

anti trafficking review

Special Issue—Where's the Evidence?

Editorial: The politics of evidence, data and research in anti-trafficking work

Stopping the Traffick? The problem of evidence and legislating for the 'Swedish model' in Northern Ireland

A Formidable Task: Reflections on obtaining legal empirical evidence on human trafficking in Canada

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What's Wrong with the Global Slavery Index?

Constraints to a Robust Evidence Base for Anti-Trafficking Interventions

Monitoring and Evaluation of Human Trafficking Partnerships in England and Wales

Debate: 'Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons

Building the Infrastructure of Anti-Trafficking, Part II: Why measurement matters

Playing the Numbers: The spurious promise of global trafficking statistics

Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons

Global Trafficking Prevalence Data Distorts Efforts to Stop Patterns of Human Trafficking

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ANTI-TRAFFICKING REVIEW

Special Issue

WHERE'S THE EVIDENCE?

Issue 8 April 2017

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

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Editorial: The politics of evidence, data and research in anti-trafficking work

Sallie Yea

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Introduction

Since the mid-2000s, critical commentators have raised concerns about both the paucity of evidence on important aspects of human trafficking, and the difficulty of obtaining meaningful data.¹ Policy formations, advocacy campaigns, concrete interventions, and popular understandings of human trafficking have all had accusations of wild claims and unfounded assumptions levelled at them. Guesstimates prevail and take on a life of their own in such a context.² Calls for more robust evidence to prove or disprove claims about the nature, extent and location of human trafficking, the characteristics of trafficked persons, and the continued investment in particular types of responses have abounded. This has occurred in light of the growing potential for unsubstantiated claims to fulfil the place of rigorous evidence to inform anti-trafficking work.

¹ E Gozdiak and M N Bump, *Data and Research on Human Trafficking: Bibliography of research-based literature*, Institute for the Study of International Migration, Georgetown University, Washington DC, 2008; T K Logan, R Walker and G Hunt, 'Understanding Human Trafficking in the United States', *Trauma, Violence and Abuse*, vol. 10, issue 1, 2009, pp. 3—30; S X Zhang, 'Measuring Labor Trafficking: A research note', *Crime, Law and Social Change*, vol. 58, pp. 469—482.

² D A Feingold, 'Think Again: Human trafficking', *Foreign Policy*, issue 150, 2005, pp. 26—32; A Farrell, J McDevitt, N Perry, S Fahy, K Chamberlain and W Adams, *Review of Existing Estimates of Victims of Human Trafficking in the United States and Recommendations for Improving Research and Measurement of Human Trafficking*, Humanity United, Washington DC, 2009.

With some of these concerns in mind, the *Anti-Trafficking Review* decided to devote an issue to the question of ‘evidence’ in anti-trafficking work. But before exploring these themes in further detail here we should first attempt to achieve some degree of clarity about the terms we are employing in this special issue. In particular, it is important to distinguish between evidence, data, and research; particularly so as many in the anti-trafficking community tend to use these terms interchangeably. Whilst research is a broad term encompassing the activities that generate knowledge and extend understanding through active investigation, data is normally understood as the results of such investigation. Although it has quantitative overtones (discussed in further detail below in relation to human trafficking), data should certainly not only—or even primarily—be understood as just statistics. Rather, it encompasses a wide range of information derived from an equally expansive bevy of methods, including participatory activities, life stories, interviews, and ethnography. Evidence, on the other hand, is not simply another word for data, but implies the ability to give substance to belief and therefore the ability to (dis)prove a proposition or suggestion. The notion of ‘truth’ then is important when considering evidence. But, as Jo Doezema rightly pointed out over fifteen years ago, anti-trafficking can become a dangerous ideology which involves ‘the distortion of truth for political ends.’³ Evidence, in other words, should never be thought of as politically neutral and the recognition that truths are social, political and moral constructs has a long pedigree in the social sciences. Scholars of human trafficking are increasingly recognising this as relevant to understanding the continued human rights abuses, inequalities and exclusions, and repressive policies often carried out in the name of anti-trafficking.⁴

Better Research?

Given the recognition that meaningful evidence on human trafficking is both sparse and prone to manipulation, and that the knowledge has largely been filled by wild claims emerging from the media, NGOs and governments, amongst

³ J Doezema, ‘The Ideology of Trafficking’, paper presented at the Work Conference ‘Human Trafficking’, 15 November 2002, Centre for Ethics and Value Inquiry (CEVI), Ghent University, 2002, p. 2.

⁴ B Anderson and R Andrijasevic, ‘Sex, Slaves and Citizens: The politics of anti-trafficking’, *Soundings*, vol. 40, 2008, pp. 135–145; B Anderson, ‘Where’s the Harm in That? Immigration enforcement, trafficking, and the protection of migrants’ rights’, *American Behavioral Scientist*, vol. 56, issue 9, 2012, pp. 1241—1257.

others, much energy has consequently been spent on attempts to better design research so it produces more meaningful data: data that can be compared, that more deeply engages with individual experiences and that enables estimates to be made. In 2005 a special issue of the journal *International Migration* critically discussed the key challenges in conducting research with trafficked persons and other key stakeholders. Issues of ethics, access, context of disclosure, remuneration for research participants, and a range of related concerns emerged as impacting both the opportunity to conduct research and the rigour with which research can be conducted.⁵ Having attended several subsequent conferences and workshops on research in human trafficking, I have seen very little that is new emerge beyond the issues outlined in 2005, apart from the scholarly investment in more elaborate and thoughtful discussions of ethical issues in research and ‘evidence gathering’.⁶

One area that begs further attention in questions about evidence concerns how trafficking research can benefit from approaches in social sciences that take seriously notions of critical reflexivity, positionality and power relations that accompany research design, fieldwork and undoubtedly the analysis of data produced. Yet in the vast majority of research reports on human trafficking I have come across—which now number well in the hundreds—these concepts are all but vanquished. There appears no time (or perhaps value) to invest in processes that recognise our role as researchers in not only shaping research design but also outcomes. Critical, post-structuralist and feminist optics in the research process, in other words, seem to have a limited validity in many (particularly commissioned/ non-academic) studies of human trafficking, despite the increasingly prominent place of such concepts in the broader social sciences approaches to research. In the field of international development, for example, a large body of research on participatory, critical and feminist approaches has emerged over the past decade, offering to correct the self-assured objectivity of some foundational approaches to poverty and marginalisation in important ways.⁷ These approaches are valuable not only because of the methodological reflections they seek, but also because they take seriously different scales (the body/ the everyday) and subjects (migrants, victims and survivors) of human security that have been marginalised in traditional

⁵ F Laczko, ‘Data and Research on Human Trafficking’, *International Migration*, vol. 43, issue 1-2, 2005, pp. 1—16.

⁶ D Siegel and W de Roos (eds.), *Ethical Concerns in Research on Human Trafficking*, Springer, London, 2016.

⁷ P Maguire, *Doing Participatory Research: Feminist approaches*, University of Massachusetts Press, Amherst, 1987.

state-centric approaches to security.⁸ Such a perspective enables researchers to think about evidence in novel ways, raising hitherto neglected questions, such as what is the impact of heightened immigration restrictions on the vulnerability of migrant workers, including sexual labourers? And how do bureaucratic classifications of and responses to human trafficking affect the agency and voice of trafficked persons themselves?

Investment in all aspects of research is necessary to generate ethically and methodologically rigorous evidence where co-learning by different types of stakeholders conducting research on trafficking is encouraged and supported. Ethnographic studies should be particularly encouraged; a quick scope of the literature over the past fifteen years reveals only a handful of ethnographic, book-length treatments of human trafficking and anti-trafficking.⁹ There is no reason why qualitative, longer-term, ethnographic studies such as these should not be amenable to discussions about evidence in the same vein as quantitative research.

Quantity or Quality?

Beyond the need for better evidence through research, important questions remain about what kind of evidence is valued amongst the anti-trafficking community. As the above discussion suggests, the questions to which evidence is brought to bear are undeniably oriented foremost to quantification, particularly through measurement of scale and the increasing reliance on indicators to inform measurements. Whether through the publication of accurate numbers or, more commonly, estimates, there now exists an almost obsessive tendency to know the scale, proportion, size, major sectors and geographical concentrations of human trafficking. One of the most common iterations emerging in recent years from the anti-trafficking community is the

⁸ J K Lobasz, 'Beyond Border Security: Feminist approaches to human trafficking', *Security Studies*, vol. 18, issue 2, 2009, pp. 319–344.

⁹ R Parrenas, *Illicit Flirtations: Labor, migration and sex trafficking in Tokyo*, Stanford University Press, Stanford, 2011; S Cheng, *On the Move for Love: Migrant entertainers and the U.S. Military in South Korea*, University of Pennsylvania Press, Pennsylvania, 2010; S Yea, *Trafficking Women in Korea: Filipina Migrant Entertainers*, Routledge, London, 2015; S Molland, *The Perfect Business: Anti-Trafficking and the sex trade along the Mekong*, University of Hawaii Press, Honolulu, 2012.

question of scale. In every context where I have conducted research I have been repeatedly asked by governments, NGOs and members of the public the following questions: How many trafficked people do you think there are in the country? Do you know where they come from? Is the problem mainly to do with the sex industry? If I respond that I do not know (as we are seeking understanding about ‘hidden populations’), my value as a researcher is diminished. The questions that make research valuable are, in other words, increasingly oriented to quantification and designing better methods to elicit reasonably accurate estimates. Hence, we now have organisations like Walk Free Foundation with their *Global Slavery Index* estimating that 45.8 million persons are held in slavery¹⁰ and the International Labour Organization (ILO)’s estimate of 21 million forced labourers worldwide. Many have cautioned against the value of such estimates,¹¹ as does Anne Gallagher in this issue.

