.

### **2.3.2 Gender**

The same UNODC (2006) report, and several others, point out that the female gender is the most interesting to traffickers. After analysing push and pull factors from immigration and human trafficking, Santos et al. (2008) tried to create a more accurate profile of women victims. Despite the authors agreeing that any woman can be a victim of human trafficking, young, tall, skinny, and pretty women seem to be more appealing to traffickers. Other aspects that traffickers seek in women are economic difficulties or complex family situations, which allow traffickers to raise the potential victims' expectations of a better standard of living (Santos et al. 2008). Vocks and Nijboer (2000) mention another aspect to explain women's vulnerability, for which they hold the media responsible. According to the authors, many women decide to immigrate "driven by consumption desires brought by the media" (Vocks and Nijboer 2000, p. 384).

In Brazil, Leal and Leal (2002) conducted a national investigation and concluded that the majority of the recruitment takes place among women and young black girls, aged 15–25 years. These girls and women are originally from a lower social class and tend to live with social and financial difficulties. According to the investigators, the victims' families are characterised by violence and all these factors make these women even more vulnerable.

### **2.3.3 Children**

Regarding child trafficking, several other forms of exploitation are involved: sexual exploitation, labour exploitation, organ extraction, illegal adoption, marriage, sports, and child soldiers (Scarpa 2005). However, children who are trafficked are especially vulnerable to sexual abuse and exploitation. Rafferty adds that

Since heterosexual prostitution remains the largest and most profitable form of CSE, girls are primarily affected, although an increasing number of boys are trafficked for paedophile abuse, sexual tourism, child pornography, as well as for the purpose of prostitution.

(Rafferty 2007, p. 405)

Traffickers use similar methods of coercion on adult and young victims, in order to prevent them from escaping. Debt bondages for travel expenses, threats, physical and psychological abuse, administration of heavy drugs (e.g., heroin) to victims are

just some of the many coercion methods used by traffickers to keep their victims obedient (Santos et al. 2008).

As a result of these coercive methods, victims suffer severe physical and psychological consequences. The physical abuse combined with poor nutrition and poor health treatment can lead to serious health problems, especially among children (ECPAT 2005). The most common cases are the sexually exploited victims, who with unprotected intercourse can contract HIV/AIDS, as well as other STDs. Regarding the psychological consequences, human trafficking victims tend to experience feelings of low self-esteem, “shame, guilt, sleeplessness, hopelessness and depression” (Rafferty 2007, p. 411). Unfortunately, these unbearable feelings sometimes lead to victims committing suicide. Many of them are just young children (ECPAT 2005).

Human trafficking thrives on poverty and social gaps. The immigration phenomenon and people’s natural desire to seek better living conditions make it easier for human trafficking to flourish.

## 2.4 Human Trafficking Victims’ Support

Historically, it is possible to organise victim support into three different stages. In the 1960s, after the Second World War, society started organising movements to provide protection to victims of crimes. In the early 1970s, the United States of America established programmes for victim-witness support, and civil society in general and feminist groups in particular reacted to the State’s disregard for the victims’ needs. The third stage started in the 1980s and continues to this day. Nongovernmental organisations (NGOs) organised themselves in order to provide the victims a fair treatment in the criminal justice system. Victim support centres were established and aim to

Offer the victim certain basic needs which emerge with the crime, such as medical care, psychological and social assistance and financial aid. In addition, they have the task to inform the victim about his/her rights, offer legal advice and sometimes represent the victim in the criminal and civil lawsuit.

(Jorge-Birol *nd*, p. 170)

Regarding human traffic victims specifically, the Council of Europe (2005) Convention on Action against Trafficking in Human Beings established as priority the development and improvement of policies concerning prevention, protection, and prosecution. Taking that into account, Victim Support organisations seek to provide assistance in areas like medical and health services, legal and financial assistance, housing and accommodation, professional training and counselling, among many others (IOM 2007).

NGOs play an extremely important role in supporting and empowering human traffic victims. Even though each organisation has different and unique proceedings, NGOs allow the legal systems of each country to reach as many victims and potential victims as possible. This is particularly true since the majority of these

organisations work inside the communities, allowing a more direct contact with potential victims and providing awareness campaigns. Due to this privileged access to victims, NGOs have developed a crucial role in lobbying.

Several NGOs from the countries of origin engage in assertive work to raise awareness. Information handed out in airports, articles in the media, and training provided to journalists and judicial officers are just some of the actions taken by NGOs in countries like Brazil and Mexico. Prevention of human trafficking, victim support, and lobbying seem to be the central goals of NGOs, according to Santos et al. (2008).

### **Conclusion**

Over the last decade, human trafficking has become a priority in national and international political agendas, and a lot of work has been done since then. While acknowledging the work already done, it is clear that there is still a long road ahead of us and much work needs to be done and measures need to be taken to fight this crime.

We all have a responsibility towards the victims of human trafficking, and we should all contribute to fight this horrendous crime. With the exception of the legal area, the academic world has not been paying attention to human trafficking, and a lot of research needs to be done. Human trafficking is a complex crime with an enormous adapting capacity to changing circumstances. At present, there is too much time being wasted between understanding the criminals' methods and adjusting political measures accordingly.

So what can we do to keep up with the new ways and methods of the criminals, and what needs to be done to combat human trafficking? Part of the answer to these questions lays in the urgent need for those in the academic, political, and victim support areas to work together and pull resources and information.

The governments of both the countries of origin and the countries of destination should establish prevention programmes mainly focused on information campaigns, set up new counselling services for victim assistance, and support the existing ones. Usually, these services are provided by NGOs that give legal information and psychological support to the victims (Clark 2003).

Another political measure that is important to adopt is the creation of specialised networks and partnerships between government organisations, NGOs, and police forces. The main goal of these networks is the development of proceedings for human trafficking victims, especially for the most severe cases, so that the victims have stronger protection (ILO 2007).

Each victim has different experiences, and each person has his own unique capacity for endurance. However, although the victims have different ways to deal with the pain and fear after they are free, we know for sure that the trauma will stay with them for a long time. The majority of EU countries give

(continued)



a reflection period to victims to decide whether they want to participate in the investigations. Countries like Portugal give a reflection period of 90 days. With the traumatic experiences and coercion that the majority of the victims have endured, 3 months seems to be inadequate. We propose that there should be a reflection period for a minimum of 6 months.

Victim empowering is another important ingredient in victim support. Regarding their reintegration, it is important to involve them in the resolution of their problems. By participating, victims recognise their needs and create their own goals, feeling that they have contributed to putting an end to their traumatic experience. It is essential that this empowerment stage is carried out by the victims, along with the support of psychologists.

Finally, and assuming a logic of prevention, it is necessary to involve community leaders, in order to protect the human traffic victims and to inform potential ones (Chung 2009).

There is a long road ahead of us in the fight against human trafficking. The economic crises that many European countries face and the economic emergence of some countries are facts that can contribute to the increase of this human rights violation. Governments, civil society, and universities have to get together in order to understand the complexities of the problem and fight back against human trafficking.

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# Chapter 3

## Trafficking in Human Beings for Sexual Exploitation in the Brazilian Criminal Law and the Consent of the Victim

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**Abstract** The purpose of this chapter is to define trafficking in persons for sexual exploitation and its implications on human dignity from the concept of vulnerability. It seeks to justify the prohibition of human trafficking when the victim consents and wards off purely moral arguments to explain their criminalisation. The criminalisation of conducts related to sexual exploitation when there is consent of the victim should take into consideration the protection of human dignity and the prohibition of exploitation of vulnerabilities.

### 3.1 Introduction

One of the most intricate criminal law subjects is the prohibition of conduct in which the victim consents. That is, it should be discussed the limits of criminalisation of behaviours that supposedly cause harm to someone with their consent. There can be no crime without harm or risk of harm; in addition, criminal law cannot punish self-injury. When the State punishes the exploitation of prostitution, it must necessarily involve harm to those engaged in prostitution; otherwise, criminalisation would be illegitimate.

By prohibiting consented conduct to protect oneself, there is a situation of paternalism, which can only be legitimised by certain requirements, such as the lack of a valid consent or the inalienability of the harmed interest. The criminalisation of consensual trafficking of persons for sexual exploitation is a hypothesis of paternalism that must be justified with an indication of harm to the interests of the victim who consents.

This chapter presents the definition of human trafficking for sexual exploitation, its consequences, and potential damages. It also discusses the concept of vulnerability and the prohibition of exploitation of people who do not emit a valid consent

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or whose consent does not match their real will (considering their situations of vulnerability). Finally, it seeks to justify this paternalistic situation pointing to possible damages to persons engaged in prostitution.

### 3.2 The Concept of Human Trafficking

The concept of human trafficking can be derived from law, from the study of internal legislation and international treaties, or from the analysis of the facts that we want to avoid. Human trafficking scholars refuse to consider legal concepts only, as we will explain further ahead. The first thing to bear in mind is that the concept of human trafficking cannot be defined by legal devices only because the real dimension of this problem exceeds the transportation of an individual from one place to another or the sexual industry. Sosinho accurately states that

Human trafficking is a complex and multidimensional phenomenon, which involves social and economic issues, particularly connected with immigration and the search for a job. Bearing in mind this complexity, building the concept of human trafficking is a difficult task, owing to the changeable nature of this crime which involves the violation of Fundamental Human Rights, both as a cause and as a consequence of the problem.

(Sosinho 2011, p. 10)

Trafficking in human beings is an extremely profitable illicit activity, and it is believed to be the third-largest source of income in the world, after trafficking in drugs and weapons. Its profitability derives from its low labour costs, the easy restocking of human goods, and the low risk of punitive action it faces (Quinteiro *nd*). In this line of business, “the good, as an object, has a double value: a use-value and an exchange value” (Leal and Pinheiro 2007, p. 18). This process entails the transformation of the human being into a disposable object, from the moment he ceases to fulfil his primary purpose.

When we speak of human trafficking specifically for sexual exploitation, the problem goes beyond prostitution as an isolated fact. Reducing trafficking-related conflicts to the right to dispose of one’s body in order to obtain profit simply does not suffice. We can contend that trafficking in human beings goes beyond the exercise of human autonomy, to the extent that fraud is often adopted to induce people into prostitution against their own will, as well as situations of coercion, using violence and severe threats. Moreover, as explained below, the vulnerability of the victim and his family is often explored by traffickers.

In this context, it is impossible to dissociate human trafficking, a crime according to law, from a number of social and economic situations that transform people into victims. This crime as a type can only be understood if all the social, economic, and cultural variables of each community are taken into account. Globalisation, poverty, lack of work opportunities, gender discrimination, economic and political instability and civil unrest in conflict areas, domestic violence, illegal immigration, sex tourism, corruption, and faulty legal systems are usually referred

to as the causes behind human trafficking (OIT 2006, pp. 15–17), and some of them directly involve the development of a relationship based on exploitation.

The single most important international document pertaining to transnational trafficking in human beings is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime. Human trafficking is, therefore, viewed by the UN as an issue pertaining to transnational organised crime. We can thus conclude that dealing with it as “any other crime” under the scope of criminal law is not enough; it requires the consideration of fundamental human rights.

According to the Protocol, “Trafficking in persons” shall mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the 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” (UN 2000, p. 2).

Defining human trafficking requires a more in-depth analysis of the elements involved. First of all, the Protocol defines conducts: recruitment, transportation, transfer, harbouring, or receipt of persons. Recruitment encompasses enticing and selecting potential victims; transportation means driving the victims from their place of origin to a destination where prostitution is to be exercised; transfer means driving the victims from a place where they prostitute themselves to a different place where they will maintain this activity; harbouring means providing accommodation; receiving means providing shelter. The means used in the practice of human trafficking involve threats (the promise to do harm), the use of force (using violent means to reduce the ability to resist), coercion (any other means that reduce the victim’s ability to resist), abduction (deprivation of liberty), fraud (deceiving the victim into believing in a false situation and, consequently, into giving an invalid consent), deception (taking advantage of a misconception of the victim without inducing the error), abuse of authority (moral coercion based on a relationship as a superior), abuse over a position of vulnerability (exploring the fragility of a person that lacks survival opportunities or sufficient cognitive development), and paying of benefits to a person with authority over the victim (usually taking advantage of a situation of misery).

Moreover, the purpose of the agent must involve profiting from the prostitution of a third party and every other form of sexual exploitation. In international law, prostitution is defined by the UN Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. From this document we conclude that prostitution involves any sexual activity performed for remuneration or any other form of contribution. Besides prostitution, the Protocol includes every other form of sexual exploitation such as engaging in sexual activities without compensation to the victim.

However, the real concept of human trafficking is only partly addressed by the Protocol, that is, only a small portion of the chain is considered. The definition provided by the Protocol, according to Kara (2010), focuses more on the movement as opposed to the exploitation. In reality, the trafficking in human beings goes well beyond the movement of the victims: it includes the “slavery” that surrounds them. This faulty definition leads to the implementation of ineffective policies. Bearing this in mind, the author proposes two definitions to reinforce the measures adopted to abolish sex trafficking. On one hand, slave trade is the acquisition, recruitment, harbouring, receipt, or transportation of an individual by multiple means and through long distances as a slave or in a similar position. Slavery, on the other hand, involves coercive labour or any service provided by captives, including the exploitation of their bodies or parts of their bodies (Kara 2010, pp. 4–5).

Similarly, Santos perceives human trafficking as a twenty-first century form of slavery, stating that “nowadays, the prominence of trafficking in human beings tells us that the abolition of slavery did not put an end to the scourge of human trafficking or its role in modern economic and migratory routes” (Santos et al. 2009, p. 71). The chain of human trafficking has a beginning and an ending that surpass its legal definition, starting with the increasing fragility of the victim and ending with the unknown, because this vulnerability is exacerbated.

In Brazilian Criminal Law, trafficking in human beings was termed “women trafficking” until the amendment of Decree Law 11.106/2005. This criminal offence was limited to the female condition, and the change was long called for, since men can also be the victims of sexual exploitation, especially in homosexual prostitution. Nowadays, trafficking in people is provided for in two criminal offences: art. 231 and 231-A in the Criminal Code. While art. 231 provides for international human trafficking, art. 231-A defines domestic human trafficking (within the national territory).<sup>1</sup>

Brazilian Law has adopted the recommendations given by the Protocol by disregarding the victim’s consent. Crimes of human trafficking are qualified by the use of violence, severe threat, and fraud, which means that the offences are committed with the victim’s consent. This leads us to one of the guidelines included in the Protocol, provided for in art. 3, subparagraph b: “The consent of a victim of

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<sup>1</sup> Human trafficking for sexual exploitation in Brazilian Law is provided for as a crime against sexual dignity and can be considered such with or without the consent of the victim; the main body of the article does not mention situations of fraud, violence, or severe threats or any condition of subordination between the agent and the victim as being fundamental to this criminal offence. In Portugal, on the other hand, trafficking in human beings can bear the finality of “sexual exploitation, labour exploitation and organ extraction” and can only be considered such when induced under violent means, abduction, or severe threat, by trick or fraud, involving the abuse of authority resulting from a relationship of hierarchical, economic, labour-related, or family-related dependence; taking advantage of a mental disability or a situation of vulnerability from the victim; or obtaining consent from a person who holds any form of control over the victim; accordingly, this crime is provided for as a crime against personal freedom. In Portuguese Law, any facilitation of prostitution with the victim’s consent is considered a crime of pimping. For more information concerning Portuguese Law, see Guia (2008), pp. 101–108.

trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used” (UN 2000, p. 2).

Complementing subparagraph *b*, we stress that subparagraph *a* predicts the means used for the trafficking in human beings: threat, use of force or other forms of coercion, abduction, fraud, deceit, abuse of authority or abuse of a situation of vulnerability, and the delivery or acceptance of any payment or benefits to obtain the aforementioned consent. By a process of elimination, trafficking in humans beings can only be considered legal when the victim gives his full consent and is not in a situation of vulnerability. The biggest problem here is setting a clear limit on the degree of vulnerability that weakens the resistance of the victim.

Therefore, we need to consider the concepts of consent and vulnerability in further detail, since the legitimacy of criminalising human trafficking involving fraud, severe threat, or any other type of coercion does not seem to offer any doubt. When fraud is involved, the victim’s consent would be different if he knew the truth of the facts; under violence or severe threat, the victim is aware of the facts but is unable to offer any resistance. The greatest challenge in criminal law is to legitimise the criminalisation of human trafficking when the given consent is free of fraud or coercion, since the offended party is, apparently, exercising his autonomy. The question here is: to what extent does the consent free of fraud or coercion represent a real exercise of autonomy?

### 3.3 Individual Autonomy and Consent

An autonomous individual is free to act without interference or control by means of coercion, persuasion, or manipulation. It is a human trait: what the person chooses as a reference to his thoughts, actions, and intentions, and this decision-making autonomy defines, to a great extent, who that person really is (Colt 2006, p. 76). An autonomous individual is able to lead his life according to his own precepts, conscience, and will (Martinelli 2010, p. 186). One of the characteristics of this autonomy is the ability to reflect about one’s decisions, motives, desires, and so forth. Personal autonomy is connected with an independent life, from rational and from emotional points of view. The individual thinks for himself and acts without being subject to an external influence (Dworkin 1976, p. 25).

The autonomous individual possesses two qualities that ensure his liberty. He is “not subject to any determination” and “his goals are his own” (Colt 2006, p. 76). This means that the individual is not moved by any deterministic force. Determination is conceived as the condition that precedes the act, that is, the individual does what he wants freely and not because he was conditioned. The concept of autonomy, on the other hand, involves situations where the person is free to choose something he had access to yet did not know until then. For instance, a woman that has never prostituted herself might decide to develop this activity as a source of

income. Even if the woman leads a sexually active life, prostitution might not have been tried yet.

The other characteristic of the autonomous individual is the pursuit of his own goals. The goals that define a conduct may involve the fulfilment of one's own or another person's interests, as long as that fulfilment is the will of the person who acts. Again, using the example of prostitution to explain this concept, a woman may choose to be a prostitute to guarantee her own sustenance or to support her family. Even if the revenue of prostitution is destined to a third party, this autonomy is verifiable when the prostituted individual acts out of her own will. However, this woman might be prostituting herself because she lacks other sustenance and survival options, and in this context there is a situation of exploitation. We are then faced with the dilemma of the exercise of autonomy and, consequently, the validity of consent.

Superficially, consent can be defined as the comprehension and the acceptance of a harmful behaviour, committed by the individual himself or a by third party, and its possible results. It can involve passive acceptance, when the harm is done to another, that is, when the owner of the legal interest accepts the harm committed by a third party, or active acceptance, when the individual harms himself. The consent of the offended party implies accepting a conduct where the individual harms himself or a third party harms a legal interest that he owns. We can say that the offended party accepts a behaviour that is harmful to himself while being fully aware of it, conforming to any possible harm (Martinelli 2010, p. 187).

The consent is valid when the owner of the legal interest is fully aware of the harmful behaviour and, particularly, of its consequences. This means that he is capable of comprehending and discerning the facts. Accordingly, this consent is invalid if the person lacks information concerning the reality of the facts or the capability of pondering the possible consequences. In line with the UN guidelines, this also stands for the lack of ability to resist due to a situation of vulnerability, typical in situations of social and economic fragility where the person, despite being fully aware of the facts, is not able to find any other survival options or hasn't acquired enough cognitive insight to reflect about a positive decision involving prostitution.

### 3.4 Vulnerability

The concept of vulnerability is very broad and is not confined to the legal sphere. Vulnerable individuals are subject to attacks and offences (Michaelis [nd](#)), "are people that, given their social, ethnic, political, economic, educational and health conditions, see their differences, established between them and the surrounding society, transformed in inequalities" (Guimarães and Novaes 1999, p. 22). We understand vulnerability as an indicator of an imbalance in personal relationships, and for a balance to be achieved an external interference is required.



Vulnerability can manifest itself in several situations of adversity. In general terms, we can say that a vulnerable individual is incapable of exercising his autonomy due to external factors, such as threats or violence, that limit the resistance to an unwanted behaviour. In strict terms, vulnerability stems from personal factors that prevent the full exercise of one's autonomy, such as the lack of cognitive development or a situation of misery for lack of opportunities.

In criminal law, there is no doubt surrounding the legitimacy of criminalising conducts that involve violence, severe threat, or fraud in order to reach a legal interest. What is subject to debate is the intrinsic vulnerability of the victim and the consequent invalidity of his consent towards harmful behaviours. Despite the seeming evidence of willingness from the victim, certain personal factors may conceal the lack of ability to fully exercise any autonomy and enable a relationship of exploitation between the vulnerable individual and the person who takes advantage of this fragile situation.

### ***3.4.1 Vulnerability in the Brazilian Criminal Code***

The Brazilian Criminal Code provides for sexual crimes committed against vulnerable individuals; these are expressly provided for in crimes against sexual dignity. The criteria that define vulnerability include the victim's age, mental capacity, and ability to offer any resistance. According to legal criteria, the victims of this crime are not able to give any consent concerning their sexual behaviour, and even in the absence of coercion or fraud the person who takes advantage of the situation commits a crime.

Art. 217-A provides for the rape of a vulnerable individual. This crime involves any sexual activity with a minor under the age of 14, a mentally ill individual whose judgment is impaired or who, for any reason, is unable to offer any resistance. Coercion and fraud are not fundamental in this criminal offence, which means that the crime prevails even with the victim's consent, to the extent that this consent is not considered valid. The substantiation of crimes involving the sexual exploitation of minors under the age of 18 is similar. In other words, the law intends to preserve the sexual dignity of those who lack sufficient insight to make their own options.

In short, the definition of sex crimes against vulnerable individuals intends to protect those who, for any of the aforementioned motives, are incapable of defending themselves when facing attacks against their sexual dignity. However, it is extremely important to consider the criminalisation of prostitution-related conducts when the victim is a capable adult. If an adult, mentally capable and fully aware of the facts, consents to prostitute himself in a different country, the person who is responsible for his transportation or who, in any way, facilitates this activity incurs in the crime of human trafficking. Why is it a crime to cooperate in the consented prostitution of a third party?

The answer to this question has three sides. One of the grounds for the criminalisation of consented trafficking is the high likelihood of future harm to

the victim. Another is based on the preservation of human dignity, considering that sex trade impacts untouchable human rights. Lastly, the final ground is based on the vulnerability of the person who consents to prostitute himself, that is, a social vulnerability masks the actual will of the victim, who otherwise would not be involved in sexual activities for payment.

#### **3.4.1.1 Banning Trafficking to Avoid Future Damage**

Human trafficking is a complex process that involves a number of actions and procedures. Removing a person from his place of origin, his transportation, frequently clandestine, and illegally introducing the victim in the prostitution market: all of these activities reduce the contact of the victim with his loved ones. The problem goes well beyond financial exploitation; certain situations involve slavery and the loss of control over oneself.

Several mechanisms are used to prevent the victim from leaving prostitution. The retention of documents; the charge of expenses, including transportation and lodging; the exploitation of the illegal status of the victim, who is afraid to contact local authorities; the shame of going back to the place of origin and being known as a prostitute; and the possible retaliation from the traffickers, who are usually close to the families: all of these factors remove the autonomy of the prostituted individual (Adelstein 2011). The weakened individual is not capable of offering any resistance, even if he gave his consent in the first place.

In this sense, repressing consented trafficking in people aims to prevent future harm to those who, in a previous moment, accepted such conditions. What is at stake here is the future harm that the victim is likely to experience and that was not a part of his previous consent, including depriving him of his liberty, preventing him from leaving prostitution, forcing him to achieve a minimum value periodically, and using physical and moral violence. Therefore, the problem is not trafficking in itself but its likely consequences.

#### **3.4.1.2 Preserving Human Dignity**

The ban on human trafficking can be grounded on the argument that prostitution constitutes a real attack to human dignity and, therefore, its protection would be unconceivable. The exercise of sexual practices for remuneration would represent the degradation of the human condition, to the extent that prostitution exposes people to humiliating and dangerous situations. Accordingly, the preservation of human dignity is an unavailable asset and any form of consent is automatically invalid.

Among uncountable debates concerning the repression of prostitution is the feminist debate. The two extremes of the feminist movement envision different solutions for prostitution. While one of the sides defends the regulation of sex trade as an issue pertaining to the freedom of choice of the woman and the exercise of her

autonomy, the other side proposes banning prostitution on the ground that the activity reduces women to a mere object of exploitation.

The side that advocates the criminalisation of the activity declares that the life of a prostitute, and particularly one who lives in a fragile economic situation, does not allow for the exercise of autonomy and, in this sense, sex trade is not an expression of will. Living in prostitution is degrading and disgusting; it means being available to customers in a trade where women are reduced to mere objects of consumption. This lifestyle impacts the self-esteem of the prostitute, withholding her from searching better opportunities; in other words, it is a road with no return (Anderson 2002, p. 775). Tolerating prostitution, according to this feminist wing, authorises the degradation and the submission of the woman to a patriarchal society, in a process of “objectification” that leaves no room for the exercise of autonomy.

The argument of prostitution as a violation of human dignity does not involve the harm or the risk of a legal interest. It does not consider any attacks against the sexual dignity or the personal freedom of the individual. It is merely based on moral arguments, grounded on the judgment of an observer who considers the activity of the prostituted individual an error. The observer takes the place of the prostitute to analyse the situation and confirms the lack of respect towards her dignity.

In criminal law, this argument is dangerous when considered in an isolated manner. The legitimacy of strictly moral evaluations does not last forever. It must involve the harm or the risk of harm to a legal interest, be it sexual dignity or individual freedom. Strictly moral criteria can lead to excesses in criminal law and to an uncalled-for intromission of the State in the private life of individuals.

### 3.4.1.3 Social Vulnerability

The third explanation is based on the situation of social vulnerability of the victims who, despite being fully capable adults, give their consent against their own will. Prostitution is a choice made by the lack of other options, and consequently this consent is considered invalid. Accordingly, by criminalising human trafficking, the State would be protecting the victim from a harmful choice for himself, preserving his true will of not becoming a prostitute.

It is therefore considered that prostitution is an activity that no person willingly envisions in his life, and if any person chooses this activity he does so because he lacks better options. And the person who makes this choice does so out of economic needs or does not possess a cognitive development that allows him to understand the evils of the activity.

The exploitation of a situation of social vulnerability among children and teenagers is considered a key factor in juvenile prostitution. Situations of economic deprivation and the lack of the minimum conditions for personal development, as well as an exposure that endangers the fundamental rights of the individual, all of these factors contribute to a greater degree of vulnerability of a minor. Accordingly:

A complex phenomenon such as the **sexual exploitation of children for commercial purposes** is one of the uncountable experiences that fit in a situation of **social vulnerability and violation of fundamental rights** of the aforementioned youths. This is a phenomenon that assumes a different appearance according to each life experience and social and economic context. Consequently, the profiles of youths that find themselves in any situation of sexual exploitation vary enormously; we divide them in four groups according to certain traits: 1) teenagers from the suburbs who develop a local connection with the sex trade (and sometimes involving the trafficking of drugs), 2) those who live in the streets, 3) children and teenagers involved in the informal labour market (child labour) and 4) boys and girls who work or live in prostitution households or spaces.

(Bellenzani et al. 2005<sup>2</sup>)

Similarly, economic and social factors increase the vulnerability among adults. In the context of human trafficking, we perceive vulnerability as a social condition resulting from a lack of inherent power in individuals with certain traits that stand out in the region where the victim finds himself as an object of exploitation. This social condition is associated with the impunity of those who violate the human rights of immigrants who do not fit in the standard of that community (Bustamante 2002, p. 340). The individual who is cut off from his roots becomes more vulnerable and feels out of place in the social environment that surrounds him. In this sense, the author identifies two types of vulnerability in human trafficking: the moment that precedes the trafficking, when he chooses prostitution in a different country, and the moment when he finds himself abroad and removed from his origins. The vulnerability of an individual, who was already in a situation of fragility, searching for new perspectives, increases under the control of the trafficker (Bustamante 2002, p. 342).

Usually, the victims of trafficking go through a stage of increased vulnerability in their lives, living in remote locations and removed from the people and the institutions that guarantee their security (Chapkis 2003, p. 931). As prostitutes, immigrants live in a situation of degradation, excluded from society, and they become an easy prey for those who profit from this activity. Without any other available options, traffickers and other exploiters become their protectors in exchange for subordination (Anderson 2002, pp. 749 ff).

It is important to note that the state of vulnerability is closely linked to the lifestyle of the individual. Certain social conditions can make people more or less vulnerable to a number of risks, without them being aware of it. Social vulnerability is, therefore, perceived as a “lack of material and immaterial assets, which exposes a certain individual or group of individuals to sudden and significant changes in their future standard of living” (Silva 2007, p. 3). Furthermore:

Social vulnerability can be seen at two levels: a structural level and a subjective level. At the structural level, it can be triggered by a decrease in their mobility and, at the subjective level, by the development of feelings of uncertainty, insecurity, not belonging to a certain group, or fragility.

(Silva 2007, p. 4)

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<sup>2</sup>This paper is available as an online page at [http://www.proceedings.scielo.br/scielo.php?script=sci\\_arttext&pid=MSC000000082005000200010&lng=en&nrm=abn](http://www.proceedings.scielo.br/scielo.php?script=sci_arttext&pid=MSC000000082005000200010&lng=en&nrm=abn), lacking formal page numbering.

Vulnerability gives way to unbalanced relationships, where the underlying differences determine what can be obtained in the business. The person who has more to offer can more easily obtain an advantage. An individual in a precarious situation of sustenance will more easily consent to behaviours he is opposed to. These situations do not involve any form of moral or physical coercion, but the victim, owing to his vulnerable situation, will accept certain proposals that go against his wishes or conscience. In certain situations, the law becomes involved in the search for balanced relationships in a particular social context.

### 3.5 The Interference of the State in Human Trafficking

Following the perspective of Brazilian Law, a different issue arises when the State bans human trafficking with the consent of the offended party. The criminalisation of human trafficking indirectly impacts those who choose to submit to it. So is the State assuming a paternalistic behaviour? In other words, does the State override the will of the offended party when banning consented human trafficking? In this point, we must consider some essential concepts. Foremost, paternalism involves interfering with the personal freedom of an individual, against his own will, protecting one from oneself. The paternalist State believes it knows what is best for its citizens and imposes or bans certain behaviours, ignoring personal options, just like a “father” imposing conduct rules to his children. This patronising behaviour restricts individual freedom and despises personal will, under the guise that the restrictive measure is necessary because, presumably, the individual does not know what is best for him.

Paternalism can be categorised according to several criteria, among them the coincidence between the subject of the restriction and the target of the protection:

In pure paternalism, interfering in the behaviour of a group of people in order to protect them from their own conducts is justifiable. The target of the restriction is the benefited party itself. Pure paternalism, also known as direct paternalism, acts upon individuals with self-harming behaviours. The individual who is benefited and the individual who suffers the restriction coincide. A good example is the norm that imposes the use of a safety belt to protect the user himself, that is, he is not free to choose not to wear the belt for his own good.

Conversely, impure paternalism, also known as indirect paternalism, legitimates the interference in the behaviour of a group of people to protect other people outside that group. A good example would be passing a law which banned the cigarette production in order to protect the health of smokers. The State would be assuming an indirect paternalist course of action, targeting manufacturers to restrict the freedom of choice of the smoker population, who would have to struggle to buy a cigarette. If, on the contrary, the law banned smoking per se, this would be a case of direct paternalism, insofar as the smokers freedom would be subjected to a restriction for their own good.

(Martinelli 2010, p. 116)

Criminalisation of human trafficking can be perceived as a manifestation of indirect paternalism. The trafficker is punished in order to protect the victim who

consented on his trafficking. The victim's liberty is restricted by preventing the agent from cooperating in his exploratory sexual activity. The exercise of freedom to consent is faced with a legal barrier that forbids any form of incitement, favouring, or support to trafficking, even in the absence of fraud or coercion.

A different definition of paternalism considers the condition of the individual who is protected by having his freedom restricted:

Soft paternalism is a point of view which considers paternalism to be justified whenever it is necessary to determine if the person involved is acting willingly and consciously. When it is not possible to determine the ability of the individual, or when the ability remains unproven, the paternalist behaviour is justified. This includes interfering in situations of self-injury when committed by children, mental patients or adults with temporary mental disorders. It is justified, for instance, to prevent an incapable individual from celebrating business contracts when he/she is not aware of the disadvantages involved for him/her.

Hard paternalism justifies certain interventions even when the individual is fully aware of his/her conduct and is willing to harm him/herself or consents to be harmed by a third party. The distinction between the recipients of the paternalistic behaviour is not important, to the extent that the interference both over the responsible and the irresponsible parties is legitimate. If, for instance, an adult agrees to donate his/her entire legacy knowing that he/she cannot lead a comfortable life from then on, preventing such action in order to preserve the well being of this person is considered legitimate.

(Martinelli 2010, pp. 115–116)

This distinction is fundamental to legitimise the restriction of liberty in people who, despite having given their consent, are not fully able to make such a complex decision. This ability can be measured by the cognitive development of the person or the situation that he finds himself in at the moment. Whenever the cognitive development is considered insufficient or in situations of fragility, the State needs to act in order to make up for the lack of a valid consent and to avoid an unwanted disadvantage for the victim.

In short, State paternalism is legitimate when it interferes with individual freedom in order to protect the individual from himself or from a third party, whenever the individual consents to a harmful behaviour, insofar as the one who experiences the restriction is not capable of offering any resistance. In situation of fraud, the consent is not considered valid because the individual is not aware and is unable to resist a harmful behaviour, to the extent that he believes in a situation that does not correspond to the reality. When coercion is involved, the individual knows what will happen but is not able to offer resistance. Finally, in situations of vulnerability, the individual is not fully capable of reflecting in order to offer any resistance, because he is in a fragile position.

