

## Introduction. Human Trafficking: Challenges and Opportunities for the 21<sup>st</sup> Century

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### Abstract

The Introduction begins with an outline of what human trafficking entails and the international and regional legal regime as it currently stands. It contends that human trafficking occurs across the globe, requiring international, regional and local responses that incorporate different actors, both state and non-state. The ten contributions in the special issue deal with some of the most common forms of human trafficking, including forced labour, sexual exploitation and child trafficking. The Introduction also outlines that there are many forms of human trafficking that are not as well-known but that, nevertheless, also require legal and policy responses. Some country good practice examples are provided. The Introduction also includes legal and policy proposals as agreed upon at both workshops.

### Key words

Human trafficking; victim-centred approach; partnerships; outcomes

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**Resumen**

Esta Introducción comienza con un bosquejo de lo que implica la trata de personas, y el régimen jurídico internacional y regional de estos momentos. Argumenta que el tráfico de personas ocurre en todo el mundo, requiere una respuesta internacional, regional y local que implique a diferentes agentes, tanto estatales como externos al estado. Las diez contribuciones que forman este número monográfico tratan sobre algunas de las formas más comunes de tráfico de personas, incluyendo trabajos forzados, explotación sexual y tráfico de niños. Además, la Introducción sugiere que hay muchas formas de tráfico de personas que no son tan conocidas pero que, sin embargo, también exigen respuestas legales y políticas. Se ofrecen ejemplos de buenas prácticas por parte de algunos países. Por último, la Introducción incluye también propuestas legales y políticas que han recibido conformidad en los dos talleres que han originado este monográfico.

**Palabras clave**

Trata de personas; enfoque centrado en las víctimas; alianzas; resultados

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## 1. Introduction

The practice of slavery dates to antiquity (Allain 2012). Once thought to have been eradicated, we now know better: it has evolved, and, through the use of new technologies, expanded. Consequently, the issues surrounding human trafficking and modern-day or contemporary slavery have been gaining international legal and political significance, especially since the Palermo Protocol (i.e., the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; see United Nations General Assembly 2000) entered into force on 25 December, 2003. Now ratified by 166 countries, it is the first internationally agreed-upon legal instrument to define human trafficking, and it mandates countries to criminalize the practice. Despite the laws and attention given to trafficking, most people are still unaware that the practice continues. This is explained in part by the fact that most ordinary lives remain largely untouched by human trafficking, so much so that the rational part of the human brain is often unable to acknowledge that one human being is capable of keeping another captive to exploit them for personal gain. But it does occur and is widespread. In fact, human trafficking and slavery is arguably the fastest growing crime in the 21<sup>st</sup> century. According to recent figures, globally there are around 27 million people being trafficked (U.S. Department of State 2012 *Trafficking in Persons Report*; hereinafter *TIP Report*). Its primary victims are women and children, arguably the most vulnerable sectors of society. Women account for almost 60 per cent of trafficked persons around the world. Collectively, women and girls represent approximately 75 per cent of all victims of trafficking. This is a gross manifestation of gender-based violence and neglect.

It is becoming increasingly evident that children and young persons are the primary target of traffickers. UNICEF estimates that as many as two million children are prostituted in the global commercial sex trade annually. Another 800,000 are trafficked across international borders, 300,000 worldwide to serve in armed conflicts, with many more trafficked within their own countries to act as child soldiers or serve as forced labour. According to 2012 data, the United Nations Office on Drugs and Crime (UNODC) reports that the percentage of child victims had risen in a 3-year span from 20 per cent to 27 per cent. The available data/estimates further suggest that 17 per cent of the victims are girls and 10 per cent are boys, and 50 per cent of internally trafficked victims are children.

Human trafficking is outstripping drugs and arms as the second most lucrative crime in the world today; unlike drugs, trafficked people can be used repeatedly. In addition, given how lucrative the crime is, traffickers have adapted their tactics to capitalize on exploitive opportunities such as targeting asylum-seekers and new waves of refugees (e.g., Syria), and countries such as Greece, Italy, Spain, and Portugal in Europe, for example, experiencing financial and employment challenges.