The usefulness of global estimates is taken up in the debate section of this special issue, with the question of whether global trafficking prevalence data indeed advances the fight against human trafficking. Two of the contributions argue in the positive (David and Robinson *et al.*) and two in the negative (Feingold and Dottridge). Beyond their arguments, we might also suggest that despite—or perhaps because of—the wholesale quantification of human trafficking evidence and the increasing invocation of indicators they are worthy of more critical introspection than they have generally been accorded to date. It is important to consider the arguments of recent critical work in the social sciences on the increasing role of measurement and use of indicators in understanding complex social phenomena, including in the arenas of poverty/development and human rights. Merry summarised these concerns with the following: ‘The deployment of statistical measures tends to replace political debate with technical expertise. The growing reliance on indicators provides an example of the dissemination of the corporate form of thinking and governance into broader social spheres.’¹² As she elaborates, ‘a key dimension of the power of indicators is their capacity to convert complicated, contextually

¹⁰ Walk Free Foundation, *Global Slavery Index*, Walk Free Foundation, 2016.

¹¹ A Guth, R Anderson, K Kinnard and H Tran, ‘Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An examination of the Global Slavery Index’, *Social Inclusion*, vol. 2, issue 4, 2014, pp. 14–22; J Brunner, *Inaccurate Numbers, Inadequate Policies: Enhancing data to evaluate the prevalence of human trafficking in ASEAN*, East-West Centre, University of Hawaii, Honolulu, 2015.

¹² S E Merry, ‘Measuring the World: Indicators, human rights and global governance’, *Current Anthropology*, vol. 52, no. S3, 2011, pp. S83–S95, p. S83.

variable phenomena into unambiguous, clear, and impersonal measures. They represent a technology of producing readily accessible and standardized forms of knowledge... Indicators submerge local particularities and idiosyncrasies into universal categories, thus generating knowledge that is standardized and comparable across nations and regions.¹³ Indicators, in other words, can conceal as much as they reveal. Thus, as I argue elsewhere, indicators can have the effect of excluding important dimensions and experiences of, in this case, human trafficking or disciplining these dimensions. This occurs when indicators obscure the co-constitution of different elements of exploitative labour relations. What is often concealed by indicators, in other words, is how the elements that inform them can combine in ways that are productive to the emergence of unfreedom in labour situations.¹⁴

Critiques also centre on the key role of measurement and statistics as forms of governmentality,¹⁵ producing contexts for the biopolitical management of subjects, knowable to the anti-trafficking community as interventions for managing victims, vulnerable populations and perpetrators. For example, indicators of human trafficking enable migrants to be sorted into trafficked (underpinned by normative assumptions about gender, vulnerability, exploitation and the need for protection), and non-trafficked (conversely, underpinned by notions of indomitability and exclusion from protection). These concerns about the power of indicators to ‘sort’ migrants into categories of deserving and undeserving have been made by a number of commentators in relation to human trafficking and forced labour¹⁶ and migration more generally. Casas-Cortes, for example, suggests that the quantification of migration (where migrants settle, their mode of arrival and so on) can be understood as efforts to ‘render knowledge of migration as an object of governmentality’.¹⁷

In sum, the privileging of quantification in research with trafficked persons and indeed on any aspect of human trafficking is perhaps understandable as the discipline is increasingly fraught with demands from policy-makers, bureaucrats,

¹³ *Ibid.*, p. S84.

¹⁴ S Yea and S Chok, ‘Unfreedom Unbound: A cumulative approach to understanding unfree labour in Singapore’, *Work, Employment and Society* (in press), 2017.

¹⁵ See M Foucault, *Security, Territory, Population: Lectures at the College de France 1977-78*, Palgrave, New York, 2009.

¹⁶ W Chapkis, ‘Trafficking, Migration and the Law: Punishing immigrants, protecting innocents’, *Gender and Society*, vol. 17, issue 6, 2003, pp. 923–937; S A Fitzgerald, ‘Biopolitics and the Regulation of Vulnerability: The case of the female trafficked migrant’, *International Journal of Law in Context*, vol. 6, issue 3, 2010, pp. 277–294.

¹⁷ M Casas-Cortes *et al.*, ‘New Keywords: Migration and borders’, *Cultural Studies*, vol. 29, issue 1, 2015, pp. 55–87, p. 63.

donors, the media and even civil society to justify claims. However, these claims are often construed in narrow terms that direct researchers' efforts in the ways they articulate their findings and the questions they ask. Where governments, and sometimes international organisations and NGOs carry out research themselves a healthy scepticism abounds as to the impartiality of the data produced. Efforts to look for better ways to estimate trafficking prevalence should not, of course, be abandoned but merely tempered in favour of a more balanced focus on different types of data, information and questions that move beyond the current preoccupation with prevalence.

The Politics of Evidence

The significance of ideology in anti-trafficking efforts noted by Doezema earlier in this Editorial speaks to a broader concern that is addressed in this issue: namely the manipulation, misuse and, at worse, neglect of existing evidence altogether. In Singapore, for example, I have witnessed firsthand the ways in which film screenings and other public events by NGOs to raise awareness about human trafficking resulted in a privileging of the 'child sex slave' as the valid frame of reference for characterising human trafficking, even when some research began to indicate the prevalence of human trafficking amongst other groups and in other sectors outside the sex industry.¹⁸ Gender and age bias in anti-trafficking efforts are certainly not restricted to the Singapore context, but they do provide a stark reminder of the oftentimes growing chasm between actual situations of trafficking and the self-perpetuating myths that come to form the basis of much action in the field. Indeed, the power of (mis)representations to take the place of empirically informed evidence was well acknowledged in an earlier issue of *Anti-Trafficking Review*.¹⁹ Others have noted with concern the ways political and other agendas, including conservative and moral ones, have influenced the construction and use of 'evidence' in anti-trafficking efforts.²⁰ These observations urge us to undertake a more

¹⁸ S Yea, 'Mobilising the Child Victim: The localisation of human trafficking activism in Singapore', *Environment and Planning D: Society and Space*, vol. 31, issue 6, 2013, pp. 988—1003.

¹⁹ R Andrijasevic and N Mai, 'Editorial: Trafficking (in) representations: Understanding the recurring appeal of victimhood and slavery in neoliberal times', *Anti-Trafficking Review*, issue 7, 2016, pp. 1—10, www.antitraffickingreview.org

²⁰ G Jahic and J O Finckenauer, 'Representations and Misrepresentations of Human Trafficking', *Trends in Organized Crime*, vol. 8, issue 3, 2005, pp. 24—40; R Weitzer, 'The Social Construction of Sex Trafficking: Ideology and institutionalisation of a moral crusade', *Politics & Society*, vol. 35, issue 3, 2007, pp. 447—475.

critical introspection of both the absence and manipulation of evidence in anti-trafficking work, and the continued investment in projects and policy stances based on thin evidence at best or no evidence at all.

The Singapore example above demonstrates how resources continue to be poured into criminal justice responses targeted at the sex industry, despite growing evidence of the prevalence of trafficking amongst male workers in the construction and shipyard sector, migrant fishers, and foreign domestic workers. Undoubtedly political interests in narrowing the parameters of victimhood so as to exclude large populations of migrant workers who form an important crux underscoring Singapore's economic miracle provide an important explanation for the discounting of evidence in this context.²¹ On a larger scale, numerous studies have indicated time and again that some of the foundational assumptions that form the basis of anti-trafficking efforts are flawed to say the least. Whilst images of dark, shadowy figures associated with transnational criminal networks persist as 'traffickers', studies from a range of regions have revealed the significance of individual, small scale local recruiters/traffickers operating with some familiarity with victims themselves.²² Similarly, a large number of studies have now been published suggesting that criminal justice responses are less than effective in curbing trafficking, and should be tempered in favour of a greater focus on prevention. However, by its very nature success in prevention is far more difficult to measure and evaluate, making it less attractive to governments and international organisations alike.²³ These examples suggest then that there is often a significant amount of evidence available to inform and (re)direct anti-trafficking policy and practice, but that it is often maligned in favour of responses that are based on pre-existing assumptions, political interests, or support a particular ideology and morality.

Scholars of human trafficking could do well to consider the substantial critiques that have emerged in related fields, such as development, in questioning these prevailing logics of intervention. Over two decades ago James Ferguson,²⁴ for example, examined how 'development' projects were divorced from the political realities that undergird them, rendering them technocratic interventions

²¹ S Yea, 'Trafficked Enough? Missing bodies, migrant labour exploitation, and the classification of trafficking victims in Singapore', *Antipode*, vol. 47, issue 4, 2015, pp. 1080–1100.

²² D A Feingold, 2005.

²³ European Commission, *Study on Prevention Initiatives on Trafficking in Human Beings*, Publications Office of the European Union, Luxembourg, 2015.

²⁴ J Ferguson, 'The Anti-Politics Machine', in A Sharma & A Gupta (eds.), *The Anthropology of the State: A reader*, Blackwell Publishing, Malden MA, 1992, pp. 270-286.

that gave the impression of being politically neutral. Importantly, as Ferguson noted, power and political proclivities often provided the key in explaining why certain projects failed, and indeed why particular programmatic interventions continued to be pursued despite limited evidence of their success.²⁵ A more robust critique of anti-trafficking evidence would do well to consider the conceptual aids provided by these types of critiques. To date, researchers of trafficking have noted the ways political interests centred around (exclusionary) migration policies have invoked a protectionist/prevention discourse around vulnerability—particularly for women—in tightening their borders against entry of particular types of migrants.²⁶ This type of critical scholarship could be extended to explore the politics of other anti-trafficking measures and, in particular the ways evidence is ignored or manipulated to perpetuate such exclusionary and unhelpful stances.