The intervention of the State is legitimate in cases of coercion and fraud in the absence of a valid consent from the victim; it is also considered legitimate when a relationship exploits a situation of social and economic vulnerability, for the consent is obtained against the actual will of the victim, to the extent that he perceives prostitution as a harmful situation for himself but does not have any other means to survive. Finally, a paternalistic intervention is not legitimate when

the victim has the necessary insight and is not in any way prevented from exercising his free will.

### **Conclusion**

It is difficult to define the situations in which the prostituted individual finds himself in a situation of vulnerability, but we cannot ignore that some of the supposed victims of human trafficking are capable of consciously choosing a living for themselves. Not every single individual who chooses prostitution is in a vulnerable position or incapable of offering resistance. Human trafficking, however, is an issue that largely exceeds the individual exercise of the sex trade. It involves a number of factors, such as the involvement of criminal organisations, the practice of other illicit activities, the removal of the victims from their place of origin and subsequent increase of their situation of fragility, the ongoing situation of slavery, among others.

Prostitution cannot be rejected and ignored by law merely based on moral issues. Any and every incrimination presupposes a harmful or dangerous conduct towards a relevant legal interest. In the Brazilian case, human trafficking is associated with sexual dignity, understood as an exercise of sexual self-determination, which is not always the case in situations of social and economic vulnerability. Additionally, as was already mentioned, the very personal freedom, in its broad sense, is subject to impairment in situations where the victims, for various reasons, lose their right to come and go.

An ideal legal frame should allow for a full exercise of the autonomy of those who choose prostitution out of their free will, even allowing the participation of a third party as facilitator. Notwithstanding, the States were forced to criminalise this behaviour because the facilitation of prostitution and, particularly, its exploitation by a third party are difficult to control. Trafficking in human beings stands out as the single most complex method of procuring, potentially involving harm to other legal interests and compromising the full exercise of personal freedom (Anderson 2002, p. 750).

From the complete criminalisation to the absolute liberalisation of human trafficking, the prohibition by probability criteria seems to be the most viable option, where human dignity is concerned. It is more likely that the trafficker is exploiting the vulnerability of the victim and that other legal interests will be harmed. Less likely is the occurrence of human trafficking with the full consent of the prostituted individual. However, should free will be proven and no legal interest harmed, the offence against sexual dignity must be disregarded and, consequently, the behaviour of the procurer must not be considered a crime.

Ultimately, we must discard the argument that prostitution is in itself an activity that harms human dignity as a means to criminalise its facilitation. This argument is valid only when prostitution is exercised against the victim's

(continued)

will, by coercion, fraud, or exploitation of a vulnerable situation. Whenever the prostituted individual gives his consent, the fact that he knows what is best for him should prevail, and therefore only a potential harm to other legal interests can legitimate the criminalisation of behaviours.

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# Chapter 4

## Women Trafficking for Sexual Purposes: The Brazilian Experience After Law N.11.106, of March 28, 2005

Danilo Fontenele Sampaio Cunha

**Abstract** This chapter presents an overview of women trafficking in Brazil within an internal sex tourism market where women are reduced to a subspecies without rights. Assuming a very critical stand towards academic definitions and the concept of “free choice”, the author reflects on causes and legal definitions and explores the new Brazilian legislation. The author calls for a change in the social perception of prostitutes, shaped by a sexist society, and stronger political measures, highlighting the importance of social prevention (greater access to education and health, stronger border controls, and awareness campaigns).

### 4.1 Introduction

The beginning of each century always brings the illusion of us going into a new era of peace and prosperity, and the coming of the twenty-first century has not behaved differently.

However, as incredible as it seems, mankind still develops practices that not only explore economically their peers but also degrade and debase people to the most abyssal of human conditions, namely to serve as objects of pleasure and/or profit to others.

Villainy and sordidness, characteristics that one expected to be overcome by centuries of evolution, have been made present in one of the lucrative criminal actions of all times, which is the trafficking of people for sexual purposes.

Being surpassed only by the trade of drugs and weaponry, the trafficking of people affects 137 countries and reaches approximately 2.5 million people, generating 32 billion dollars per year (according to UNODC) and providing for, beyond the exploitation of slave workforce, international networks of prostitution, many times connected to routes of sexual tourism.

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Data by the United Nations Office on Drugs and Crime, in a study of 2003, points to 83 % of the cases involving women and 48 % under 18 years old, with only 4 % involving men as victims, being invariably refugees and/or illegal aliens. Said study also states that in 92 % of the analysed cases, the victims were enticed for purposes of sexual exploration and in 21 %, they were used as slave workforce.

In 2002, the Research on Women, Children and Adolescents Trafficking for Commercial Sexual Purposes (Pestraf 2002), coordinated by Professor Maria Lúcia Leal, of Universidade de Brasília—UnB, when she worked with the Reference Center on Studies and Actions on Children and Adolescents (CECRIA), mapped 141 routes of national and international trafficking that “commercialised” Brazilian children, adolescents, and women and was the starting point to the work performed in 2003 and 2004 by the Joint Parliamentary Commission of Inquiry (CPMI) of the National Congress of Sexual Exploitation against children and adolescents, reported by Ceará State Senator Patrícia Saboya Gomes.

Said research identified that the Brazilian victims of the international trafficking networks are mostly adults, coming mainly from coastal cities (Rio de Janeiro, Vitória, Salvador, Recife e Fortaleza) and also from Goiás, São Paulo, Minas Gerais, and Pará, destined to Europa, especially to Italy, Spain, and, more recently, Portugal and Latin American countries such as Paraguay, Suriname, Venezuela, and the Dominican Republic.

It is known that Goiás and Ceará have been diagnosed by Pestraf (2002) as two of the main locations from which victims of human trafficking for sexual exploitation come, and in Ceará, sexual tourism in practice internally, especially in the capital Fortaleza, is the main link with the international trafficking networks—because of the easy access to Brazilian women by foreigners interested in paying for sex. The women who are targeted by these networks have usually been involved with prostitution before.

The sexual exploitation of women is the most common (79 %) because, in general, it is more visible, it happens in urban centres or in the roadside, and it is the object of denunciation. Differently, other means of abuse, such as slavery, are not sufficiently reported.

The present study aims to expose practices and invisible behaviours that reinforce the differences, strengthen the inequalities, and create silence towards people who are being explored, hurt, and used for sexual purposes, with special attention to the social costs incurred by a considerable share of the female population.

The knowledge of national and international legislation on the subject will help us reflect on our own human condition and on the prevention and fight against such degrading practices.

## 4.2 Precepts of Women Trafficking for Sexual Purposes: The Purposed Dehumanisation

To think of human trafficking for sexual purposes is to think of prostitution itself, since the dominant percentage of such practices refers to reducing women to a condition that is comparable to a sexual slave. And dealing with prostitution is always a cause for controversy, especially by those who understand it to be a profession like any other.

To bring the analysis closer to reality, we need to establish a small differentiation between our lives and the lives of thousands of women in the streets of all countries.

Actually, it must be said that the subject requires the knowledge for all of us, legal professionals, professors, and scholars, that there will be a guaranteed tomorrow and then another day and then another and that our lives will continue to follow the serene course set by ourselves, with the occasional inconvenience but always with a following tomorrow. One must also remember that we can always hide from the sun or the rain and study safely in a healthy and comfortable environment, accompanied by people who are interested in our progress, with parents, brothers, relatives, and friends around us.

Such reality, for us so natural and obvious, also entails that our ideas and desires will never cause any unpleasantness and that the occasional disagreement will never harm our lives.

Said premises for all of us, professionals, professors, and students, do not apply to the lives of women who live in prostitution or who have lived in prostitution. In prostitution there is no tomorrow. The prostitutes are not allowed to presume that a tomorrow may exist.

One can talk about prostitution in its encyclopaedic definition of providing sexual services, whether with a moralist and reducing premise, whether with the premises of a romantic and merely academic feminism of female sexual freedom and personal autonomy. Accordingly, it is possible to analyse the trafficking of people through numerous aspects, but the basic study seems more suitable—although the reality is harsh and bitter—so that, through a frank analysis of the subject, we may think of sincere solutions that will move beyond mere academic theory.

Even though other forms involve the use of the female body by other women, or the use of the male body by women and men, the vast majority of human trafficking cases for sexual purposes are related to the use of the female body by men, which is why the analysis of the subject will be limited to prostitution simply as the use of the female body for sex, via payment, by men.

Such definition brings other behavioural precepts. I would rather talk about behavioural precepts than precepts of culture because classifying any practice as a cultural precept may induce people to accepting, being tolerant of, or even being confused with whether this or that behaviour is common and/or natural.

I start by the premise that there is nothing natural in prostitution. It is not part of the nature of any human being to be taken, used, explored, and thrown away. It is

not part of anybody's nature to have his dignity vilipended each day, each hour, in each date.

Something that should not need to be said but must be clarified: prostitution comes from male *choice* and not from female *nature*. No cultural alibi can be used to justify it nor lies, excuses, or any kind of cheap rhetorical reasoning.

In other clear, obvious, and straightforward terms: the only reason why there is prostitution is because there is a male consumer market for it.

Another basic precept inherent to prostitution is that the money, for people involved in it, seems to have a magical attribute of allowing the limitless use of whatever purchase.

Therefore, if a man pays a woman with his money for the practice of sex, the latent thought is that she wanted and deserved what was done to her, as violent and degrading as it may have been, and nothing more than that.

It must be noted that when the work conditions of a factory worker are witnessed, everybody agrees that they should be better or that they should earn more, that the norms of protection for accidents should always be updated, and that the work hours should be reduced. The perverse reality in the workplace of the underworld of luxury is that no one speaks of the work conditions faced by prostitutes. What would be the reason for that?

The answer seems to be found in another precept: for a lot of people, money is more important than women. Such cruel idea indicates that money is more real to people than the woman around the corner, anonymous, with a fake identity, with a fantasy of being taken by a client, and with a reality of submission for life.

It really seems that the absence of a name, of a surname, of an origin, of details that are common to normal people potentiate this precept. If that woman is not real, then there is no need for any type of interaction, any form of care, or even a minimum of respect.

It seems that, without even knowing their name, men do not need to remember who these women are. Without a name, it seems that they are nobody. They are merely diffuse incarnations of women, reduced to a series of sexual orifices. Based on that, men can do with them whatever they want. Because men see them as objects; they know that they have no one to call for since, after all, objects do not speak, do not go to the police, and are not represented by lawyers. Objects are nobody.

#### ***4.2.1 What This Destructive Logic Entails Is the Depersonalisation of People***

The situation, through dehumanisation and objective categorisation of people, reduces all the potentialities of women to one single imposed destiny: to be a utensil for another human being.

Such logic leads undeniably to a miserable project of human being and rejects the notion that people were born for transcending their initial conditions and that it is always possible, as hard as it may seem, to overcome the difficulties, break free from the apparently solid limitations, and change. This kind of reasoning belittles human beings and reduces women, especially poor women, to a subspecies, with no rights, no opportunities, and no voice.

All of us have lived through one day or another, one situation or another in which we felt like nothing. Once or twice, we have been humiliated, mistreated, or neglected. But that was certainly just one episode, a passing situation that we may even forget or vaguely remember. For a woman in prostitution, these life experiences happen every day, forever and ever.

Even in face of such a harsh reality, prostituted women can somehow react. In the lawsuits I have presided on women trafficking for prostitution purposes, what apparently and initially happens with victimised women is the necessity of pretending or faking some sort of domain over their clients or over the situation they live in. Therefore, they act as if they were free to choose their clients, to deny this or that service, and, furthermore, to “leave this life” whenever they please.

In fact, I interpret that behaviour as a way of minimally preserving their human identity, which involves choice—I do not know, however, if they have that much free will.

My opinion is that choice leads to option, and, from what I have seen, these options are nonexistent or visibly disproportionate in relation to the difficulties suffered. Actually, it is not easy to convince an uneducated, unemployed, unqualified, poor, and hungry woman, with the same desires of any adolescent, that it is best to earn a day’s work being a housemaid than to perform sexual services and earn the same as she would in a month.

I believe most women in prostitution did not make a rational and truly free choice to enter such activity. I believe they simply had an attitude of survival, which, in most cases, was not even an option, since it was the only one.

I say once again this never-mentioned precept: the liability of those who unscrupulously add to and make use of the trade of human beings.

### 4.3 Causes

In international terms, I do not believe that poverty is enough to create a legion of prostitutes, even though many societies are organised differently, in a way that the measures of repression and negligence towards women are so overwhelming that the only thing of value in the woman becomes her sexual freedom, and, consequently, a sellable action.

It is certain that, nowadays, the large flow of prostitution in Europe has now basically economic and crime-related causes, a reality that tends to increase the social effects of economic crises.

But beyond poverty, other factors have potentiated the possibility of prostitution, such as sexual abuses in childhood, especially incest, when children are trained not to have respect for their own body and learn that they are valued solely for sex, which is connected to the loss of structure in families.

I now want to make clear that I am not being conservative to the point of thinking of the continuation of marriages as a means to prevent cases of prostitution, but I am only highlighting that a girl without a mother or a father, with no studies or household conditions, and neglected by governmental supporting bodies will probably live in the streets, and a homeless woman goes through much more vulnerable situations than the average homeless man.

The international trafficking itself has another typical characteristic: the mutual fascination between the foreigner and the prostitute.

The dream of many Brazilian women, typically distorted via unrealistic and enchanting images of a Hollywood world, is bound to the illusion of Europe or America having good men, men who they would be comfortable marrying. The illusion persists in the perverse fascination of leaving poverty with no considerable effort and in the need to be welcomed by people who they imagine to be better, by a fairer country, where they will be righteous people and will come back with money or may even bring all of the family there, as if it were a modern realisation of fairy tales.

Another socioeconomic aspect must be highlighted: why do women of underdeveloped countries become prostitutes abroad?

One of the answers is pretty obvious: because there, they may achieve what these underdeveloped countries cannot provide—access to education and qualification and to the formal workplace in equal conditions to men, with the same level of pay. Prostitutes in countries with strong economies and citizenship guarantees are not that many, and they do not charge so little money for their services.

#### **4.4 Legal Definition**

The international trafficking of women for the purpose of prostitution had already been reported in 1885 as a concern of nations, in the Convention of Paris in 1902, which gave the League of Nations authority to repress the trafficking of “white slaves”.

In 1950, the United Nations, through the Convention for the Protection of Human Rights and Fundamental Freedoms, established an international cooperation against women trafficking (Brazilian legislative Decree n. 6, of June 12, 1958).

The Pact of San Jose, Costa Rica, of 1969 (ratified by Brazil in 1992), has also reaffirmed the commitment of the Americas in defending human rights and repressing international women trafficking for prostitution in the same way that the Inter-American Convention was created to prevent, punish, and eradicate violence against women in 1994 (ratified by Brazil in 1995).

Brazil has also signed and ratified the Convention on the Rights of the Child (1990), Convention 182 of ILO concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (2000), the Optional Protocol to the Convention on the Elimination of Discrimination against Women (2000), and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (2001).

The UN Convention on Transnational Organized Crime, better known as the Convention of Palermo, ratified by Brazil through Decree n. 5.015, of March 12, 2004, brings within its additional protocols one related to the combat against the Smuggling of Migrants by Land, Sea and Air (ratified by Decree 5.016/2004) and the protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (Decree n. 5.017/2004).

This last document defines, in its article 3, the trafficking of human beings as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

(UN 2000, p. 2).

It must be noted that said Protocol recognised the situation of debility and submission of these victims to be so profound that it clarified that the possible consent of the victim does not validate the illicit conduct, stating categorically that “b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be **irrelevant** where any of the means set forth in subparagraph (a) have been used” (UN 2000, p. 2).

Furthermore, said Protocol considered as a child any person with age under 18 years, adding that “c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article” (UN 2000, p. 2).

The Rome Statute, of July 17, 1998, incorporated into the Brazilian legislation through Decree n. 4.388, of September 25, 2002, recognised, among the crimes against humanity under the competence of the International Criminal Court, sexual aggression, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, or any form of violence of comparable gravity in the sexual area.

## 4.5 New Brazilian Legislation

The Brazilian Criminal Code of 1890 had proscribed, in its article 278, the crime of “inducing women, whether by abuse of their weakness or poverty, whether by coercion via intimidation or threat, to be subject to prostitution trafficking”. This proscription, though from 1890, is unfortunately and incredibly still very real.

The recent Law n. 11.106,<sup>1</sup> of March 28, 2005, which altered articles 148, 215, 216, 226, 227, and 231, and added article 231-A to Decree-Law n. 2.848, of December 7, 1940 (Criminal Code), established that Chapter V of Title VI—OF THE CRIMES AGAINST CUSTOM of the Special Part of Decree-Law n. 2.848, of December 7, 1940 (Criminal Code), is now in force with the title OF PROCURING AND THE TRAFFICKING OF PEOPLE, whereas article 231 has defined the international trafficking of people as

Art. 231. To promote, to intermediate or facilitate the entrance, in national territory, of the person that comes to exercise prostitution or the exit of the person that exercises it abroad:

Penalty – reclusion, from 3 (three) to 8 (eight) years, and fine.

§ 1.....

Penalty – reclusion, from 4 (four) to 10 (ten) years, and fine.

§ 2 If the conduct is perpetrated through the use of violence, grave threat or fraud, the penalty is of reclusion, from 5 (five) to 12 (twelve) years, and fine, aside from the penalty related to the violence.

§ 3 (revoked).

One may notice that the most significant alteration has been the adding of the verb “intermediate” and the definition of the crime as not just women trafficking<sup>2</sup> but trafficking of people in general, including homosexuals of both genders, a category that was not part of the Code of 1940 and is now common in European brothels.

The action of intermediating, included in the article, has considerable reach and has certainly made explicit the framing of numerous converging conducts to the practice of the crime in question, such as agency services, refinement, training, feeding, and beautification of people for the said purposes.

Furthermore, article 231-A, related to the internal trafficking of people, was added to the Code, and it states that

Art. 231-A. To promote, to intermediate or facilitate, in national territory, the recruiting, the transportation, the housing or the reception of the person that comes to exercise prostitution:

Penalty – reclusion, from 3 (three) to 8 (eight) years, and fine.

<sup>1</sup> It should be noted that the new Law 11.106/2005 has also revoked the incises VII and VIII of art. 107; arts. 217, 219, 220, 221, and 222; the incise III of *caput* of art. 226; § 3rd of art. 231; and art. 240 of Decree-Law n. 2.848, of December 7, 1940 (Criminal Code), which means that, with the revocation of incises VII e VIII of art. 107 of the Criminal Code, the punishment of rape, indecent assault, sexual possession via fraud, seduction, corruption of minors, and abduction (arts. 213–221 of the Criminal Code) is no longer extinguished with the marriage of the victim with the agent or with the marriage of the victim with a third party, respectively.

<sup>2</sup> The old writing referred to women trafficking and said: “Art. 231 – To promote or facilitate the entrance, in national territory, of women who come to exercise prostitution or the exit of women that exercise it abroad. Penalty: reclusion from 3 to 8 years. § 1st – If any of the situations in § 1st of article 227 occurs. Penalty: reclusion from 4 to 10 years. § 2nd – If the conduct is perpetrated through the use of violence, grave threat or fraud, the penalty is reclusion, from 5 (five) to 12 (twelve) years, and fine, aside from the penalty related to the violence. § 3rd – If the crime is committed with the purpose of profit, the subject shall also be fined”.



Sole paragraph. The prescription on §§ 1 and 2 of this Decree-Law applies to the crime proscribed by this article.

With a view to perfect the punitive system, aside from punishing the international trafficking of people with greater amplitude, the legislator has enacted the crime of “internal trafficking of people”, establishing as a crime proscribed in art. 231-A of the Criminal Code the following conducts: “To promote, to intermediate or facilitate, in national territory, the recruiting, the transportation, the housing or the reception of the person that comes to exercise prostitution”, making clear that any person, from any gender, can be an active or a passive subject in the crime.

The description of the crime includes the actions of “promoting”, which means giving impulse, putting into execution (by any means, including the financing of the activity); “intermediating”, which is serving as an intermediate or mediator, even with supply of information and training; “facilitating”, here with the sense of making it simpler, giving it more agility, which comprises any active or passive conduct with these purposes.

The “recruiting” is the reunion, the selection of people, commonly made personally by one of the members of the criminal group, with pictures of the people who will possibly be subject to trafficking being sent on the Internet to the other members of the group, which will “take care” of them in their destination. The “transportation” is the movement itself from one place to another, in which prostitution is exercised, whereas the “transfer” means movement from one place in which prostitution is already exercised to another in which the practice will continue. “Housing” is the specific place designed for the shelter of people, and “reception”, for the purposes of the criminal proscription, means the taking of someone to a place that is not destined to housing but in which shelter, protection, or physical comfort is provided.

All of the aforementioned practices may be executed with the active participation of the subject or through financing. In some of these situations, the crime is of a permanent nature, with the possibility of being caught in the act.

The Child and Adolescent Statute (Law n. 8.069, of July 13, 1990), in regard to the trafficking of children and adolescents for the purposes of sexual exploitation, though not explicitly, establishes that

Art. 238 – To promise to give or to give a child or a pupil to a third party, through payment or promise of reward. Penalty: reclusion of 1 to 4 years and fine.

Art. 239 – To promote or help the execution of act destined to send a child or an adolescent abroad without observance of the legal formalities or the purpose of profit. Penalty: reclusion of 4 to 6 years and fine.

Sole paragraph: If the conduct is perpetrated through the use of violence, grave threat or fraud. Penalty: reclusion, from 6 to 8 years, aside from the penalty related to violence.

Art. 244-A – To submit a child or an adolescent, as defined in the head of article 2 of the Child and Adolescent Statute, to prostitution or sexual exploitation. Penalty: reclusion, from 4 to 10 years, and fine.

§ 1 – The owner, the manager or the person in charge of the place in which occurs submission of children or adolescents to the practices referred in the head of this article incur in the same penalties.

§ 2 – It is a mandatory effect of the conviction the loss of license of location and of functioning by the establishment.

It must be noted that the term “submit” in art. 244-A is not to be interpreted as an “imposition” of prostitution to the child or to the adolescent but as a means to subject the victim, directly or indirectly, to prostitution or sexual exploitation.

In fact, famine and poverty convince any person to do the unimaginable, and in these conditions, children and adolescents are even more easily stimulated to do or not do things that may even be beyond their comprehension, following, inadvertently, the sad example of other minors around them.

So if a child or an adolescent is put in a situation of famine and abandonment, which makes prostitution or sexual exploitation the only available means of survival, all people involved will be committing a crime, whether it is the parents, the traders, the pushers, the procurers, or the clients.

Therefore, the father, the mother, or the person responsible for sending children to gas stations by the roadsides with the “mission” of bringing money back home, under threats of grounding or punishment, as well as the owners or the managers of the said stations or of bars and motels in the vicinity who, upon noticing the presence of such children and adolescents in their establishments, do nothing to stop their prostitution or sexual exploitation by truck drivers, must, like the latter, be subject to the same criminal penalties, since they are collaborating, by action or omission, to the submission of the victims to prostitution or sexual exploitation, in the form of art. 29 of the Criminal Code.

## 4.6 Criminal Organisation: Agents and Seduction Tactics

The aforementioned crimes are rarely committed by a single agent—the involvement of several people is more common, each with a different task and working, most times, within a structure close to the complex relations of the homicidal crimes for hire by their strategies and symbolic effects<sup>3</sup> common to so many other criminal organisations.<sup>4</sup>

Therefore, we may define the hiring person as the owner of clubs and brothels interested in new girls or boys for his clients. The hitman can be seen here as the individual who objectively follows the rules of the hirer, whether it is recruiting and seducing the victims, whether it is preparing them, training them, and promoting, intermediating, facilitating, transporting, transferring, housing, or receiving the victim.

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<sup>3</sup> We take a note from the observations of César Barreira, professor of Universidade Federal do Ceará, in his book *Crimes for hire – violence in the Brazilian scenario*. Relume Dumará. Rio de Janeiro – RJ. 1998.

<sup>4</sup> Said structure is also verified in crimes of money laundry.

It must be noted that a hirer can be, in fact, a hitman of a superior hiring person, which means he is being hired to operate in the trafficking of people and developing a structure to generate income for the activity, hiring new hitmen and becoming their hiring person.<sup>5</sup>

One must observe, still, that in many situations, the second hirer and the hitmen have a formal and legally established work relationship, with the last, upon arrest, arguing that they have merely followed orders and that they were unaware of the illicit nature of the activity. In face of evidence, they cannot deny<sup>6</sup> their actions but behave as if they were executing something that was not theirs, ordered by someone from the outside, thus their belief that their punishment should be mitigated.

Still, an axiological reasoning present in the crimes for hire is observed here: the distorted definitions of loyalty and protection, with a perfectly asymmetric and hierarchical relationship between “hirer” and “hitman”.

Therefore, the hitman never reveals who the hiring person is because of the need of his permanence in the international trafficking of people as the only guarantee of life preservation, since the risk of elimination of former hitmen is real, in the common “erasing” operations.

Furthermore, disloyalty may result in the loss of any legal support by the inditee or defendant and the suppression of economic support financed by the hirer<sup>7</sup> to the family of the hitman.

The criminal organisation that gives support to these actions also provides assistance for the hitman upon investigation or prosecution, with licit services and fake IDs that allow for the hitman to deceive the authorities and remain a fugitive.

Normally, the hitman idealises the organisation of which he is a member, thinking that all members are out of reach and protected against prosecution by justice.

In fact, some demonstrate a clearly distorted perception of this world, fantasising about their contribution to society as entrepreneurial citizens who are responsible for hundreds of jobs, living some sort of glorious, prestigious, and profitable side of this life, without leaving behind the visible machist component of understanding the continuity of the exploitation of women as being “natural” or that women accept the practice of sexual services “because they want to”.

The motive of the hiring person and the hitman is, undoubtedly, the “easy money”, but they develop a process of permanent achievement, which comes from a continuous dissatisfaction, since the earnings are usually not enough for

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<sup>5</sup> In the crimes for hire, the agent is a fundamental piece to the practice, since he is responsible for planning the crime of murder and the preparation of the hitmen, even offering legal protection by lawyers.

<sup>6</sup> They usually say that they are merely friends and benefactors of the girls who were prostituted by their intermediation, although they participate actively in the strategies of the criminal organisation.

<sup>7</sup> Usually, the family of the hitman is supported by the hirer for as long as the lawsuit or the time in prison goes.

them. This behaviour leads to plans and actions even more daring and significant from a financial perspective.

We have observed that, according to data from the Research on Women, Children and Adolescents Trafficking for Commercial Sexual Purposes (Pestraf) in 2002 and 2003, of the Ministry of Justice, women without any prior connection to prostitution were also procured by the trafficking networks.

According to this research, the trafficking procures mainly women between 18 and 30 years of age, predominantly single and available to leave the country, with low education, without any real job, or traders, debt collectors, small business owners, hairdressers, typewriters, manicurists, saleswomen, liberal professionals, and realtors (but of course, the shame of many women in identifying themselves as prostitutes may cause some distortion in the data), taken, in their majority, to countries of romance language.

Usually, and as said before, the international trafficking uses the natural hope to which all unemployed and poor people are submitted, promising advantageous job opportunities with enough pay to support the victims themselves and their relatives back in Brazil, without any differentiated professional qualifications attached, such as cleaning maids, telephone operators, or hotel receptionists.

Many women leave Brazil in a clandestine form, but many leave legally, with the procurer providing their passport and plane ticket and even buying them new clothes and giving them providential trips to the hairdresser. The procurers also promise that the jobs in foreign countries will last a season of 3–6 months, with the possibility of indeterminate continuation, according to a posterior deal that may be made. In general, whole-body pictures of the candidates are provided to catalogues and private registers of the involved parties.

Upon arrival at the destination and reception by strangers, with whom they had contact in Brazil, women are generally taken to the brothel that they thought was a hotel, being informed that they must leave their tickets home and their passports with the owner.

Invariably, the victims are informed, right on the first night, of the amount they owe to the owner, which is the entire investment made so far, including the clothes, the expenses at the hairdresser, and the plane tickets, together with the daily costs at the “hotel”, as well as all of the food (that must be prepared in the establishment).

They are also informed of their actual duties, to be performed with the clients and established on a price list that varies according to the minutes of “activity”, where only a percentage of what is raised by each woman is destined to pay her debt. They are informed that, when the debt is completely paid, their tickets and passports will be returned to them.

It must be clarified that the condoms are also charged to the women and may be acquired in the establishment, and the women are informed of the fines in case of not working in the open hours of the place (generally, from 4 p.m. to 4 a.m.) or going over the minutes “purchased” by each client without additional charges.

The victims are also informed that they must not leave the premises without the consent of their “bosses”, nor are they allowed to make any phone calls without proper supervision.

It must be observed that, as mentioned, the fact that the woman, whether she is already a prostitute or not, consciously accepted to submit herself to prostitution does not repeal the crime, since the consent of the victim is irrelevant in face of acts of fraud, deception, or abuse of power or of a position of vulnerability in the sexual exploitation or practices similar to slavery.<sup>8</sup>

## 4.7 Transgenerational Psychological Effects

Another aspect that must be studied is related to the emotional consequences in the victims of the crimes mentioned in this chapter, in the perception that individuals are biological, psychological, and psychosocial entities, as well as the emotional wound that may be transmitted from generation to generation, if not properly healed.

According to Schutzenberger (1997, p. 31), each family establishes its rituals and behavioural patterns that may be repeated and may be passed on from generation to generation, uncritically, if they are not clarified, talked about, and re-evaluated.

The author says:

Let's say, in simple terms, that, in the birth and even inside the uterus, the child, the person receives a certain number of messages: names and surnames are transmitted, an expectation towards the things the child has to maintain or avoid. This can be positive and/or negative. There is a projection on the child, for example, of "the perfect picture of grandpa Jules", and soon people assume that the child will be an explorer, an adventurer, or maybe a "bad person" like the child's uncle; the child will become a scapegoat; or the child will be dressed in the skin of a dead person that must be replaced. Like the fairies around the bed of Sleeping Beauty in the woods, they will soon say and predict things, impositions, scenarios, a future; saying these things or not saying them, in a heavy and secretive silence: that is what will 'program' children"

(Schutzenberger 1997, p. 31).

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<sup>8</sup> Art. 149 of the Criminal Code has been altered by Law n. 10.803, of December 11, 2003, stating that

Art. 149 – Reducing someone to a condition analogue to slavery, whether by submission to forced labor or exhaustive work hours, whether by submission to degrading work conditions, or by restriction, by any means, of their freedom by reason of debt entered into with the employer or its proxy:

Penalty - reclusion, from 2 to 8 years, and fine, aside from the penalty corresponding to the violence.

§ 1º Is subject to the same penalties the person that:

I – hinders the use of any means of transportation by the worker, with the purpose of keeping him in the workplace;

II – keeps ostensive vigilance in the workplace or takes away documents or personal objects of the worker, with the purpose of keeping him in the workplace.

§ 2º The penalty is increased by half, if the crime is committed:

I – against a child or an adolescent;

II – by reason of discrimination of race, color, ethnicity, religion or origin.

What I am talking about, therefore, is the possible fixation of roles for the woman within the family to serve the needs of complex family obligations. Thus, the episode of prostitution in the family may cause some sort of expectation that the prettiest or the most sensual daughter of the prostituted woman, in case of financial difficulty in a certain age (birthday syndrome), dedicates herself to prostitution in the same way her mother or her grandmother did, providing support to the other members of the family, in some sort of private family loyalty and loyalty to the victimisation itself, reviving and perpetuating the family myth.

It is noted, then, that the consequences of the crimes may reach further generations of the victim, in the form of invisible loyalties founded in unconfessable secrets based on family myths.

## **4.8 Support to Victims and Social Prevention**

These crimes are of difficult prevention by the police and of complex elucidation, since they necessarily require reports by victims, family, or friends.

Furthermore, the conducts involved in these crimes are undeniably discriminated against, with a patent tendency for contempt towards victims by the responsible authorities, who are unaware of the seriousness of such conducts to the dignity of victims and of the applicable legislation, with laudable exceptions.

I believe the initial step for an effective combat to such crimes is the perception of the genuine situation of the women involved, which is to see them as victims of poverty, of greed and luxury, of our own practices, and of lost hope or dreams that never came true. These women are explored in their illusions of a better life and vilipended in their body and spirit, destroyed in their dignity and self-esteem, although they endeavour to show, so many times, with a histrionic shamelessness and a certain nonchalance to facts, that they were conscious of their activities and that they performed them willingly.

It must be observed that many of the women involved have romanticised their situation, still believing that, one day, they will “leave this life” and marry a rich and caring foreigner, with whom they will raise a respectable family in a stable and lasting love connection.

One may observe, as said before, that it is the invisible and machist way of living, shared even by some women and still valid in our society, that “authorises” prostitution and admits the silence because of the economic and social power over the people who are being explored. Another typical concept among our middle class is related to the perception of prostitutes as dirty and contagious people, sources of everything that is bad and wrong, which is why they are seen as deserving of “punishment” for the life they live, without any sort of care or attention.

Aside from the need to fight poverty, incest, and sexual violence suffered in childhood, which push women out of their families and to the depths of prostitution, we also need to address this way of living with the certainty of the solution being obviously political, directly affecting the men that use prostitution services as well.

It must be noted that the appointed measures are connected not merely to typical criminal repression but also to costly fines and even State intervention, in the form of forced liquidation of companies created or used in a preponderant way in the trafficking of women, like the prescription on article 24 of the Environmental Law<sup>9</sup> (Law 9.605, of February 12, 1998).

In fact, I believe that the only possible prevention is *social prevention*.