There are no once-and-for-all solutions to human trafficking (Ashworth and Zedner 2014). This is because the methods employed by traffickers and their allies are transformative: they change as soon as law enforcement gets close or profits decline. But that is not to say that nothing is being done about it. In fact, the opposite is true. Normative criminal sanctions exist in at least 166 countries (U.S. *TIP Report* 2015). These strong laws aim to criminalize the practices and to protect the survivors, yet there are very few convictions in any country. In 2014, there were just under 4,500 convictions globally, only 216 for forced labour (U.S. *TIP Report* 2015). The 2009 Annual Report by the European Union Agency for Fundamental Rights (hereinafter, EU FRA) revealed that EU Member States underuse criminal laws for prosecuting child traffickers. Indeed, in "five Member States it emerges that no final convictions were issued in the period 2000–2007" (EU FRA 2009). We are failing our children. It is unsurprising therefore that the enslavement of people for exploitative purposes appears to be rampant; the trade is seen as a major criminal activity, yet there are hardly any specific, holistic prevention measures in place, especially not for children (Laczko and Danailova-Trainor 2009, Annison 2013, Jones 2017).

This special issue addresses the legal and judicial situation and strategies to help survivors. It represents a compilation of papers and presentations discussed at the Oñati International Institute for the Sociology of Law during two workshops held in June 2014 -*Human Trafficking: Challenges and Opportunities for the 21st Century*- and April 2016 -*Child Trafficking in Europe*. Each workshop provided papers for this special issue.

The first workshop brought together experts from across the globe to provide insights into different aspects of human trafficking and how they relate to the EU experience. Contributions from Canada, California, Argentina, Spain, the Balkans, and the UK all brought fresh views from the frontline as well as research results that fed into a panel with contributions from the EU Commission Anti-Trafficking Office, the EU Fundamental Rights Agency and the Council of Europe Anti-Trafficking Monitoring Group (GRETA). One of the workshop's main aims was to put forward recommendations in key areas that were not, at the time, priorities for Member States and that, globally, have caused major concern. One of these areas is the lack of criminal prosecutions and convictions under (criminal) human trafficking legislation. The workshop also asked the question whether the EU regime of remedies is the best place to deal with this aspect or if the focus should remain with alleviating the pain and suffering of those who have been trafficked regardless of the method employed. The groups were successful in forwarding recommendations for revisions within the European Union regime on two themes: victim protection and possible changes to the EU Anti-Trafficking Directive. These are reflected in this special issue.

The second workshop, held in April 2016, focused on child trafficking in the EU, with experts from across Europe and Canada sharing good practice examples that provided new national strategies to combat child trafficking. For example, *Child trafficking in Poland, Families that torture, The needs of child victims, Child victims from Nigeria, Capacity building*, and role of agencies in helping child victims and prosecuting traffickers under the EU strategy. Several participants did not present papers but made significant contributions during the workshop discussions. All the participants (except GRETA and the Office of the Dutch National Rapporteur) agreed on a submission for the consultation of a new EU Anti-Trafficking Strategy based on the cumulative expertise of survivors, frontline staff, health practitioners, human rights defenders, academics, trainers, NGO representatives working in the field as well as asylum and refugee system representatives. The submission was made in four key areas as a supplement to measures that already exist. The focus of the submission was on children; however, most of the recommendations also applied to any victim of trafficking regardless of age. The submission is part of the special issue. To best encompass the subjects of the papers presented at the workshop, this special issue is divided into four sections: *Trafficking for the Purpose of Labour Exploitation, Survivors, New Ways of Working*, and *Outcomes*.

## 2. Trafficking for the Purpose of Labour Exploitation

Until 2000 there was no singular, coherent and/or international definition of human trafficking that States could (or would) ratify. The only United Nations treaty on human trafficking is the Palermo Protocol, a supplement to the Convention against Transnational Organized Crime, which should be read with this fact in mind. It is specifically designed to focus on cross border organized crime and therefore is an example of a primarily crime control model, not led by human rights (Bruckmueller and Schumann 2012, Milivojevic and Segrave 2012, p. 236; for an overview, see Gallagher 2001, Allain 2012, and Kaye and Winterdyk 2012, pp. 58–61). It targets first steps: obligating States that ratify it to enact domestic criminal laws that outlaw practices defined within the Protocol as human trafficking. The transposition of the Palermo Protocol into the domestic legal systems has caused significant issues. Most countries pick and choose facets of the legal definition, oft leaving out some important aspects. Sometimes this is because there is no equivalency within the domestic system, but other times it reflects the minimum legal standard a country

can get away with and still receive international support (be it financial or political). Hence, political will is often what is lacking.