The Special Issue: Evidence and effectiveness

So far in this Editorial I have focused on some of the key issues concerning the questions to which evidence is brought to bear and how this ‘disciplines’ research in both methodology, use, interpretation and presentation of data. More recently there have been calls not only for evidence to inform policy and anti-trafficking interventions—termed ‘evidence-based policy’—but often vocal demands for evidence of the normative basis on which anti-trafficking practices rest and, relatedly, the effectiveness of such practices. In contrast to well-accepted treatise on aid effectiveness more generally, many in the anti-trafficking community, including the contributors to this special issue, have lamented the paucity of evidence to inform policy directives and concrete interventions and the lack of monitoring and evaluation of interventions. Some of the contributors ask, for example, why governments privilege criminal justice responses to human trafficking and devote disproportionately large resources to it, when there is little evidence to suggest they are effective in countering human trafficking or, indeed, providing victims with justice and restitution. Logistical issues (such as access) are important to consider, but political interests are equally important.

²⁵ Regarding migration in general, see also A Percoud, ‘Depoliticising Migration’, in *Depoliticising Migration: Global governance and international migration narratives*, Palgrave Macmillan, London, 2015, pp 95–123.

²⁶ See Fitzgerald, 2010; Anderson, 2012; R Andrijasevic, ‘Beautiful Dead Bodies: Gender, migration and representation in anti-trafficking campaigns’, *Feminist Review*, 2007, vol. 86, pp. 24–44.

Three of the contributions in this issue focus on the evidence that is used—or rejected—to formulate national anti-trafficking policies. They demonstrate how, even when evidence does exist, anti-trafficking laws and policies can still be based on assumptions, morality, political agendas or external pressures. Huschke and Ward's contribution presents a study that the authors conducted on the applicability of the 'Swedish model' (a ban on the purchase of sex) in Northern Ireland and its possible impact on human trafficking. The study found that sex workers and their clients oppose the ban and the police have limited powers to enforce it. However, despite this solid evidence that the ban would have very limited effect on human trafficking, the Northern Ireland Assembly voted to adopt the measure. The authors conclude that 'evidence ... is of little interest for proponents of the Swedish model'. The paper also reveals how crucial it is to actually talk to subjects affected by human trafficking policy and law, including sex workers and their clients—something no one should have to emphasise fifteen years after the signing of the UN Trafficking Protocol.

In their contribution, Millar, O'Doherty and Roots describe the difficult process of conducting socio-legal research on human trafficking in Canada and, in particular, the 'formidable task' of obtaining verifiable data on trafficking prosecutions and the implications this has for anti-trafficking laws and policies. Their research shows that Canadian anti-trafficking legislation is based not on robust evidence but on sensationalistic media reports, NGO advocacy and international pressure from the US government through its annual *Trafficking in Persons* Report. It also raises the important question of the availability and accessibility of court data that can be used to conduct research and produce evidence. The authors conclude with five recommendations for the Canadian government to facilitate research, in order to create evidence-based policies.

The links between human trafficking and vulnerability factors, such as poverty, unequal development and gender-based violence, are generally well documented and accepted in literature and policies on human trafficking. Climate change, on the other hand, is rarely considered as such a vulnerability factor. Using the Indian Sundarbans as a case study, Molinari shows how climate change in the region has exacerbated the same factors that lead to human trafficking, such as loss of livelihoods and forced migration. Despite this evidence, climate change rarely features in anti-trafficking policy and discourse. One reason, argues Molinari, may be that it does not fit neatly into the dominant anti-trafficking narrative of vulnerable women and girls and malevolent crime gangs.

Lynch and Hadjimatheou take a different approach to 'evidence' in their contribution. They explore the (physical) evidence on which border force officers (BFOs) at London Heathrow airport can count to implement their duties to

identify potential victims of trafficking and refer them to support services. They outline the main frustrations that BFOs have with regard to their anti-trafficking work, namely, the limited power to stop and question nationals of the European Economic Area countries, the lack of powers to search travellers' phones and view their social media profiles and the limited exchange of intelligence information with other police departments. The authors acknowledge the problematic profiling based on race and gender that occurs at borders but hope to initiate a more honest discussion about what can be reasonably expected of BFOs with regard to their anti-trafficking duties.

As already mentioned in this Editorial, the need for—and use of—global prevalence data on trafficking has been hotly debated for over a decade, but even more so in the past few years with the publication of the *Global Slavery Index (GSI)* by the Walk Free Foundation. In her contribution, Gallagher undertakes the onerous task to unravel the methodology behind the GSI and to question some of its findings. For example, why is wealthy and peaceful Brunei among the most vulnerable countries to 'modern slavery' and Singapore—among the safest, given its almost one million migrant workers, many of whom lack any protections. In addition, Gallagher reflects on the surprising lack of critical engagement with the Index by those involved in anti-trafficking work and, more broadly, the increasing influence of 'philanthrocapitalism' in the anti-trafficking and other development fields.

The final two thematic papers in this issue focus, to different extents, on the role of monitoring and evaluation (M&E) in anti-trafficking work. From his perspective of an M&E practitioner in Southeast Asia, Harkins lists nine constraining factors to producing robust evidence for the success of anti-trafficking interventions. While some of these relate to broader issues, such as lack of definitional clarity or a criminal justice focus, others stem from insufficient investment in and capacity for conducting M&E. In his experience, most anti-trafficking projects 'bean count' direct outputs (such as numbers of participants trained or people reached) rather than outcomes (such as better information and knowledge acquired). Consequently, this lack of capacity precludes the production of meaningful evidence of which interventions work and which don't.

Similar findings are shared by Van Dyke in her contribution, which explores the M&E data collected by anti-trafficking organisations working in partnerships in England and Wales. There too, the data collected by these partnerships focuses on outputs (numbers of awareness-raising materials, people reached, victims referred or suspects convicted) rather than outcomes or impacts (such as learning, enhanced wellbeing, improved referral, or increased confiscation of assets of traffickers and compensation to victims). She concludes

that more robust and purposeful data collection is necessary in order to evaluate the work of anti-trafficking partnerships.

For the debate section of this issue we invited contributors to defend or reject the proposition ‘Global trafficking prevalence data advances the fight against trafficking in persons’. In her contribution, David defends the proposition by demonstrating how statistics on other crimes and victims of crime have led to improved understanding and policy measures targeting these crimes. Acknowledging the limitations of current data on trafficking, she adds that data is nevertheless critical if we are to adequately respond to human trafficking and related crimes. Feingold, for his part, rejects the proposition as what he calls ‘the numbers game’. He points to definitional problems, such as using the term ‘modern slavery’, as well as generally questions whether we can ever have serious and reliable estimates and whether they would actually help trafficked persons or anyone else. Robinson, Branchini and Thame defend the proposition on the condition that data is collected rigorously and presented in sufficient detail as to allow meaningful analysis. They offer five recommendations for improving data collection and prevalence estimates. Finally, Dottridge rejects the proposition by pointing out how global estimates obscure the situation of groups of people who have been known to endure slavery-like conditions for decades. Using the examples of Paraguay, Cambodia and Russia, he demonstrates how neither the *Global Slavery Index*, nor the US TIP Report give us any helpful information about which people and in which industries in these countries suffer exploitation.

Conclusion

The argument that lack of evidence or neglect of evidence can lead to ineffective anti-trafficking policies and practices is an important one made in all the papers in some way or another. But should we also look to research anti-trafficking itself? Such a focus has been suggested by some commentators already. Sverre Molland, for example, outlines the need for researchers examining human trafficking to undertake ‘tandem ethnography’ that explores both the, ‘social worlds of trafficking and anti-trafficking’, helping to understand both their co-constitution and enabling state responses to human trafficking to be critically framed in relation to the phenomenon itself.²⁷ Ultimately, examining the moral, political, and economic interests at stake in understanding the nature, direction and

²⁷ S Molland, ‘Tandem Ethnography: On researching “trafficking” and “anti-trafficking”’, *Ethnography*, vol. 14, issue 3, 2013, pp. 300–323.

reticence of particular policy and advocacy stances and anti-trafficking projects themselves is a task that begs for a deeper and more politically-charged call to research. Evidence may then well take on a different and less technocratic guise than currently inhabits the world of human trafficking research.

Lack of effectiveness is tied to lack of sound justification for policy in the first place. The logic is circular and takes us back to the questions posed at the outset of this Editorial: why is there such a dearth of good research on human trafficking? How can research be better designed and carried out in ways that avoid the prescriptive logics of intervention? It is hoped that the papers in this special issue, and the considerations put forward in the four debate pieces, will contribute to the extension of our ways of thinking about why evidence is important, what evidence matters, and how research to produce meaningful evidence can be better designed and carried out.

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**Thematic Articles:
Where's the Evidence?**

Stopping the Traffick? The problem of evidence and legislating for the ‘Swedish model’ in Northern Ireland

Susann Huschke and Eilís Ward

Abstract

In 2015, after two years of controversy, the so-called ‘Swedish model’—the criminalisation of paying for sex—became law in Northern Ireland as an anti-trafficking measure. Evidence from the ground in Northern Ireland, however, questions the enforceability and appropriateness of a sex purchase ban to significantly reduce or eradicate trafficking in the sex industry. First, it is unclear that criminalisation will change the behaviour of male purchasers, many of whom thought that their actions were already illegal; second, sex workers do not support the law; and third, there are significant difficulties in law enforcement in the context of Northern Ireland, including a lack of police resources.

This article examines mitigating evidence drawn from two sources: findings from a mixed methods study commissioned by the Department of Justice of Northern Ireland—in which we were amongst several co-authors—to support the reform process; and contributions to the consultation held within it.

We argue that the sex purchase ban in Northern Ireland is essentially meant to send a moral message about the unacceptability of commercial sex rather than effectively reduce trafficking. With this conclusion, we aim to contribute to an open and honest debate about the moral foundations of anti-trafficking measures, the role of research evidence in the policy process, and the gap between stated intentions and likely effects of neo-abolitionist measures such as the sex purchase ban in both Northern Ireland and more generally.

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Keywords: sex work, human trafficking, Swedish model, criminalisation, Northern Ireland, evidence-based policy

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Introduction

In 2015, the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act* was enacted in Northern Ireland (NI). It included legal changes in regard to sentencing, prevention and enforcement of anti-trafficking measures, as well as provisions to improve support for victims of trafficking. All of these aspects were eclipsed by the media coverage and public debate about Clause 6 (later Clause 15), that criminalised the purchasing of sex.