Such measures may be implemented with more access to education and health, with access of women to the formal workplace, with higher control and vigilance in frontier regions, and with immediate training of authorities in charge of issuing passports in personal interviews with women suspected of future prostitution.

Besides, the dissemination, by means of any format of media, of information that may help to prevent trafficking and that allows for people to report such practices and the giving of informative leaflets when issuing passports or even printing leaflets with instructions towards reporting such conducts with travel documents and/or passports are other simple measures of prevention.<sup>10</sup>

## 4.9 Legalisation of Prostitution

The current situation of prostitution is confusing in international legislation, with adult prostitution being legal in most countries (the Netherlands, Germany, and New Zealand, to name a few) and illegal in the United States (with the exception of ten cities in the State of Nevada), India, Argentina, and Muslim and communist countries.

The rules vary according to the roles involved: a prostitute, a client, or a procurer. Therefore, in Switzerland, it is illegal to pay for sexual services but not to sell them. In the Netherlands, it is illegal to be a client or a procurer of a prostitute aged under 18 but to be a prostitute is not, unless the client is aged under 16 years.

In 1980, in the United States, many states raised the penalties for prostitution in cases in which prostitutes knew that they were HIV positive, demanding that people arrested for prostitution be subject to an HIV test and, when positive, informed that any future prison for prostitution will be charged as *felony prostitution*, with a penalty ranging from 10 to 15 years in prison. In Brazil, such conduct would be framed as a crime of risk of venereal contamination (Art. 130 of the Criminal Code, with a penalty of 3 months to 1 year, and if the intention is to transmit the disease, penalty of 1–4 years) or risk of contamination of severe malady (Art. 131, with a

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<sup>9</sup> Law 9.605/98, Art. 24—The legal person created or used, preponderantly, with the purpose of allowing, facilitating or hiding the practice of crimes defined in this Law, shall have its forced liquidation ordered, its assets considered instrumental to the crime and, as such, lost in favor of the National Penitentiary Fund.

<sup>10</sup> In regard to local prostitution, we may think of the obligation of hotels, inns, and flats to communicate to the police any suspicious transit of guests, especially foreigners, with escorts, and the same should be applied to travel agencies, car rentals, restaurants, bars, and clubs.

penalty of 1–4 years and fine) or risk of life or to the health of other (Art. 132, with penalties ranging from 3 months to 1 year, if the fact does not constitute a more serious crime).<sup>11</sup>

The Brazilian legislation does not proscribe prostitution as a crime but states in the Criminal Code, besides the already mentioned crimes, the conducts of *Mediation for Service to the Lewdness of Other* (art. 227—to induce someone to satisfy the lewdness of others—penalty of 1 to 3 years of imprisonment), *Facilitation of Prostitution* (Art. 228—to induce or lure someone to prostitution, to facilitate prostitution, or to stop someone from abandoning prostitution—penalty of 2 to 5 years of imprisonment), *Ownership or Maintenance of Brothel* (Art. 229—to maintain, by oneself or by a third party, a prostitution house or a place designed for encounters of libidinous purpose, with or without the intent of profit or the direct mediation by the owner or the manager—penalties of 2 to 5 years of imprisonment and a fine), and *Ruffianism* (Art. 230—to profit from the prostitution of others, to participate actively in its profits, or to support oneself, in whole or in part, by someone who practices prostitution—penalties of 1 to 4 years of imprisonment and a fine).

Many people think that the *legalisation or the decriminalisation* of prostitution would bring dignity and professionalism to women in prostitution, arguing, basically, that (a) adult prostitution should be the object of the same form of freedom of expression, religion, and trade applicable to other work fields, and the Government cannot make this kind of choice for the people involved; (b) the legalisation of prostitution will bring the management of such conducts, banning the procurers and preventing clandestine prostitution; (c) the legalisation shall bring social security rights to women, aside from a better medical support, preventing sexually transmitted diseases; (d) legalisation will dignify prostitution just like any other line of work.

One of the main questions about this involves knowing whether dignifying prostitution will extend to the prostituted woman or, in other words, if the legalisation or the decriminalisation of prostitution will bring dignity solely to the sex industry. I question, therefore, if the “consumers” of the female activities would be accepted as legitimate consumers of sex and if the woman in such activity would be accepted as a common worker. I believe our hypocrisy does not go that far.

Furthermore, if even companies or traditional fields evade taxes, what would happen if prostitution was legalised? The legalisation/decriminalisation of prostitution would not make clandestine prostitution disappear, whether to evade the taxes charged, whether for not complying with the demands certainly made in terms of health vigilance of the establishments or as a way to preserve the anonymity of women.

It is widely prejudiced to speak of public health control through the monitoring of prostitutes only as to sexually transmitted diseases, since they are obviously also transmitted by men.

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<sup>11</sup> With the possibility of attempted murder.



One should also examine with detail what is understood by “freedom of choice”, since, as said before, most women in prostitution have not made a rational and truly free choice when entering such activity but have simply made a choice for survival.

Besides, to legalise prostitution seems to be a simple way of saying to politicians that they do not need to worry about improving the conditions of the population, since there will always be the route of prostitution, abdicating of the responsibility of promoting a decent and acceptable job.

In Brazil, human dignity is identified as the basis for our democratic State of law (art. 1, III of the Constitution of 1988); such legalisation is constitutionally prohibited, which does not take away the need to support and defend the people who are exploited in such activities.

### Conclusion

We started the twenty-first century with the sad acknowledgement of not being as evolved as we thought we might be, as far as the treatment offered to our peers is concerned. There are still those who exploit women in the same way that others used to, when the Criminal Code of 1940 was edited, which means that there are still people *inducing women, whether by abuse of their weakness or poverty, whether by coercion through intimidation or threat, to submit themselves to the trafficking for prostitution.*

Organised crime and a vast web of illegal operations in various countries of origin, transit, and destination characterise the trafficking of women, and to fight against it, it is necessary to create and maintain an equally vast array of preventive and repressive measures, including the protection and the assistance of the victims all the way to the international judicial collaboration. The Convention of the United Nations against Transnational Organized Crime, better known as the Convention of Palermo, indicates the governmental measures that must be enacted for such combat, with applicable national legislation.

However, only society, becoming aware of the seriousness of the offence to human dignity that women trafficking elaborates, is capable of making women slavery disappear, a form of slavery that is translated into prostitution and international trafficking of women. Then, perhaps, we may stop, in the words of Victor Hugo in *Les Misérables*, negotiating with famine, poverty, isolation, and abandonment.

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# Chapter 5

## An Overview of International Human Trafficking in Brazil

Márcio Anselmo and Guilherme Fernandes

**Abstract** This chapter aims to present an overview of international trafficking in persons in Brazil. The chapter will present a general overview of the Brazilian law dealing with the issue of international trafficking in persons, analysed from the perspective of international norms. The government action in the formulation of public policies on human trafficking is also analysed by the Brazilian National Policy for Combating Trafficking in Persons and the National Plan to Combat Traffic in Persons. At the end we show some data obtained from criminal investigations of the Brazilian Federal Police, the agency responsible for investigating crimes of international trafficking in persons.

### 5.1 Introduction

The issue of trafficking has been the subject of several recent studies in Brazil. Leal and Leal (2002) was the first study to draw a picture on the trafficking of women, children, and adolescents for sexual exploitation in Brazil, although subjected to harsh criticism for its methodology by Banchette and Silva (2012, pp. 107–125).

Illes et al. (2008) and Cacciamali and Azevedo (2006) studied the Bolivian trafficking for labour exploitation in the city of São Paulo; Piscitelli (2004, 2005, 2006) analysed the trafficking for sexual exploitation; and Castilho (2008) discussed the context of the Feminist Theoretical Criminology, critical to verify if the judges evaluate the facts in the gender perspective.

On the other hand, some recognise the need for studies and diagnostics on the subject (Campos et al. 2011, p. 245; Blanchette and Silva 2012, p. 108), since the report of the UNODC, *The Globalization of Crime: the Transnational Organized Crime Threat Assessment* (2010, pp. 44–49), points to Brazil as a major market supplier of human trafficking, as well as other reports from international organisations (UNODC 2006, 2009), based almost exclusively on work by Leal and Leal

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(2002) and their derivatives in English, as well pointed out by Blanchette and Silva (2012, pp. 107–125).

In this chapter, we describe the Brazilian criminal law for trafficking in persons, examined in the light of international norms; we treat the public policies that combat trafficking in persons; and, in the end, we present some data obtained from criminal investigations conducted by the Brazilian Federal Police.

## 5.2 International Human Trafficking in Brazilian Law

Cacciamali and Azevedo (2006) classify human trafficking as the crossing of persons over boundaries. At the destination, those persons will be the subject of exploration by deceit, coercion, or violence. It is not important if the crossing over is made by illegal ways or not. But it is necessary that a previous intention of exploration and abuse of the person who will be crossed over boundaries exists.

Normally, the human trafficking victim wishes to emigrate because she is looking for better life opportunities, of any order: economic or social. So the baiter offers her better work conditions at the place of destination, eluding the victim with attractive employment offers. However, when the victim arrives at the promised place, she is taken to a precarious environment and finds herself in situations such as captivity, slavery by debts, prostitution, and illegal human organs trafficking.

The concept of human trafficking can be found in the Protocols that supplement the United Nations Convention against Transnational Organized Crime: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, adopted by General Assembly Resolution 55/25, which has entered into force on December 25, 2003, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly Resolution 55/25, which has entered into force on January 28, 2004.

According to the United Nations Office on Drugs and Crime (UNODC), the States that ratify the instrument commit themselves to take a series of measures against transnational organised crime. This includes the creation of domestic criminal offences (penal types), the adoption of new and sweeping frameworks for extradition, mutual legal assistance, and law enforcement cooperation. Nevertheless, as this is not sufficient, the States must also enforce the promotion of training and technical assistance to build or upgrade the necessary capacity of national authorities.

In trafficking in persons, the victim's consent is irrelevant. Furthermore, in case of any children being involved—children being anyone under 18 years old—the transport, housing, or reception, with the aim to explore, is by the mere conduct itself trafficking in persons.

In turn, the trafficking of immigrants is defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air. Its third article determines that immigrant trafficking means the promotion, with the aim to obtain, directly or

not, a financial benefit or just a material benefit from the illegal entrance of a person into a foreign land.

In the trafficking of immigrants, a greater relevance is given to the consent of the victim than in the trafficking of persons because, in this case, the consent of the victim makes a difference. It is relevant. Moreover, the trafficking of immigrants always involves the crossing of boundaries, while the trafficking of persons can take place from a region to another region of the same country. It means that it can happen inside a unique country.

Human trafficking—conglobating the two modalities—demands a high capacity of interaction with criminal networks, principally related to countries connected to drug trafficking. In this manner, it can achieve ways of eluding to preserve its obscurity, for example looking for alternative routes, corrupting boundary control authorities, using violence, and anything else. In an ordinary way, the recruitment occurs in the country of origin, but it can also occur during the journey or in the destination place, by a person or a “specific recruitment agency”, which can be legal, working just as a frontispiece.

Cacciamali and Azevedo (2006) affirm that the transportation of persons involves individuals who facilitate the trafficking between countries. It means that they facilitate not only in the origin but also during the journey and in the destination. Once in the destination, the persons are kept by several ways of coercion: violence, physical restriction of liberty, fraud, imprisonment, or confiscated documentation—ordinarily, in the beginning of the journey, the mediator confiscates the documents of the victim.

Although there are tenuous differences, trafficking in persons and trafficking of immigrants are mixed and normally occur at the same time. The Brazilian law adopted both international documents by Decree 5.017 and 5.016 of 2004.

In the Brazilian Penal Code, article 231 typifies the action of promoting, intermediating, or facilitating the entrance into national territory of a person who is about to be prostituted. It also punishes the person who promotes, intermediates, or facilitates the going out of another person to be prostituted outside of Brazil. This criminal type is located in chapter V of the Brazilian Penal Code, which deals with pimping and international trafficking in persons. This article aims to protect sexual public morality and sexual liberty (Delmanto et al. 2007). The punishment for this penal type is deprivation of liberty from 3 to 8 years and a pecuniary penalty, if there is an aim to obtain any profit.

Article 231-A typifies the action of promoting, intermediating, or facilitating, inside the national territory, the recruitment, transport, transfer, housing, or reception of the person who will be prostituted. While article 231 criminalises international trafficking in persons, article 231-A aims to criminalise internal trafficking in persons. It means internal activities that contribute to involve persons in sexual exploration. Article 231-A also aims to protect sexual public morality and sexual liberty (Delmanto et al. 2007). The punishment for this crime is the same as in article 231.

In both articles, the victim can be a person of any gender; they are not restricted to the protection of women. The crime delineated by article 231 is completed with

the effective entrance or exit. So it is not necessary for the victim to be prostituted. In its turn, article 231-A completes itself with the recruitment, transport, transfer, housing, or reception of the victim. It is also not necessary to effectively prove prostitution; the mere intent is sufficient (Delmanto et al. 2007).

In the Penal Code, there is an article 239 that belongs to the Children and Adolescent's Law (ECA—Estatuto da Criança e do Adolescente). This article defines as crime promoting or assisting the action of sending a child or an adolescent to another country without regarding the legal ways of doing it or with the aim to obtain any kind of profit. The agent delineated by this article is anyone who is neither the father nor the mother. This crime is completed with the mere action of sending the child or adolescent to another country disregarding the legal formalities. The concrete exposure of the child or adolescent to a material or moral danger is not necessary. The crime is also completed when the criminal sends the child or adolescent regarding legal formalities but looking for profit (Castilho 2008). The punishment for this crime is deprivation of liberty from 4 to 6 years and a pecuniary penalty.

In the same statute, there is article 244-A. It describes as a crime the conduct of sexual exploitation of children or adolescents. The penal type of this article does not consider a crime the action of sending the child or the adolescent to another country but typifies the result of sexual exploitation. In this manner, it is possible to consider that this article is also applicable when the child or adolescent is a victim of trafficking with the purpose of sexual exploration. The punishment for this penal type is 4–10 years of imprisonment and a pecuniary penalty.

There are other important articles among the Brazilian law that relate to human trafficking. They are not directly related to human trafficking, but they contemplate important actions. Article 207 of the Brazilian Penal Code deals with the enticement of workers inside the national territory. It delineates as a crime the action of seducing workers to take them to other places inside the Brazilian territory. To complete the crime, the agent must act ambidextrously. In other words, it requires fraud or error, using false information and false promises to convince them to go to another place to work. The punishment for this criminal offence is detention from 1 to 3 years and a pecuniary penalty.

Human trafficking survives not only from sexual and labour exploitation; some criminal networks deal also with trafficking in pieces of the human body. For this reason, there is Law no 9.434 of 1997, which typifies, from article 14 to 20, crimes related to the promotion, intermediation, facilitation with the aim to obtain any profit from pieces of the human body. It is a crime to remove tissues, organs, or any part of the human body without regarding the formalities of the law. It is also forbidden to remove tissues, organs, or any part of a living person (Castilho 2008).

Law 6.815 of 1980, the Foreigners' Law (Estatuto dos Estrangeiros), also includes some penal types that describe actions as crimes related to human trafficking. Article 125, XII, delineates the act of introducing a foreigner illegally into the Brazilian territory. It is also a crime to hide an irregular foreigner inside the national territory. Article 125, XIII, in its turn, delineates as a crime false declarations in legal proceedings for visa, foreigner registration, alteration of foreigner

registration, false information on legal proceedings of naturalisation, or false information to obtain foreigner passport, laissez-passer, or exit visa (Cahali 2010). The punishment for the criminal offence in article 125, XII, is 1–3 years of liberty privation and for the criminal offence in article 125, XIII, is 1–5 years of liberty privation. If the criminal agent is a foreigner, he can be expelled from Brazilian territory.

Bringing this overview of the Brazilian law related to human trafficking to a conclusion, it is very important to highlight that the Brazilian Penal Code has a peculiar definition of criminal organisation. Article 288 of the Penal Code defines “gang or band” as the association of more than three persons with the aim to commit crimes (Castilho 2008). The punishment for this kind of criminal association is 1–3 years of liberty privation, doubled if the association has guns or any kind of weapons—it is not necessary that all the members of the association have a weapon; it is sufficient that just one has any type of weapon, and it does not matter if the weapon is a gun or just a “piece of wood” (Delmanto et al. 2007). Nevertheless, there is no specific penal type for international criminal organisations. This is relevant because the rules of the Palermo Protocol related to international trafficking demand the involvement of a criminal network or a criminal organisation. So if the crimes of all these above-mentioned articles are committed by one to three persons, they are not, under the Brazilian laws, a case of human trafficking because there is no criminal organisation action. On the other hand, if more than three persons are involved, it can be described as human trafficking.

### 5.3 National Policy to Counter Trafficking in Person

Establishing an action plan is the key to tackling the problem from the government perspective. The Brazilian National Policy for Combating Trafficking in Persons was approved in 2006, with the participation of the ministries, prosecutors, and representatives of civil society, and represented a milestone in the formulation of policies to prevent and combat trafficking in persons (Leal 2011, pp. 252–254). According to Campos et al. (2011, p. 241), it was a great starting point.

The work, which was a starting point to prepare a report of government actions and programmes, was subjected to debate aiming to define the guidelines of the Brazilian state intervention in this area.

The proposal was submitted to public consultation, with the participation of the organised civil society, and generated debates, public lectures, and seminars in Brazil. It included the participation of various nongovernmental organisations, professionals, students, and government agencies involved in the theme of human trafficking.

The National Policy to Counter Trafficking in Persons establishes a set of guidelines, principles, and actions directing the Government in order to help the fight against trafficking in persons. The document is presented with three strategic

goals: prevention, suppression of trafficking and accountability of the perpetrators, and support to the victim.

Article 5 presents specific guidelines for preventing trafficking in persons: (a) implementing preventive measures in public policies, in an integrated and cross-sectional way, on health, education, labour, security, justice, tourism, social assistance and rural development, sports, communications, culture, human rights, among others; (b) supporting and carrying out educational and awareness raising campaigns at international, national, regional, and local levels, considering the different realities and languages; (c) monitoring and assessing the campaigns with the participation of the civil society; (d) strengthening the already existing projects and fostering the creation of new projects for the prevention of the trafficking in persons.

Specific guidelines for combating human trafficking are outlined in Article 6: (a) cooperation among national and international law enforcement agencies; (b) international legal cooperation; (c) confidentiality of judicial and administrative procedures, pursuant to the law; and (d) integration among the law enforcement agencies and law enforcement actions against the perpetrators of the related crimes.

A third section (Section 8) provides specific guidelines for victim assistance: (a) legal, social, and medical protection and assistance for the direct and indirect victims of trafficking in persons; (b) consular assistance for the direct and indirect victims of trafficking in persons, regardless of their migration status; (c) harbouring and temporary sheltering of the victims of trafficking in persons; (d) reintegration in society, with assurances as to education, culture, work training and opportunities, for the victims of trafficking in persons; (e) reintegration in the family and in the community of children and adolescents who were victims of trafficking in persons; (f) providing of attention to the victims' specific needs, with special attention being given to issues of gender, sexual orientation, ethnic or social origin, place of birth, nationality, race, religion, age, migration situation, professional activity, or other status; (g) protection of the identity and privacy rights of the victims of trafficking in persons; (h) surveying, researching, updating, and disclosing of information on government and nongovernment institutions, located both in Brazil and abroad, that provide assistance to victims of trafficking in persons.

The document provides a set of actions in the areas of justice and public security, foreign affairs, education, health, welfare, human rights, protection and promotion of women's rights, tourism, and culture to implement the policy to combat trafficking in persons.

In 2008, the National Plan to Combat Trafficking in Persons was presented by the Ministry of Justice, in order to provide for concrete actions. It was prepared by an Inter-Ministerial Working Group, with representatives from various public agencies, prosecutors and the civil society, experts, and international organisations.

The document has a preventive focus, aiming to reduce the vulnerability of certain social groups regarding the trafficking in persons, especially with the formulation of public policies to combat the structural causes of the problem.

As for the treatment of the victims, an important point is the fact that the document makes no distinction between domestic and foreign, also ensuring the

treatment of foreigners trafficked to Brazil. In the axis of prevention, the provision of information, especially research on trafficking in persons, and the training of professionals working with the theme are identified as priorities.

The repression and accountability of the offenders are also included in the document, which encourages international legal cooperation with the negotiation of bilateral and multilateral repression treaties, as well as the coordination of joint actions.

According to Campos et al. (2011, p. 241), the Plan intends to build a concrete programme, with clear identification of priorities, actions, goals, the agency responsible for each measure, partners, and deadlines.

#### **5.4 International Trafficking in Persons Investigated by the Brazilian Federal Police**

As was already discussed earlier, the criminalisation of international trafficking in Brazil is found basically in two legal prescriptions: the crime under Article 231 of the Penal Code, which involves international human trafficking, and the crime under Article 239 of the Children and Adolescents Law in this specific protection.

The Report of the United Nations (UN), *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010, p. 44), points Brazil as a major supplier in the market of human trafficking for sexual exploitation.

From existing data systems in the Brazilian Federal Police (Departamento de Polícia Federal 2012), it was possible to identify, in the period from 1999 to 2011, the existence of 475 investigations for the crime of international trafficking in persons, with 721 offenders formally charged by the police for the crime under Article 231 of the Criminal Code (International trafficking of people for purposes of sexual exploitation: Promote or facilitate the entry in the national territory of someone who will be involved in prostitution or other forms of sexual exploitation, or to recruit and take abroad someone who will exercise it outside the country).

The Federal Police data systems show the distribution of the persons indicted, according to sex and age, with a female predominance (54 %) over men (45 %). Regarding age, data indicate that women between 23 and 27 years old are the majority and, as for men, those between 28 and 32 years old. The predominance of young women in the crime is justified by the strategy of the offender in winning the confidence of the victims, facilitating the approach.

The vast majority of foreigners indicted for the crime of international trafficking in persons in Brazil are Spanish (Guinn 2008, p. 137) and Portuguese citizens, which also coincides with the major routes for this type of crime. Regarding the victims identified in Spain in 2006, Brazilian and Paraguayan citizens exceeded 30 %, overcoming the position previously occupied by Colombia (UNODC 2010, p. 51).



Besides the crime of international trafficking in persons, in the investigations carried out by the Brazilian Federal Police (Departamento de Polícia Federal 2012), criminal liability for other crimes was also identified: in 243 cases, the crime of “formation of gang” was also committed, which in Brazil is the association of more than three people in a gang or band with the purpose of committing crimes (art. 288 of the Penal Code); in 80 cases, there was also the practice of *rufianismo*, which involves taking advantage of the prostitution profits of another person (art. 230 of the Penal Code); in 44 cases, the facilitation of prostitution (art. 288 of the Penal Code); in 24 cases, the internal trafficking in persons (art. 231-A of the Penal Code); and in 22 cases, crimes of falseness (art. 297 and art. 299 of the Penal Code).

It is important to note here that, as you can see, in those 721 cases in which criminal responsibility was assigned to the crime of trafficking in persons, 243 cases also involved the crime of gang or band (art. 288—Criminal Law—*quadrilha ou bando*), which corroborates that the crime, as a rule, is practised by criminal groups, especially transnational corporations.

At this point, it is important to remember that Brazil does not criminalise the act of being part of a criminal organisation itself, despite having ratified the Palermo Convention (Decree No. 5015 of March 12, 2004, promulgates the UN Convention against Transnational Organized Crime, as it was above mentioned), in total violation of Article 5 of the Convention, which establishes the obligation to criminalise the participation in an organised criminal group.

As a consequence, the Supreme Court (STF, 2012) has recently decided not to fit the concept of organised criminal group provided for in the Palermo Convention as an antecedent crime for money laundering (structured group of three or more persons, existing for some time, and acting in concert with the aim of committing one or more serious crimes or offences set forth in this Convention, with the intent to obtain, directly or indirectly, financial or other benefits). This decision has a direct impact on the issue involving the criminalisation of money laundering because trafficking in persons, the third most profitable crime, second only to drug trafficking and weapons, accounts for approximately 10 billion dollars a year (UNODC 2010, pp. 16–17).

Therefore, according to the position of the Supreme Court, it remains impossible in Brazil, considering the terms of the current money laundering law, to actually punish money laundering arising from the trafficking in persons, since the Brazilian law provides as a precedent crime in this matter only drug trafficking and weapons (art. 1, I and III of Money Laundering Law no 9.613/98).

For the crime under Article 239 of the Children and Adolescents Law (Promote or assist the enforcement of the act intended to send a child or adolescent abroad without observing legal formalities or with a view to profit), there is no record of 109 procedures, with 221 counts of the crime and 218 accused persons.

## Conclusions

Today, human trafficking is one of the most lucrative criminal activities, and it is extremely hard to be identified. The complexity it involves, and the vast ways in which it occurs, makes very hard not only its combat but also the appropriate law production regarding its prevention and repression. Human trafficking has a large capacity for being in touch with other different types of criminal activities, involving criminal networks and criminal organisations that deal with trafficking of weapons, trafficking of drugs, money laundering, among others.

In spite of this diversity and relation to other types of crimes, many countries focus their law production in preventing and reprimanding sexual exploitation, trying to distinguish trafficking from illegal immigration. Brazil is a good example of it. As it could be seen in this work, the Brazilian law has a clear concern for dealing with sexual exploitation, lacking answers, for example, for labour exploration.

Moreover, there is an evident lack of meeting between the Palermo Protocols and the Brazilian type for criminal organisation. The crime of “gang or band” (art. 288, Brazilian Penal Code) is not sufficient or suitable to contemplate the definition of organised crime. Nevertheless, it is this type that dictates what organised crime is in the Brazilian law. So there is not a clear definition of what organised crime really is, harming in the heart the meeting of the Brazilian criminal system with the international law related to human trafficking.

In this sense, the Brazilian Supreme Court (STF) decided that it is not possible to apply the money laundering article of the Brazilian Law, which punishes crimes of money laundering made by criminal organisations, because they understood that there is not an article in Brazilian law that punishes this type of crime. Moreover, human trafficking is also not described as a crime that can be related to money laundering. So, in this way, it is not possible to punish this type of crime.

Concluding, it is not difficult to observe that the Brazilian law has to be reformulated. It is clear that it does not meet with the international law on human trafficking. So it is urgent to modify this legal treatment regarding a better dealing with the prevention and repression of human trafficking in Brazil and South America.

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# Chapter 6

## The Spanish Action Plan Against Trafficking in Women: Policies and Outcomes (2008–2011)

Luz María Puente Aba and Agustina Iglesias Skulj

**Abstract** This contribution aims to analyse the design and implementation of policies against trafficking in Spain. In 2009, 63 % of the countries had adopted measures against trafficking in general, while 16 % had adopted measures to combat only certain elements contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons. The Spanish case is included in the latter group. In this chapter, we aim to explain the outcomes of the counter-trafficking policies drawing on feminist debates around sex trafficking and prostitution.

### 6.1 Introduction

The subject of “trafficking in women” has received increased international attention in the last decades. Regardless of the human rights documents sanctioned during the first decades of the twentieth century and the recent ones, this subject continues to be addressed as a matter of controlling borders and sexuality.

This chapter aims to analyse the design and implementation of the policies against trafficking in Spain. According to the Executive summary of the Global Report on trafficking in persons of the United Nations Office on Drugs and Crime (UNODC) in 2009—containing information from 155 countries and territories on measures to combat trafficking—in November 2008, 63 % of the countries had adopted measures against trafficking in general, while 16 % had adopted measures to combat only certain elements contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Protocol). The Spanish case is included in the latter group.

The three main policy dimensions to combat trafficking in human beings—prosecution, protection, and prevention—lead to the proposal of the *Plan to combat*

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*trafficking in women for sexual exploitation* (Ministerio de Igualdad 2010)<sup>1</sup> in Spain. This 3-year plan was created by the former Ministry of equality in 2008 and continued under the auspices of the Ministry of Health, Social Policy and Equality.

The central point in this chapter is to analyse two interim results from the implementation of the Plan produced and published by the Secretary of State of Equality in order to develop accurate policies about sex trafficking. However, before evaluating the results, it would be useful to make some remarks on the problems of implementing these policies by Spain. Through this perspective, it is possible to understand how the relationship between women and control is transformed and institutionalised (Marugán and Vega 2002), from the construction of women as subject (Butler 2006, pp. 120 ff.).

Spanish policies are based on abolitionist stance that conflates prostitution with sexual exploitation, as stated in the report on the “Current situation of prostitution in Spain” (INFORME DE LA PONENCIA PARA EL ESTUDIO DE LA SITUACIÓN ACTUAL DE LA PROSTITUCIÓN EN ESPAÑA 2007). However, this perspective represents both epistemological and political obstacles in defining what trafficking actually means. Furthermore, this issue is framed with the myth of “white slavery” that becomes a metaphor for a number of fears and anxieties in the twenty-first century and still permeates politics today (Doezema 2000, 2010; Maqueda Abreu 2009a, b).

Indeed, during the discussions prior to the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime (2000), the consensus of a definition of the crime was focused on the issue of prostitution. Therefore, trafficking should be defined in a context where the repressive control of irregular migration, moral issues, and the defence of human rights converge. It would seem that trafficking in women has become a position marked by moral panic embedded with fears of foreigners, immigrants, criminals, terrorists, and globalisation. Within this framework, it is often difficult to disentangle these fears from actual concern over the fate of trafficked women themselves (Berman 2010).

The conflation of trafficking and prostitution also produces a *genderisation* of the Protocols, while the active subject in smuggling is a male; in the case of trafficking, we find women “victims” or children. This situation reveals how the territory of the body is controlled and governed while determining the subject capable of protection versus the subject capable of punishment.

In this definition, the key element is exploitation, which is described as covering 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

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<sup>1</sup>The Plan is available at [www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/DOC/PlanIntegralTSHconFES\\_Cst.pdf](http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/DOC/PlanIntegralTSHconFES_Cst.pdf) and [http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/DOC/PlanIntegralTSHconFES\\_Ing.pdf](http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/DOC/PlanIntegralTSHconFES_Ing.pdf) (English version).

removal of organs. In other words, while trafficking is not confined to prostitution-related exploitation, sexual exploitation remains the paradigmatic understanding of trafficking. Yet the crucial word “exploitation” is not defined. As a result, issues of coercion or choice are left open to debate (Askola 2007).

The notion of *female vulnerability* has been tackled in fervent feminist debates within various disciplines. Feminist and activists have lobbied governments to direct resources, laws, and social policy towards tackling violence and discrimination against women. More recently, feminist activists and scholars have attempted to move beyond the binary opposition between equality/discrimination in feminist theory in order to incorporate a more nuanced understanding of vulnerability. However, this perspective has had mixed outcomes. On one hand, in all European Member States, gender mainstreaming has become an important issue through a variety of mechanisms such as Treaty provisions and Directives concerning access to employment, equal pay, and maternity protection. On the other hand, within the human trafficking agenda, there is a pervasive language of vulnerability, which provides unique insights into how the government invokes discourses of female vulnerability (FitzGerald 2011, p. 158). As a result, the concept of vulnerability denies autonomy to migrant women and affects sex workers with even more violence.<sup>2</sup>

In this regard, the Council of Europe in its Resolution passed on May 19, 2000 (OJ C 59, 23.2.2001, p. 307), defines the vulnerability in the context of trafficking as “the result of coercion and an irregular administrative situation”. This definition, which identified vulnerability with the lack of rights of irregular migrants, assimilated the behaviours of those who illegally cross the border to those who are subject to violation of human rights in situations of exploitation. Even though they were sanctioned in separate Protocols, the confusion between the smuggling of migrants and trafficking was equated in the concept of vulnerability in the Spanish Criminal Code until 2010 (Maqueda Abreu 2009b, pp. 1250 ff.).

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<sup>2</sup> Why is the image of migrant women as victims so powerful? Once again appears the myth that was accompanied by the design of policies for more than one century: young, innocent women and foreign traffickers, beneath which lurk fears and anxieties for alleged invasion of the nation by foreigners, the unstoppable expansion of capitalism, and terror to the independence of women and their sexuality. The consequences of this myth are the negation of autonomy of women and their project vital and more sharply in what is the scope of their sexuality. It is also necessary to take into account the colonial approach of Western feminists, aimed at perpetuating the presumption of “minority and helplessness” of women in the “third world” (Mohanty 2008; Puwar 2008). This *genderisation* tried to deal with the meaning of “consent”. However, as reflected in Directive 2011/36/EU of the European Parliament and the Council for the prevention and combating trafficking in human beings and the protection of victims, which replaces Framework Decision of the Council 2002/629/JHA in order to establish a more comprehensive concept of situations in which trafficking can occur and what it should be understood by exploitation, stated that consent cannot be overridden *tout court*, but that must be evaluated on a case-by-case basis. Obviously, when the trafficking affects children, the consent may not, under any circumstances, be taken into account. Furthermore, article 177 bis of the Criminal Code set out in paragraph 3 that “the consent of a victim of trafficking in human beings will be irrelevant when it has resorted to one of the means indicated in paragraph of this article first”.

## **6.2 Politics and Prostitution**

The Spanish policy on prostitution belongs to the abolitionist model. In fact, outdoor and indoor prostitutions are neither prohibited nor regulated by the State.

With the introduction of the Criminal Code in 1995, much of the behaviour connected with prostitution was decriminalised. Although legislative attention focused more on exploitation rather than the internal market of prostitution, this situation would change in 1999.