Europe, the main geographical area of focus for this special issue, has enacted legislation to tackle human trafficking. Both the Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (see European Parliament and Council of the European Union 2011) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings are predominantly human rights instruments rather than crime control laws. Their focus is on victim protection and the provision of services to survivors. To this extent, Europe (and the international community) has moved on from first steps. How have the twin obligations of crime control and human rights been enacted into national legal systems? Are they effective? What areas are covered and which are left out?

**Luz María Puente Aba** is an associate professor of criminal law and her article focuses on child trafficking for the purpose of labour exploitation. The article begins by pointing out how difficult it has been to clearly and effectively define what is meant by *child trafficking*. The author carefully points out the complexity of child trafficking when articulating the various ways in which child trafficking can express itself. In addition to being confronted with a definitional challenge, Puente Aba also discusses the plight of the lack of reliable data in relation to child trafficking. This, as she points out, is linked to the difficulties countries face when trying to regulate the circumstances concerning child work and the criminalization of trafficking for the purpose of labour exploitation.

**Benjamin Greer**, as former Californian prosecutor, has a first-hand view of the ground-breaking California supply chain law (California Transparency in Supply Chains Act of 2010), which serves as a role model for other normative instruments across the globe. His article examines the law designed to increase consumer awareness of supply chain practices that use trafficked individuals to make consumer goods and examines the legal effectiveness of the California transparency framework to eliminate trafficking for labour exploitation. To what extent can one law effect change? Is this law a good practice example for the new partnership working described in the EU Directive?

### 3. Survivors

The EU Directive is victim-focused, meaning the law makes clear that the person(s) who has been trafficked should not be subject to prosecution, criminalized or have their asylum claim not be taken seriously because of involvement in a criminal activity. Rather s/he should be seen as a victim of a crime and given appropriate help, including free legal advice. Children must be dealt with using the national existing child protection systems and cared for by the state, rather than criminalized. Often this is not the case.

The criminological literature has typically focused on the wrong doing (anti-social activities) of young persons but as evidenced in the human trafficking literature, children and young persons are a highly vulnerable sector who, despite international and/or national legislation, have, at best, a very weak voice in terms of protecting their rights. Yet, as the adage goes, *our youth represent the future and unless we can ensure their safety and security, we risk compromising the sustainability and credibility of our future*. Therefore, we must ensure an environment that will build towards reclaiming conditions and environments that recover 'alienated'/wayward youth by addressing both their needs and the needs of society.

**Liz Hales's** article makes clear that many migrant women victims of human trafficking are held in UK detention and immigration removal centres as criminals. This is despite the UK's commitment, by ratifying several international treaties dealing with human trafficking and slavery, not to criminalize victims (known as the *non-punishment principle*). One reason the UK is still not fulfilling its obligations is

because its focus has always been, and arguably still is, on border control. This obsession leads to very negative consequences for migrant women, as the article details.

**Imogen Gunner's** contribution is in the form of an interview, written by **Jackie Jones**. It details her work as a Senior Support Worker for BAWSO, and particularizes her five years supporting victims of human trafficking and slavery, both men and women, in Wales. Mostly supporting women who have been exploited for sexual purposes, she outlines the difficulties with claiming asylum as a victim of trafficking and the lack of financial and other support available, especially for those from outside the EU.

According to the United Nations Office on Drugs and Crime (UNODC) *Global Report on Trafficking in Persons 2012*, at least 136 different nationalities were trafficked and detected in 118 different countries, with *domestic* trafficking accounting for 27 per cent of all detected cases of trafficking in persons worldwide. This is a huge rise in the recognition of domestic human trafficking. Yet, the sexualized violence against the girl child is mostly absent from narratives on human trafficking. The Palermo Protocol is an important international convention, but it is focused on large organized crime. **Jeanne Sarson** and **Linda MacDonald's** article highlights the fact that families are often traffickers of the girl child. There is very little focus on this form of domestic trafficking and their important article sheds light on the extreme pain suffered by victims that in fact and law amounts to torture.