Equally contentious was the research commissioned into the local sex industry by the Department of Justice (DoJ) to inform considerations of Clause 6, whose findings were, according to the Justice Minister, ‘ignored and derided’.¹ While arguing for the law’s appropriateness and its potential to achieve its goals of reducing trafficking for the purposes of sexual exploitation, Clause 6 proponents consistently repudiated the research’s purpose, or indeed the need for any evidence from the locality.² Legislators instead drew evidence from, *inter alia*, a visit to Sweden, from its supporters who contributed to the consultation process, and from a ‘private consultation’ held by the law’s promoter, Lord Maurice Morrow.

Both authors of this article were part of the research team commissioned by the DoJ to carry out the research.³ In this article, we suggest that the repudiation of the

¹ Northern Ireland Assembly (NIA), *The Official Report (Hansard)*, 9 December 2014, vol. 100, no. 4, p. 49.

² E Ward, ‘Knowledge Production and Prostitution Law Reform: The case of Ireland North and South’, CSRNI Conference, Queen’s University Belfast, 4 April 2016.

³ We have permission to use interview quotes and survey results for this publication. The reflections on the research process and the public reception of the research as discussed in this paper are entirely our own and do not necessarily reflect the views of other members of the original research team or the NI Department of Justice.

research report did not simply spring from prior commitment to the ‘Swedish model’ (the criminalisation of those who buy and the decriminalisation of those who sell sex) evident in the legislation itself. This repudiation was strategically necessary in order to invalidate evidence that, as became clear in time, suggested multiple factors mitigating both the appropriateness and the efficacy of the sex purchase ban (SPB) in NI. It is these mitigating factors, or the evidence from the ‘mundane and the routine’⁴ of the sex industry in NI with which this article is concerned.

While the legal changes in Northern Ireland do not conform fully to the ‘Swedish model’—sex workers are not decriminalised and can still be charged with soliciting and brothel-keeping⁵—the adoption of the legislation in 2015 is part of a global move from regulating women who sell sex to regulating men who buy it.⁶ Neo-abolitionist groups, defined as those who promote the SPB, or the so-called ‘Swedish model’ as the go-to policy measure to abolish sex work and reduce trafficking for sexual exploitation, propose shifting ‘the burden from prostitutes to their clients’.⁷ In this view, commercial sex is understood to be predominantly demand-driven and a form of violence against women.⁸

Opponents of the SPB posit that trafficking for sexual exploitation is a result of multiple, interconnected factors, such as poverty, global inequality, oppressive gender norms, and restrictive migration regimes that force people to rely on traffickers to cross borders. In this view, demand for commercial sex is viewed as part of human trafficking but not as the single most important factor, and

⁴ R Matthew, *Prostitution, Politics and Policy*, Routledge, Abingdon, 2008, p. 136.

⁵ In Northern Ireland, the offence of ‘brothel-keeping’ will continue to be applied to sex workers working together in the same place, meaning they can be charged with ‘brothel-keeping’. The Swedish law, in contrast, decriminalises the sex worker.

⁶ T Sanders and R Campbell, ‘Why Hate Men Who Pay for Sex? Investigating the shift to tackling demand and calls to criminalise paying for sex’ in V Munro (ed.), *Demanding Sex? Critical reflections on the supply/demand dynamic in prostitution*, Surrey, Ashgate, 2008, pp. 163–180.

⁷ See for example, A Erwin, ‘Sex worker Laura Lee’s challenge to new prostitute law put on hold’, *Belfast Telegraph*, 14 March 2016, retrieved 20 June 2016, <http://www.belfasttelegraph.co.uk/news/northern-ireland/sex-worker-laura-lees-challenge-to-new-prostitute-law-put-on-hold-34538217.html>

⁸ See for instance, J Nieme, ‘What We Talk About When We Talk About Buying Sex’, *Violence Against Women*, vol. 16, no. 2, 2010, pp. 159–172.

consequently, demand-focused policy measures will fall short of their goal.⁹ Simultaneously, opponents argue that the law entails a number of negative side-effects, particularly for those who sell sexual services, and problematise the idea of the SPB as an ‘apparatus’¹⁰ that can be transposed from one jurisdiction to another, without reference to context, including history, the legal framework and socio-political institutions.

In what follows, we draw on findings from the aforementioned study and on the debates relating to the proposed law in the NI Assembly and the Justice Committee as part of the promulgation process, as well as on media interviews with key policy-makers. We foreground the mitigating factors identified in these sources in regard to the SPB, in the context of the literature on the law reform process.¹¹ Those factors suggest that the law may not change the behaviour of 1) those who buy sex, 2) those who sell sex, and 3) that there are significant differences between NI and Sweden, most notably regarding the enforcement of the SPB in the jurisdiction arising from evidence-gathering. Our findings suggest that the law may have no impact on trafficking for the purpose of sexual exploitation in Northern Ireland. We conclude that the law was therefore less about implementing effective anti-trafficking measures than about a moral positioning in relation to commercial sex *per se*. Our focus here on the relationship between evidence and a law reform process moreover points to the manner in which evidence can be used and misused in the context of trafficking for the purpose of sexual exploitation.

⁹ See for instance, C Vance, ‘States of Contradiction: Twelve ways to do nothing about trafficking while pretending to’, *Social Research*, vol. 78, no. 3, 2011, pp. 933—948; S Milivojevic and S Pickering, ‘Trafficking in People. 20 years on: Sex migration and crime in the global anti-trafficking discourse and the rise of the “Global Trafficking Complex”’, *Current Issues in Criminal Justice*, vol. 25, no. 2, 2013, pp. 585—604.

¹⁰ M L Skilbrei, ‘The Sex Purchase Ban in Sweden and Norway: Evaluating law-in-action’, Gender ARC NUIG/UL Seminar NUIG, Ireland, 11 September 2015.

¹¹ Ward, 2016; G Ellison, ‘Criminalising the Payment for Sex in Northern Ireland: Sketching the contours of a moral panic’, *British Journal of Criminology*, vol. 57, issue 1, 2017, pp. 194—214.

The Context in Northern Ireland

Prior to the 2015 Act, practices in Northern Ireland relating to prostitution, such as soliciting and advertising of prostitution, were governed primarily under the Sexual Offences (Northern Ireland) Order 2008. The Sexual Offences Act (2003) included laws against trafficking and the Policing and Crime Act (2009) made it illegal to buy sex from someone who had been subject to force. The purchasing of sex, *per se*, was not however a crime.¹²

Very little attention (academic and other) was paid to the sex industry or to sexual exploitation and up to ten years ago police in the jurisdiction did not consider trafficking to be a problem.¹³ Reflecting a global phenomenon, prostitution, linked to trafficking for the purpose of sexual exploitation, moved into public and political discourses in Northern Ireland in the last decade, led by a ‘powerful constellation of lobbying advocacy and faith groups’ working at a community and national level and affiliated to international movements.¹⁴

Maurice Morrow (Democratic Unionist Party), a member of the Northern Ireland Assembly and a creationist Christian, drew from this constellation in presenting his bill to the Assembly.¹⁵ It was sponsored by *Christian Action Research Education* (CARE), a conservative Christian lobby organisation that, for example, opposes abortion, same-sex marriage and divorce. As became evident in the public consultation process, the bill was fully supported by *Women’s Aid* (NI), an organisation that runs shelters for victims of domestic abuse and views sex work as violence against women. Support for the bill also came from neo-abolitionist activists in the Republic of Ireland, such as *Ruhama*, a faith-based organisation working with ‘women affected by prostitution’ with the ultimate goal of facilitating women’s exit out of sex work, and the *Immigrant Council of Ireland*, the organisation that led the successful anti-prostitution campaign *Turn off the Red Light* in that jurisdiction.¹⁶

¹² See: E Hawthorne, ‘Women in Northern Ireland involved in Prostitution’, *Irish Probation Journal*, vol. 8, 2011, pp. 142–164.

¹³ R Dudley, ‘Crossing Borders: Preliminary research on human trafficking in Northern Ireland’, *Women’s Aid*, Belfast, 2006.

¹⁴ Ellison, p. 6.

¹⁵ For a detailed discussion of the arguments presented by policy-makers in support of the bill, see: S Huschke, ‘Victims Without a Choice? A critical view on the debate about sex work in Northern Ireland’, *Sexuality Research and Social Policy*, vol. 14, issue 2, 2017, pp. 192–205.

¹⁶ E Ward, ‘The Irish Parliament and Prostitution Law Reform: A neo-abolitionist shoe-in?’ in E Ward and G Wylie (eds.), *Feminism, Prostitution and the State: The politics of neo-abolitionism*, Abingdon, Routledge (forthcoming 2017).

The Study

The study commissioned by the DoJ was conducted between April and August 2014 in time for consideration by the NI Assembly in October. The law was debated in the Justice Committee and in the Assembly between September 2013 and September 2014 and voted on on 20 October—just four days after the research report was circulated. Designed to understand the experiences and demographics of sex workers and clients, the research examined topics such as the relationship between sex work and trafficking and the likely effects of the SPB. The first baseline study of the sex industry in the jurisdiction, it provided quantitative and qualitative insights and drew on online surveys with sex workers (n= 171) and clients (n=446) and semi-structured interviews with sex workers (n=19), clients (n=10), officially identified victims of trafficking (n=2), and law enforcement and service/providers in the field (n=18).¹⁷

The study showed that the Northern Irish sex industry differs from other European contexts in some regards. There is very little street-based sex work in Northern Ireland, with a total number of around 20 people selling sex outdoors. Sex work is predominantly advertised online and arranged via phone. Sex workers meet clients in their own apartments, in hotels, in the client's home or in so-called 'houses'—small brothels run by an agent or booker, with usually only one or two sex workers present at the same time. Similarities to other locations across Europe include the high percentage of migrant sex workers (around 65%), particularly from within the European Union (EU). The majority of sex workers work independently (85% of respondents in the online survey). It is generally new migrants who work with an agent or another third party who keeps part of their earnings in return for managing bookings, travels and accommodation, as they are more likely to lack the language and organisational skills and necessary knowledge to work independently. Our research suggests that the majority of migrant sex workers working with/for a third party were aware that they would be working in prostitution before moving; nevertheless, they were vulnerable to exploitation and abuse. Sex workers described threats and violence from agents, deception regarding working conditions and payment, and not being protected from violent and abusive clients.