### ***6.2.1 Prostitution-Related Crimes and the Offence of THB***

The Criminal Code prohibits the inducement of someone to enter into or continue to engage in prostitution if the inducement is by coercion, exploitation of a situation of hardship, or abuse of a position of superiority. The punishment is a fine of 12–24 months and imprisonment of 2–4 years (Article 188.1). Article 187.1 also penalises anyone who induces, promotes, fosters, or facilitates the prostitution of a minor. Punishment is imprisonment of 1–4 years and a fine. However, criminal responses to the phenomena of trafficking in human beings for the purpose of sexual exploitation have changed in recent years. In 2000, the Penal Code included a general offence of smuggling in human beings (Article 318 bis) and a specific offence of trafficking of human beings for the purpose of sexual exploitation (Article 188.2). A reform enacted on September 29, 2003, integrates the two offences in the same article (318 bis). Sex trafficking applied only when the person was an illegal migrant. In 2003, a new paragraph was included that punishes the sexual exploitation in the realm of smuggling of migrants (Article 318 bis 2).

In 2010 (LO 5/2010, 22/6, reform of the Criminal Code), a new reform incorporates Art. 177 bis, which incriminates the offence of trafficking in human beings as a consequence of the commitments made in international documents and the EU. So far, Article 318 bis became obsolete because it dealt with two different criminological realities jointly and with great technical imprecision. However, this problem largely persists because article 318 bis is still in force and remains unmodified with this reform.

### ***6.2.2 The Plan Against Sex Trafficking (2008–2012)***

The Plan is organised into three chapters. The first chapter defines trafficking from the conventions and agreements in force. The second chapter of the Action Plan describes the methodology. Lastly, the third chapter points out the five areas of intervention: measures of awareness, prevention and investigation, education and

training, assistance and protection to victims (legislative and procedural), and measures of cooperation and coordination.

Furthermore, the plan is guided by three principles. First is the need to adopt a gender perspective whereby women are more likely to become victims because of the lack of education and opportunities. The second principle holds that human trafficking cannot be disengaged from prostitution, while the third focuses on the transnational character of the phenomenon. The last principle holds that the crime of trafficking requires effective police and judicial action. Although the document emphasises the importance of not confusing trafficking in human beings with the smuggling of migrants, it states “both trafficking and smuggling occur through causes established by irregular migration networks”. The chapter on methodology emphasises the lack of reliable data for the integral Plan. In this regard, it affirms that “Trafficking in women and children exists because the prostitution of a large percentage of female migrants is in the hands of networks”. In this sense, the former Minister Bibiana Aído, in an interview published on July 18, 2010, in *El País*, refers to the Plan of the Government as the first time where there is an instrument to fight against sexual exploitation. She continues claiming that migrant women represent 90 % of prostitutes, comparing the situation of these women to slavery. However, these claims contradict UN data estimating that only one in seven women are victims of trafficking. Lastly, when the journalist asked a question regarding the regulation of sex work, she replied that it would not be processed as it affects only 10 % of women and therefore does not require a priority intervention.

Neither these figures nor the Plan is supported by any statistics, studies, or previous research on this phenomenon. The absence of data—while partly justified by the difficulty of quantifying a very complex phenomenon recognised by the UN, IMO, etc.—in the case of the Plan is due to what scholars have called the “strategic figures”, i.e. the analysis of the real problems is replaced by abstractions, which maintain the stigmatisation. By assuming that forced prostitution refuses to submit to testing, abolitionism insists on the lack of freedom. No one in their right mind would opt for the exercise of prostitution.

### **6.2.3 Problematic Data**

The contemporary obstacles presented to the implementation of a strong anti-trafficking regime are further aggravated by the ambiguous analysis of this area (Munro 2005). Statistics vary widely between the various agencies involved (police, immigration, sex workers and abolitionists, human rights activists, and social service providers), reflecting both a pervasive lack of reliable intelligence and a potentially divisive conflict of interests among relevant stakeholders.

While there are grounds for suggesting that the extent of sex trafficking in the EU may be overestimated, the equation of sex trafficking and prostitution has taken an axiomatic status in policy debates. This conflation is especially significant given the current anxieties about the perceived porosity of national boundaries within the



EU (Hubbard et al. 2008, p. 139). Consequently, trafficking counter-policies are framed not so much as a problem of morality but one of security, with the putative re-emergence of the ‘white slave trade’ triggering multiple initiatives intended to protect the sovereign spaces of the EU as much as the sovereign bodies of women (Aradau 2004, p. 253). For instance, the European Parliament has prioritised police cooperation to halt trafficking, encouraging the “harmonization of judicial and criminal laws” to prevent “one of the most dangerous threats in the Member States of the EU”. EU-sponsored programmes (including STOP I & II, 1996–2002; DAPHNE I & II, 2000–2008; and Stockholm Programme 2010–2014) collate information on sexual trafficking to encourage cooperation between EUROPOL and European police forces, while the EU Framework Decision on combating trafficking 2002/629/JHA calls on member states to develop “effective, proportionate and dissuasive” policies for traffickers, recently replaced by the Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on the prevention of and the fight against the trafficking in human beings and the protection of victims.

The Spanish Plan reveals how the protection of vulnerable women involves a system of race and gender profiling that reinforces stereotypes of helpless and naïve women who are allegedly unaware of the vagaries of life in the West (Kempadoo and Doezema 1998). The Plan against Trafficking states: “In order to ensure the prompt and accurate identification of victims of trafficking we have developed a best practice toolkit for front line immigration, police officers and other professionals who may come into contact with victims”. Moreover, the ongoing battle for ascendancy among competing conceptualisations has had tangible impacts on the strategies deployed to address the occurrence of trafficking and upon the balance between repressive and empowering measures afforded to the parties involved (Savona and Stefanizzi 2007). Different agencies and stakeholders, motivated by the dictates of their respective institutional or campaign agendas, have tended to adopt variable combinations of these contextual frameworks.

It is clear that although Spain professes to support an inclusive approach that extends beyond sexual purposes, it has solely focused on the domestic level of trafficking for the purposes of prostitution. Clearly, what characterises the ‘wrong’ of trafficking activity in this context is neither a component of control nor a component of coercion but rather the exploitation deemed inherent in the prostitution activity itself. This outlook is reaffirmed by the fact that, in the most recent legislative provisions, the language and concepts used to define harm in trafficking activity are identical (save the element of transportation) to those used to define harm in instances of domestic prostitution (Art. 188 and Art. 177).

Perhaps this is the aspect that most affects the daily lives of sex workers. Despite the efforts to develop protocols of good practices and the study of organised crime that the annual report announces, those affected by police pressure maintained an attitude of rejection of the State security bodies; the police is perceived as an enemy rather than an ally. According to Amnesty International, “in the absence of adequate identification procedures, the first contact of the victims with staff workers of the state occurs usually within the framework of police actions of control of

irregular migration, on premises for prostitution or on the street”. Generally, the security forces, in this first speech, do not follow any protocols with a view to identifying victims of trafficking and “(...) police officers usually start from the first contact with the victims a procedure of expulsion, even in cases in which they are interested in filing the complaint” (Amnesty International 2009, p. 40).

All this demonstrates that the police continue to act without protocols. Instead, they use the detention of irregular migrant sex workers as a strategy to try to identify victims of trafficking in police stations, which often concludes with the expulsion of the women (Ación and Checa 2011).

### 6.2.4 Backgrounds

Before being approved at the end of 2008, the draft of the Plan received criticism from NGOs, such as the Spanish Network against Trafficking, the Pro Human Rights of Andalusia Association, and some sex worker’s rights organisations. The criticism was directed at the lack of distinction between the crimes of smuggling and trafficking that resulted in a purely security-based approach and criminal prosecution. Critics pointed to the lack of procedures and specific protocols for the identification of victims more than the derivative of the submission of the complaint and the obligation to cooperate in the criminal process. Critics also demanded the need for clearer concepts to avoid confusing situations as different as prostitution and trafficking for the purpose of sexual exploitation, as well as the need to cover other types of trafficking, like labour.<sup>3</sup> These remarks were also pointed out by the global report on trafficking in persons from the United Nations Office on Drugs and Crime in 2009<sup>4</sup> and the report on human trafficking of the Office to monitor and combat trafficking of the US State Secretary (Office to Monitor and Combat Trafficking in Persons Trafficking in Persons Report 2010).<sup>5</sup>

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<sup>3</sup> See Genera [www.genera.org.es](http://www.genera.org.es); Hetaira [www.colectivohetaira.org](http://www.colectivohetaira.org); Asociación Pro Derechos humanos Andalucía [www.apdha.org](http://www.apdha.org); Amnesty International, [www.es.amnesty.org](http://www.es.amnesty.org); Ación and Checa (2011).

<sup>4</sup> This report details the measures taken to combat trafficking in human beings from 155 countries. In 2008, 63 % had adopted measures against trafficking in general, while 16 %, including the Spanish State, had adopted measures to fight a manifestation of this crime only. This criticism is also made in the Report to the Chairman, Committee on the Judiciary and the Chairman Committee on International Relations House of Representatives, GAO 2010.

<sup>5</sup> <http://www.state.gov/g/tip/rls/tiprpt/2010/142761.htm>.

### 6.3 The Outcomes and Shortcomings of the 2010–2011 Plan

The reports published to date on the assessment of the measures set out in the comprehensive Plan reported on the preparation of three studies: a report for a description of the phenomenon of trafficking (University of the Laguna/Institute for women), other resources in the field of the country's autonomous regions (CCAA), and another report on the proceedings.<sup>6</sup> None of these studies are published or available.

The first evaluation of the results of the Plan published in April 2010 stated that at State level, seven specific shelters for victims of trafficking had been identified for the purpose of sexual exploitation (Madrid, 3; Extremadura, 2; Cantabria, 1; Castile-La Mancha, 1). In addition, 55 shelters that cater to victims of sexual exploitation or women were found in areas of prostitution. One dozen public and private centres, despite not offering resources for victims of sexual exploitation and female victims in areas of forced prostitution, provide attention to victims.

There are not enough assistance programmes for victims to cover the whole country. The regional administration is responsible for providing assistance to victims. Because they lack specific technical staff, victims are often directed towards existing shelters that provide assistance to victims of gender violence. On other occasions, social organisations contact the International Organization for Migration (IOM) in Spain and, for the repatriation of the victim, the PREVIE (programme for the voluntary return of immigrants from Spain), which provides a small amount of money for the trip (50 €). Sometimes they seek the possibility of financial support for reintegration into their country of origin, an amount that usually makes it possible to create a small business in their country, with the promise of moving away from prostitution. The result is that a fund to ensure reparation for damage suffered by the victims (via compensation) lacks any budget in Spain.

The Plan also addresses awareness-raising campaigns aimed at combating prostitution (carrying out a number of exhibitions and distributing coasters and stickers), denouncing prostitution, and campaigns in the press with the slogan “say no to prostitution” or “without clients there is no trafficking” in the context of the campaign “Blue heart” of the United Nations Office on Drugs and Crime.

In the report submitted in June 2011, the prohibition of advertisements in newspapers set the focal point of the strategy to fight trafficking in women for sexual exploitation. This report also proposed the elaboration of a framework protocol for the protection of the victims and the extension of the Plan for another year.

Concerning the prosecution of the offences reported to police interventions, these have increased by 164 % in 2009. According to the national police and Civil Guard, almost all the complaints of trafficking occur after carrying out raids

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<sup>6</sup> Despite repeated attempts during this research to receive these studies, to date none of the people contacted by email have sent some kind of answer.

or police inspections in local bars or flats. In this report, they concluded that 95 % were migrants and all of them were victims of organised crime. However, they complain that there are “very few women who voluntarily come forward to file a complaint”. Collaboration with justice is precisely the weak point in taking actions to combat trafficking, since the victims do not go through with the complaint or “disappear” after filing the complaint, making it impossible to initiate proceedings, according to the State security forces. On one hand, as the Attorney General’s annual report from 2010 argues, the main cause of this inadequacy between procedures of prostitution control and the number of complaints is due to the difficulty of getting the women to collaborate. However, despite carrying out 885 inspections of places where there were indications of crimes in 2009, only 392 statements were taken. On the other hand, the problems that occurred in the field of criminal justice prior to the enactment of article 177 bis, such as the subordination of the protection of human rights to the illegal nature of the person, together with cases of trafficking in women for the purpose of sexual exploitation sentenced in the light of Article 188, gave rise to reports from NGOs and international institutions that complain about the lack of discrimination between the trafficking and prostitution with the third parties involved.

The Parliament passed a reform of the Criminal Code of article 177 bis, and the reform of article 59 bis of the Alien Act to adapt it, not only to the directive but also to the Council of Europe Convention on action against trafficking in human beings, and to accompany these changes it also reformed the rules of procedure.<sup>7</sup> These reforms incorporated as *specially regulated situation* the figure of the victim of trafficking in human beings, for the purpose of both sexual exploitation and labour. These measures also apply to potential victims of human trafficking who are nationals of a Member State of the European Union. The Report on the outcome of the Plan in 2010 states that the protection of victims is covered by the inclusion in the Aliens Act article 59b, which provides for the restoration and 30-day cooling-off period granted to the victims of trafficking willing to collaborate in criminal procedures, with the authorisation for temporary stay during the same and suspension of the disciplinary proceedings instituted or the implementation of the agreed measures of expulsion or return. However it complies with the Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on the prevention of and the fight against trafficking in human beings and the protection of victims and which replaces the Framework Decision (2002/629 /JHA).<sup>8</sup> These

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<sup>7</sup> (Royal Decree 557/2011, April 20, which approves the regulation of the organic Law 4/2000, on rights and freedoms of foreigners in Spain and their social integration, after its reform by Law 2/2009). (Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009).

<sup>8</sup> In 2009, Spain was convicted by the Court of Justice of the European Union for the infringement in the transposition of Directive 2004/81/EC—right of residence of nationals of third countries who are victims of trafficking in human beings or have been the subject of an action to facilitate illegal immigration and to cooperate with the competent authorities (Judgment of the Court (Sixth

legal reforms continue to subordinate the granting of the period of reflection, visa, and assistance to the prior complaint and collaboration in criminal prosecutions (this rule contradicts Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on the prevention and the fight against trafficking in human beings and the protection of victims, replacing Framework Decision 2002/629/JHA). Its paragraph 15 states that the success of the investigations and procedures of the crimes of trafficking cannot be borne by the complaint by the victim.<sup>9</sup>

As in many European national laws, the illegal migrant worker can “earn” the status of a victim who qualifies for a resident’s visa when considered “fully cooperative” by the State in the investigation and prosecution of her traffickers. This resolves the trafficked woman’s contradictory position as both the victim and perpetrator of a crime, leaving her solely as a passive victim in need of state protection. But women removed from the site of their transgression via incarceration and deportation are delinked from the position of agents, in which they would be able to testify against the actual criminals and act in the interest of the state. It would seem that the use of the gendered and racialised panic narrative that reinforces state anti-immigration discourses allows state agents to claim to have cracked down on criminals and fortified borders in the name of protecting women (Berman 2010, pp. 91–92).

Meanwhile, statistics from the Organized Crime Intelligence Center (CICO) of the Spanish Home Office reported that in 2010, 335 organisations were dismantled and 1,641 women were identified as victims (this shows an increase of 26 % over the previous year). However, in the proceedings that ended in convictions, none of them were capable of demonstrating any relationship with the trafficking or criminal organisations. This situation may change with the reform of the Criminal Code, although there is still no data on the application of article 177 bis. These statistics also state that approximately 70 % of women who are forced into prostitution in Spain come from Romania and emphasise the lack of cooperation by these women in filling complaints. In fact, according to studies carried out in the Czech Republic, Poland, and Romania (trafficking in persons towards Europe for the purpose of sexual exploitation, UNODC 2010) the majority of victims are recruited by acquaintances, friends, or relatives (Andrijasevic 2010).

The police and the Civil Guard state in their reports that “in most cases we are not dealing with criminal organizations”. Faced with this evidence, the Spanish network against trafficking designed the basic guide for identification, referral, and protection for persons trafficked for exploitation. This document states that the

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Chamber) of May 14, 2009—Spain (case C-266/08)) (1) (“State non-compliance—Directive 2004/81/EC—right of residence of nationals of third countries which are victims of trafficking in human beings or have been the subject of an action to facilitate illegal immigration and to cooperate with the competent authorities—not complete alignment of national law—non-communication of the ‘adaptation of domestic law measures’”).

<sup>9</sup> Despite improvements that include the new reform in relation to gender-based violence, Amnesty International wants to alert that immigration control still has more weight than the protection of the human rights of victims.

reason for the lack of complaints or the abandonment of the complaint is the mechanism used by traffickers to establish romantic relationships with their victims who are later submitted to trafficking through deception or coercion. Furthermore, an article published by *Project Hope*,<sup>10</sup> involved in the network of the Plan, states:

We can understand that these women are victims of trafficking, which could be called “structural trafficking”, as in these cases the figure of the arrester, or the capture phase does not exist, but it is the economic structure of countries of origin who “expel” these women, and the host country (in this case Spain) who through the immigration laws and the lack of access to legal work, puts them in a vulnerable situation which leads to the exercise of prostitution (. . .) It could be argued that gender inequality operates at the origin, relegating women to the role of mothers and wives, thereby limiting opportunities for self-development in their countries, and in our country; this inequality offers spaces where these emancipated women, although not free, are relegated to the category of objects of male consumption. In addition, women continue to be exploited when they send money to their families.

As the analysis of the report shows, any assistance to trafficked persons remains secondary or is assumed to occur through arresting traffickers. Comprehensive assistance programmes to actual victims remain either optional for states to implement (as in the UN protocol) or conditioned by the victim’s cooperation with the authorities (as in the Spanish law). Moreover, because the visas granted to persons who cooperate are temporary and contingent on the duration of prosecution, they leave trafficked persons in the undesirable position of being returned to the place from where they wanted to escape, as well as being vulnerable to the criminals who initially trafficked them. They appear to be nothing more than “tool[s] for the prosecution” (Pearson 2002, p. 56).

By creating some provision for residency permits, this law seems to recognise that the ability to migrate and work abroad is a central, rational component of what trafficked persons seek. But because they require prosecutorial cooperation, they equally turn trafficked persons into instruments of the state. It is only in acceding to this instrumentalisation that a trafficked person can be recognised by the state as rational, a recognition that remains contingent until the state action (investigation and prosecution of criminals) is complete. Those who do not accede are assumed not to have this rational foundation for their decision to migrate, and the receiving countries simply return them home.

Another measure taken at the police level provides for the creation of a new automated system of border controls that will make it possible to compare the fingerprint and facial image of the bearer of the document through the chip it includes and to check the existence of criminal records or police complaints on the registry of arrivals and departures.

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<sup>10</sup> The Spanish network against trafficking developed a basic guide for the identification, referral, and protection of persons trafficked for purposes of exploitation, available at <http://stoptrata.mzc.org.es/descargas/guiabasicaidentificacionderivaciondevictimimas.pdf>; also in this line see “Integral health and trafficking in women”, *Revista Voces*, no 9 (spring-summer 2010), <http://voces.proyectoesperanza.org/>; and “La trata de personas en el mundo y en España”, [http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle\\_prensa&dc=313](http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle_prensa&dc=313).

## 6.4 Final Remarks

The shortcomings listed so far result from the gender perspective and abolitionism with which the policies are designed, meaning that the Plan refers only to sex trafficking conflated with prostitution, overlooking all other forms of trafficking in human beings. This was the starting point for the 2010 annual report of the Ombudsman's Office. Allegedly, there are no policies regarding male or child victims of other types of trafficking, when there are tools for detection or prevention in areas such as agriculture, the garment industry, or home care.

The Ombudsman's report emphasises the failures of the enforcement of the Aliens Act by the security forces and by personnel in detention centres as regards the period of reflection or the residences. The consequence is the high number of expulsions of irregular victims. Given this situation, the Ombudsman pointed out the "need to identify the problem" and claimed that the State security forces have to be trained to recognise the victims as an "urgent" need, in order to make effective the mechanisms provided for in the Plan and legislation. Due to the number of complaints received and the lack of attention from the various agencies to submit the required information, the Ombudsman's Office has published a special monographic report on trafficking in human beings.<sup>11</sup>

The feminist mainstream describes a movement that embraces the artificial nature of the demarcation between the various categories of abuse of human rights, the sex-gender system, the irregularity of the immigration status, and the growing flexibilisation of the labour market, particularly for migrant women. Victims of the crime of trafficking in women represent a paradoxical category, in which three government technologies converge: as illegal migrants, they are subject to expulsion; when they engage in sex work, they are persecuted, without taking into account their decision; and, last but not least, as victims of trafficking, they are constantly redefined with increasingly restrictive criteria as part of their reintegration and rehabilitation through re-educational programmes and other psychological forms of therapy, supporting them in considering themselves as subjects who act autonomously while respecting the rules (Convention of the Council of Europe on the fights against trafficking in human beings, Warsaw, 2005, Articles 10 ff.). Indeed, the victims subjected to treatment must develop a new image of themselves, must testify against traffickers, and finally return to their countries of origin and seek productive work that is not sex work (Baucells i Lladós 2006; González Zorrilla and García Arán 2005, pp. 296 ff.).

The proposal to criminalise prostitution in order to combat sex trafficking and the exploitation of migrant workers in the sex sector is often based on a simplistic view of the sex industry and the way the sector operates. To focus on anti-trafficking efforts and policies on the buyers as those causing the demand, and/or

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<sup>11</sup> DEFENSOR DEL PUEBLO (2012), *La trata de seres humanos en España: víctimas invisibles*, Madrid, available at [www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Informe\\_Defensor\\_del\\_Pueblo\\_trata.pdf](http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Informe_Defensor_del_Pueblo_trata.pdf).

on “traffickers” as exploiting migrant labour, diverts attention from the much wider economic, social, and political context within which the sex industry is located, and, in particular, for the purposes of our argument here, it diverts attention from the role played by residency and employment regulations in the destination states.

This approach also reduces women’s migration and participation in the sex industry to the idea of (sex) slavery and simplifies social relations by viewing them exclusively in terms of patriarchal oppression or criminal activity, leaving no space for sex workers’ agency. Moreover, it adds force to the idea that trafficking is equivalent to coerced and illegal migration and fosters an imaginary clear-cut separation between “legal” and “illegal” forms of migration (Andrijasevic and Anderson 2008).

Sex trafficking narratives occlude the rationality of the putative trafficking victim and the complicity of receiving countries in their trafficking. By doing this work, the narrative helps to construct a trafficked population that can and must be managed, and it also allows the management of this constructed population to perpetuate an economy of “irregular” migration in the interests of global labour markets rather than, as states would claim, helping to block or manage irregular migrants and assist trafficked persons (Berman 2010, p. 86).

Indeed, women who have been abused are “saved” through the previous building of their role as victims with pathological features, which makes them a subject at risk from a risk factor itself (Aradau 2008, p. 98). The construction of the “adequate victim”, i.e. traumatised women, prevents the autonomy and decision about their sexuality having political significance (Marugán and Vega 2002; Aradau 2008, pp. 108–113).

What is in question in the “fight against trafficking for sexual exploitation” is the emergence of new migrant subjectivities, as the change in borders produces effects not only on the nation state but also on the rules that control gender. It is necessary for policies to respond to the multiplicity of living situations and the autonomy of women who choose to engage in sex work as one option, among others, in the current situation of the labour market (Maqueda Abreu 2009a; Juliano 2002).

At the very least, counter-trafficking policy needs to recognise that controlling borders and bodies, stricter penalties for traffickers, and the criminalisation of trafficked women themselves are insufficient to address the global movement of women. In this regard, the Spanish policy designed to fight trafficking in human beings needs to (a) consider the problem in relation to the global movement of women, laws, and gender issues that affect them; (b) remove the conflation of trafficking and sex work; and (c) interrogate assumptions that are presented as the “reality” when they are merely ideological frameworks regarding “morality” in relation to gender, sex work, and migration, among others.



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# Chapter 7

## Victims, Villains, and Valiant Rescuers: Unpacking Sociolegal Constructions of Human Trafficking and Crimmigration in Popular Culture

Edith Kinney

**Abstract** Increasing media attention to human trafficking in the U.S. has expanded awareness of the issue and mobilised campaigns for new anti-trafficking laws aimed to rescue victims and punish those who exploit them. This chapter analyses the sociolegal construction of the subjects of this narrative: victims, villains, and valiant rescuers. Drawing on investigative journalism, television shows, and movies that depict the “war against human trafficking”, I examine the framing of “trafficking” through narratives of crime, sexual risk, and crimmigration. The dual role of law as an instrument for vindicating victims and policing the risks posed by trafficking reflects the influence of “governing through crime” politics and “carceral feminism” in American anti-trafficking efforts. The sociolegal construction of trafficking subjects in American popular culture reveals the important influence of public frames processes in developing the criminal justice response to trafficking that typifies American responses to the problem.

### 7.1 Introduction

Human trafficking re-emerged as a hot topic in the U.S. media in the 2000s. Although men, women, and children are trafficked into a variety of sectors, “sex trafficking” has dominated both political discourse and popular representations of the problem. Those sensationalistic representations are typified by narratives of captivity, sexual violence, and criminality. Spurred by stories of innocent women and children trafficked by ruthless gangs of foreign criminals and exploited as “sex slaves” by pimps and sadistic “johns”, a “new abolitionist” movement has forged an unusual alliance between the Left and the Right: activists, politicians, and

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celebrities of varying political convictions have joined forces to combat human trafficking (Chapkis 2003; Berman 2006; Bernstein 2010). Almost always, such efforts call for increased mobilisation of criminal justice institutions to rescue innocent victims and punish the criminals who exploit them.

Public conceptions of human trafficking as “modern-day slavery” are shaped by a spate of documentaries, exposés by investigative journalists, television crime dramas, and feature films that reveal this “hidden crime” to the viewer. Popular knowledge of trafficking does not come only, or even primarily, from official reports. Most pop culture portrayals of human trafficking focus on its sexualised dimensions. The sexualised depictions of trafficking in the popular media help construct popular and political understandings of the phenomenon. Media representations of trafficking not only (re)produce “narrative conventions and rhetorical tropes commonly used to depict sex trafficking” but also “[establish] methods for gathering facts and arriving at conclusions about prostitution and sex slavery” (Soderlund 2011, p. 193). Moreover, the constitutive relationship between law and society suggests that media portrayals of trafficking both reflect and inform anti-trafficking enforcement efforts and can shape “law in action”. Indeed, media attention to trafficking stimulates public calls for government officials and law enforcement to address trafficking and prostitution.

This chapter examines how popular representations of human trafficking operate to construct the legal subjects of anti-trafficking campaigns and to promote a law-and-order response to the issue. Using three case studies, I illustrate how journalistic exposés and “crime dramas” construct sex trafficking as “an object of humanitarian action, law enforcement intervention, and human rights policy”, shaping both public understanding and official responses to the issue (Soderlund 2011, p. 193). First, I explore the role of investigative journalism in anti-trafficking using as an example of such journalism Landesman’s (2004) *New York Times Magazine* article “The Girls Next Door”. That article illustrates the blurry line between fact, fiction, and infotainment in investigative reports about trafficking in the U.S. Next, I examine the 2008 Hollywood thriller *Taken*, starring Liam Neeson, an ex-CIA operative whose extralegal quest to rescue his kidnapped daughter from Eastern European sex traffickers reveals a web of foreign corruption, crime, and moral decay. Finally, I evaluate the 2005 Lifetime Television cable miniseries *Human Trafficking* to explore this example of direct collaboration between media, advocacy organisations, and government agencies in efforts to raise awareness of trafficking and illustrate the role of the police and immigration officials in anti-trafficking crackdowns. The miniseries captures the tough-on-crime and anti-prostitution politics that dominated American anti-trafficking campaigns in the mid-2000s.

In each of these three depictions of trafficking, trafficking is framed as an imminent danger comprised of migrant criminality and ubiquitous sexual exploitation, to which only aggressive law enforcement tactics can respond effectively. The representation of trafficking as a “cimmigration” issue in popular culture demonstrates the important effect of media on legal consciousness, as media

portrayals of crime and justice shape not only beliefs about trafficking but also practices of legal institutions responding to trafficking.

## 7.2 Theoretical Framework

### 7.2.1 *Legal Consciousness: Popular Representations of Crime and Trafficking*

Public conceptions of law, justice, and rights are shaped by formal and informal legal institutions. As most people lack a formal legal education, “legal consciousness” and understanding of the legal system primarily come not from knowledge about courts or major cases but from diffuse sources, including popular culture and day-to-day social interactions (Ewick and Silbey 1998). This constitutive theory of law, whereby law both constitutes and is constituted by social relations and cultural practices, enables scholars of law and society to assess how “[l]aw enters social practices and is, indeed, imbricated in them, by shaping consciousness, by making law’s concepts and commands seem, if not invisible, then perfectly natural and benign” (Sarat and Kearns 1995, p. 31).

Portrayals of law in films represent “not only a valid source of information on popular attitudes toward law but also a form of legal discourse, a constituent of law itself” (Rafter 2007, p. 229). Examples of the impact of popular culture on legal consciousness abound. For example, “tort tales”, TV judge shows, and crime dramas have figured prominently in debates about legal issues (Haltom and McCann 2004; Elkins 2007; Wilson and Ackerman 2012; Tyler 2006). Depictions of crime shape the social construction of criminality and legality (Mason 2003). Consequently, cultural criminologists have proven that media representations of crime—particularly emotionally charged crimes such as sexual violence—affect people’s attitudes and assessments about actual crimes (Young 2008; Kovera 2002).

The dramatisation of crime in news, television shows, and films employs simplified narratives populated by simplified characters: criminals, victims, hero/heroine cops, corrupt officials, forensic experts, adversarial prosecutors, and amoral defence attorneys. Cultural images of crime are popular because they offer “a set of stories which address certain social anxieties in its audience” and are able “to render the messy and troubling complexities of law enforcement pleasurable by assigning them to the ancient simplicities of crime and punishment” (Sparks 1990, p. 123). Indeed, the standard moral pattern of “violation, discovery, punishment, and resolution” in conventional Hollywood crime films (Rafter 2006, p. 74) offers viewers the “dual satisfaction of vicariously partaking in transgression while providing reassurance that in the end order and the status quo will be restored” (Kohm and Greenhill 2011, p. 201).

Significantly, mass media studies have found that people tend to confuse different forms of media, such as entertainment, news, and commercials (Shrum 2003). As Tyler observes, “fictional depictions of crime and the criminal justice process can and do spill over to shape public views about the nature of crime and criminals”, as people fail to “discount fictional dramatizations of crime when making legal judgments” (Tyler 2006, p. 1062; Doyle 2003). Although some individuals may have direct experience with the criminal justice system, such knowledge is supplemented and contextualised with information from popular media. Indeed, studies show that mass media reports about crime rates are linked to fear of crime (Heath and Gilbert 1996) and perceptions of the seriousness of crime (Iyengar and Kinder 2010).

The prominence of crime in newspapers, television, and films reflects the fact that crime has emerged as an organising problem in both contemporary politics and public life more generally. In our “risk society”, fear of crime and the drive to respond to social problems through punitive, law-and-order solutions reveal a new form of “governing through crime” (Simon 2007). This dynamic posits the ideal citizen as a (potential) crime victim, as crime can serve as a “potent stimulant to political community” by “invest[ing] individuals with political subjectivity as victims, offenders, prosecutors and judges” (Simon 2000, p. 1128). Thus, to analyse the social construction of legal subjects and social control, David Garland suggests that one must consider not just the “controllers and the controlled” but also “the onlookers, whose sentiments are first outraged and then reassured” through the processes of crime and punishment (Garland 1990, p. 8).

Because popular media shape conceptions of law and legality, how trafficking is framed in the media shapes how it is defined in public discourse, who is posited as being “at risk” of trafficking, and what proposed solutions appear tenable (Benford and Snow 2000). Especially because statistics measuring human trafficking are notoriously unreliable, media representations are particularly likely to shape popular, academic, and policy understandings of the issue (Kempadoo et al. 2005; Weitzer 2007; Soderlund 2011; Government Accountability Office 2006). Media portrayals of law and legal institutions also shape public expectations of how these institutions should operate—how police officers should treat suspects, what kinds of evidence should be gathered, what should happen to/for victims, and how criminals should be punished. In addition, the increasing “celebritization” of human trafficking and the rise of celebrity activists as rescuers, “ambassadors,” and (often ill-informed) “experts” who advise political elites in law and policy forums reveals the powerful role pop culture plays in the anti-trafficking movement (Haynes 2014). Thus, assessing the sociolegal construction of crime, victims, offenders, and enforcers can offer insight into the mobilising power of crime frames for politicians and social movement activists, as well as the ways in which sought-after reforms are likely to be implemented in practice.

### 7.2.2 *Framing Crime, Risk, and Victimhood in the “War on Trafficking”*

The centrality of the idealised victim-subject in contemporary political discourse makes it a powerful mobilising icon for anti-trafficking reformers. “Crime frames” can underscore the urgency of a social problem and target certain populations as in need of or threatening security, inviting and legitimating government intervention. Actors operating in a political milieu dominated by governing through crime rhetoric can strategically “frame” movement issues in terms of crime, victimhood, and justice to generate support for proposed reforms. Though initially framed as an issue of women’s and children’s rights in the 1980s and 1990s, contemporary anti-trafficking laws and policy at the international and national levels tend to frame trafficking as an issue of crime and national security (Gallagher 2009). Driven by international efforts to combat transnational organised crime and stymie people smuggling, the criminalisation of human trafficking over the past 15 years—and generalised “crackdowns” on migration as a means to combat it—marks one front in the internationalisation of “cimmigration” (Chacón 2010).