#### 4. New Ways of Working

Traditionally, international human rights law holds state parties liable for acts and/or omissions by them against their citizens; for instance, the state's lack of investigation or prosecution of human trafficking and protection of its citizens from harm. As traditional notions of the State change, non-state actors are increasingly being seen as the subject of international legal obligations and are being held liable for human rights offences. For a number of countries, this does not sit well with the traditional international legal rights regime. Often non-state actors are not being held liable for abuses for two main reasons. First, international law requires a link between the non-state actor and the state before a conviction can be secured. This is difficult in many circumstances and cannot often be proven to the legal standard that international law requires. Secondly, domestic laws do not always cover the specific offence that law enforcement seeks to pursue; for example, forced or compulsory labour. Law, therefore, can be a barrier to justice. If private actors are the major culprits (and domestic criminal laws are not working) a new approach is needed. Efforts to *combat* trafficking have evolved from the 3 *P's* to the 4 *P's* -Prevention, Prosecution, Protection, and the most recent *P*, Partnership. This new approach is exemplified in the EU Directive. It calls on governments, criminal justice agencies, NGOs plus businesses to work together to eliminate trafficking in all its forms. It is a new way of engaging the consciences of individuals, communities and governments. This is particularly pertinent for children whose complex needs are magnified when they have been trafficked. The fourth *P* also affords us the opportunity to take a step away from the dominant criminal justice discourse (True 2012, p. 67) to one of developing long-term strategies to help survivors exit their vulnerable situation. For instance, someone who is in the sexualized commercial trade to find permanent living-wage employment. The Third Sector, working in partnership with other agencies of the State and business, can be such a sight.

**John Winterdyk's** article adopts a broader approach to combatting child trafficking and human trafficking in general. His article explores the challenges and necessity of building capacity through building sustainable partnerships at a local, regional, and international levels. The article addresses some of the fundamental challenges that must be overcome in order to more effectively combat trafficking in human beings. Drawing on several different initiatives, the article offers a number insights to

illustrate how to capitalize on the vast number of opportunities that already exist at various levels. Attention is also given to how at the various levels organizations might be coordinated to enable collaborative work in an informed and dynamic manner to combat human trafficking. The article concludes with a brief overview from several recent research projects that focus on some of the issues and themes incorporated into this presentation/paper.

**Bernie Bowen-Thomson** is the Co-CEO of the women's front-line charity SaferWales. It has been a trailblazer in many ways, including providing support for male on male violence (including same-sex relationships, the Dyn Project), Streetlife which works with women in prostitution as well as being an integral member of MARACs (multi-agency risk assessments conferences). Her contribution details what partnership working looks like in relation to children who have been trafficked. There are many advantages to working with others, including police, social services, etc. but there are still major challenges before one can truly speak of full partnership working.

PhD candidate and research fellow, **Silvia Rodríguez-López's** article focuses on the increasing role that corporations have or are playing in combating against child trafficking. She begins by noting the important role they can and do play given their profile and potential influence both regionally and in some cases internationally. However, noting their relative recent involvement in playing a role in combating human trafficking, the author discusses and explores how corporations expand and improve the role they can potentially play. Furthermore, Rodríguez-López offers a brief overview of the response given by international and European anti-trafficking instruments concerning corporate criminal liability for child trafficking. Importantly, the article concludes by emphasizing the critical role, awareness, and responsibility corporations have from such perspectives as potential perpetrators of this serious crime, and as necessary actors to prevent it.

## 5. Outcomes

There were outcomes from both workshops. From the **first workshop**, the group of experts welcomed the EU Anti-Trafficking Directive, many provisions of which are excellent, providing a solid legal base for prosecutions, prevention and protection in the field of human trafficking. The victim protection provisions, child victim provisions and criminal law sanctions all move the fight against human trafficking on and are welcomed. There are areas where the group felt further strengthening would assist in helping victims and securing prosecutions. These proposals were forwarded to the European Commission and EU Fundamental Rights Academy. The results from the **second workshop** constituted a set of recommendations for the consultation on a new EU human trafficking strategy. They centered on four areas, mainly on children, but could also translate to all victims of human trafficking.

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