¹⁷ For more details on the methodology and ethical considerations, see: S Huschke *et al.*, *Research into Prostitution in Northern Ireland*, 2014, pp. 16—34, retrieved 14 December 2015, <https://www.justice-ni.gov.uk/publications/research-prostitution-northern-ireland>

Some of the incidents described by sex workers might qualify legally as trafficking. Police records report 26 confirmed cases of trafficking for sexual exploitation in Northern Ireland between 2009 and 2014, including three British/Irish nationals who were trafficked internally. In our online survey, 3% of respondents (n=3) stated that they had been trafficked at some point. These numbers, in combination with our findings from interviews with sex workers, police officers and service providers, clearly indicate that the majority of people working in the Northern Irish sex industry are not victims of trafficking.

This paper draws on findings from the study, complemented by reflections on the research and dissemination process and an analysis of the public debate around the SPB. We investigated how research evidence was discussed and used (or ignored) in the public debate, based on the publicly available proceedings of the policy debate in the Northern Irish Assembly and the Justice Committee and media reports commenting on the proposed law.

Implementing the Sex Purchase Ban on the Ground: The views of clients and sex workers

In this section, we raise and consider two possible mitigating factors that emerged in the study—the attitude of the clients and of sex workers towards the proposed criminalisation—that might reduce the potential of the SPB to achieve its first goal in the chain of causality—its capacity to reduce demand for commercial sex in Northern Ireland.

The SPB: What the clients said

The sex purchase ban contained in Clause 6 is intended to prevent people from paying for sexual services out of fear of being arrested and sentenced to up to one year in prison or payment of a fine. Thus, the efficacy of an SPB requires, firstly, knowledge about the law and the implications of a transgression, and secondly, a compliant change in behaviour of the client. In relation to knowledge of the law, our client survey indicated that 36% of clients living in Northern Ireland either thought it was *already* illegal to pay for sexual services, or were not sure about the legal status of the act. In other words, over one-third purchased sex regardless of its legal status even in a context of significant media coverage of the proposed SPB in the year before our study was conducted. Moreover, many clients do not inquire about the legality of paying for sex before they engage in it for the first time. Knowledge about the legal context is, if at all, acquired over time by talking to sex

workers or reading about it in internet forums. We furthermore found that the majority of clients would not stop paying for sexual services if it was criminalised, as Table 1 below shows, but would try to ensure that they were not detected. In our survey, respondents could tick multiple boxes in reply to this question (e.g. being more careful *and* doing it less often).

Table 1: What would you do if paying for sexual services was illegal in Northern Ireland?

I would....	%
...only see the escorts/sex workers that I trust	42%
...be more careful	38%
... stop using sexual services in Northern Ireland	15%
... not do anything differently	13%
... do it less often	11%
... stop using sexual services altogether	7%

While responses to hypothetical scenarios do not necessarily indicate behaviour, and the lawmaker's intentions to promote the implications of criminalisation through public education could have an impact, the pattern is startling: the vast majority of respondents would not stop purchasing sex even if it was criminalised while only 15 per cent (68 respondents) would stop using sexual services in Northern Ireland.

The main reason for this apparent disregard for the legal framework might be that paying for sex was already 'felt' to be illegal. In the context of Northern Ireland's morally conservative society, commercial sex constitutes a taboo and is usually carried out in secret, so not much would change for clients.¹⁸ This was acknowledged by the Police Service Northern Ireland (PSNI). One officer

¹⁸ For an in-depth discussion of clients' motives, attitudes and experiences, see: S Huschke and D Schubotz, 'Commercial Sex, Clients and Christian Morals: Paying for sex in Ireland', *Sexualities*, vol. 14, no. 2, 2016, pp. 192—205.

commented during the oral consultations: *‘the nature of our society means that people who use prostitutes are already taking a significant risk with their reputation’* and that it is therefore *‘very difficult to determine what further impact this [Clause 6] will have on their behaviour’*.¹⁹

On the basis of these doubts regarding behaviour changes in those who pay for sex, it could be suggested that the SPB may not dramatically alter the numbers of those who purchase sex in Northern Ireland, or not significantly reduce the demand for commercial sex, though clients may change the ways in which they contact and meet up with sex workers in order to minimise the risk of being caught.

Our evidence from the online survey and interviews with sex workers suggests further mitigating factors discussed below.

The SPB: What sex workers said

While the new law casts sex workers as crime victims, and thus their collaboration is not *necessary* for prosecution (if there is enough other evidence available), their attitudes will contribute to availability, frequency and the conditions under which sex is bought and sold. In other words, the response of sex workers to the proposal is a factor in the law’s implementation.

Of the 171 sex workers that took part in the online survey, only 2 per cent thought that criminalising clients was a ‘good idea’ and only 8 per cent thought it would reduce trafficking for sexual exploitation. This lack of support for the law from sex workers is mainly linked to their concerns about the negative side effects of the law in regard to their working conditions. During interviews with sex workers, we asked an open-ended question about how things might change if paying for sexual services was made illegal. Only 3 of the 79 comments (4%) referred to positive effects, such as a decrease in violent clients. Eight suggested that there might be fewer clients, but viewed this negatively, as it would reduce

¹⁹ Northern Ireland Assembly, Committee for Justice (NIA CfJ), *Report on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill* (NIA 26/11-15), para 3116, retrieved 7 June 2016, <http://www.niassembly.gov.uk/globalassets/documents/reports/justice/report-on-human-trafficking-bill.pdf>

their income and threaten their livelihood. Instead, the majority of sex workers (both in the online survey and face-to-face interviews) felt that criminalisation would worsen their situation.

Sex workers worried that it would lead them to take greater risks, as they would have to be even more secretive about selling sex, e.g. not be able to work from the same (safe) premises but have to move locations frequently. Some thought it might increase the involvement of organised crime groups and ‘pimps’ who would benefit from their need to work in more hidden ways. They were also concerned that it would turn away some of their ‘decent clients’, forcing them to offer services to other, potentially violent, clients in order to make a living. Finally, sex workers stated that they would be less likely to report crimes committed against them or others to the police, because of fears of being arrested or being forced to reveal client details, thus further reducing their earning potential. As one sex worker put it: *‘This bit about not criminalising the sex worker is utter rubbish—you cannot criminalise one half of an equation and hope that it doesn’t affect the other half.’*

In addition, sex workers felt ignored by policy-makers and viewed the law as lacking an evidence-base, as illustrated below:

‘Part of the problem with this is that I used to respect government and I used to think they did things because they really put a lot of information into learning about things and making real decisions based on real facts. They are not making any decisions based on facts. (...) I feel so disillusioned. Because they don’t care about me, because they are not interested in what I have to say. It is not about whether it is right or wrong or whether anybody is getting hurt. It is all based on morals.’

Thus, our research indicates that both clients and sex workers may not support the law through corresponding change in behaviour other than adapting their modus operandi. Strikingly, sex workers feared its overall impact as being negative for them rather than positive.

Implementing the SPB in the Northern Ireland Context: The views of experts

In this section, we discuss evidence from our study supplemented by relevant contributions from both the DoJ and the PSNI to the consultation process, particularly mitigating factors related to the effectiveness of the law in Northern

Ireland, as highlighted by these actors. While the DoJ's view was, from the start, that the ban was 'unworkable',²⁰ the PSNI, as we will see below, offered it a qualified welcome.

Doubts about the effects and effectiveness of the sex purchase ban

Both the DoJ and the PSNI argued during the consultation process that legislators promoting a policy transfer from Sweden needed to take local context into consideration. The DoJ pointed to the difficulties raised by the knowledge-gap²¹ in relation to the sex industry in NI in the first instance and proposed the removal of Clause 6 from what was otherwise welcome legislation because there was 'no evidence base available to back up the change being proposed'.²² The Department moreover argued for a separation of sex work from trafficking for legislative purposes and that, on foot of the pending research, legislators could return to consider prostitution at a later stage, a view supported by other witnesses such as Amnesty International (NI) and the Law Centre in Belfast, an organisation that works with victims of trafficking. However, the majority of Assembly members dismissed the distinction between these facets of the sex industry as irrelevant and argued that local context was not important in their deliberations.

In response to a DoJ official's comment that while there may be international patterns in how the sex industry is expressed, local information was required, one Committee member argued:

*'Some of us do not need any research or evidence. For some of us the very principle of purchasing a woman is sexual violence, full stop. That is a principled position, and some people do not need to have an evidence base to come to the conclusion that men are currently empowered to continue to subject that type of activity upon women.'*²³

Developing its argument for the removal of Clause 6, the DoJ made the case that a 'bigger picture' than criminalisation of demand was required when considering legislation. Moreover, Clause 6 raised the possibility of unintended consequences which could be contrary to its intentions. Exploration was needed of the possible negative impact of the ban on: 1) extremely vulnerable people who could become further removed from access to police and other forms of assistance, 2) the economic circumstances of those in the sex industry and their families, and

²⁰ H McDonald, 'Plans to reform Ulster prostitution laws are unworkable, says Justice Minister', *The Guardian*, 21 April 2014.

²¹ This concern led to the commissioning of our research in the first place.

²² NIA Cfj, para 147.

²³ NIA Cfj, para 268.