As the “war on trafficking” is waged alongside a war on terror, a war on drugs, and crackdowns on illegal immigration, counter-trafficking initiatives exemplify the internationalisation of governing-through-crime politics that legitimate aggressive criminal justice approaches to a variety of social problems. The U.S., as the self-appointed “global sheriff” in the war against trafficking (Chuang 2006), uses its anti-trafficking policies, funding, and unilateral sanction regime as an “opportunity for statecraft” to “implement its foreign policy objectives through elements of its human rights agenda” (Bumiller 2008, p. 146). Although the U.S. promotes the “3 Ps” approach to trafficking—prevention, protection of victims, and prosecution of offenders—criminal justice and security objectives dominate U.S. anti-trafficking policies and programmes at home and abroad (Chacón 2006; Srikantiah 2007; GAATW 2007). In the post-9/11 era, representations of human rights violations in trafficking intersect with “cultures of security”, which are “textual and visual strategies that the state and media use to promote both fear of violence from some outside force and a promise of protection by the state as long as citizens comply with the ideological, political, and legal frames of regulation and control” (Hesford and Kozol 2005, p. 4).

Reductionist narratives of crime and victimisation figure prominently in discourses about trafficking. News articles emphasise crime as the “cause” of trafficking and focus on criminalised activities, particularly illegal immigration and prostitution (Gulati 2011). Efforts to raise public awareness about human trafficking often invoke the iconic victim-subject of the “sex slave” in need of rescue from evil traffickers, who are nearly always identified as noncitizen men of colour (Chacón 2010, p. 1616). Journalistic reports about trafficking reflect a “preoccupation with sex” that fails to track the legal definition of human trafficking that includes coerced labour in other spheres (Cheng 2008). Indeed, over half of articles assessed in a recent study of news coverage of “human trafficking” referred to the

issue in terms of sex trafficking, prostitution, or pornography (Gulati 2011). News reports commonly simplify or ignore the complex global dynamics that foster risky migration and exploitation, simultaneously decontextualising women's migration and sex work and obscuring women's agency (Cheng 2008).

Contemporary anti-trafficking discourses thus function as "cultural myths" that affect particular conceptions of migration, female sexuality, and the sex industry, reflecting "deeper fears and uncertainties concerning national identity, women's increasing desire for autonomy, foreigners, [and] immigrants" (Doezema 2000, p. 24; Doezema 2010). This problematic framing of trafficking evidences a process of "othering" both victims and offenders that not only mischaracterises the phenomenon but also misdirects reform efforts, impeding the effectiveness of legal responses to human trafficking (Todres 2009). Moreover, the sympathetic victims, villainous traffickers, and valiant rescuers who populate official and popular portrayals of human trafficking represent a way in which the crimmigration trend is normalised and legitimised. Securitising discourses about the risks of trafficking and calls to protect innocent victims from traffickers justify tighter border controls and enhanced surveillance of migrant communities, targeting both suspected offenders and potential victims "at risk" of trafficking.

The framing of trafficking as a sex crime and crimmigration problem helps explain why legal responses to "modern-day slavery" are both stimulated and constrained by popular attention to the issue. The emphasis on sexual risk and law-and-order interventions in contemporary anti-trafficking campaigns and popular representations thereof exemplify "governing through crime" politics (Simon 2007) and the rise of "carceral feminism" (Bernstein 2007). The U.S. anti-trafficking movement has been dominated by an unlikely alliance of "new abolitionists", including evangelical Christians and radical feminists (Bernstein 2010). Characterised by "militarised humanitarianism" and "carceral feminism", new abolitionists share an ideological framework that posits prostitution as "the literal antithesis of freedom", coupled with a neoliberal sexual agenda that "locates social problems in deviant individuals rather than mainstream institutions, that seeks social remedies through criminal justice interventions rather than through a redistributive welfare state, and that advocates for the beneficence of the privileged rather than the empowerment of the oppressed" (Bernstein 2007, p. 131).

The following case studies examine how trafficking victims, villains, and rescuers are constructed in popular media, including investigative journalism, television dramas, and Hollywood films. I explore how narratives of migrant criminality and sexual risk are deployed to legitimate law-and-order anti-trafficking interventions that raise troubling concerns with regard to the protection of victims' rights and the normalisation of "crimmigration".



## 7.3 Popular Depictions of Trafficking

### 7.3.1 “*Perfect Victims*”, *Migrant Criminality*, and the *Journalistic Sex Trafficking Exposé*

Over the past century, investigative journalism has played an important role in the cultural construction of sex trafficking as an object of moral reform, human rights, humanitarian, and criminal justice intervention (Cheng 2008; Langum 1994; Soderlund 2011; Walkowitz 1980). Indeed, “investigative journalism has become a dominant mode of knowledge production both in popular understanding of human trafficking and in policymaking”, as the public and legislators both rely upon journalists’ exposés of trafficking to support new anti-trafficking initiatives (Cheng 2008, p. 7). The blurry line between news stories about sex trafficking and its representation in popular culture is exemplified by Peter Landesman’s lurid (and contested) 2004 report, “The Girls Next Door”, in the *New York Times Magazine* (Landesman 2004).

As with other subjects of crime journalism, such reports posit an idealised victim subject—innocent “women and children” unwittingly trafficked into sexual slavery. The narrative conventions of innocents enslaved in prison-like brothels by foreign criminals and abused by monstrous clients have roots in late nineteenth-century campaigns against “white slavery” (Doezema 2010; Soderlund 2011). Landesman painted a graphic picture of a ubiquitous-yet-invisible epidemic of sex slavery in America. Drawing on a tradition of sordid journalistic depictions of white slavery dating back to the nineteenth century, Landesman’s exposé of sex trafficking bordered on the pornographic, trading on ‘allusions to the sex trade’s hidden nature and the reader’s potential for voyeurism’ (Soderlund 2011, p. 201). Indeed, under the suggestive headline “Sex Slaves on Main Street”, the front cover of the magazine featuring Landesman’s article pictured an anonymous girl sitting on a bed, wearing a Catholic school uniform and black knee socks; the camera angle positions the viewer so as to look up the girl’s skirt.

Landesman’s report introduced readers to the seedy underworld of the sex trade by invoking known, moralised archetypes. He combined first-hand accounts of commercial sex establishments, interviews with activists and law enforcement officials, and hearsay reports to describe the process by which young foreign girls were trafficked to satisfy U.S. demand for prostitution and the “increased appetite for more aggressive, dangerous sex”: abduction, “breaking in”, and sexual enslavement (Landesman 2004). Landesman “reiterated the popular, hystericised image of human trafficking: that young, innocent girls are tricked, kidnapped, beaten, and forced into a life of sexual slavery” by “vast, international crime syndicates” for enormous profits (Berman 2006, p. 289).

Unlike previous reports of trafficking in poverty-stricken countries, however, Landesman’s story emphasised traffickers’ breach of U.S. borders and criminal migrants’ infiltration of American suburbs. Reflecting the emergent crimmigration approach to trafficking, Landesman’s anti-trafficking narrative described the risks

of the “porousness of the U.S.–Mexico border and the criminal networks that traverse it” as the “main staging area in an illicit and barbaric industry” where international sex traffickers “subcontracted” *coyotes* to smuggle girls across the border (Landesman 2004). Landesman’s focus on migrant criminality pervades his descriptions of squalid brothels where young girls service migrant men for US \$4.50; Eastern European trafficking operations run as “well-oiled monoethnic machines”; and Mexican traffickers, as 12-year-old schoolboys, are given “one or two girls their age to rape and pimp out to begin their training, which emphasises the arts of kidnapping and seduction” (Landesman 2004). Combining the threat of sexual risk and migrant criminality, “The Girls Next Door” buttressed the view that “prostitution via sex trafficking has become . . . [a] threat to ‘our’ communities, ‘our’ women, and ‘our’ way of life” (Berman 2006, p. 289).

Intense criticism of Landesman’s reporting—including accusations that he fictionalised portions of the story—resulted in an Editor’s correction attempting to explain inconsistencies in his story (Shafer 2004). Despite these concerns with its veracity, the article was the basis of the 2007 Hollywood film *Trade*, starring Kevin Kline (Kreuzpainter 2007). *Trade* features a kidnapped Mexican girl and a young Polish woman tricked into the sex trade by the same nefarious gang. The film tracks the trafficked girls through a treacherous journey across the U.S./Mexico border to a stash house of sex slaves in New Jersey. Ultimately, the trafficked girl’s brother joins forces with Ray (Kline), a “Texas lawman”, to rescue the virginal girl before she is sold into sexual slavery in an Internet auction. After bidding US\$32,000 to buy the girl, Ray poses as a paedophile to pick up his “purchase” from the traffickers: she is dressed in a school uniform reminiscent of the girl posing on the cover of the *New York Times Magazine* for Landesman’s article. As Ray liberates the girl from the traffickers’ clutches, police raid the proverbial “house next door”, rescuing child sex slaves trapped in the basement, including one little boy. The rescued victims are assured that U.S. law enforcement officials are trustworthy—unlike the corrupt cops in Mexico—but this is where the rescued victims are promptly repatriated.

Before the closing credits of *Trade*, viewers are informed that the CIA “estimates that between 50,000 and 100,000 girls, boys and women are trafficked annually into the United States to be pimped out or sold for forced sex”: no specific evidence is cited. Official sources explain the paucity of data regarding victims of trafficking in the U.S. by stating: “we are not finding victims in the United States because we’re not looking for them.” This sets up a dynamic where awareness-raising reports by journalists and others in the “rescue industry” emphasise the scope, scale, and suffering of trafficking victims to trigger and justify law enforcement efforts to tackle the “hidden crime” of trafficking (Agustín 2007; Soderlund 2011).

The cultural resonance of this framing of trafficking normalises the harsh trend of crimmigration while concealing its more pernicious effects. Media coverage of anti-trafficking interventions rescuing and protecting (innocent) trafficking victims puts a “soft glove” on the “punishing fist” of American immigration enforcement (Chapkis 2005). The symbolic power of personal narrative about sexual suffering—

a classic feminist advocacy and journalistic trope—aims to trigger visceral reactions and serve as a “solidarity-inducing denominator”, simultaneously redeeming the sex slave and disidentifying her from the criminality associated with “illegal aliens” and voluntary sex workers (Aradau 2004, p. 262). Consequently, “the ability to invoke the plight of the unfortunate trafficking victim” and the “invocation of trafficking as a driving force behind [immigration] enforcement puts a human rights gloss on a border-enforcement model that, in fact, raises a number of serious human rights concerns” (Chacón 2010, p. 1642).

Anti-trafficking interventions facilitate not only the rescue and repatriation of trafficked persons but also legitimate expanded surveillance and policing of migrant communities. The risks posed by trafficking are embodied in the migrant—the transnational gangs of criminals who facilitate trafficking (and illegal immigration), as well as the unfortunate migrants who become their victims in a dark underworld of sexual slavery, drugs, and crime. Both offender and victim are framed in terms of criminality. Aradu argues that this “double identification” of (sex) trafficking victims as “illegal migrants and victims, prostitutes and suffering bodies” facilitates the confluence of humanitarian and security interventions, whereby those “at risk” of trafficking “insidiously metamorphose into ‘high risk’ groups” to be managed by government interventions designed to contain and prevent potential re-trafficking (or illegal re-migration) (Aradau 2004, p. 274).

Unfortunately, trafficked persons who fail to meet officials’ preconceptions of the “perfect victim”—one who exercises no free will during her illegal entry to the U.S. and who is an innocent, passive (child or female) victim of (sexual) exploitation rescued by law enforcement—may be denied immigration relief, as well as social, legal, and medical services (Srikantiah 2007; Todres 2009). Investigative reports like “The Girls Next Door” that sensationalise trafficking and emphasise the naïveté and passivity of women and children entrapped in sexual slavery contribute to the problematic construction of the “perfect victim”, inhibiting recognition of trafficking and forced labour situations by both the public and enforcement officials. Consequently, popular understandings of irregular migration, traffickers, and victims (versus “illegal aliens”) can shape actual enforcement practices as officials implement anti-trafficking reforms. When trafficked persons are “(not) found chained to a bed in a brothel”, unrecognised survivors may be charged for immigration- or trafficking-related offences and then detained, deported, and/or prosecuted (Haynes 2007). And when trafficking is framed as a problem of migrant criminality, “then the most obvious – and the most frequently promoted – solution is to increase border controls and criminal enforcement of immigration law” (Chacón 2010, p. 1652).

### 7.3.2 *Virgins and Vigilante Justice in Taken*

The 2008 Hollywood film *Taken* resolves the viewer’s sense of injustice about sex trafficking through protective paternalism and vigilantism (Morel 2008). *Taken*

stars Liam Neeson as retired CIA agent Bryan Mills. While touring Paris, Mills' 17-year-old daughter, Kim, is "taken" by Albanian sex traffickers. Using the "unique set of skills" he developed as a spy, Mills launches an international campaign of violence, murder, and torture to rescue his abducted daughter before she is sold into sexual slavery. *Taken* reflects a white slavery era narrative of innocent, naïve girls at risk of seduction by foreign men. Indeed, traffickers ensnare the two American teens before they leave the airport: approached by a flirtatious procurer, the impetuous girls unwittingly reveal they are underage and unsupervised, emphasising their sexual vulnerability. Moments after they arrive in Paris, several men break into their apartment and kidnap the girls. Employing his skills and connections as a former U.S. security agent, Mills uncovers the new trend in trafficking: previously, traffickers offered "girls from Eastern Europe jobs as maids or nannies, then they'd get them addicted to drugs and turn them into a prostitute. Now, they think it's more efficient to just kidnap girls who are travelling."

Mills assaults, shoots, maims, murders, and tortures a variety of evil, foreign men as he tracks down his daughter, simultaneously exposing a corrupt partnership between French officials and the Albanian crime network. Along the way, viewers are exposed to several scenes of sexual violence and migrant criminality. In one, Mills uncovers "fresh merchandise"—a cargo container full of young women drugged and forced into prostitution. As he searches the container, he pulls back the curtain on different scenes of sexual exploitation—one girl is forced to perform oral sex, while others are groped by dirty, faceless men. Spotting his daughter's jacket, Bryan enters one room, pulling a man off a young woman, beating him. Unable to interrogate the drugged girl, Bryan rescues her, leaving the other anonymous victims to their fate as slaves in the global sex trade in his quest to rescue his daughter.

A subsequent brothel scene reveals a similar disregard for the plight of other trafficked women—and a hierarchy of victims. Posing as a corrupt French official, Mills confronts the Albanian traffickers in a brothel. When they resist his demands for a bribe, Mills' response reflects a discourse of migrant criminality: "What do you want me to arrest you for? Drugs? Kidnapping? Prostitution? You come to this country, take advantage of the system. We are tolerant. . . [but] your arrogance offends me. And for that the rate goes up 10 %." Mills' murderous rampage through the brothel also displays the abject, yet eroticised, bodies of sex trafficking victims stereotypically "chained to a bed in a brothel" (Haynes 2007, p. 349). Mills identifies Kim's missing friend in the brothel: handcuffed to the same bed on which she was prostituted, with track marks down her arm—she is dead. Embodying the worst case scenario for trafficking victims, the scene highlights the sexual vulnerability of innocent youth and the risks facing women in the global sex trade. However, rather than rescuing the victims or reporting the crime to authorities, Mills abandons them in the hopes of finding his daughter before she is similarly debased and degraded.

The final scenes of *Taken* reflect a far-fetched portrayal of sex trafficking straight from a nineteenth-century white slavery film. After torturing and electrocuting one

of the traffickers, Mills infiltrates a secretive auction where young women are sold as sex slaves to elite foreign men. Slipping into a darkened room, Mills finally sees his daughter clad in a bikini; advertised as “certified pure”, her virginity increases her value, and bidding begins at US\$100,000. Mills forces a well-dressed Arab man to buy Kim for US\$500,000. She is taken to a lavish yacht where a man, identified as a “sheik”, lounges in silks, eager to deflower his newly procured virgin. After a violence-fuelled escape, Mills shoots the sheik in the head and rescues his daughter.

The orgy of violence and vigilante justice throughout *Taken* is seemingly justified by Mills’ efforts to protect his daughter and preserve her virginal innocence. There is no subsequent mention of Kim’s friend who died at the brothel or the other dozens of victims whom Mills encountered and abandoned in his quest. *Taken* epitomises the notion of collateral damage, as the bodies of “othered” young women are salaciously dumped at the sidelines in order to rescue the “one”. The audience’s desire for justice is satisfied vicariously through Mills’ violent breed of paternalistic vigilantism—and the white, virginal victim is rescued before any “real” harm can be done.

### ***7.3.3 Sex Sells: Sexploitation, Crimmigration, and Carceral Feminism in Lifetime’s Human Trafficking***

While *Taken* focuses on a private family’s experience with trafficking, its victims (or at least a victim), and an idealised rescuer, *Human Trafficking* examines the institutional context that characterises public efforts to combat trafficking. Lifetime Television, a cable channel targeting women, premiered the original four hours miniseries *Human Trafficking* in 2005 (Duguay 2005). Designed to raise public awareness of trafficking, the series promised viewers “a tough, uncompromising drama about the brutal realities behind the international trafficking of women and children for sex, and the battle to rescue its victims enslaved in America” (Lifetime TV, *Human Trafficking*, Lifetime Television Broadcast, October 24–25, 2005).

The miniseries featured Oscar winner Mira Sorvino as Agent Kate Morozov, an intrepid New York City cop who uncovers an international sex trafficking ring while investigating the deaths of several young Eastern European women. She becomes a rookie Immigration and Customs Enforcement (ICE) agent with the Department of Homeland Security (DHS), where she convinces her grizzled boss Bill Meehan (Donald Sutherland) to pursue the trafficking case. Driven by her own experiences of childhood sex abuse, Kate ultimately goes undercover as a Russian “mail-order bride” to crack the case, rescue the sex slaves, and catch the bad guys.

The actors, director, and producers of the miniseries shared the explicit aim of “shining light” on “hidden crime” to motivate viewers to take action against human trafficking. As part of Lifetime’s campaign to stop violence against women, the miniseries combined melodrama with NGO-style case studies of individual women to “sensitize people to the existence of sex trafficking while at the same time bring

them on a compelling emotional journey” (Lifetime 2005). Indeed, as Mira Sorvino’s character self-referentially remarks in the film when convincing her boss to pursue the investigation, “This is an extremely mediagenic case. We have an innocent young girl trafficked across U.S. borders, sold as a sex slave, and murdered. . .”

Highlighting the multimedia crossover between entertainment and advocacy, the miniseries was based on 2 years of “extensive consultations” with “leading non-profit organisations and experts on how best to raise awareness of the problem” (Lifetime 2005) and included public service announcements, an educational viewers’ guide, online resources, and links to advocacy opportunities for viewers to join the fight against trafficking. The miniseries producers even arranged the first multimedia agreement with the Department of Homeland Security (DHS) to “further ensure an accurate portrayal of this difficult topic” (Id.). Galvanised by her exposure to the horrors of sex slavery, Sorvino subsequently became a UN Goodwill Ambassador to combat human trafficking for the UN Office on Drugs and Crime.

Though hailed as an important step in bringing the hidden crime of human trafficking to light, the miniseries’ portrayal of innocent victims, evil villains, and valiant rescuers reflects a problematic understanding of trafficking and its subjects. *Human Trafficking* is a conventional crime drama with a formulaic plot line of violation, discovery, punishment, and resolution. The simplistic portrayal of innocent victims abducted by a ring of sex traffickers whose reach implausibly extends across the globe from Europe to America to Asia misrepresents the criminal threat posed by human trafficking; it also fails to address the complex interplay of globalisation, labour markets, and immigration restrictions that contribute to risky migration and exploitation.

The film’s characters are shaped by entrenched stereotypes about sex, race, and risk, evidencing a process of “othering” that mischaracterises the phenomenon of human trafficking, “driving demand for trafficked persons, influencing perceptions of the problem, and constraining legal initiatives to end the practice” (Todres 2009, p. 608). Several critics of the miniseries questioned the lurid framing of trafficked women, noting that *Human Trafficking* eroticised the purported victims of sexual slavery. As one reviewer noted, Lifetime’s promotional ads for the series included “a grainy photograph of five young women, each with full cherry-stained lips and dark hair, side by side, their eyes concealed by black blindfolds” (Karnasiewicz 2005). Another critic dubbed the series “exploitation about exploitation”, as *Human Trafficking* endeavoured to “expose a worldwide scandal and just happens to expose vast amounts of flesh in the process” (Shales 2005). Indeed, the miniseries’ portrayal of young (white) girls duped by procurers—stripped, raped, drugged, and debased by sex with strangers—traded in the same narrative conventions of nineteenth-century morality plays and movies warning of the horrors of “white slavery”: “innocence, established by youth and sexual purity, helplessness, degradation and death” (Doezema 2001, p. 24).

Saturated with sex, crime, and violence, the miniseries reflects the intention to provoke visceral reactions to the sexual suffering of the innocent trafficked teens.

The first scene opens with a menacing Russian man throwing a crying girl against the wall, threatening to kill her if she does not obey. The film immediately places the viewer in the position of the sex slave, going so far as to provide a close-up of a corpulent man's crotch as he unzips his pants, as if the viewer herself were on her knees before him. The audience is spared an unseemly scene only through the suicide of the girl, who jumps out an open window to freedom. The opening scene evokes a sense of disgust, violation, and injustice, which is to be resolved by the dogged investigative work of Agent Kate Morozov.

The character of Agent Kate personifies Elizabeth Bernstein's concept of "carceral feminism" in the American anti-trafficking movement. The miniseries portrays criminal justice as the vehicle for social justice: police and immigration enforcement agents "rescue and restore" victims, while traffickers, prostitute users, and pimps are corrected by "punitive systems of control" considered "the best motivational deterrents for men's bad behavior" (Bernstein 2010, p. 58). The trafficked women in the film are framed as psychologically and physically broken victims entrapped in a prison-like brothel, and the equation of brothels with prisons represents "good locked away in an evil world . . . [necessitating] the introduction of a third party that not only witnesses but takes decisive action to end the sex slave's suffering and restore moral order to the world" (Soderlund 2005, p. 78). Finally, the trafficking interventions represented in *Human Trafficking* incorporate a therapeutic discourse, whereby rescued victims receive social services and are "rehabilitated" via their engagement with the criminal justice system, which also advances immigration-control goals by repatriating foreign victims "back home" where they belong and preventing re-migration.

*Human Trafficking* employs stock characters and sites typical to contemporary narratives about international (sex) trafficking. For example, single mother Helena is "seduced by romance" in Prague when her new "boyfriend" sells her into sexual slavery. Young Nadia from Kiev—a blonde, blue-eyed 16-year-old dreaming of fame and fortune in America—is duped into a "modelling" contract. The two Eastern European girls are stripped, raped, beaten, and forced into prostitution in the New York City suburbs, personifying the so-called Natasha Trade of young women trafficked from post-communist Eastern Europe (Hughes 2000; Malarek 2004). Berman notes that the "whiteness" of these trafficking victims "has contributed to much of the recent public investment in trafficking in women" (Berman 2006, p. 275).

Race also plays a problematic role in *Human Trafficking's* portrayal of sexual exploitation in foreign countries. The stories of a second set of victims in *Human Trafficking* focuses on horrors of trafficking abroad, specifically child prostitution and sex tourism in Asia. But despite the foreign locale, the trafficked persons presented in *Human Trafficking* are all white girls abducted and forced into the sex industry, save one, a Filipina girl, who is callously sold by her impoverished rural family. Todres argues that the miniseries' portrayal of human trafficking victims not only fails to reflect the reality that the majority of trafficked persons are not white—the film also "reinforc[es] stereotypes that 'other' cultures value

children less and thus will sell their children while white Western families must be victims” (Todres 2009, p. 607).

The most unlikely trafficking story in the movie—and one of the most preposterous representations of trafficking—plays off kidnapping and captivity narratives. “Annie”, a blonde, white American 12-year-old on a holiday in the Philippines, is snatched from a market while shopping with her parents. Annie’s panicked parents struggle with incompetent local criminal justice officials, fearing anti-American “terrorists” abducted her until a Homeland Security official informs them that Annie is a victim of sex trafficking. When Annie’s mother asks “why would they want an American girl?” the official explains that “most of the people over here are gracious, honest and decent, but where there’s economic hardship and poverty, there are some who take advantage—they become predators. They look for easy targets and I’m afraid young women like Annie. . .” He trails off, leaving the viewer to speculate as to Annie’s fate. Sold to an Australian running a club for paedophile sex tourists, Annie’s virginity saves her from immediate sexual abuse: she is a “special order” to be sold to “Saudi” procurers. The deferral of Annie’s debasement maintains her innocence and purity while sustaining narrative tension, even as other (native) children around her are abused, raped, or murdered.

The construction of men who buy sex as insensitive, deviant, perverse, and predatory reflects the iconic figure of the monstrous client and calls to reform male sexuality in earlier white slavery campaigns. Indeed, a common theme throughout *Human Trafficking* is the risk any man could be a secret paedophile or callously pay for sex with trafficked women, and to end trafficking we must “end demand” for commercial sex. For example, an American NGO advocate from “Stop Trafficking International” who assists Annie’s mother notes that work to combat child sex tourism is “painful and scary. . . because this could be your neighbour, your dentist, your accountant, heaven forbid a member of your family”. The sceptre of sexual predators in one’s own backyard underscores the urgency of trafficking and the need to vigilantly police sexual risk and predation at home, as well as abroad.

Further, the salacious portrayal of sex tourism in *Human Trafficking* problematically conflates commercial child sex abuse and voluntary adult sex work in foreign countries. Viewers experience the scene of the child sex club (complete with a bar, pool, toys, and children in skimpy swimsuits serving old white men) through Annie’s horrified eyes. Titillating scenes of strippers, go-go bars, and adult sex workers engaging white male tourists provide the backdrop for the commercial sexual exploitation of children. The Asian women dancing in the bar fail to come to the aid of the children and instead flash their breasts and laugh, implying that voluntary sex workers are immoral, callous, and indifferent to the plight of the abducted children. The sex tourists’ failure to intervene when young children (even a white child!) are dragged through the bar to the paedophile fantasyland at the back of the club provokes a sense of outrage, as Western men ignore the evil occurring right before their eyes.

Despite the implausibility of Annie’s scenario and the fact that *Human Trafficking* as a whole exaggerates and oversimplifies the risk of trafficking, the power of its cultural myths of innocence, abduction, and sexual debasement was reflected in



public response to its airing. One commentator notes that the day after the *Human Trafficking* series aired, “one manager of an electronic anti-trafficking listserv with a name similar to that of the series on the Lifetime channel explained that she received a flurry of e-mails . . . from parents who feared that their daughters would be kidnapped and trafficked into the sex trade” (Brennan 2008, p. 24).

The move to combat “domestic trafficking” in the U.S. by cracking down on child prostitution, street prostitution, and the sex trade more broadly exemplifies how these anxieties play out in real life (Bernstein 2010). Indeed, the closing scenes of *Human Trafficking* warn that “the United States is one of the largest markets for sex slavery in the entire world” and that any female could fall prey to traffickers, as “each one of [the rescued victims] could be your sister, your best friend, or as Annie Gray showed us, your daughter”.

The calls for law enforcement to crack down on the “demand” for commercial sex by raiding brothels and arresting johns as a means to combat trafficking exemplify the rhetorical power of “carceral feminism”, as well as a governing through crime approach to social issues like prostitution and child sex abuse. Citizens are enrolled in these governance projects as both “watchers” on the lookout for crime and as risk managers, vigilantly self-policing the risk of potential victimhood and sexual vulnerability of women and children. The director of *Human Trafficking*, Agatha Dominik, reflects these concerns in her comments that the miniseries aimed to help the American public recognise “suspicious” activities in “average American neighbourhoods” where traffickers enslave women in brothels (Guthrie 2005). Dominik emphasised the public’s role in identifying and reporting suspected cases of trafficking: “Law enforcement is always at the mercy of citizens because you can only have so many officers snooping into benign-looking houses” for signs of trafficking, which ostensibly include “streams of men” coming and going at odd hours, women who attempt to contact neighbours, and dirty and malnourished children (Guthrie 2005). Interestingly, Lifetime also used the miniseries as a platform to work with members of Congress to support legislation, including the “End Demand for Sex Trafficking Act of 2005”, which sought to reduce trafficking by expanding prosecution efforts on exploiters and purchasers of unlawful commercial sex acts, prohibiting sex tourism, and increasing federal involvement in anti-prostitution enforcement.

Rather than protecting victims, the “rescue” and brothel raid scenes in *Human Trafficking* exemplify numerous violations of victims’ rights, which is concerning in a film that aims to portray a “victim-centred” approach to trafficking. One of the early brothel raid sequences illustrates several problematic law enforcement practices criticised by human rights and sex workers’ rights advocates (Empower Chiang Mai 2003; Human Rights Watch 2010; GAATW 2007). In the first brothel raid scene, a SWAT team of ICE agents rushes through a beauty salon that serves as the front for the brothel. With their guns pulled, the agents kick down doors to seedy bedrooms, exposing young women who scream in terror, jumping out of bed and grabbing scraps of clothing to cover their naked bodies as men scramble to pull up their pants. Rather than providing victims immediate access to social workers or NGO advocates, the “rescued” women are detained and handcuffed. Agent Kate

announces (in English, without translation), “Alright ladies, we are from Immigration and Customs Enforcement. We are here to put you into protective custody: that means you are no longer in danger. We’re taking you to a safe place, alright? We’ve got to put you in handcuffs but it’s temporary, so the sooner we get out of here, the sooner you’re safe.” In addition to the problematic practice of handcuffing and restraining “rescued” victims, the raid scene in *Human Trafficking* also exemplified another violation of victims’ rights—failing to protect the privacy and identities of trafficking victims. In the film, the rescued women are handcuffed and led out of the building by police in full view of the media and onlookers. This clearly violates internationally recognised best practices, as well as “victim-centred” training guidelines for U.S. law enforcement.

The criminal justice response to trafficking promoted in the miniseries marks a normalisation and justification of “crimmigration” in its treatment of both “illegal” aliens involved in crime and foreign victims of trafficking. As Stumpf observes, “the appearance and powers of the two immigration enforcement agencies—[ICE] and U.S. Customs and Border Protection—are almost indistinguishable from those of criminal law enforcement organizations” (Stumpf 2006, p. 387).

The portrayal of shelters and investigatory practices in *Human Trafficking* similarly reflects crimmigration prerogatives, including efforts to induce cooperation with law enforcement. After the brothel raid, most of the “rescued” women refuse to talk to investigators. But one victim, Helena, tentatively agreed to testify if U.S. authorities could ensure that her daughter in Prague would be safe from retaliation by the traffickers. When Helena’s resolve later wavers, ICE officials use deception and coercion to pressure her to testify in order to obtain evidence of trafficking necessary to make the case. Kate’s grizzled boss Bill Meehan (Donald Sutherland) agrees to bring Helena’s daughter to the U.S., but on the condition that she cooperate with law enforcement:

Meehan: We can fly her halfway around the world, but not without knowing what that woman’s gonna say – what she’s gonna give us. Right now as far as [DHS] is concerned, all you’ve got right now is a bunch of hookers, that’s it. There’s no deal, no investigation, unless you can get someone to verify that these women were actually trafficked. All you’ve got right now is a smuggling case.

Agent Kate: So what do I do with her now?

M: You do what you’re supposed to do – you tell her what she wants to hear.

AK: You mean that I should lie to her?

M: Wanna get the bad guys?

Such tactics reflect a problematic practice of law enforcement official’s overreliance on victims’ testimony to establish a case of trafficking (Haynes 2007). Many victims are reluctant to cooperate with investigators due to mistrust, misinformation, and a general lack of incentives to do so. Although victims may be eligible for a T-visa providing immigration relief, service providers report that prosecutors and immigration agents “grill” victims about their entry into the U.S. and “use [victims] as sources of information about holes in the border”, evidencing how the humanitarian provisions in U.S. anti-trafficking law can be used to advance crimmigration and border security objectives (Nathan 2005, p. 30).

Moreover, the film's distinction between "real" trafficking victims and "a bunch of hookers" illegally smuggled into the U.S. sets up a hierarchy of deserving and undeserving victims (Munro 2008). This distinction also reflects the dual identification of trafficked women as victims of crime (by both traffickers and sadistic clients) and illegal aliens engaged in the (criminalised) sex trade. This slippage epitomises how humanitarian protections for trafficking victims can serve to mask the overlap of anti-trafficking interventions and (cr)immigration enforcement.

Officer Kate eventually pressures Helena into testifying by threatening to rescind protection: pushing Helena out into the street, Kate says, "Your boss got you a valid visa, so I have no authority to hold you in custody. If you think you can do better for your family . . . it's your choice." Kate exploits Helena's fear for her family—and her own safety—to convince her to testify. Helena's fears are well founded: although she ultimately agrees to testify, she is shot dead by the traffickers when she arrives at the ICE safe house.

After losing her key witness, Kate "gets tough" with the other victims held in detention, variously threatening deportation and demanding cooperation with investigators in exchange for shelter, medical attention, and social services. Kate leverages immigration offences to pressure victims to provide information for her investigation: "You've given me no choice, I've got to start the deportation process. . . It's not me, it's our law. Now, if you want to go home, believe me I respect that, but please don't fool yourself into thinking you'll be safer there. . ." Such investigatory practices, interrogations, and pressure tactics, while commonly used for dramatic effect in cop shows and crime dramas, have deleterious effects on trafficking investigations and are recognised internationally as practices that violate the rights of trafficking survivors. For example, Principle 8 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking provides that protection and care for trafficked persons "shall not be made conditional on the capacity or willingness of people to cooperate in legal proceedings". Moreover, U.S. law does not require victims to participate in investigations to receive assistance.

Despite their inaccuracies, fictionalised accounts of crime and punishment like *Human Trafficking* provide a vehicle for the transmission of social norms and values. Media studies have demonstrated empirically that audience enjoyment of crime fiction is correlated with seeing the criminal suffer punishment and appropriate moral sanctions (Raney 2005). On the other hand, seeing acts of crime go unpunished arouses anger in many viewers and can produce a desire for retribution and "an emotional need to achieve justice for the victim", which remains incomplete until a wrongdoer is identified and punished for his crime (Tyler 2006, p. 1067). "Without such punishment, the victim, her family, and others in the community do not feel that the social world has been put right, thereby perpetuating social consequences of the crime" (Tyler 2006, p. 1067).