3) those who would choose to remain in prostitution including their possible exposure to riskier behaviour. Finally, legislators needed to know why people got into prostitution in the first place.²⁴

Both the DoJ and the PSNI voiced concerns about the law's intention to protect sex workers. Our interviews with police officers for this study indicated that opposition to Clause 6 from within the PSNI was founded on its possible negative implications for sex workers. Echoing the views of sex workers that emerged in our survey, one officer commented:

'There are concerns that we could put sex workers in a really difficult position that they're not going to go to one central location and just remain there, they're going to go out to the customer, because the customer's going to be too scared to come to a brothel.'

Another officer stated that the fear of being incriminated in the offence of purchasing might push people in the sex industry further away from police protection and *'away to the edges of society'*.

Concerns about unintended consequences of Clause 6 were iterated by the PSNI during the Assembly's oral hearings and constituted the basis for its qualified support. In the words of one officer:

*'[M]ost of the groups operating in prostitution into the island of Ireland, including Northern Ireland, come from outside the jurisdiction, and the legislation and the proposals may send a strong message. I am not sure how much of a deterrent it will be but at least it is a strong message (...). However there is a qualification in our own mind about the service and our relationship and contact with the rest of those who are prostitutes.'*²⁵

In addition, the PSNI was not convinced by the evidence from Sweden on the impact of its law on trafficking for sexual exploitation. In an interview, a police officer in charge of collaborating with the Swedish police on international human trafficking explained:

'Now, I'm not going to criticise the Swedes on the Swedish model, but they had no idea this was going on in Sweden. So we said, well listen, this crime gang from Romania are all based in your jurisdiction, you need to look at this crime gang. [But instead] there are significant resources against punters as opposed to seeking out the gangs involved in trafficking.'

²⁴ NIA Cfj, para 3489—3492.

²⁵ NIA Cfj, para 3045.

This point was raised within the Assembly proceedings where a PSNI official told the legislators that *‘there is still a significant prostitution in Sweden. More so there is still a significant human trafficking problem in Sweden’*.²⁶

However, turning again to local conditions, the PSNI offered the Assembly evidence to suggest that Clause 6 might not be enforceable in any event and it is to this evidence, captured in both our research and in the oral proceedings, that we now turn to for the final mitigating factor.

Problematic Policy Transfer: Critical differences between Sweden and Northern Ireland

During the public consultation, DoJ officials raised questions about the appropriateness of transferring a policy from one context to another given differences in the legal frameworks of Northern Ireland and Sweden. These differences were spelt out by the PSNI in the oral consultation and emerged in the interviews conducted during our research.

First, as a post-conflict society facing continuous levels of community violence, Northern Ireland’s police resources are often stretched. One officer told the Justice Committee: *‘We have to decide how to use our finite resources against the most serious harm visited on society’*.²⁷ The PSNI made clear that from its point of view, there were not enough resources available to conduct wide-ranging investigations into sex purchasing between two consenting individuals, and instead, policing would focus on high-end risk or on organised crime. In the words of one officer:

*‘We envisage that, if the law was passed, prosecutions [of clients] may then flow. However, these would flow from major investigations that are ongoing into organised crime groups.’*²⁸

Consequently, the PSNI offered ‘qualified support’ for Clause 6 because of its potential to assist in serious crime investigations and prosecutions related to criminal gangs, not because of its impact on the sex industry in general. The PSNI officer was unambiguous in his comment to the Assembly:

*‘We welcome the focus on victims and on what other legislative tools may be brought to bear on human trafficking and prostitution; however, our focus would be on organised crime groups.’*²⁹

²⁶ NIA Cfj, para 3187.

²⁷ NIA Cfj, para 3084.

²⁸ NIA Cfj, para 3035.

²⁹ NIA Cfj para 3045.

A further mitigation, identified by the PSNI, was potential difficulties arising from differences in evidence gathering norms and legalities. In an interview, a PSNI officer explained that enforcement of the SPB in Sweden relies on ‘sensitive intelligence gathering methods’ such as telephone interception (i.e. listening in on the phone conversations between clients and sex workers), surveillance cameras in private apartments or hotel rooms and operations by undercover officers. In Northern Ireland, such tactics need approval from the authorities under the Regulation of Investigatory Powers Act (RIPA), and are meant to be employed only in cases of serious crime, including terrorism. An interviewed police officer commented:

‘Our assessment is that in that scenario of (...) a non-trafficked girl conducting herself as a prostitute, and a non-controlling person who wants to buy a sexual service, then the consensual act between those two adults doesn’t trigger the point of serious criminality, where we can use any covert tactics. Surveillance—you would really struggle to justify that as a tactic.’

The only other form of evidence that might allow prosecution of a client in cases of consensual sex between individuals, as opposed to organised crime and trafficking cases, is from the sex worker. As we saw above, investigations might not assume cooperation from sex workers.

Drawing together strands of differences between Northern Ireland and Sweden, a PSNI witness told the Assembly:

‘I think that we are starting out from a different base level of prostitution in Northern Ireland [compared to Sweden](...) However, we also have a different legal system, so because the law (in NI) will not allow them, we are precluded from some of the operations that the Swedes conduct.’³⁰

A close consideration of the protracted debates produced during the law’s promulgation within the Assembly is beyond the scope of this article.³¹ However, as we argue, a striking aspect of the promulgation process was the repudiation by the legislators of the need for locally grounded evidence, whether mitigating or otherwise, and the reliance instead on the exemplar of the Swedish law and a belief as to the appropriateness of its transfer to Northern Ireland. In response to a

³⁰ NIA Cfj, para 3241.

³¹ Ward, 2016; Ellison; Huschke.

comment from a DoJ official as to the impossibility of assessing the impact of Clause 6 on local conditions in the sex industry due to a lack of local knowledge, one Committee member stated:

‘It is a classic “knock it into the long grass” argument that Northern Ireland is very different from the rest of the world. The fact is that a lot of these traffickers are coming from other parts of Europe. A lot of these women are coming from places such as Romania, Bulgaria or Latvia, but we are different, so the classic way to get rid of Lord Morrow’s Bill would be to kick it into the bushes by saying that we need more research. What is radically different about Northern Ireland that is not already known through the thousands of studies that have been carried out on prostitution in the rest of Europe? What is so different about us that requires these studies?’³²

In a further brief exchange about the need for local knowledge, the Justice Committee chair queried why the Department needed to carry out any research in the first place given the ‘inextricable link’ between trafficking and prostitution.³³ Another Committee member, frustrated that the Department could not simply support Clause 6 without seeking further information, commented:

‘Clause 6 is vital to reducing prostitution and all of the things that go along with it—all of the sexual diseases, the murders and the beatings. Clause 6 is vital to protect these women. If you do not support it, the charge will be laid at your Department that it is supporting prostitution.’³⁴

Throughout the consultation process, the effectiveness of the law in Sweden was cited by its supporters as transferrable to Northern Ireland.³⁵ Swedish feminist and anti-prostitution campaigner Gunilla Ekberg, in her capacity as advisor to the Bill’s proponent Lord Morrow, told the Justice Committee during the oral evidence sessions that, based on its impact in Sweden, the law would work in Northern Ireland. Following this statement, Assembly members argued that the potential of Clause 6 was not contingent on local conditions or local attitudes and many referred to the adoption of such a ban in Norway, Iceland and elsewhere to support the case for transferring the policy to NI.³⁶ On the other hand, evidence presented to the committee regarding alternative policy measures to reduce trafficking and violence in the sex industry, such as the decriminalisation of sex work in New Zealand, was simply ignored. The law was enacted despite opposition from the

³² NIA Cfj, para 268.

³³ NIA Cfj, para 293.

³⁴ NIA Cfj, para 370.

³⁵ Ward, 2016.

³⁶ Ward, 2016.

principal institution tasked with its implementation, the Department of Justice, and a qualified welcome from the PSNI based on, *inter alia*, a belief as to the law's utility in the jurisdiction in relation to serious crime only and not in relation to the majority of interactions in the sex industry which involve two consenting adults.

Proponents of the SPB furthermore relied heavily on the personal accounts of a small number of survivors of prostitution, who described the sex industry as inherently violent and supported the ban. At the same time, the experiences of current sex workers which drew a much more nuanced picture of the sex industry were dismissed as irrelevant or non-representative.³⁷ One committee member advised that evidence from 'so called prostitutes' collective groups' be treated with extreme suspicion. It would be better, he said, to talk to prostitutes individually when they are 'not being coerced by their pimps and controllers, rather than the so-called groups which are clearly front people'.³⁸

In the end, the Justice Minister suggested that the research he commissioned precisely to allow an interrogation of the Swedish law and its impact in NI was dismissed because the findings 'portrayed the views of sex workers who had until then not been heard and because it destroyed a lot of the stereotypical imagery of prostitution'.

Conclusion

This article has sought to identify, from the research evidence of the study and from contributions to the oral and written consultation on the part of the PSNI and the Department of Justice, critical factors that might mitigate the impact of the sex purchase ban as a mechanism enacted to reduce both the sex industry in Northern Ireland and trafficking for the purpose of sexual exploitation.

We highlighted three mitigating factors: 1) many clients are likely to continue paying for sex, either because they are unaware of the laws around commercial sex, or because the sex purchase ban does not actually change the context for purchasing sex, as paying for sex was already felt to be 'illegal'; 2) the majority of sex workers operating in Northern Ireland do not support the law and may not cooperate with law enforcement; and 3) there are likely to be significant problems with its enforcement due to limited police resources and the improbability of undercover evidence gathering being sanctioned without the involvement of organised crime. These factors challenge both the appropriateness of an SPB in NI and its potential to work as an anti-trafficking strategy. Our predictions seem accurate in light of the

³⁷ Huschke, 2016

³⁸ NIA Cfj, para 3223.

fact that in the first year after its enactment, only one arrest was made under the new law.³⁹

In conclusion we raise two points. Firstly, following Wagenaar and Altink,⁴⁰ this article illustrates the generalised resistance to ‘evidence’ that characterises the promulgation of prostitution policy, made more complex when legislators turn their minds to the relationship between commercial sex and trafficking. There is no reliable evidence that the law works as claimed⁴¹ and witnesses in the consultation, not least of all the police force, challenged assumptions about the effectiveness of the SPB in Sweden. Regardless, its proponents were still untroubled about claims as to the success of the law in Sweden.