*Human Trafficking's* representation of criminal justice and immigration enforcement agencies exemplify these emotional dynamics of crime, punishment, justice and resolution. Not only are traffickers arrested and/or killed; the men who pay for sex are also threatened with incarceration and rape as punishment for their

wrongdoing and depravity. The two raid scenes that conclude *Human Trafficking* aptly demonstrate the appeal of “governing through crime” approaches—to sate the audience’s thirst for vengeance and reinstate moral order.

When American officials in the Philippines raid the paedophile club in their search for Annie, they arrest the child sex tourists. One DHS official pulls back a curtain to reveal a white man (previously introduced as the trafficker’s personal doctor) embracing a young Filipino boy. With his gun pulled, the officer confronts the flabbergasted, exposed man:

Are you an American? You’d better start praying for extradition, tough guy, because they’re going to rape your white ass all day and all night in the Manila jail. You know something? I just might lose your paperwork for a couple of weeks. . . . I’m going to plaster your face all over the news Doc. Your kids are going to be real proud of their dad. What if one of your kids were abducted and abused?

The fear that one’s neighbour, doctor, father, or husband could be a depraved child sex tourist reflects the contemporary bogeyman of the paedophile (Leon 2011), and the threat of prison rape as a just form of extralegal punishment is presented as fit for the crime.

Stateside, Agent Kate goes undercover as a Russian mail-order bride to bust the trafficking ring. After Kate’s “fiancé” confiscates her passport and forces her into a van with several other simpering women, she is led to the basement of a brothel where her shirt is torn open as she stands in a “line up” for the trafficking kingpin’s inspection. Fearing her cover is blown, Kate grabs a gun from one of the goons to place the trafficker under arrest. Though he attempts to escape, ICE agents gun him down and Kate ultimately kills him with two shots to the chest. The raid is over—the girls are rescued, and the bad guys are punished. The abrupt demise of the evil Russian trafficker at the hands of armed immigration enforcement agents satisfies the audience’s desire for punishment and retribution. The victims are assured vindication, more so than if the film had depicted the lengthy process of a formal prosecution. Indeed, previous scenes with the trafficker’s slick defence lawyer suggest that he can “beat the system”, so the death of the ruthless criminal provides a sense of resolution and finality—one that Americans do not necessarily expect from their formal criminal justice procedures.

### **Conclusion**

Given the importance of media in the reciprocal relationship between law and society, activists and academics should be cognizant of how popular understandings of law and justice may shape implementation of reform. This chapter illustrates how portrayals of trafficking in popular culture oversimplify dynamics of trafficking and global migration, recreate damaging stereotypes about victims, and legitimise incarceration and coercive enforcement strategies that can expose trafficked persons to punitive treatment at the hands of officials, exploiters, and employers.

(continued)

The sociolegal construction of sexualised victimhood, migrant criminality, and sexual deviance in popular representations of human trafficking in popular media should give pause to anti-trafficking reformers. Horror stories of exploitation of migrant women and minors in the sex trade certainly provide a powerful and “mediagenic” resource to mobilise sympathy for victims and political support for anti-trafficking campaigns. However, the persistent representation of human trafficking as “sex slavery” not only mischaracterises the complex political, social, and economic factors that shape exploitative migration and servitude—it also reproduces sensationalistic stereotypes about victims and perpetrators that misdirect enforcement efforts.

Advocates and media personalities aiming to raise awareness about the scourge of human trafficking need to be aware that the way the issue is framed in popular culture will affect the ways in which they can utilise legal institutions to address trafficking. As “feminist governance” reforms are implemented in “actual legal-institutional power”, advocates should take heed of the potential for well-intentioned interventions to produce collateral damage (Halley et al. 2006; GAATW 2007). In particular, feminist activists and scholars assessing the relationship between the sex trade and trafficking would do well to “examine how public discourses on sexuality legitimate the exclusion, condemnation, or acceptance of particular migrants . . . [and] how discourses about dangerous migrant sexualities legitimate the subordination of minoritised U.S. communities” (Luibhéid 2002, p. 144).

Media portrayals of easily recognizable “perfect victims” “chained to a bed in a brothel” and rescued by law enforcement obscure public awareness of the structural causes of trafficking and exploitation. Such portrayals suggest as solutions only crime control efforts to combat trafficking by “cracking down” on prostitution. But when trafficking is framed in a broader lens, calls to address the “demand” that drives the phenomenon can also address the role of American consumers in creating a market for cheap, exploitable labour. New legislative approaches like California’s 2010 Transparency in Supply Chains Act requiring retailers and manufacturers to disclose their efforts to eradicate slavery and human trafficking from their direct supply chain—while less dramatic than brothel raids and arrests of individual traffickers—may create more durable structural changes that create disincentives for employers to exploit vulnerable workers.

Unfortunately, without the political will to reform the broader policies that restrict migration and emphasise immigration enforcement, efforts to address human trafficking will likely track earlier media-fuelled panics around trafficking and sexual slavery. The promotion of “tough on crime” enforcement actions in popular representations of human trafficking—arresting and prosecuting rings of migrant criminals, while rescuing and repatriating victims—reveals how media and news reports about trafficking can also serve

(continued)

to justify the expansion of the prison industrial complex and the normalisation and legitimisation of crimmigration.

The tremendous amount of attention paid to human trafficking over the past decade demonstrates the power of sex, suffering, and migrant criminality to mobilise popular and political support for anti-trafficking campaigns and criminal justice reforms. But such power should be wielded carefully, lest it result in reproducing or even worsening the plight of the “victims” it is supposed to save.

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## Chapter 8

# Victims or Criminals: The Example of Human Trafficking in the United Kingdom

Jessica Elliott

**Abstract** Following the drafting of the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, it would seem that a more victim-focused, victim-centric approach is being taken toward the individuals who fall foul of this transnational phenomenon than previously has been the case. The more encompassing provisions of this Convention, when compared to the somewhat weak provisions enshrined in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000, provide for various bespoke rights such as rest and recovery periods and temporary residence permits for those subject to its provisions.

Of particular note is Article 26 of the Convention, which provides for “non-punishment” of victims where their involvement in unlawful activities can be attributed to the fact that they have been trafficked, namely that they were compelled to commit the relevant offence in the course of/as a result of having been trafficked. This provision of the Convention is drafted in nonbinding terms, and therefore ratifying States can decide exactly how they wish to proceed on this particular matter. Non-punishment can only be actively considered if the individual in question has at least been identified as a putative victim of trafficking—identification being dealt with by Article 10 of the Convention.

The United Kingdom has, within its anti-trafficking framework, a National Referral Mechanism for the identification of victims, and two Crown Prosecution Service Protocols, which provide for prosecutorial discretion where victims of human trafficking have committed criminal offences as result of having been trafficked. This chapter aims to analyse, through the lens of both the UK’s implementation of Article 10 and 26 provisions and a series of recent case law decisions of the domestic courts, the applicability of both the Convention and these Protocols to victims of human trafficking in order to determine whether such individuals in fact are being properly treated as victims or as criminals.

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## 8.1 Introduction

Human trafficking is a serious international crime. Trafficking takes place for, among other things, the purposes of sexual and labour exploitation (Scarpa 2008) and is a large-scale and lucrative activity (Malarek 2004, p. 13). Brussa (1991, pp. 42–43) identifies profitability and organised crime as being among the prevalent reasons for the continual rise in trafficking. In many situations, trafficking will begin on a consensual footing (Aronowitz 2001, p. 164) where a migrant chooses to leave his country of origin and falls into the hands of traffickers. Others are kidnapped through means of physical force or deceived into taking up a false offer of employment. Trafficked victims originate from a vast range of countries, regions, and backgrounds (Aronowitz 2001, p. 166; Europol 2006). Efforts to effectively combat trafficking must target not only prevention, prosecution, and punishment but also the protection of and assistance to the victims of this phenomenon.

The currently accepted international legal definition of “trafficking in persons” is provided by Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000 (UN Trafficking Protocol), and replicated verbatim in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings, 2005 (Council of Europe Trafficking Convention). More recently, this definition has been, for the most part, replicated verbatim in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 2011 (the 2011 Directive), which includes the additional aspect of begging as a form of “forced labour or services”. This definition provides the following:

Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

According to this definition, trafficking has three elements: the “action” of, say, recruitment, through some form of “means”, such as coercion or force, for a “purpose”, which is broadly categorised as “exploitation”. The definition goes on to state that “. . . the consent of a victim . . . shall be irrelevant where any of the means . . . have been used”. Where the victim is a child (i.e., under 18 years of age), it is not necessary to show that any of the stated “means” have been used.

Trafficking can be distinguished from smuggling on various bases, although at times the two are conflated or at least confused. Smuggling is defined by the United Nations as

. . . the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national

or a permanent resident.

(Protocol against the Smuggling of Migrants by Land, Sea and Air,  
Supplementing the United Nations Convention against Transnational  
Organized Crime 2000)

According to these definitions, it can be seen that smuggling does not involve the elements of coercion, force, or exploitation that trafficking involves. When it comes to smuggling of humans, there is no perceived victim as the actions of the smuggled person are viewed as voluntary. This distinction is important, as smuggled persons do not have access to the bespoke regime of rights and assistance that trafficked persons and putatively trafficked persons have available to them.

Following the drafting of the Council of Europe Trafficking Convention, ratified by the United Kingdom in 2009, it would seem that a more victim-focused, victim-centric approach is being taken toward the individuals who fall foul of this transnational phenomenon than previously has been the case. The more encompassing provisions of this Convention, when compared to the somewhat weak provisions enshrined in the UN Trafficking Protocol, provide for various bespoke rights such as rest and recovery periods and temporary residence permits for those subject to its provisions.

The Council of Europe Trafficking Convention has three key aims: the prohibition and prevention of trafficking in persons, the investigation of trafficking activity and the prosecution and punishment of traffickers, and, finally, the protection of victims of trafficking (The Law Society 2011). The latter is the chief concern of this chapter, particularly in terms of the (in)correct identification and subsequent criminalisation of trafficked persons—an issue that has become apparent through examination of domestic case law (Elliott 2009; *R v O* [2008]; *R v LM and others* [2010]; *R v N and LE* [2012]).

Of particular note here is the theme of “crimmigration”—the “convergence of criminal and immigration law in marking out the boundaries of who is an accepted member of society” (Stumpf 2006, p. 1). Sometimes, trafficked persons may be arrested and charged with criminal offences that were committed through compulsion arising as a result of the trafficking situation. According to the Crown Prosecution Service, “This most frequently arises when they have been trafficked or smuggled here to commit criminal offences, but can arise in circumstances where they are escaping from their trafficking situation” (CPS 2011, p. 30).

There is clearly a possibility that some adults and children who have been arrested and charged with committing criminal offences might be victims of trafficking and might have committed the offence(s) in question as a result of compulsion arising from the trafficking situation. Sometimes victims are trafficked to commit criminal offences, including the following: causing or inciting/controlling prostitution for gain (provided for in Sections 52 and 53 of the Sexual Offences Act 2003), keeping a brothel (Section 33 or 33a of the Sexual Offences Act 1956); theft in organised pick-pocketing gangs (section 1 of the Theft Act 1968), or cultivation of cannabis plants (section 6 of the Misuse of Drugs Act 1971). For example, children are trafficked for forced criminality (ECPAT 2010) such as

working in cannabis factories (*R v. N and LE* [2012]) or for street crimes and forced begging (2011 Directive, Article 2).

Alternatively, the possession of false identity documents—which may be being used in order to escape the trafficking situation, such as in *R v O* [2008]—is a frequent basis for criminality. Victims may be apprehended by law enforcement agencies where they are attempting to escape from their traffickers, the most typical example being immigration offences: using a false instrument (section 3 of the Forgery and Counterfeiting Act 1981), possession of a forged passport or documents (section 5 of the Forgery and Counterfeiting Act 1981), possession of a false identity document (section 6 of the Identity Documents Act 2010), or failure to have a travel document at a leave or asylum interview (section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004). As a result of these myriad opportunities for criminal sanction to be imposed, trafficked victims will at times be treated not as victims but predominantly or exclusively as criminals.

Article 26 of the Council of Europe Trafficking Convention provides for the potential (but not obligatory) “non-punishment” of victims where their involvement in unlawful activities can be attributed to the fact that they have been trafficked, namely that they were compelled to commit the relevant offence in the course of/as a result of having been trafficked. The criminalisation of victims for offences committed as a result of serious compulsion is incongruent with one of the central aims of the Convention: that of protecting victims. This provision of the Convention is drafted in nonbinding terms so that it does not impose a duty of non-punishment. Instead, it creates a duty of active consideration as to whether or not prosecution of a victim should proceed in any given case. Therefore, provided that a mechanism for active consideration is in place, ratifying States can decide exactly how they wish to proceed on this particular matter.

In order for the Article 26 duty to be triggered, the individual must be at the very least identified as a putatively trafficked victim. The identification of trafficked victims is addressed in Article 10 of the Council of Europe Trafficking Convention. The point of interest here is that the identification of victims and the criminalisation of victims are intrinsically linked, i.e. if a trafficked victim is not identified as such (or even as a putative trafficked victim), then the corollary is that he may well be subject to criminal sanction due to the commission of offences as a direct result of the trafficking situation. The identification point is essential, as there is the potential for a wealth of difference in treatment between a trafficked victim who has committed offences and the offender who may be viewed as “just another smuggled migrant”. As the case law will indicate, even where victims are positively identified as trafficked, the Article 26 duty has not always been adequately discharged in the domestic courts.

This chapter will analyse the implementation and (lack of) consideration of the duty to consider non-punishment of victims in the UK, drawing upon a series of recent and prominent domestic decisions that exemplify the current problems arising here. With ratification (by the UK) of the Council of Europe Convention being in the not-too-distant past, it seems that awareness of the non-punishment principle may be somewhat lacking. Furthermore, it seems that awareness of the

existence of human trafficking among the relevant professionals who come into contact with putative victims is also lacking, leading to misidentification in some instances that only serves to fuel the problem of victims being treated as criminals. As the questionable conviction of trafficked victims at first instance continues to occur, an increasing need for the UK to raise the bar as regards the recognition and treatment of these victims is becoming apparent.

## 8.2 Identification of Trafficked Victims

Article 10 of the CoE Trafficking Convention provides:

Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims.

In response to this obligation, the UK has in place a “National Referral Mechanism” (NRM) to facilitate victim identification. Under this mechanism, indicators (a list of which is provided by, *inter alia*, the UK Border Agency and Anti-Slavery International 2005) are used by front-line professionals (known as “First Responders”, listed by the [Serious Organised Crime Agency](#)) to help identify putative victims, before referring their details on to a designated “Competent Authority”, who are charged with making a decision (usually within 5 days) as to whether there are “reasonable grounds” to believe that an individual has been trafficked (Home Office 2008, p. 3), following which a 45-day rest and recovery period will be available to the putative victim until a “conclusive grounds” decision is reached as to whether or not the individual is in fact a trafficked victim.

Examples of “Competent Authorities” are given in the Explanatory Report to the Convention as “. . . public authorities which may have contact with trafficking victims” (Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings 2005, paragraph 129). The NRM has been in place in the UK since 1 April 2009, and the relevant designated competent authorities are the UK Border Agency (UKBA) and the UK Human Trafficking Centre (UKHTC), to whom guidance on victim identification has been issued (Home Office/UK Border Agency 2012a). Guidance has also been issued to police and immigration officers to aid them in identifying potential trafficked victims (Home Office/UK Border Agency 2012b). There is no formal route of appeal where a negative decision is reached, which leaves those cases which are wrongly decided with little open to them save judicial review.

Although the formal NRM process requires that identification is carried out by designated authorities at all stages, the identification of trafficked victims clearly places the responsibility on other professionals with whom the victim comes into contact, such as legal counsel, who must be alert to possible signs that an individual has been trafficked. It cannot be assumed that the professionals responsible for identification of victims under the NRM will always encounter the victim at a

sufficiently early stage to identify her prior to any criminal proceedings being initiated against her. Multiple deficiencies and failing in the identification process, which largely centre around lack of awareness (of trafficking) by officials, are evident in the domestic case law (*R v. N and LE* [2012]; *R v O* [2008]; *OOO et al v Commissioner of Metropolitan Police* [2011]). Those who are not identified as trafficked/putatively trafficked do not have the opportunity to benefit from the active consideration that prosecutors must give when determining whether or not to proceed with prosecution against a trafficked/putatively trafficked person for offences committed by that person as a result of compulsion arising from the trafficking situation. Therefore, it is imperative that putative and genuine victims of trafficking are expeditiously identified as such.

### 8.3 The Non-punishment Principle

Article 26 provides:

Each 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.

For the sake of clarity, it is worth establishing from the outset what Article 26 does not do. In the case of *LM, MB, DG, BT and YT* [2010], the following was recognised:

It does not say that no trafficked victim should be prosecuted, whatever offence has been committed. It does not say that no trafficked victim should be prosecuted when the offence is in some way connected with or arises out of trafficking. It does not provide a defence which may be advanced before a jury. What it says is no more, but no less, than that careful consideration must be given to whether public policy calls for a prosecution and punishment when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled (in the broad sense) to commit it. Article 26 does not require a blanket immunity from prosecution for trafficked victims.

(*R. v LM and others* [2010], paragraph 13)

In order for the “non-punishment” principle enshrined in Article 26 of the Council of Europe Trafficking Convention to come into play, the individual in question must first be correctly identified as a trafficked victim or, at least, a suspected trafficked victim. Where misidentification occurs, the outcome can be dire (Elliott 2009; *R v O* [2008]), and a string of decisions (*R v O* [2008]; *R. v. LM and others* [2010]; *R v. N and LE* [2012]) over the past 5 years has compounded the need for prosecutors, defence lawyers, the police, and all other relevant parties coming into contact with the putative victims to be proactive and vigilant with respect to victim identification and causing enquiries as to identification to be conducted.

The problems surrounding victim identification are manifold, not least due to the different and at times subtle forms of coercion employed by traffickers (as opposed to outright violence)—identified by Brown (2001) in testimonies provided by

victims—which can mask victim status. Furthermore, victims may fail to self-identify (Home Office 2009; U.S. Department of Health and Human Services 2009, p. 18; Drew 2008) as a result of fear; lack of knowledge/understanding that they have been trafficked; post-traumatic stress, which is not infrequently experienced as a result of the trafficking situation (Ramage 2006, p. 7); or some other reason. Consequently, the deficiencies in the identification process and the failures at first instance to actively consider the Article 26 duty clearly need to be addressed so that a more robust, victim-centric regime is in place, which allows victim access to the bespoke rights and assistance that the anti-trafficking regime confers upon those who are formally identified as trafficked.

#### **8.4 Application of the Non-punishment Principle in the United Kingdom**

The United Kingdom has, within its anti-trafficking framework, two Crown Prosecution Service Protocols, which provide for prosecutorial discretion where victims of human trafficking have committed criminal offences as result of having been trafficked. These Protocols provide guidelines on “Prosecution of Defendants Charged with Offences Who Might Be Trafficked Victims” and “Prosecution of Young Defendants Charged with Offences Who Might Be Trafficked Victims” (CPS 2012). These guidelines serve to provide for active consideration as to whether or not to prosecute in any given case involving a trafficked victim. The CPS states:

If . . . the suspect has been trafficked and committed the offence whilst they were coerced, consider whether it is in the public interest to continue prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds. . .

(CPS 2012)

When cases potentially engaging these protocols arise, it is imperative that prosecutors and other relevant professionals must be aware of the possibility that the individual concerned may be a victim of trafficking. This may involve taking into account information from other sources that a suspect might have been trafficked, for example from nongovernment organisations (NGOs) that support trafficked victims. There is also a responsibility on the police officers coming into contact with putative victims to take certain steps to ensure that identification can proceed. It will, for example, be necessary to enquire into and obtain information regarding the circumstances surrounding the suspect’s apprehension (CPS 2012) and whether there is a credible suspicion or possibility that the suspect may be a trafficked victim. Awareness of trafficking is also essential with respect to legal counsel, health care professionals, and any other professional body or person who may encounter victims, so that the potential for timely and correct identification is maximised and so that the non-punishment principle is engaged from the outset where cases arise that concern the potential criminality of a putative victim.

### ***8.4.1 Awareness of Human Trafficking and the Non-punishment Principle***

That national law might not have been as effective as subsequently required by the UK's international obligations has been demonstrated by the recent decision in *R v O* EWCA Crim 2835, which was decided prior to ratification of the Council of Europe Trafficking Convention by the UK.

The appellant was apprehended on her way out of the UK and was found to be carrying false identity documents. Between speaking to passport control officers and subsequently her legal representatives, it soon became clear that there were questions to be ascertained as to her age. She stated that she had come to England with her boyfriend in order to escape her father, who would have killed her if she had not proceeded with an arranged marriage in Nigeria. She also stated that once in England, she was "given to be a prostitute" and consequently ran away.

Several days prior to her trial date, the appellant's legal representatives received information from the Poppy Project, which is funded by the Office for Criminal Justice Reform (reporting to the Ministry of Justice) and offers accommodation and support to female victims of trafficking. The information received indicated that *O* was potentially a victim of human trafficking for the purpose of prostitution, yet this information was not acted upon. *O* was initially convicted at the Crown Court on March 17, 2008, resulting in imposition of a sentence of 8 months' imprisonment, less 16 days spent on remand. Leave to appeal was granted by Cox J on June 26, 2008.

The grounds of appeal related to *O*'s age, the potential for her to rely on the defence of duress, and the lack of appreciation by the appellant's lawyers of her position as a victim of trafficking. Consideration of this issue by her legal representatives was largely nonexistent, as was any awareness by legal representatives on both sides of the two CPS Protocols that provided guidelines on prosecutorial discretion where trafficked victims have committed criminal offences. The appeal was allowed.

Since the UK had not at that time ratified the Council of Europe Trafficking Convention, it was not bound by its provisions and could not have been held legally accountable for any failure to act according to the standards of the Convention, yet the facts of the case do show that the then existing provision of protection for such people as the applicant in *O* was deficient. It was recognised in *O* that the UK has taken measures expressly in support of the purpose of the Convention, yet these were clearly insufficient to protect *O* at first instance, particularly since awareness of the CPS guidance was lacking among the relevant professionals. The Court of Appeal noted in *O* that these protocols—although incorporated into the Code for Crown Prosecutors—do not appear in standard criminal law practice books. Instead, Laws LJ found a way to get the most desirable outcome through drawing upon the sources that were available to be used at that point in time: the two CPS Protocols, common law, and Article 6 of the ECHR. He recognised that both common law and Article 6 of the ECHR required standards of procedural protection



that were much higher than those that had been accorded to the defendant in the present case. *O* had not had a fair trial, and there had been ample opportunities for the relevant professionals to recognise that she was at the very least a putative trafficked victim.

The issue of adequate legal assistance, something clearly lacking in this case, has been raised by the Joint Committee on Human Rights (JCHR) in its Twenty-Sixth Report, where it is stated that “There was . . . some concern expressed regarding the quality of the initial legal assistance that was being provided to victims of trafficking” (JCHR Twenty-Sixth Report 2005–2006, paragraph 159). Article 6(3)(c) of the ECHR includes the right to legal assistance, and legal assistance and legal aid are provided for in Article 15 of the Council of Europe Trafficking Convention. As recognised by Drew (2008), this legal assistance must be competent, and the responsibility on legal counsel as regards identifying victims is illustrated in this case. Although the UK could not be held to account for deficiencies as regards the Convention, which it had yet to ratify, *O* still provides a shocking insight into the lack of training, acknowledgement, and formal procedure for victim identification pre-ratification.

The Court in *O* highlighted a number of important lessons to be learned. Primarily, in cases involving a trafficked victim/putative trafficked victim, both prosecutors and defence counsel must be proactive in causing enquiries to be made about the suspect and the circumstances surrounding the commission of his offence. Along a similar vein, the importance of the opinions of relevant NGOs and charities must be taken into account, as the Poppy Project highlighted in this case that *O* was a potential trafficked victim, yet their advice was not heeded. The recent UK-specific report by the Group of Experts on Action against Trafficking in Human Beings (GRETA) recognised that NGOs acting as first responders felt that their views as experienced front-line staff are not sufficiently taken into account and given due weight in the identification process when the credibility of potential victims is questioned (GRETA, paragraphs 90 and 219), and *O* provides an insight into how useful and relevant the opinions of these organisations are as regards victim identification. Furthermore, in *O*, criticism was levelled at the court, defence, and prosecution for failing to recognise that *O* was in fact a minor. Finally, the CPS guidance on the prosecution of trafficked victims should be disseminated more widely. In the case of *O*, the CPS guidance regarding prosecution of trafficked victims was not given due regard. The importance of awareness of the guidance has been reinforced by subsequent case law.

#### **8.4.2 *Duress, Coercion, and the “Public Interest” in Pursuing a Prosecution***

According to the CPS guidance, where the circumstances surrounding the victim’s commission of an offence meet the requirements for the defence of duress, the

prosecution will be discontinued. Even where the circumstances do not meet the requirements for duress, prosecutors must, according to the non-punishment principle, consider whether the “public interest” is best served in continuing the prosecution in respect of the criminal offence (CPS 2011, p. 30; *LM*, paragraph 10).

In determining where the public interest lies, the CPS (2012) indicates that various matters will be considered: firstly, whether there is a credible suspicion that the suspect might be a victim of trafficking; secondly, the role the suspect played in the commission of the criminal offence; thirdly, whether there was a direct causal link between the criminal offence and the trafficked situation; fourthly, whether the offence was committed as a result of violence, threats, or coercion; and, finally, it must be considered whether the victim was in a vulnerable situation or subject to considerable fear. It is undisputed here that for active consideration to be given to the non-punishment principle, a sufficient proximity between the trafficking situation and the commission of the offence must be apparent.

To reiterate what was stated in the UK Action Plan on Tackling Human Trafficking, “It is difficult to envisage circumstances where it would be in the public interest to prosecute genuine victims of human trafficking for immigration offences” (Home Office and Scottish Executive 2007, p. 57). This proposition must accommodate more than immigration offences—intense scrutiny of whether there is any public interest in pursuing a prosecution for any offences committed by trafficked persons as a result of compulsion must take place in any such case. However, all decisions in the case as to the prosecution remain the responsibility of the prosecutor.

The knowledge and experience of prosecutors may be limited in some instances, which will be to the putative victim’s detriment. For example, cultural and religious practices, including witchcraft and juju rituals, may compel victims to obey their traffickers as a result of fear of repercussions if they do otherwise (CPS 2012). Other trafficked victims may be physically held captive or psychologically coerced (*Regina v Lorenc Roci, Vullnet Ismailaj* [2005]). Prosecutors must therefore have awareness of, and regard to, such factors in determining whether an individual’s situation might support a defence of duress in law, for as Simester and Sullivan note, “. . .it would be unacceptably Draconian to punish persons who have acted to avoid catastrophic harm to themselves, to those to whom they feel attached or feel responsible” (2010, p. 725).

Factors supporting a defence of duress in law are not uncommon in the testimonies of trafficked persons. For example, threats to the individual or his family members are a frequent means of coercion used by traffickers in order to maintain control over their victims (Project Acumen 2010, p. 5), as well as threats to the victims themselves. The CPS gives guidance as regards factors that might be considered with respect to duress, including whether there was “. . .opportunity for the defendant to escape from the threats without harm to himself, for example by going to the police. . .” (CPS 2012). As a blanket approach (if one is taken), this is inappropriate as it clearly assumes a degree of physical and mental autonomy that many trafficked persons will not in fact be able to exercise. For example, not all

trafficked victims will be “locked away”—many trafficked persons do not conform to the stereotype of the “perfect victim” (Uy 2011, p. 205). Victim testimonies (see Brown 2001 for examples) indicate that they may be allowed to leave the premises where the exploitation takes place on a regular basis, but due to the various coercion techniques employed by traffickers—some of which are subtle and psychological—the victim will not contact the police or in fact any third party to report his situation and ask for help.

In *LM, MB, DG, BT and YT* [2010], the first three appellants appealed against convictions for the offence of controlling prostitution for gain, contrary to the Sexual Offences Act 2003, s. 53. The Crown’s case was that the individuals had gone from being trafficked victims to controllers of other victims. At a late stage, the Crown accepted a new basis of plea that the appellants themselves had been trafficked for forced prostitution and that any subsequent controlling activity had taken place under pressure from their traffickers, albeit falling short of duress. The Crown contended that the prosecution should have been abandoned once the new factual basis was accepted. The appellants contended that there was a breach of the Council of Europe Trafficking Convention in prosecuting them in the first place and that Article 10, in particular, had been breached due to the prosecution’s failure to either refer them to, or advise their solicitors to refer them to, the relevant agencies so that they could be identified as trafficked victims.

The appeals were allowed,<sup>1</sup> with the court stating:

... either the Crown should have offered no evidence or, if it had not, an application for a stay of proceedings ought to have succeeded on the grounds that any decision to proceed was one which no reasonable prosecutor could make.

(LM, at H7)

The court recognised that although a breach of Article 10 is to be deplored, it is the breach of the Article 26 duty to give proper consideration as to whether or not to proceed with prosecution that might render the prosecution unlawful or amenable to stay. The appeal was allowed due to the fact that the Article 26 duty was ignored when the factual basis changed, and if it had been discharged, then the convictions would have been quashed, even though the offences were serious—the new bases of plea should have triggered consideration of the “public interest” issue as to prosecutions of trafficked persons.

It was recognised in this case that *R v O* was not to be taken as authority for the broad proposition that “a person thought to be trafficked should not be prosecuted for crimes committed as a result of the trafficking situation” (paragraph 21). Nonetheless, this case does highlight the need for continuing awareness of the duty to actively consider Article 26 and the CPS guidance, as here the victims were

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<sup>1</sup> For other two defendants, whose cases concerned false identity documents. *BT*’s appeal was not allowed due to lack of evidence as to her being trafficked. *YT*’s appeal was not allowed as the individual had been free from exploitation for some months when the offence occurred. But the fact of her trafficking in the past allowed for substantial mitigation—appeal allowed against sentence of 9 months, so that it may be quashed and substituted with one of 4 months.

once again failed by the system both as to identification and non-punishment, even though the presence of coercion clearly brought the public interest argument into play. The offence here was more serious than that in *O*, but that does not detract from the importance of the non-punishment principle or the right of the victim to have his offence considered in light of that principle. Subsequent case law such as the *N* case (below) indicates that there are continuing deficiencies as regards both identification of putative victims and consideration of the non-punishment principle.

### 8.4.3 *Trafficking v Smuggling*

The line between trafficking and smuggling can become blurred and therefore presents a barrier to victim identification. This in turn creates a barrier to consideration of the non-punishment principle. Some instances of trafficking may at least begin on a consensual footing—as Outshoorn observes: “The dynamics of trafficking are best explained by migration theory” (2005, p. 143). In many instances, human trafficking illustrates the link between migration outflow from impoverished regions and subsequent exploitation of the migrant by those involved in the trafficking process. It is this initial voluntariness on the part of the migrant that can serve to blur the distinction.

The CPS guidance contains criteria for prosecutors to consider where the criminality of a putatively trafficked person is at issue. Criteria such as the following are troublesome:

Did the defendant put himself into a position in which he was likely to be subject to threats made to persuade him to commit an offence of the seriousness of the charge, eg getting involved in a criminal gang likely to subject him to threats to commit criminal offences?  
(CPS 2012)

The appearance of victim complicity or initial “consent” may lead the putative victim to be caught by the above criterion and therefore considered more culpable for his offence, even where it was committed as a result of compulsion.

This is exemplified somewhat in the case of *N and LE* [2012], which concerned two defendants, both Vietnamese minors who had been arrested in cannabis farms and sentenced to 20 months’ imprisonment. Both saw their convictions confirmed, after the custodial sentences had been completed. The appeals were well out of time, but extensions were granted as the case potentially concerned exploitation of the vulnerable, and it was felt that these issues were of real importance and therefore needed to be considered. Government guidance existed at the time as regards minors trafficked into cannabis factories (Department for Education 2012). Furthermore, on the date on which *N* was interviewed by the police, the Child Exploitation and Online Protection Centre representing the Association of Chief Police Officers (ACPO 2012) had issued its assessment of the threat of child trafficking in the UK. It contained information as to the number of Vietnamese

minors trafficked into the UK and the link with forced labour in cannabis farming that was becoming apparent, stating:

Police should be alert to the possibility that any person, adult or child, identified in a cannabis farm could be a victim of trafficking. The intelligence indicates that sometimes, as a consequence of the need for more awareness of the problem, young persons are not identified as victims, statutory defences are not recognised and the individuals end up being charged, prosecuted and convicted of offences committed whilst being exploited.

(ACPO 2012, p. 1)

The issue of trafficking versus smuggling was raised in this case as there was a question mark over whether one of the victims, in particular, had in fact been trafficked. The facts of the case are not straightforward. For *N*, the identification process did not start until after the sentence had been carried out. *N* had initially indicated that he had been smuggled into the country but that his “employment” was coerced. He admitted travelling via the Czech Republic to the UK, and there was therefore a question mark over his status as trafficked or smuggled. He later came into contact with a man called Ha, who offered him the job in the cannabis factory. The conditions were described as fairly controlled—the entry and exit door was locked from the outside, and *N* received no remuneration for his “work”. He claimed that at first he was unaware of the illegal nature of the plants. He managed to leave the factory once and was threatened by Ha, who said that he would be killed, so he returned to the factory. *N* was a child for the purposes of the Trafficking Convention. The view was taken that *N* was smuggled into the UK, and the judgment notes at paragraph 41 that “*N* himself had never suggested that he had been trafficked into this country”. The separate question of whether *N* was being exploited or held in bonded labour following entry to the UK was not considered. *N* was in possession of cash. At no point was it raised to or by the prosecutor that *N* should be investigated as a putatively trafficked person.

It was argued for *N* that the conviction was unsafe, that much greater investigation should have been carried out by the CPS into whether *N* was a trafficked person, and that the legal counsel and judge should also have been alerted to the possibility that *N* was trafficked and should have recommended to the CPS that this was the case, so that further investigation could have taken place, and that the Article 26 duty would have been recognised and discharged. However, the court placed emphasis on the voluntary nature of *N*’s smuggling and the fact that evidence that might have pointed to *N* being trafficked was not available at the original hearing.

There were some inconsistencies in *N*’s story before the original case made it to trial. Such inconsistencies may point to the existence of trafficking, whereas in reality they may be taken as a sign that the individual lacks credibility and that their account is not truthful. The UKBA recognised that there were “credibility issues” with *N*’s testimonies but nonetheless decided on the balance of probabilities that *N* was a trafficked victim.

*L* was arrested in possession of money and a mobile phone. He said he was 15, but it was subsequently determined that he was at least 17. He received a “reasonable grounds” letter from the UKBA (stating that he may have been

trafficked) while the case was ongoing, and it was determined that the prosecution should proceed nonetheless. The UKBA indicated subsequently that they believed *L* to have been trafficked, yet the Chief Crown Prosecutor indicated that the prosecution should continue. *L* stuck with his guilty plea, with it being indicated to him that judicial review on grounds of unreasonableness (as to continuing the prosecution) would be unlikely to have a favourable outcome.

The judgment backed the decision of the Crown Prosecution to proceed with the prosecution even after a positive reasonable ground decision and furthermore confirmed the conviction after the “conclusive grounds” decision was issued. With respect to *N*, it was stated that “Allowing for the size of the criminal enterprise in which he was involved, an immediate custodial sentence was appropriate” (paragraph 93), although the sentence was, on appeal, reduced to a 4-month detention and training order. The identification decision with respect to *L* was challenged by the prosecutor on the grounds that there was evidence suggesting that the minor could not be described as a trafficked person as he was found with cash on him, had been provided with a mobile phone, lived in an ordinary house, and was supplied with groceries weekly. The prosecution was confirmed, but *L*’s initial custodial sentence was reduced from 20 to 12 months. The Court determined that it was not necessary to review the initial assessment of the public interest. The Court of Appeal emphasised that the remedy available to prosecuted and convicted victims of trafficking is not judicial review but appeal against conviction on the ground that the conviction was unsafe.

This case brings cause for concern for several reasons. Primarily, following prosecution, the defendants were in fact conclusively determined to be genuine trafficked victims by the UKBA, meaning that they had come within the small percentage of third country nationals who received a positive “conclusive grounds” decision since the inception of the NRM. This decision would not have been reached lightly—the Anti-Trafficking Monitoring Group Report found that, 1 year after the implementation of the NRM, the positive identification rate of non-EU/EEA Nationals in the UK stood at 11.9 %, compared with UK citizens who were identified at a rate of 76 % and nationals of other EU states at a rate of 29.9 % (Anti-Trafficking Monitoring Group 2010, p. 9). Two years after the NRM had been implemented, the UK-specific report by the Group of Experts on Action against Trafficking in Human Beings (GRETA), who are responsible for monitoring the implementation of the Council of Europe Trafficking Convention, raised the issue of the disparity in victim identification rates dependent upon country of origin, with statistics from that period in the UK showing that 86 % of UK nationals, 71 % of other EU/EEA nationals, and 21 % of non-EU/EEA nationals received conclusive grounds decisions (GRETA 2012, paragraph 217). Clearly, the statistics are not weighted in favour of third country nationals, yet both *N* and *L* fell within the small percentage of those positively identified.

Emphasis was placed on *N*’s leaving the factory for a short time period and returning following the threats that were made to him as indicative of a degree of autonomy that would not typically be displayed by a trafficked victim. This indicates a lack of understanding of the complexities of human trafficking and the

degree of coercion and control that can be exerted over victims, as threats are frequently employed to coerce victims (Brown 2001). Similarly, reliance upon *L*'s possession of a mobile phone as evidence of a degree of autonomy is inappropriate and shows poor awareness. Traffickers may in fact use mobile phones to stay in contact with victims, as indicated by Hayes (2012).

Furthermore, due to the publications and guidance available on trafficking at the time, the relevant professionals should have been aware of the link between Vietnamese child trafficking victims and the cultivation of cannabis. The ACPO 2012 publication recognised a “general lack of awareness amongst officers on how to recognise child victims of trafficking”, and a specific failure as regards child victims trafficked for cannabis cultivation is evident.

This case illustrates the confusion that can arise as to whether an individual has been trafficked or smuggled and highlights the dangers of not erring on the side of caution where the status of an individual is in dispute. More proactive enquiry is necessary so that trafficked persons who may appear at first to have been smuggled do not slip through the net. The judgment emphasises on several occasions that *N* never suggested that he had been trafficked. Victims cannot be expected to self-identify as they may simply not know that they have been trafficked (Home Office 2007). This decision underpins the point that responsibility is placed on others, such as legal counsel, to be proactive in the identification process. It is difficult to reconcile the decision in this case with the Article 26 duty, as the conclusion to be drawn from the facts is that culpability of the defendants was lacking.

## 8.5 Is the UK Failing the Victims?

The case law indicates that the system for victim identification is somewhat deficient in the UK and that active consideration of the non-punishment principle is not always achieved. Training and awareness among those charged with the responsibility of identifying putative victims, as well as those encountering the victim as part of criminal proceedings, is clearly lacking, and this is to the detriment of the victims of this highly coercive, exploitative phenomenon. If a putative victim is not identified as such prior to his trial, it is apparent that professionals such as a legal counsel must have a heightened awareness of the potential for and prevalence of trafficking, so that identification can take place expeditiously and so that active consideration of the requirements of the non-punishment principle may take place at first instance.

As regards victim identification, the Anti-Trafficking Monitoring Group indicates that too much emphasis is being placed upon the immigration status of the putative victims (2010). GRETA President Nicolas Le Coz stated that “...it is important that decisions on immigration and asylum are clearly separated from procedures to identify victims of trafficking, which hasn't always happened in the UK” (Human Rights Europe 2012). The continuing disparity between the identification rates of UK nationals and non-EU/EEA nationals may be indicative of

immigration status being given precedence over the identification of victims. The corollary is that third country nationals who have not been conclusively or even putatively identified as trafficked will then have their immigration status looked at as the next port of call. And, for all putative victims who are not identified as such, any offences committed that may have resulted from trafficking-related “compulsion” will be treated in the usual way according to domestic criminal law, without any specific provision for prosecutorial discretion.

Leaving the focus on immigration status aside, there is clearly an issue with respect to awareness of trafficking among many of the professionals who encounter trafficked persons. The central case law considered in this article raises issues as to the identification of victims and the active consideration of non-punishment for victims of trafficking in the UK. The *O* and *N* cases also raise particular issues with respect to the treatment of child victims of trafficking. The organisation referred to as End Child Prostitution, Child Pornography and Trafficking Children for Sexual Purposes (ECPAT) has called for a review of the NRM and furthermore for the responsibility for identifying children under the NRM to be transferred from the UKBA to the Department for Education (Education Committee—Fourth Report 2012, paragraph 98). The Fourth Report of the Education Committee criticised the criminalisation of child victims of trafficking on the basis that help should be provided by a children’s services specialist rather than by immigration officials (Education Committee—Fourth Report 2012, paragraph 98). The procedure as regards the criminalisation of adult victims appears to be no less lacking.

The CPS has made it clear that in no way can immunity (from prosecution) be guaranteed, even where a “conclusive grounds” decision is reached (CPS 2011, paragraph 31). Nonetheless, the GRETA Report calls for the UK to take a clearer line on the matter of victim criminality (GRETA 2012). Where victims are referred into the NRM and have received either a “reasonable grounds” or “conclusive grounds” decision as to their status as “trafficked”, this should be taken into account in prosecution proceedings. This carries with it problems of its own: not all genuine victims of human trafficking will consent to be referred into the NRM, and for adult victims, consent is a precursor to referral. Various things may prevent a victim from consenting to referral into the NRM, such as mistrust of the authorities—which Feder (2010) notes is often present in migrants who have experienced sexual violence, for example—and perhaps, not un-ironically, a fear of criminality as a result of activities undertaken in the course of the trafficking.

The GRETA Report assessment of the treatment of victims in the UK is telling. Although it was recognised that the UK has done a lot to combat trafficking (including setting up the NRM and the UK Human Trafficking Centre), it was specifically pointed out that UK authorities need to

... further strengthen mechanisms for identifying victims and to make sure that people who have been trafficked are treated primarily as victims of serious human rights abuses ... and that they should not be prosecuted for offences committed as a result of their being trafficked.

(Council of Europe 2012)



Training and awareness among those likely to encounter putative victims are a key. A practice note issued for legal counsel by the Law Society (2011) notes that the Council of Europe Trafficking Convention articles relating to a rest and recovery period and access to services and assistance:

...are very important for any professional coming into contact with victims of trafficking who may not have been identified as such and who may have been arrested and charged for criminal offences as a direct consequence of their trafficking situation.

Consequently, there appears at least to be growing recognition of the importance of all relevant professionals being aware of trafficking and the non-punishment principle. But whether the training and guidance for professionals are adequate and effective is still at issue, as the case law indicates that the responsibilities acting upon the relevant professionals are not always adequately discharged.

As regards the implementation of Article 26 of the Council of Europe Trafficking Convention, GRETA makes particular recommendations for the British authorities to step up their efforts in order to take a more victim-centric approach (GRETA, paragraph 336). These issues must be addressed, so that genuine victims are treated as just that: victims rather than criminals.

### **Conclusion**

The issues discussed throughout this article clearly indicate that there have been and continue to be deficiencies as regards the UK's implementation of its obligations and duties under the Council of Europe Trafficking Convention, particularly with regard to some of the articles that are aimed at the identification of victims and the duty to actively consider non-punishment of victims who have committed offences as a result of compulsion arising from the trafficking nexus. A nuanced regime exists to protect and assist trafficked victims, and in order for this regime—deriving from the Council of Europe Trafficking Convention—to be effective, it must be properly implemented into the domestic legal regime.

The CPS and other relevant bodies are attempting to step up to the mark by producing relevant guidance, but one of the key issues identified in the examination of the case law is that there is an ongoing lack of awareness as to, firstly, what a trafficked victim is and, secondly, the Article 26 duty to consider non-punishment.

Since the Article 26 duty is intrinsically linked to the identification of trafficked victims, in that the duty under that article is not even triggered until potential victimhood is considered, there appears to be a genuine need for training and awareness raising among not only those who are charged with identifying putative and conclusive victims but also all other professionals who come into contact with putative victims, such as legal counsel.

In examining the failures to adequately discharge the Article 26 duty in UK case law, it is recognised here that it is not acceptable to ask for blanket

(continued)

immunity from prosecution. That would indeed be a step too far and may equate to a “carte blanche” for immunity from prosecution as regards all offences committed by trafficked persons. Nonetheless, it is clear that more high-profile publication of the relevant guidance on non-punishment of victims is needed at the very least, so that active consideration of the non-punishment principle may take place in all relevant instances and so that the vulnerable victims of the trafficking phenomenon may receive access to the protections enshrined in the Council of Europe Convention. It should not be necessary for cases to go to appeal before the Article 26 duty is adequately considered. It is high time for victimhood to become the focus of enquiries, rather than the primary emphasis being placed on criminality, actual or potential.

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## Chapter 9

# Forced Sex, Chosen Sex: Risk, Trafficking, and Prostitution in Portugal

Jorge Malheiros and Maria João Guia

**Abstract** Feminine prostitution is an activity often associated both with international migration and criminal practices. In Portugal and in several other Western European countries, the proportion of foreign women among sex professionals clearly exceeds the proportion of foreigners in the resident populations. Actually, in some cities, the majority of female prostitutes are foreign citizens (Indoors, Indoor sex work. *Autres Regards*, Marseille, 2010), in several cases in an irregular situation. This leads to the second issue dealt with in this chapter—the direct and indirect links between prostitution, illegal activities, and crime. In most Western European countries, prostitution in itself is not a crime, but sexual exploitation and pimping are. In addition, trafficking for sexual exploitation is consensually classified as a crime that involves “coercive” or “deceived” migration, often associated with threat, fraud, and violence. Focusing our analysis on this triple link between international migration, prostitution, and criminality, we frame it within the notion of risk; the key idea behind the article assumes that prostitution, particularly when it involves foreigners, is always a “risky business” (Kindler M, *A risky business? Ukrainian migrant women in Warsaw’s domestic work sector*. Amsterdam University Press, Amsterdam, 2012), whether it is assumed by choice or as a consequence of trafficking. The notion of risk stems not only from the unattended negative consequences of trafficking and other criminal activities but also from the higher exposure to verbal and physical violence (from pimps, clients, and other society members), family tension and exclusion, or health problems.

Using examples from human trafficking for prostitution and classic street and indoor prostitution not associated with trafficking processes involving Eastern European and Brazilian women in Portugal, we want to show that the immigration-prostitution nexus does not necessarily involve trafficking and that prostitution is always a “constrained option” balanced between risk and (financial) opportunity taken within a framework of limited social and cultural features. If contemporary society can be considered a risk society with a global nature with

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dangers that cross national borders and result from transnational interdependence, as Beck (1998, 2006, 2009) puts it, prostitution, an activity that involves strong international links and close intersections with criminality, exposes immigrant prostitutes to various forms of risk, thereby creating a particular risk group out of them.

## 9.1 Introduction

Migration, and particularly female migration, always involves a certain level of risk. The notion of risk corresponds to the exposure to a peril or a catastrophe; it translates into the awareness (by anticipation) of a future negative event that may affect a person or a group (Beck 2009; Kindler 2012). Everybody is exposed to risks in one manner or another. Indeed, Beck considers that the increasing interaction, individualisation, and uncertainty (associated with the behaviour of financial markets, labour relations, etc.) are leading to an increased exposure to risks in contemporary society, particularly to what can be classified as cosmopolitan global risks.

Migration always involves a rupture with the original neighbourhood society, which may incorporate extreme inequality and shorten social opportunities, but is a familiar environment that provides some forms of solidarity that can be mobilised. Long-distance travelling processes under stressful conditions, crossing borders often without the necessary permissions, and the adjustment to different societies involve a relatively high exposure to risks. As Kindler (2012) demonstrates, migrants, and in particular female migrants, strike a balance between gains (mostly financial) and risks when opting for emigration; this rationalises the decision to emigrate, the means to operationalise the move, and the choice of destination. If the migratory process becomes associated with prostitution in the destination city or region, the level of risk exposure increases, even if the decision of entering the sex industry is assumed by the migrant, without any threats or frauds from third parties. In comparison to the average woman, female prostitutes expose themselves to higher levels of verbal and physical violence (from pimps, clients, relatives...), as well as to higher health risks (Indoors 2010). In addition, they carry a heavy social stigma that tends to limit social and family relations (at least for a certain period of life) and generate rejection from the home and host societies, or at least from some sectors of their respective populations.

If migration and post-migration engagements in prostitution are risky options, trafficking for prostitution represents not only a much higher risk but also a risk of a different nature. Trafficking in human beings is a crime that is consensually recognised as consisting of three elements: (a) an action, as the recruitment, transportation, transfer, accommodation, or reception of someone; (b) a means, such as the use of force, threats, coercion, kidnapping, fraud, sham, abuse of authority or of a situation of vulnerability, concession or reception of benefits;

and (c) an objective of exploiting someone sexually, at work, or for the removal of organs. When one of these elements is not present (except for minors, who do not need to have the means, considering their non-capacity for having the adult ability to choose), we are dealing with a crime or a reality other than trafficking in human beings.

There is still a grey zone where the differences between human trafficking and migrants' smuggling are concerned, but the lines that separate these crimes are very clear: the main difference refers to the object of the crime and the values that should be defended. When we face a human trafficking crime, the victim is the person's body and will. Basic human rights are violated when someone is forced to act in a way that she would not, given a choice. On the other hand, migrants' smuggling is a crime against the sovereignty of a certain state, who determines in what conditions a migrant should be allowed to enter, stay, live, or work within its territory. It corresponds to a "contract" between the victim, who is seeking better life conditions, and the offender, who takes advantage of the vulnerability of the person to exploit her in exchange for fake documents, a visa, or other necessities for entering a country she would not be able to enter on her own.

When the crime of trafficking started to raise more attention in Portugal, most cases involved sexual exploitation purposes. In the turn of the millennium, from the late 1990s to 2003/2004, immigration to Portugal increased substantially and the number of foreigners jumped from about 207,000 in 2000 to approximately 450,000 in 2004 (Malheiros 2012). During this period, three regularisations of undocumented foreigners took place: the first one in 2001, the second one in 2003 (specific to Brazilian citizens), and the last one in 2004, following a process that was also implemented by other southern EU countries (Peixoto et al. 2012).

At that time, two sources became dominant in the inflows of women reaching Portugal: (1) an increasing Brazilian inflow, displaying an overrepresentation of women and more low-skilled migrants than the previous Brazilian migratory wave (Padilla 2004) and (2) the novel arrival of thousands of Eastern European migrants, mainly from Ukraine, Moldova, Russia, and Romania, lacking any former historical links with Portugal (Baganha et al. 2004). As a result of this process, in 2005, the Ukrainian community was the biggest among foreigner groups in Portugal, and in 2011, Brazilians were by far the largest foreign group in the country, with a population of approximately 111,500. Despite the decrease observed as a consequence of the serious economic and social crisis experienced by Portugal from 2004/2005 onward, Ukrainians were still the second-largest foreign community, with 48,000 members, slightly outnumbering Cape Verdean foreigners (SEF). Many explanations have been advanced to justify this huge displacement of migrants from Eastern European countries to Portugal, but those can be briefly justified by the progressive development of family networks that have reinforced the sense of opportunity, since the political transition that took place in these countries after 1990 was associated with an economic crash that caused huge unemployment and wage losses. It is worth mentioning that in the late 1990s and early 2000s, the Portuguese economy was growing at a very positive pace, unemployment was residual, and jobs in public works were available in large quantities,

thereby creating the attractive conditions that can explain the arrival of Brazilians, Eastern Europeans, and other foreigners (Malheiros and Esteves 2012).

During this period of increased migration from Brazil and Eastern Europe, the presence of women coming from these countries becomes more visible in prostitution-related activities, although their involvement in the activity can be traced before the late 1990s. Available data indicate that the number of Brazilian prostitutes in Portugal is higher than the number of Eastern European sex workers (Indoors 2010; SEF 2011), the former being relatively more represented in ordinarily constrained sex activities and the latter in cases of trafficking for sexual exploitation. Actually, Eastern European victims were apparently easier to mislead because the languages are so different and the victims were often unable to communicate in English, French, or any other Latin-based language. In the eyes of Portuguese men, Eastern European women were almost unknown, and they quickly became associated with the image of blonde, Nordic women—features that made them very desirable, especially in the early years of migration. Within this context, it was relatively easy for criminal networks based in Eastern Europe, and mainly devoted to organised crime, to collect women facing harsh social situations in post-Soviet countries, promising them the false dreams of better living conditions abroad. This social relationship often ended up in trafficking and sexual exploitation in Portugal, the women forced to move regularly from one city to another, locked inside houses and apartments where their movements were controlled. A state of permanent kidnapping became the norm, the victims being successively raped and prohibited to establish contacts that could possibly help them get out of these criminal schemes.

During the peak of immigration, Portugal was not completely prepared to deal with these types of crimes, and several legal devices that now frame them have been created after irregular migration, and immigration, in general, gained momentum (e.g., recruiting illegal manpower was only provided for in law as a crime in 2003, and the legal text on human trafficking crime was changed after Law n. 59/September 4, 2007) Nevertheless, many process crimes involving trafficking and sexual exploitation have been brought to courts, even though this reality remains relatively obscure and unknown.

As far as Brazilian sex workers are concerned, sexual exploitation also takes place, but trafficking is apparently less evident. Brazilian women also excite the imagination of Portuguese men; they are hyper-sexualised, portrayed as exotic, sensual, and even “easy”. This process is connected to the idea of a developed Brazilian body culture and the free use of sex (Padilla 2007; Malheiros and Padilla 2014). This desire of Portuguese men creates a lucrative market for Brazilian sex workers, and they appear engaged in independent apartment sex activities, as well as in brothels and on the streets. If trafficking is not the norm, consented smuggling for sex activities and pimping are not absent in the work process of these women. However, it should be stressed that pimping, which is also considered a crime, differs from trafficking in Portuguese law. In pimping, the individual who exploits a person sexually is normally not doing it by means of violence or against the will of that person, at least, by means of explicit violence or obligation. The person subject



to that crime is allowed to refuse submission to sexual acts if she chooses. In the crime of human trafficking, there is no possible choice: the victim is always subjected to a threat, coercion, or a form of obligation that does not give her the possibility of choosing otherwise.

Returning to the concept of risk that, in our perspective, establishes a link between the two types of prostitution (the one associated with trafficking and the “classic” form, involving a process of choice, however constrained), two elements deserve clarification: the level and the nature of the risk.

In both cases, we can identify a double-risk situation, which stems both from the migratory process and the engagement in prostitution. However, trafficking for sexual exploitation is associated with a higher risk than migration-related and ordinary prostitution because the possible threats involved in the former (kidnapping, rape, isolation) correspond to dangers that are both more serious and more frequent. Moreover, and using Douglas and Wildavsky’s (1982) perspective, the nature of the risk in the case of “chosen” prostitution can be classified as belonging to the domain of “voluntary risk”, which involves a component of awareness and choice, whereas the nature of the risk attached to trafficking can be considered involuntary (or forced), because it is largely outside the control of the risk subject, being imposed by a third party.

## **9.2 Two Examples of Human Trafficking in Portugal Involving Eastern European Women: Crime, Conviction, Vulnerability, and High Risk**

In the late 1990s and during the first decade of the twenty-first century, some criminal Eastern European networks increased their activities in the European space. We will refer here to a concrete case of a criminal network trialled and convicted for several crimes in Portugal because this had a big impact on the Portuguese society. We will call it the Nikolai<sup>1</sup> case, a perfect example of how the criminal actions were processed in practice, namely human trafficking of Eastern European women.

The Nikolai case refers to an Eastern European criminal network, hierarchically organised with clear objectives, which operated between 1999 and 2003 in several Portuguese locations (namely Lisbon and Setúbal and also in the central coastal region). In these locations, the organisation established “cells” with an autonomous leadership and previously defined tasks of a varied nature and level of importance, carried out in the name and interest of all the elements of the group. The leadership of all the activity, however, was assumed by one member only, back in the country of origin.

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<sup>1</sup> All names referred to in the text are pseudonyms, to protect the identity of the individuals involved.

The core of this group had been structured and implemented several years before in Moldova, a country rife with criminal activities such as extortion, facilitation of illegal immigration, robbery, pimping, homicide, etc. It was also able to attract migrants from other ex-USSR Republics, namely Ukraine and Uzbekistan. At a certain point, it extended its activity to other countries, and among them was Portugal. Then the network assumed a transnational character, since the criminal activities they were engaging in, such as human trafficking, required international movements. Due to the transnational complexity of the network, it was not possible to identify all the members involved in the operation, despite the international cooperation developed between several countries. The Portuguese public prosecutor accused 19 suspects, all males aged between 24 and 45, 11 of Moldovan nationality, 5 Ukrainians, 2 Russians, and 1 Georgian, in a collective court. Fifteen of them were convicted of crimes such as criminal association, extortion, facilitation of illegal immigration, and solicitation of illegal immigration.

The action of this group in Portugal followed in the footsteps of other Eastern European criminal networks and was planned by the leaders of the group, in Moldova. They allocated their constituents in strategic positions all over Europe, each one of them with well-defined tasks. To carry out their plan, they created a climate of terror among Eastern European immigrants who were travelling to the European Union, namely Portugal, with the purpose of increasing their vulnerability. They would create situations, immediately before or after their arrival to Portugal, that would facilitate the extortion of money or other values.

Knowing that those immigrants lacked socioeconomic conditions, resulting from the ex-USSR desegregation, and also aware that Portugal needed manpower in some sectors of economic activity (mainly in civil construction and public works), this group recruited male Eastern European immigrants and introduced them in the illegal labour market. Additionally, they introduced women in Portugal via similar tactics: deceiving them in their countries of origin, with fake promises of work in ordinary activities, like domestic work or looking after children. They would subsequently exploit them through prostitution, obtaining economic benefits from this activity.

They called upon a terror climate, using physical force, threats, and verbal intimidation in order to avoid resistance. The group also forced migrants to pay them certain amounts of money each month (like a tax), in exchange for a supposed “protection”. These amounts of money were then channelled to the top of the hierarchy, in Moldova. Threats of harm and death were regularly made both to the immigrants and their families back in their countries of origin.

Criminal activities included the collaboration of other individuals who were not clearly identified, some in their countries of origin and, particularly, contacts in travel and tourism agencies in several countries, who would convince citizens of Eastern European countries to travel to Portugal. They promised a well-paid job for them in Portugal, consistent with their specialisation and professional qualifications, with the guarantee of obtaining permission to stay and work in the country.

The complex transnational activity of the network involved other constituents that regularly visited EU member countries, namely Belgium, Germany, Spain, and Portugal, making contacts with members of the group that were placed in strategic

locations and controlled the recruitment and placement of illegal immigrants from Eastern Europe in the EU.

Once implanted in Portugal and in full operation, the organisation introduced the defendant Nikolai in national territory, in order to protect their constituents from the actions of other groups, such as the “Borman” group (21 defendants with a total of 144 years and 6 months in prison, including 18 for the main accused—newspaper *Público*, January 31, 2003), the “Sasha Sportsman” group (an Eastern organised group that was dedicated to the promotion of illegal immigration, extortion, robbery, and murder—magazine *Visão*, February 13, 2003), and “Casanova” (a network that recruited illegal labour and was involved in forgery and tax crimes, whose victims were more than 3,000 illegal immigrants from Eastern European countries and whose illicit profits reached an estimated value of approximately 5.5 million euro—Daily News, January 31, 2004).

The case began to be investigated by Portuguese authorities based on the statements of two citizens of Lithuanian nationality, for the practice of prostitution in Portugal. These women had used the services of a couple who promised a dishwashing job in Portugal. It turned out that the couple was collaborating with the Nikolai criminal network, which recruited potential immigrants from Eastern Europe with the promise of work in Portugal and organised their journey to this country in a group by land. After reaching the national territory, these women and their eight companions in the group were driven to a city, and there they were “controlled” by individuals who belonged to the aforementioned organised group, composed of citizens from Eastern Europe. Their lives became property of the group, and days later, they were taken to a house where they were forced into the nightlife and involved in the practice of alternative activities, for which they received a fixed compensation from the network, while the profits were handed to the organisation. Given the fact that both of these women could speak Portuguese and some of the girls in their group were not obtaining satisfactory profits, they were later approached by a different network member who ordered them to have sex with clients and, in case of refusal, threatened to sell them to others as prostitutes.

With the help of a Portuguese citizen, these women and another victim of the criminal network managed to escape and report the case to the Portuguese authorities, who began the investigations that culminated in the arrest and subsequent conviction of 15 defendants. Ultimately, the majority of the witnesses and victims of the action group failed to appear in court, and the criminals in the dock denied any knowledge of the procedures, apparently for fear of retaliation either against themselves or against family members, which led to the low penalties imposed on the convicted. The highest sentence was a mere eight-and-a-half years, handed down to Nikolai, who was also wanted in Moldova for involvement in a triple murder case. Moreover, it is worth of mention that despite the lengthy investigation, the mastermind behind the organisation in Moldova still remained unidentified (Guia 2008).

The concepts of human trafficking and facilitation of illegal immigration are often confused, since the boundaries between the works developed by the networks

that are dedicated to both crimes are quite tenuous. Pimping is a crime often associated with human trafficking because a large proportion of trafficked women are exploited for sexual purposes. The *modus operandi* of human trafficking networks is very similar to the one used by the networks that facilitate illegal immigration, but trafficking is a crime that is harder to prove, again because of its deeper transnational and international nature. The mobility of the victims, who are forced to rotate from country to country, is not only a core element of the business but also a strategy to hinder their escape. The evidence in the investigation of these crimes is mostly testimonial, and therefore, again, it is very difficult to find victims who are available and willing to speak and testify, because the increase in their exposure leads to a decrease in their safety. Another problem is that human trafficking networks are seeking increasingly younger victims, increasing the crimes of paedophilia and the spread of infectious diseases, to the extent that neither adequate protection nor the necessary medical care is provided to people forced into sexual activities.

Organised crime has increased in recent years, particularly in the area of human trafficking, whose profits deriving from sexual exploitation only rise annually, having reached the current sum of 27.8 billion U.S. dollars (ILO 2005). The activities of criminal networks vary, depending on the predominant nationality of each group. Despite the differences, it is possible to establish some common features in Brazilian or Eastern European networks, for example, or even with those dealing with irregular immigration coming from Portuguese-speaking African countries. The globalisation of the economy has allowed these criminal groups to operate internationally, with a clear hierarchical organisation and also with great violence (Guia 2010).

This phenomenon took place in Portugal, especially between the years 2001 and 2005. Since then, laws have been changing, becoming more comprehensive, and widening the scope of situations that are considered crimes. Nowadays, criminal networks work differently, making investigation harder, even within the context of a more advanced legislation.

For instance, a more recent case involved a man from an Eastern European country who had already acquired Portuguese citizenship after living in Portugal for several years. He married a woman of no means, a single mother with a young daughter, and promised her a better life that would alleviate the extreme poverty she was facing. After bringing her and her daughter to Portugal, he told her that he had been obliged to incur in a debt to obtain the necessary money to bring them to Portugal and forced her to enter into prostitution to repay that debt. The situation demonstrates how the husband abused her in a position of vulnerability, since she could not speak Portuguese, had no friends, and was responsible for the well-being of her daughter. The abuses persisted for a long time, and it was very difficult to prove that she was a victim of human trafficking, since she was completely manipulated by her husband and could not find an alternative to manage her life: she had no one else to help her, and she was suffering from psychological trauma. Using this *modus operandi*, criminals infiltrate the private sphere of family relations, which is normally protected by several procedural precautions. It is important to mention that this woman was not the only victim that this man had in mind, as he

planned to go back to Eastern Europe and bring other vulnerable and poor women and force them to prostitute themselves.

At a certain point, the woman was confronted with the need to testify, and at this point, her consent was questioned. Was she forced into prostitution, or did she choose to develop the activity? While the police services and courts held her husband in detention, it became known that she maintained her activity as a prostitute. Could she have found another job to pay the bills of her house and support her daughter? She was unable to speak Portuguese, the country was going through a severe economic crisis, and the few available jobs were poorly paid. Was it a matter of consent that she continued to engage in prostitution? Did she actually have a choice? What were her alternatives, being in the vulnerable position of being married to the only person she knew in Portugal and with whom she (and her daughter) had gotten “used” to living with? How could we judge her choice in this case as she remained silent before the court?

The two cases that were presented illustrate well the high level of risk faced by the victims of trafficking involved in prostitution, as well as the difficulties in convicting criminals and stopping transnational networks from operating in this domain. All the women that were mentioned were deceived and forced into nightlife and sex work. The original offer of supporting a migration process whose purpose is to find a regular job (or a “better life”) in Portugal becomes a journey into prostitution and dependence and indeed into becoming the property of criminal individuals and networks. And the risks associated with the prostitution of trafficked women seem to be higher than the risks involved in ordinary prostitution because protected sex and medical care are inexistent or very limited. Finally, higher levels of isolation from the receiving society are the norm among trafficked women, which limits their alternatives and possibilities of getting help and increases their dependence on the people that exploit them.

### **9.3 “Classic” Prostitution of Brazilian Immigrants: Opportunities, Constrained Choice, and Risk**

Immigration and prostitution do not always involve trafficking of women. In this section, based on a small set of interviews with six Brazilian prostitutes implemented in the framework of the BELTS-W project,<sup>2</sup> we aim to offer a reading

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<sup>2</sup> The Project BELTS-W (Brazilian Entrepreneurial Links and Transnational Strategies—Women—PIHM/GC/0111/2008), financed by the Portuguese Foundation of Science and Technology (FCT) and the Portuguese Commission for Equality, focused on entrepreneurial links of Brazilian women immigrants in Portugal who still live in the country or have returned to Brazil. Prostitution has been considered a specific activity and has deserved some analysis in the research, which mainly relied on qualitative information collected in 100 interviews with Brazilian women, six of them sex workers. Quantitative data coming from secondary sources and simplified content analysis of newspaper sex advertisements were the complementary information sources of this research.

of the features associated with “classic” prostitution and also to show that prostitution can be a matter of choice, but also, in this case, a constrained choice that involves risks. This takes place even when trafficking and explicit exploitation are not involved, and this was the case with the sex workers that we interviewed, who clearly declared that they did not feel exploited or considered themselves to be victims of procurement in any way. This does not mean that it didn’t happen at all; usually, people do not tell the complete story, and certain facts that are considered shameful, particularly painful, or assumed to provoke the criticism of others end up being erased or at least mitigated in some way and simplified in the interviews.

Although we used a few quantitative data, what is important here is the qualitative component. The elements collected in the six interviews allow us to develop a deeper understanding of several issues that can be subsequently cross-referenced with extensive information and quantitative data. A press survey, including a sampling of “relaxing massage” ads, a cover name for “sex services”, published in three newspapers (*Diário de Notícias*, *Jornal de Notícias*, and *Record*) between 1995 and 2011, reveals certain evolutionary aspects in the context of prostitution, especially indoor sex work.