Secondly, more specifically, the adoption of an SPB in Northern Ireland was essentially meant to send a moral message about the unacceptability of commercial sex rather than to achieve progress in the fight against trafficking. Ellison makes the case that the legislation emerged from a classic moral panic and was driven by a particular local combination of Northern Ireland’s protestant community and radical feminists, with the former concerned to shore up feelings of collapse in its traditional value system.⁴² Hence, it was necessary for those in favour of the SPB to repudiate the need for and value of local research and to disregard the mitigating factors raised by the PSNI in relation to the implementability of the ‘Swedish model’ in Northern Ireland. It is notable that the PSNI’s identification of mitigating factors, especially the difficulty with the covert tactics required to gather evidence, did not make any difference to the eventual adoption of the proposal. It may be indeed that the Assembly members who voted for the adoption of the SPB were content with the PSNI’s view that Clause 6 might at least ‘send a message’, regardless of the actual effects on the sex industry. If this is correct, we can conclude that evidence regarding the actual effectiveness of the SPB is of little interest to the proponents of the ‘Swedish model’.

³⁹ Ironically, three sex workers were arrested together with this one client. The women were charged with brothel-keeping (each other), exemplifying how little has changed for the sex workers that the ‘Swedish model’ is meant to protect. See H McDonald, ‘First arrest made under Northern Ireland’s new offence of paying for sex’, *The Guardian*, 5 November 2015, retrieved 16 June 2016, <https://www.theguardian.com/society/2015/nov/05/northern-ireland-offence-of-paying-for-sex-first-arrest>

⁴⁰ H Wagenaar and M Altink, ‘Prostitution as Morality Politics or Why It Is Exceedingly Difficult to Design and Sustain Effective Prostitution Policy’, *Sexuality Research and Social Policy*, vol. 9, 2012, pp. 279–292.

⁴¹ Huschke *et al.*, pp. 168–169.

⁴² Ellison.

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A Formidable Task: Reflections on obtaining legal empirical evidence on human trafficking in Canada

Hayli Millar, Tamara O'Doherty and Katrin Roots

Abstract

This article explores the experiences, challenges and findings of two empirical research studies examining Canada's legal efforts to combat human trafficking. The authors outline the methodologies of their respective studies and reflect on some of the difficulties they faced in obtaining empirical data on human trafficking court cases and legal proceedings. Ultimately, the authors found that Canadian trafficking case law developments are in their early stages with very few convictions, despite a growing number of police-reported charges. The authors assert it is difficult to assess the efficacy and effects of Canadian anti-trafficking laws and policies due to the institutional and political limitations to collecting legal data in this highly politicised subject area. They conclude with five recommendations to increase the transparency of Canada's public claims about its anti-trafficking enforcement efforts and call for more empirically-based law reform.

Keywords: human trafficking, empirical knowledge, research, anti-trafficking law, sex work, social justice, research methodology

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Introduction

There is a growing consensus among critically-oriented scholars that research on human trafficking comprises a 'rigour free zone' of frequently unsubstantiated claims and increasingly expansive definitions.¹ These claims—that sex trafficking is a prolific and growing problem in Canada, linked to transnational organised crime and domestic criminal gangs, and that certain groups (Asian women, Indigenous women and youth) are at significant risk²—are repeated by government representatives, advocates, and even some academics in spite of a lack of empirical evidence to substantiate the claims.³ Non-government organisations (NGOs)⁴ and the media⁵ further obscure matters by packaging their advocacy and journalism as 'studies' and 'research' on trafficking. The public accept these claims as facts, which then form the basis of political calls for action; in particular, for increasingly expansive and punitive law reforms and enforcement actions.⁶

¹ See: A T Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, New York, 2012; J Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *American Society of International Law*, vol. 108, issue 4, 2014, pp. 609—649; R Weitzer, 'Researching Prostitution and Sex Trafficking Comparatively', *Sexuality Research and Social Policy*, vol. 12, issue 5, 2015, pp. 81—91.

² See the annual US Department of State *Trafficking in Persons Reports*, Country Narratives for Canada (2001—2016); RCMP, *Human Trafficking in Canada*, Ottawa, Ontario, 2010; RCMP, *Project Safekeeping 2013*, Prepared by the Human Trafficking National Coordination Centre, Ottawa, Ontario, 2014.

³ A De Shalit and K Roots, 'Evidence that Evidence Doesn't Matter: The case of human trafficking in Canada', *Atlantis: Critical Studies in Gender, Culture and Social Justice*, vol. 37, issue 2, 2016, pp. 65—80.

⁴ See, e.g., F Gabriele, K Sapoznik, A Serojitdinov and E Williams, *The Incidence of Human Trafficking in Ontario: Ontario Coalition Research Initiative*, Alliance against Modern Slavery, Toronto, 2014; and E Wohlbold and K LeMay, *Local Safety Audit Report: Towards the prevention of trafficking in persons and related exploitation in the Ottawa area*, PACT-Ottawa, Ottawa, 2014.

⁵ See, e.g., T Grant's *Globe and Mail* newspaper series on 'Missing and Murdered Women: The trafficked', 10 February 2016, retrieved 3 January 2017, <http://www.theglobeandmail.com/news/national/the-trafficked-sexual-exploitation-is-costing-canadian-women-their-lives/article28700849/> which was then linked to the Ontario provincial government unveiling an anti-trafficking strategy available at: <http://www.theglobeandmail.com/news/national/ontario-government-to-unveil-strategy-to-tackle-human-trafficking/article28740329/>. Grant initially referenced her investigative series as being based on three months of research, including conducting more than 60 'interviews' with key stakeholders.

⁶ See: A De Shalit, R Heynen and E van der Meulen, 'Human Trafficking and Media Myths: Federal funding, communications strategies, and Canadian anti-trafficking programs', *Canadian Journal of Communication*, vol. 39, 2014, pp. 385—412; G Soderlund, 'Running from the Rescuers: New U.S. crusades against sex trafficking and the rhetoric of abolition', *Feminist Formations*, vol. 17, issue 3, 2005, pp. 64—87.

The Canadian government has enacted both immigration (in 2002) and criminal (in 2005) laws prohibiting human trafficking. It has also created several inter-governmental and enforcement-oriented task forces to combat this form of exploitative conduct. Yet, it appears that the original laws and subsequent legal amendments are not based on rigorous empirical evidence demonstrating the nature and prevalence of trafficking. Instead, they are a by-product of Canada's international commitments and bilateral pressure from the United States of America (USA) through its annual *Trafficking in Persons Report*. In fact, it continues to take time for Canada's courts and law enforcement agencies to determine the legal parameters and application of the relevant anti-trafficking terminology in the Canadian context.⁷

Those working in social justice contexts with, for example, commercial sex workers, precarious labourers, and migrant workers, have witnessed this new era of prohibitions imposed on communities of marginalised persons. They have seen the development of a highly politicised discourse that has permeated public policy discussions on both commercial sex and human trafficking, regardless of community and individual resistance to the label 'human trafficking victim'.⁸ Laws have been created without adequate consultation with members of affected communities, and enforcement actions have caused direct harms to their members.⁹ These developments did not emerge from an evidentiary basis;¹⁰

⁷ For a discussion of the legal interpretative challenges, see L Barnett, *Background Paper: Trafficking in persons*, Legal and Social Affairs Division, Parliamentary Information and Research Service, Ottawa, 2016.

⁸ See especially: De Shalit, Heynen, van der Meulen at pp. 385—412. This politicised context has been observed in numerous other country contexts. See, e.g., M Dragiewicz (ed.), *Global Human Trafficking: Critical issues and contexts*, Routledge, London, 2015.

⁹ See: K Mackenzie and A Clancey, *Im/migrant Sex Workers, Myths, and Misconceptions: Realities of the anti-trafficked*, SWAN Vancouver Society, 2015, retrieved 30 June 2016, <http://swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf>; and Canadian Alliance for Sex Work Law Reform (CASWLR) and Pivot Legal Society, *Joint Submission for Canada's Review Before the UN Committee on the Elimination of All Forms of Discrimination against Women 65th Session*, 2016, pp. 1, 9—16, retrieved 30 June 2016, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_25385_E.pdf

¹⁰ For a complete discussion of the evidentiary record underlying the legislative changes in Canada, see Millar and O'Doherty in collaboration with SWAN Vancouver Society, *The Palermo Protocol & Canada: The evolution and human rights impacts of anti-trafficking laws in Canada (2002 - 2015)*, 10 October 2015, retrieved 30 June 2016, <http://icclr.law.ubc.ca/publications/palermo-protocol-canada-evolution-and-human-rights-impacts-anti-trafficking-laws-canada>

indeed, as is the case for most countries, there is very little empirical evidence underlying Canada's legal efforts to combat human trafficking.¹¹

With this politicised context in mind, the authors of this paper sought to contribute to the existing empirical legal knowledge of human trafficking in Canada. In order to assess the formulation and enforcement of national anti-trafficking laws, Millar and O'Doherty engaged in a 20-month university ethics-approved independent collaborative research project with the NGO Supporting Women's Alternatives Network (SWAN) Vancouver Society. SWAN is an outreach organisation that works directly with im/migrant women indoor sex workers in the Greater Vancouver area. Roots conducted a 15-month university ethics-approved research study for her PhD dissertation focusing on the criminal justice system and Ontario courts as terrain on which the meaning of human trafficking is shaped, enforced and challenged.

The authors made three important findings from these studies. First, Canadian legal efforts rely on a one-dimensional and exaggerated view of human trafficking, equating it with sex work, especially if involving pimps and/or minors. Second, and related to this singular narrative, there are significant discrepancies between the available empirical evidence and the claims that the government, NGOs, and the media make about human trafficking. Third, there exist serious limitations associated with the available legal data and institutional and structural constraints to obtaining socio-legal data in this field.