In many cases, prostitution is not connected to trafficking and can be perceived as a strategy in several ways. The departure from Brazil is frequently associated with social capital or proximity relationships (the so-called social networks of proximity), which involve family members or fellow countrymen (both for women who leave to become prostitutes and women who leave to work in other activities in Portugal and end up prostituting themselves), as it normally happens in the general immigration context. These people usually play a role in the transition process to prostitution. Individually, this transition is also usually marked by negative developments and disruptions in the personal lives of the women involved:

(...) Lived with a lady. Then, the daughter of this lady decided to go to Italy. She came from Italy to Portugal. It was then that she invited me to come here. I was a domestic worker in her house. I was still working in this lady’s the house. I just came here because I knew someone here. And I always thought that outside Brazil things could get better (...).

My life was never good there ... I had a boyfriend who was not worth it ... when I left to Portugal, I was pregnant ... I did not know ... I had to get an abortion here. (...) From Brazil, I left traumatized with my boyfriend ... I left a favela (slum)... There, a friend of mine was murdered, I was afraid of dying ... Everything happened because of drug trafficking (...).

R., Brazilian, Lisbon

(I came) after my husband had left the house. I was unable to raise my three children. What I earned was not enough. I decided to come to Portugal. I had a bar, where I sold things too. I was not making money. My husband got another (woman) and left me with three children to support. I bought clothes to sell door to door. I even worked in a ceramics factory. After that I was robbed. I had already taken money from the bar to buy clothes and I become more indebted. It was then that I sold everything to come to Portugal.

S., Brazilian, Lisbon

These two stories show that these women came to Portugal in ruptured contexts. In the first case, the boyfriend offered no support when an unplanned pregnancy occurred, which led to involvement in drug trafficking and violence. In the second

case, the rupture involves a relationship between an older woman and a husband who abandons the household with unbearable family expenses. The first idea that we take from these elements is that migration is based on freedom of choice, but this choice is frequently constrained by social networks and triggered, in many cases, by negative personal events that alter the family routines and/or impose a rupture in their everyday lives.

For these women, the intention behind the migration to Portugal was to find a job and start to earn money, part of which they planned to send back to Brazil. However, the moment they arrived in Portugal, they faced another problem, the low incomes:

When I arrived here I had a job on a farm (...). I kept this job for three years. I earned 300 euro per month only. I sent my children half of my salary, and that left me with very little (...). Then I fell down the stairs when I was cleaning the ceiling. I had to leave because the fall caused a problem with my spine (...). I was not earning anything. The lady told me to come back when I felt good (...). I had another cousin who lived here in Alameda connected with "this" ... I called her to ask for a job. It had to be in prostitution. Then she arranged everything for me to start making programs. I made programs in apartment only. I started prostitution in the flat of a Brazilian woman.

S., Brazilian, Lisbon

My mother (who was already in Lisbon) got me a job as an intern. This job was more than full time ... just had one day off per week. When I had this job I did not have much time for my daughter. Even earning 900 euro. After 10 months I started to work in a restaurant. I had to leave this job because of my daughter. She was living on the street, did not want to study ... I had to make money ... And that was how I started in prostitution. It was a way to make money. And also to be closer to my daughter. She is on the streets ... This is very complicated. (...) I have bills to pay. I only have a flexible schedule in prostitution (...).

N., Brazilian, Lisbon

In the first case, the interviewee was employed in a rural area in the outskirts of Lisbon, and she earned 300 euro only; in the second case, the women's earnings reached 900 euro per month, but a problem involving her daughter rendered this paycheck insufficient. However, the main idea here is that prostitution allowed some flexibility in the work schedule and more time with her daughter. Thus, we have two motives behind the transition to prostitution, time flexibility and remuneration, and the latter is indeed fundamental for the involvement in this activity. One additional component is the connection between Brazilian women, in this case Brazilian prostitutes in Portugal, and their condition as irregulars; this poses some difficulties for labour market formal involvement and also for the development of formal economic activities, both in the registration of those activities and in the access to credit lines.

The "free" engagement in prostitution is clearly linked to the wages, which are immediate and higher than the earnings as a hired person with low to medium qualifications. The accounts are clear; in many cases, there is a certain fascination from a consumer's point of view, considering the high earnings attached to prostitution—some accounts refer to liquid earnings up to 3,000 and 4,000 euro (with no taxes involved) and 5,000–7,000 euro in other cases, these being monthly earnings

well above the Portuguese average wage and also the earnings of many liberal professionals. In all these cases, the idea of “easy money” is recurrent:

The women in prostitution are addicted to money . . . every day she can earn some money . . . even if it is little. Before having my children I earned a lot of money . . . got to do some 5 . . . 7000 euro ( . . . ) That was before . . . nowadays we do not earn that anymore. I sent a lot of money to Brazil ( . . . ) . . . I bought a lot of clothes, shoes too . . . Before having my children. At a certain moment, I almost had 50 pairs of jeans. I bought where I wanted . . . at the mall, in the fair . . .

R., Brazil, Lisbon

Today I do not regret anything. I earned a lot of money . . . very much! I saved money but also spend much. I did not care what they thought of me . . . I did not think about it. I was just thinking about the money I earned every month. . . 2500 . . . 3500 euro.

L., Brazil, Quarteira (The Algarve)

These statements also point to the fact that these are short-term professions, and the earnings decrease substantially as the women mature. In addition, the appeal of consumerism is very strong, and the interviewees confess that they earn a lot and also spend a lot, instead of amassing any savings.

It is relevant to stress that in the cases that we studied, and these covered several typologies (street prostitution, house prostitution, and prostitution in high- and low-level nightclubs), sex work was a conscious option, although circumstances, as we have seen, often compelled women to get engaged in this activity. There are several strategies, but in most cases there was an agreement involving the Brazilian immigrants, as opposed to explicit procurement, that is, Brazilian sex workers made agreements with other individuals, often other women, who in turn opened the way to prostitution and eventually guaranteed some protection:

I was not deceived. I knew since Brazil that I was coming to work in “the night”. But there are cases of deceived women . . . the proposals they make are lies. I’ve seen several cases . . . They receive proposals for work in restaurants, with families . . . and end up going to prostitution. I did not come mistaken. I was not afraid because I like the world of prostitution.

I, Brazilian, Quarteira (The Algarve)

No one has ever exploited me; I was always on my own. Only a man who took me to Alverca; I always had to give him x to go there. It was on the road . . . where factories are. . . where the “owners of the street” are. I was there just for a week. I was not going to give him the money from my work. I knew other friends who went there . . . We would just call him and to schedule our day there. We paid half to him. There were no obligations or violence on his part. If we did not work, we did not have to pay him. This is known as a pimp. And I think that Portuguese women like to live with a pimp. . .

R., Brazilian, Lisbon

However, despite rejecting the idea of being deceived or exploited by others, the “collaboration” of a pimp is mentioned in the second case, which involves street prostitution, and the assumption of a risk is present in every discourse of the interviewed women. Actually, the risk of violence is explicitly mentioned, both by those who explore prostitution and by the clients:

Yes, there is always the danger of violence . . . I was kidnapped in . . . was in Artilharia Um street, in Lisbon, a customer who had been with me a week before, it seems that he was



crazy . . . he was transformed ( . . . ) Some men were crying out for not having the complete act . . . they wanted the money back. . . , I already had to slam to avoid being assaulted . . . a woman who lives this life must be prepared for anything. . .

It is the first touch . . . you know . . . you know that you are an object. . . I came home on the first night . . . I spent almost two hours showering . . . I spent a week crying . . . I went to work crying . . . ( . . . ) A person leaves prostitution very traumatized. One feels like crap! Everyone knows that prostitution exists. Even men seeking these women, they do not accept it . . . they talk dirty . . . they treat you badly ( . . . ) I have no words to describe what I feel. . .

R., Brazilian, Lisbon

We face a lot of risks ( . . . ) He was crazy. I was so scared that I stopped seeing him. I swear by all that is most sacred. In Lisbon there are many pimps. They are well dressed, beautiful cars . . . We think he has money because he dresses well . . . Then he subdues the person . . . and takes everything he can from the person – the passport, the money, the freedom of the person. This has not happened to me, but it happened with some of my friends . . .

I., Brazilian, Quarteira (The Algarve)

Generally speaking, the cases of violence and exposure to the exploitation of pimps are always mentioned in the third person, but that does not mean that traumatic experiences do not exist; after the first interview, experiences like these were usually mentioned but never in an explicit form. In addition to risk, a significant lowering of many of these women's self-esteem is patent, leading them to perceive themselves as objects, at least in the beginning, and to accept their situation as a dead end that is very difficult to escape from.

Leaving prostitution is difficult, and two circumstances seem to encourage this process: (a) the beginning of a more permanent relationship with someone—in many cases, these are complicated relationships, such as second relationships with married men, who then “offer” a home to the “former” prostitutes who try to reorganise their lives around the new situation; that often does not last for very long, and (b) the birth of one or even more children, demanding the care of the mother, as stated below, in the second interview extract:

I met my first husband in Quarteira, Algarve. I lived with him seven years and then left the bar and went to the restaurant. Then I had a parallel relationship that is what I have today. . . it has lasted y for 5 years already. I live in his apartment, but he is not from here, he is from Coimbra.

L., Brazilian, Quarteira, The Algarve

I decided to stop prostitution a year ago when I was pregnant with my third child. My youngest daughter is now 6 months old.

R., Brazilian, Lisbon

These are two cases where an effort to leave prostitution can be identified. However, these efforts are frequently interrupted with several returns. Problems become more acute when ageing, and physical decline becomes accentuated, especially in contexts of limited financial means. Even in cases involving significant earnings, which can exceed 5,000 euro per month in the best periods, almost all interviewees say they don't save anything, at least not as formal savings in Portuguese banks, because almost every woman sends regular remittances to Brazil

to help family members, namely parents or underaged children. Many of them have invested in lands and houses in Brazil, even when they have doubts about going back.

There are several stereotypes associated with the Brazilian women as being exotic and easy, which have contributed to stigmatise the images of these immigrants in Portugal and stimulated the sexual wishes of Portuguese men. If this process has roots in the colonial construction of the sexy “mulata”, whose body and sexuality could be controlled by the Portuguese colonisers, it has often been rebuilt in contemporary images of Brazil and Brazilian people, for example through portrayals of sexy “mulatas” catching sun in tropical beaches or dancing in carnival parades (Padilla 2007).

In addition, many Brazilian women claim that there is a greater concern with the body in the Brazilian culture than in the Portuguese and European ones. Brazilian women claim that they go to the hair salon and to the beautician more often and also that they dominate the best manicure, hair, and skin treatment techniques, an opinion that is often shared by Portuguese women. Actually, a form of aesthetic-corporal capital (Malheiros and Padilla 2014) seems to be mobilised by Brazilians in several professions connected to beauty filière of activities. The question that we should raise is whether this factor is relevant in starting and maintaining activities in “classic” prostitution. Our data clearly suggest that this is mainly an activity that results from constrained choice and need, but the aesthetic-corporal capital is mentioned in some cases as an added value of the Brazilian sex professionals:

Portuguese (men) see us in a more affectionate way . . . They say we’re more affectionate, not so rough . . . we don’t say “hurry up” as the Portuguese say. I always say, “my dear, cute one. . .”. Men still prefer the Brazilian . . . especially the men from the North of the country.  
R., Brazilian, Lisbon

There are many Portuguese women in prostitution. Today much has changed . . . Even the Portuguese have learned things by socializing with the Brazilians . . . Brazilian women speak a lot . . . They end up by saying how the Portuguese should change . . . Brazilian women are much more vain . . . Brazilian women do their nails every week. Portuguese women, sometimes, only once a year. . . at least toenails. I see it here in the beauty lounge. But today, Portuguese women are more attentive to their looks; they look after themselves in a better way.

I, Brazilian, Quarteira (The Algarve)

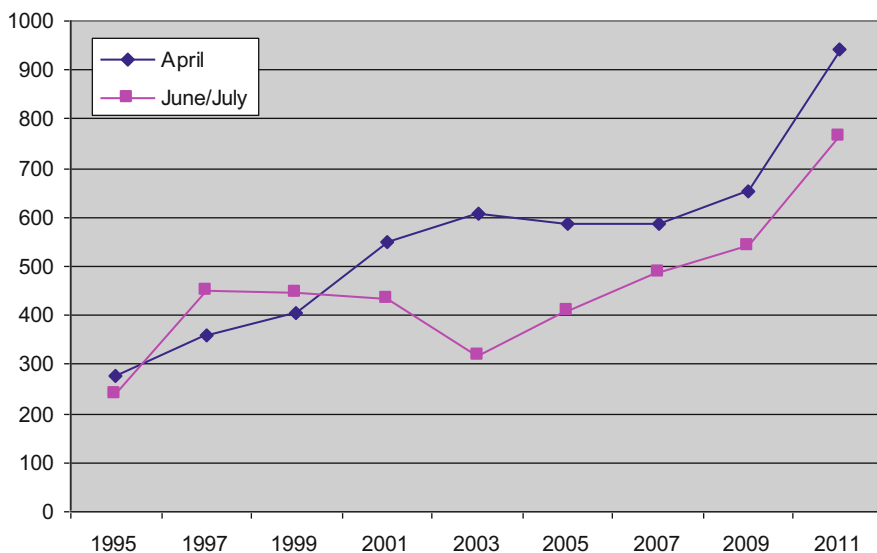
There are also cases in which managers of nightclubs and prostitution brothels hire Brazilian women to “teach” Portuguese women “techniques” to attract men to drink with them and pay for their drinks; to maintain a pleasant ambiance using kind words, looks, and some touches; and also how to behave when bringing those men into sexual acts.

The stereotypes ascribed to Brazilian women still remain in the Portuguese society, as well as the processes of mobilisation of aesthetic-corporal capital by Brazilian workers in the beauty filière. However, the above-mentioned elements point to changes in the “classic” prostitution world in Portugal, namely an increase in the presence of autochthonous women in the activity, the eventual decrease of Brazilian prostitutes, and the relative fading of the Brazilian “sex myth”, in addition

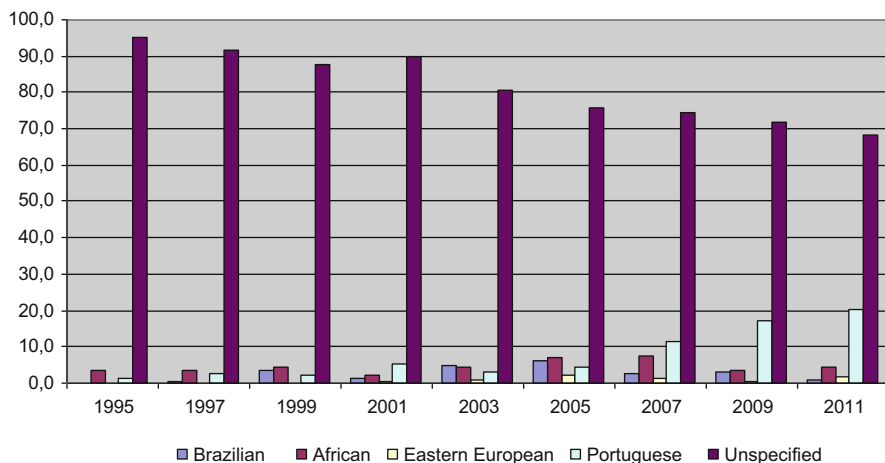
to a decrease in the earnings associated with the deep economic crisis (Newspaper *i*, February 9, 2013).

An analysis of the sample of “relax and massage” ads published in April and in June/July in the newspapers seems to sustain some of aforementioned ideas. Between 1995 and 2011, the number of these ads rose substantially (Fig. 9.1), pointing to both an increased use of this communication vehicle by the women engaged and perhaps a growth in the actual number of these women. The majority of these ads don’t specify the nationality of the women involved (Fig. 9.2). One of the explanations for this is the possible illegal status of some foreign women: they could be subject to an inspection from the immigration police (SEF) and subsequently ordered to leave the country. However, in the course of time, nationality/geographical origin/ethnicity as a featuring element became more explicit and the ads that do not mention this field fell from more than 90 % in 1995 to less than 70 % in 2011; in other words, the number of people mentioning their geographical origins in these ads is decreasing. The main reason for this corresponds to the emergence of the “Portuguese” reference, which sometimes is specified by regions: Madeira, Minho, Alentejo, and others. Since 2005, there has been a clear increase of the Portuguese references, general or regional, in these ads (Fig. 9.2). The Brazilian peak, as well as the African peak, happened in 2003–2005, immediately after the great immigration movements to Portugal.

This evolution can be explained by several hypotheses, which can only be tested in future researches concerning female prostitution. Nevertheless, the first possible explanation pertains to an effective increase of Portuguese women in indoor prostitution, a situation that may have been pushed by the unemployment growth



**Fig. 9.1** Evolution in the number of massage and relax ads (1995–2011)



**Fig. 9.2** Distribution of newspaper “massage and relax ads” by geographical origin of the women involved (%)

among the youth, leading to the emergence of “independent” indoor sex work as a new income source. A complementary element concerns the possible decrease of Brazilian prostitutes in the present context of crisis, following the return movement that is attaining Brazilian immigrants working in other activities. A second explanatory hypothesis is connected with the role of SEF inspections: foreign women don’t identify themselves to avoid being controlled, while Portuguese women do. Finally, a third possibility is associated with the adjustment to the changing demands of clients and also to an increasing value of Portuguese prostitutes, nowadays also in possession of the “Brazilian aesthetic-corporal skills”. . . Perhaps the sexy and exotic image connected to the novelty of the presence of Brazilian prostitutes in Portugal is losing power, and Portuguese women are presently more valued in the sex imaginary of Portuguese males.

Although the Brazilian women interviewed declared that the engagement in prostitution was an option and did not involve being trafficked to Portugal, constraint and risk are not absent from this process. On the one hand, limited references to “non-assumed” exploitation by pimps have been made, pointing to connections with the dangerous world of the nightlife. On the other hand, exposure to verbal and physical violence (by clients or pimps) was often mentioned, confirming the specific risk of prostitution when compared to other activities (Indoors 2010). High exposure to some health risks (HIV, gynaecological problems), although not present in the interviews conducted, is also a matter of concern, as demonstrated by the Indoors research. Finally, isolation and living conditions are also negative issues associated with the practice of indoor sex work “by choice” of the woman, this choice being highly constrained by the lack of available jobs adapted to low and mid qualifications, offering wages compatible with living standards above the poverty line or close to it. All things considered, shamefulness is a hallmark for

several prostitutes that hide the activity from their relatives and friends, particularly in the country of origin. The wish to leave exists but is mitigated by the acknowledgement of limited work opportunities with wages comparable to those in prostitution.

**Concluding Remarks**

The analysis of prostitution through the lens of a risk approach, especially when assumed in a culturalist perspective that regards risk as a social construction that cannot be separated from the social and cultural processes that produced it (Douglas 1992; Kindler 2012), offers an interesting conceptual frame to develop a cross-comparative analysis of the two modalities (“classic” prostitution and trafficking for prostitution) discussed in the previous sections. The structure of Table 9.1 aims to operationalise this frame in terms of risk type and risk intensity, considering a set of dimensions that enable a comparison between the two forms of prostitution, which take place in the same society and are carried out by immigrants.

Before delving into the reading of the contents of Table 9.1, it is worth remembering that trafficking of women is often connected with sexual exploitation, but prostitution does not necessarily imply trafficking. Actually, as we have seen, in many cases the prostitution of migrant women is not connected with trafficking. However, if trafficking for sexual work is one of the most violent processes of exploitation for women associated with forced migration, current immigrant prostitution is also an activity that involves a level of risk that is higher than several other activities (Table 9.1). Therefore, a risk perspective links both processes, but the risks are of a different nature and intensity.

**Table 9.1** Risk associated with both forms of prostitution

	Classical/consented prostitution—Brazilian	Forced (trafficking for prostitution)—Eastern European
Social marginalisation level (family/friends)	High	Very high
Social isolation (local)	Medium	Very high
Engagement in the decision-making process (voluntary/involuntary risk)	Voluntary ( <i>in spite of constraints</i> )	Involuntary ( <i>forced</i> )
Transnational character of risk	Medium	Very high
Level of risk related to the migration process	Low/medium	Medium/high
Level of risk related to involvement in prostitution	High	High/Very high
Level of danger associated with the exploiting groups	Medium	Very high

(continued)

Currently, in trafficking for prostitution, we find a type of risk that is imposed on the migrant women and that is unacceptable to the social standards of the destination society. Isolation and violence against women can not only be extreme, but exploitation levels and connections to the wide and complex transnational crime world are also frequent, as the aforementioned reference to the Nikolai case illustrates.

As far as classic consented prostitution is concerned, the level of risk decreases considerably, not only because social contacts are higher but also due to the presence of the “choice” element, a process that hinders the involvement with highly organised criminal groups. Although there is a certain presence of Portuguese procurers, the main strategy involves women who work together, since the option for prostitution is systematically supported by two pillars: fast availability of money and high earnings (which can actually be extremely high). Aware of certain possible dangers associated with prostitution (higher exposure to sexually transmissible diseases, violence from the clients, exploitation attempts by pimps, etc.) and also of the social stigma of those engaged in the activity, women accept a certain degree of risk, assuming that this brings some compensation in a society that does not offer secure jobs with wages equivalent to the earnings that can be obtained via sex work. Ultimately, these women strike a balance between possible rewards and potential risk, which justifies the engagement in the activity (Kindler 2012). The mobilisation of aesthetic-corporal capital by the Brazilian prostitutes involved in classic indoor sex work is a factor perceived to strengthen the possible gains, therefore contributing to a more positive perspective of the risk-reward balance. Nevertheless, limited opportunities in the destination country and the demand for a reasonable standard of life seem to be stronger explanatory factors behind the engagement in prostitution than aesthetic-corporal capital, which apparently works as a complementary and secondary factor.

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# Portuguese Good Practices in THB

This book could not end without mentioning the projects that have been developed in Coimbra, Portugal, under this topic. It has been rewarding to observe how many academics, professionals, NGOs, and individuals that have been leading international projects in trafficking of human beings. I will just mention three of them: “Human Merchandise—Project for Human Trafficking Awareness”, developed by *Saúde em Português – Associação de Profissionais de Cuidados de Saúde dos Países de Língua Portuguesa*<sup>1</sup>; “Reviewing social auditing practices to combat exploitative brokering in Southern Europe”, a transnational project coordinated by the Faculty of Psychology and Educational Sciences of the University of Coimbra, Department of Social Work, and Observatory for Citizenship and Social Intervention; and the Agency for the Prevention of Trauma and Human Rights Violations, a group of professionals involved in the area of prevention and response to potentially traumatic situations.

Between 2010 and 2013, *Saúde em Português*—the Association of Healthcare Professionals in the Portuguese-Speaking Countries developed two projects: Human Merchandise (“Mercadoria Humana”) and Human Merchandise 2 (“Mercadoria Humana 2”). Both projects had as their main goal to prevent, acknowledge, inform, and increase awareness regarding the issue of human trafficking for work and sexual exploitation. Among the activities carried out, some stood out, such as the creation of a play; creating of a mannequin exhibition; organising of awareness campaigns on public transports and on the radio; the production, editing, and dissemination of information materials; and the organisation of awareness actions targeted at strategic audiences (health professionals and high-school and university students). In this context, *Saúde em Português* has invited Pedro Medeiros,<sup>2</sup> a professional photographer based in Coimbra, to design

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<sup>1</sup> <http://www.youtube.com/watch?v=najYFABGsQA>.

<sup>2</sup> <http://www.youtube.com/watch?v=dwFglFz8Cdc&NR=1&feature=endscreen>.  
Pedro Medeiros (pmedeiros69@gmail.com).



a rare photographic exhibition, interpreting and representing the main aim of the campaign. In response to this challenge, Pedro Medeiros created an author's project, composed by an original portfolio of 8 images, plus a new one on Human Merchandise 2, which can be observed at [http://obviousmag.org/archives/2012/11/mercadoria\\_humana.html](http://obviousmag.org/archives/2012/11/mercadoria_humana.html). The "HUMAN MERCHANDISE" photographic installation has as its main intention the protection of the victims who are every day subjected to the most different forms of trafficking and exploitation.

More recently, Saúde em Português opened a shelter for male victims of human trafficking, the first one in Portugal (Coimbra). Through a multidisciplinary team, it provides temporary shelter in a safe location, assuring those it is intended for a decent and cosy environment, which promotes their physical and mental health and their social integration, as well as medical, legal, psychological and social support.

The second project—the ReSaurSe Project (Reviewing social auditing practices to combat exploitative brokering in Southern Europe)<sup>3</sup> aims to contribute to trafficking prevention and victim identification and referral by combating exploitative brokering practices through social auditing. From that premise, it proceeds that social auditing significantly contributes to the success of efforts not only against trafficking for labour exploitation but also against less-investigated forms of THB, such as trafficking for the purpose of forced marriages and inter-country adoptions. On a more specific level, the project pursues the following objectives: to raise awareness of the role of exploitative brokering practices in trafficking in human beings; to present a clear picture of brokering practices involving EU-based actors from a multidisciplinary perspective and to identify problem areas that can be addressed through social auditing, as well as regulatory action; to identify and consolidate best practices in the area of social auditing in the EU; to build the capacity of social auditors by equipping them with practical tools and training; and to support organisations in trafficking prevention efforts through social auditing and the development of private sector certification programmes as a means of boosting social responsibility.

With these objectives in mind, the project will produce the following deliverables:

- a multidisciplinary study of exploitative brokering practices involving EU-based actors,
- a study of current social auditing practice in the EU and a compendium of best practice,
- a Social Auditing Handbook for Anti-Trafficking as a source of guidance for in-house and third party auditors and supply chain consultants,
- a pocket manual for social auditors on identification and making appropriate referrals,

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<sup>3</sup> Partners: The Tavistock Institute of Human Relations (TIHR) (UK), European Institute for Local Development (GR), Bacau University (RO), Centre for the Study and Prevention of Child Abuse and Neglect Department of Mental Health and Social Welfare Institute (EL), ANKEY Consulting and Trade (TR), Confartigianato Imprese Terni (IT).

- a stakeholder network to sustain the project’s impact,
- training courseware for an eLearning course in Social Auditing for Anti-Trafficking.

Below follows the list of planned actions:

1. Research on exploitative brokering practices:

A multidisciplinary team will be formed to conduct a study of exploitative brokering practices, which will focus on labour brokerage, inter-country adoption brokerage, and marriage brokerage. The study will consist of a gap analysis of relevant legislative and regulatory frameworks and a study of brokering service users, including recruitment practices, motivations for resorting to brokering, and experiences.

2. Research on social auditing in the EU<sup>4</sup>:

This activity will examine the current social auditing practices with a view to identifying and consolidating best practice in identifying victims and addressing THB.

3. Handbook development: the Social Auditing Handbook for Anti-Trafficking will be developed for practical use by the private sector.
4. Pocket manual development: a pocket manual for social auditors (a step-by-step guide that auditors can carry with them to the field) will be developed.
5. Courseware development: an eLearning course on Social Auditing for Anti-Trafficking will be developed and made available on CDs, as well as online.

The third project concerns the creation of the Agency for the Prevention of Trauma and Human Rights Violations, within Coimbra Professionals, mainly from the health area. João Redondo, one of the promoters, presented the project and the objectives as follows.

Each year, more than five million people die as a result of some form of injury, and among 15–44-year-olds, injuries are one of the leading causes of death and morbidity (World Health Organization 2006).<sup>5</sup> Whether intentional<sup>6</sup> or not,<sup>7</sup> the consequences of traumatic situations are a serious public health problem. In some situations of violence, they are also a violation of human rights.

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<sup>4</sup> Available at the EU site EU DG Programs: [http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Projects%2FHOME\\_2012\\_ISEC\\_AG\\_TH\\_B\\_4000003932](http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Projects%2FHOME_2012_ISEC_AG_TH_B_4000003932).

<sup>5</sup> Schopper et al. (2006).

<sup>6</sup> The typology proposed by the World Health Organization divides violence into three broad categories according to the characteristics of those committing the violent act: self-directed violence (suicidal behaviour and self-abuse), interpersonal violence (family and intimate partner violence and community violence), collective violence (social, political, and economic violence)—Krug et al. (2002).

<sup>7</sup> Unintentional injuries are usually subdivided by their causal mechanism (i.e., how they occurred). The most commonly used subcategories for unintentional injuries are thus road traffic injuries, falls, burns and scalds, drowning, poisoning, and stabs/cuts.

The loss and suffering associated with traumatic situations are immeasurable. A drop in work productivity due to death or disability means a significant reduction of economic opportunities, as well as social security contributions in all countries. Treatment and rehabilitation of victims use a significant percentage of health care budgets.

Despite the growing significance of this problem, few countries have national policies, strategies, or plans of action for injury and violence prevention (World Health Organization 2006).

To promote the good health and welfare of individuals, it is essential to invest in prevention efforts. This calls for the adoption of a systemic ecological model and an approach to the “problem” in a public health perspective, which reinforces the importance of building a multi-sectoral and multidisciplinary network at all levels. For these contributions to be coherent, they need to be guided by a common vision, common objectives, and common strategies. Examples of this can be found in the work of the networks “Violence: Information, Research, Intervention”<sup>8</sup> (2002) and “School against Violence” (2007), which have been developing violence prevention interventions in the region of Coimbra. Both networks have the participation of the Coimbra Hospital and University Centre—CHUC (the Family Violence Unit and the Centre for Prevention and Treatment of Psychological Trauma—Department of Psychiatry and Mental Health).

The network “*Violence: Information, Research, Intervention*” (Grupo V!!!) was formally established in Coimbra in 2002. The following institutions belong to this network: Regional Health Administration of the Centre Region (ARSC); District Centre of Solidarity and Social Security of the District of Coimbra; Coimbra Hospital and University Centre—CHUC (the Family Violence Unit and the Centre for Prevention and Treatment of Psychological Trauma—Department of Psychiatry and Mental Health; Child and Adolescent Psychiatry Service, Emergency Room); Centre Delegation of the National Institute of Legal Medicine and Forensic Sciences; Department for Investigation and Penal Action (DIAP), Coimbra; Faculty of Psychology and Educational Sciences of the University of Coimbra; Bissaya Barreto Foundation (FBB); Office of Victim Support Coimbra, APAV; National Guard (GNR), Coimbra; National Institute of Medical Emergency (INEM); Public Security Police (PSP) of Coimbra.

The “*School Group Against Violence*” includes the following organisations: Coimbra Group of Schools Central, Coimbra Group of Schools West, Coimbra Group of Schools South, Avelar Brotero Secondary School, D. Dinis Secondary School (third cycle), Coimbra Hospital and University Centre—

(continued)

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<sup>8</sup> [www.violencia.online.pt](http://www.violencia.online.pt).

CHUC (the Family Violence Unit and the Centre for Prevention and Treatment of Psychological Trauma—Department of Psychiatry and Mental Health, Child and Adolescent Psychiatric Service), Commission for the Protection of Children and Youth of Coimbra (CPCJ Coimbra), Bissaya Barreto Foundation (FBB), Polytechnic Institute of Coimbra—Coimbra College of Education (ESEC).

Based on national and international guidelines and recommendations, and counting with the experience of networking developed in the region of Coimbra, a group of professionals<sup>9</sup> involved in the area of prevention and response to potentially traumatic situations (intentional or not) defended the importance of creating, implementing, and monitoring a regional plan to prevent violence and unintentional traumatic situations that prioritises:

- the ability to improve data collection;
- additional investment in primary prevention;
- the integration of violence prevention in social and educational policies;
- the implementation of programmes for victims and perpetrators;
- more effective coordination of action, avoiding unnecessary duplication;
- the combination of knowledge, networking, funding, and facilities, in order to benefit the economy and boost investment;
- the development of platforms that facilitate the exchange of information among all sectors, as well as joint research;
- the strengthening and monitoring of adherence to treaties, laws, and other international mechanisms for human rights protection.

To achieve these objectives and develop a safe community project that emphasises organisational needs, since February 2014, several meetings have been held with all relevant organisations in the community, closely associated with all relevant sectors of activity, that represent potential opportunities of investment for prevention and/or response to potentially traumatic situations. These meetings

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<sup>9</sup> *Reis Marques*: Psychiatrist, Head of the Department of Psychiatry and Mental Health—University Hospital Centre of Coimbra (CHUC); *João Redondo*: Psychiatrist, Coordinator of the Family Violence Unit and of the Centre for Prevention and Treatment of Psychological Trauma—Department of Psychiatry and Mental Health—CHUC; co-founder of the network “Violence: Information, Research, Intervention” (Grupo V!!!); co-founder of the network “School Against Violence”; *João Paulo Almeida e Sousa*: Critical Care MD, Head of Emergency Room and Intensive Care Department (CHUC); *Álvaro Carvalho*: Psychiatrist, Director of the National Program for Mental Health (General Directorate of Health—DGS); *Duarte Nuno Vieira*: Professor of the Faculty of Medicine of the University of Coimbra and President of the European Council of Legal Medicine; Chief Forensic Pathologist, Center Delegation of the National Institute of Legal Medicine and Forensic Sciences; co-founder of “Grupo V!!!”; *Manuel Albano*: National Rapporteur on Trafficking in Human Beings—Commission for Citizenship and Gender Equality (CIG).

will result in the creation of the “Agency for the Prevention of Trauma and Human Rights Violations”.

Among other things, this organisation will also reinforce an effective use of decision-making processes already in place, correct decision-making mechanisms that have proven inefficient, and continue reaching out to the community so it can take part in the solution of the “problem”.

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