The studies suggest several important public policy concerns, including starkly contrasting understandings of what constitutes evidence of the extent of human trafficking and differing opinions on which measurements, or indicators, are most accurate to represent incidents of human trafficking in Canada. The authors' findings contribute to the existing empirical evidence; however, the findings also expose the inherent limitations of conducting socio-legal research by examining police-reported charges, locating and analysing immigration and criminal trafficking cases prosecuted in the courts, observing human trafficking legal proceedings in the courts, and conducting interviews with legal experts and practitioners in Canada.

¹¹ See: L Ogrodnik, *Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons* (Cat. No. 85-561-M), Canadian Centre for Justice Statistics, Ottawa, 2010.

Existing Canadian Data Challenges

As is the case in most countries, relatively little is known about the actual nature and prevalence of human trafficking in Canada. Much of the available research consists of small-scale studies using convenience samples that are regionally or community specific; some of these studies suffer from serious methodological deficiencies.¹² Additionally, most Canadian research is government-sponsored, which often requires it to fit into specific government priorities and funding streams. Even though police-reported crime statistics and official government reports on anti-trafficking investigations and prosecutions are readily available,¹³ many of these sources lack definitional rigour and consistency in reporting offences. For example, according to Ferguson, in 2003 the Royal Canadian Mounted Police (RCMP) published an intelligence estimate stating that each year 800 persons are trafficked into Canada, 600 of whom are women or girls forced to work in prostitution, and that an additional 1200 women and girls are trafficked through Canada to the USA to work in the sex industry.¹⁴ In 2010, the RCMP retracted this estimate, indicating they could not accurately assess the scope of trafficking in persons. Nevertheless, the original 2003 estimate continues to be widely cited by the academic and NGO literature and Canadian legislators in public policy debates calling for increasingly expansive and punitive anti-trafficking laws.¹⁵

Further, government statistics reference a ‘trafficking-related’ category, in addition to a ‘trafficking-specific’ category.¹⁶ This former category distorts statistics since criminal conduct such as assault, theft, drug trafficking, fraud, prostitution-related offences or any other conduct subjectively and variously determined by the reporting agency to be related to a trafficking case can be

¹² See, e.g., Gabriele *et al.*, 2014 and Wohlbold & LeMay, 2014.

¹³ Examples of the agencies publishing reports include: Statistics Canada, the Department of Justice Canada, Public Safety Canada, and the RCMP Human Trafficking National Coordination Centre.

¹⁴ J A Ferguson, *International Human Trafficking in Canada: Why so few prosecutions?*, Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia, 2012, at pp. 1, 63–64, 187–188.

¹⁵ See, e.g., the 2012 legislative debates concerning *Bill C-310: An Act to Amend the Criminal Code (trafficking in persons)* where various Members of Parliament cite the retracted RCMP 2003 estimate, available at <https://openparliament.ca/bills/41-1/C-310/>

¹⁶ See, e.g., Human Trafficking National Coordination Centre, <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>, referencing 151 individuals convicted of human trafficking-specific or related offences as of January 2015.

included. The ‘related’ category also includes cases where the accused persons *were not convicted* of trafficking-specific charges. The vicarious representation of such cases as trafficking verdicts contributes to the impression that trafficking convictions are more prolific than they actually are. In addition, government statistics tend to reference the numerous trafficking *investigations and charges* despite many of them being withdrawn or stayed for a variety of reasons, including lack of evidence. While these patterns are also evident in other countries,¹⁷ relying on investigation or charging statistics has serious limitations in terms of the evidentiary strength of individual cases and the often political nature of charging practices. However, employing prosecution rates as a primary measure of success in global anti-trafficking efforts is equally problematic as employing investigation rates. To obtain an in-depth understanding of the extent of such complex social issues it is necessary to examine the entire process from investigation to conviction for each case. However, Canadian government and media reports typically do not provide this type or level of analysis, nor do they acknowledge the limitations of their data sources.

Existing estimates of the prevalence of human trafficking in Canada suffer from serious limitations due to systemic constraints to conducting independent empirical legal research. Further, Canadian policymakers, the public, and politicians seem to be unaware of—or discount—the complexities and challenges associated with empirically assessing the scope of human trafficking in Canada. In this contribution, the authors outline the main challenges they faced in their attempts to gather empirical data in a highly politicised legal environment. They also explain some of the realities of conducting socio-legal research in Canada and call for increased attention to developing more rigorous and ethical methods for data collection on human trafficking, identifying five recommendations for improved data collection in the Canadian context.

Researching Canadian Legal Anti-Trafficking Efforts

The common research questions that the authors sought to address were: (1) how has Canada responded to its international obligations under the UN Trafficking Protocol to enact and enforce criminal and immigration anti-trafficking

¹⁷ See: K Kangaspunta, ‘Was Trafficking in Persons Really Criminalised?’, *Anti-Trafficking Review*, issue 4, 2015, pp. 80—97. Internationally, based on 2014 United Nations Office on Drugs and Crime data, Kangaspunta at pp. 80—87 indicates that for every 100 trafficking in persons suspects, 45 are prosecuted and of those prosecuted 24 (55%) are convicted at the court of first instance.

laws, and (2) how are these laws perceived and experienced by those tasked with enforcing them and those who are subject to law enforcement efforts? Millar and O’Doherty, in collaboration with SWAN Vancouver Society, employed a triangulated methodology comprising three different samples:¹⁸ focus groups with SWAN Vancouver outreach workers and board members, interviews with eight criminal justice practitioners, and an analysis of the evolution of the immigration and criminal laws and prosecution of trafficking-specific offences nation-wide from 2002 to 2014.

Roots conducted a 15-month independent research study for her PhD dissertation using qualitative research methods to trace the shifts in the meaning of trafficking through translation from international law to Canada’s domestic legislation and its application by legal practitioners. Focusing on the province of Ontario, the study employed legal databases (Quicklaw and CanLII), media sources, NGO and government reports and correspondence with the Ministry of the Attorney General, to identify all reported names of individuals charged under human trafficking-specific criminal laws from 2005 to 2015. Roots collected court information and/or indictments for 126 charged individuals, which provided biographical data, accompanying charges and legal outcomes. Roots also obtained audio recordings of eight human trafficking trials and conducted sixteen interviews with police officers, prosecuting attorneys, defence attorneys, and judges. Millar and O’Doherty employed similar strategies in collecting primary court documents and triangulating sources to verify their validity.

Ultimately, Millar and O’Doherty were able to verify 33 Canadian trafficking in persons cases¹⁹ resulting in either a conviction or another legal outcome (full or partial acquittal, stay of proceedings, withdrawn charge, mistrial and new trial ordered) on a trafficking-specific charge. Roots, using the individual accused as the unit of analysis, was able to track 126 individuals charged with a trafficking-specific offence.²⁰ Collectively, the authors found that most offenders pleaded guilty as opposed to being found guilty through a trial process. In a majority of cases, trafficking charges were stayed or withdrawn by the prosecuting attorney. Overall, these cases indicate that not only have few trafficking-specific prosecutions been undertaken in Canada, but that relatively

¹⁸ The study was funded by the Law Foundation of British Columbia, which is a non-profit foundation that funds legal research.

¹⁹ A case refers to one or more accused adults or minors who were prosecuted for at least one trafficking-specific immigration or criminal offence. The 33 cases represent 60 accused in total, although only 27 of these accused were convicted for a trafficking-specific offence.

²⁰ Forty out of these 126 individuals’ cases are ongoing at the time of publication.

few—only 17 case prosecutions—secured a conviction on a trafficking-specific charge. Collectively, the authors’ findings indicate that, like other jurisdictions,²¹ Canada’s prosecution efforts are in their infancy stages with only a handful of appellate judgments to draw on in interpreting the legal elements of the offence, and significant variations in legal actors’ understandings of what human trafficking means.

Accessing Primary Court Documentation

The authors encountered several challenges in trying to comprehensively track and verify immigration and criminal case prosecutions, in part because Canada, like most countries, lacks a central repository for human trafficking judgments. The process of accessing primary court documentation was complex and laborious, especially in instances where specific details about a case were required.

Both sets of authors employed similar case and primary court documentation location methods, using national legal databases and provincial legal judgment databases to systematically search for cases. Millar and O’Doherty informally conversed with the main government agencies that publish human trafficking reports and statistics, some of which provided primary court documents for some cases or were able to verify whether a case was prosecuted as a trafficking-specific case. In order to track primary court documentation, Millar and O’Doherty also filed three access to information (ATI) requests in an effort to obtain the case names or case file numbers for Government of Canada published statistics citing ‘trafficking-related’ offences. The ATI process was lengthy, with the deadline extended twice for the three requests. Ultimately, all three requests were declined on the basis that the data being requested had been provided to the police agency in confidence by a municipal or regional government.

²¹ See, e.g., A T Gallagher, ‘Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice’, *Anti-Trafficking Review*, issue 6, 2016, pp. 1—11, www.antitraffickingreview.org; A Farrell, C Owens and J McDevitt, ‘New Laws but Few Cases: Understanding the challenges to the investigation and prosecution of human trafficking cases’, *Crime Law and Social Change*, vol. 61, issue 2, 2014, pp. 139—168; A Farrell, M J DeLateur, C Owens and S Fahy, ‘The Prosecution of State-Level Human Trafficking Cases in the United States’, *Anti-Trafficking Review*, issue 6, 2016, pp. 48—70, at pp. 50—67, on first and second generation prosecutions in the USA.

Additionally, the authors used media reports to identify cases, but were cognizant of the attrition between charges reported by the media and prosecuted cases. Still, examining media reports elicited important information, allowing a comparison between charges and convictions, and demonstrating quite clearly that a majority of cases result in a withdrawal of charges or stays of proceedings. Examining media reports also captures how the perceived prevalence of trafficking offences is created through the frequency and sensationalism with which the media reports on charges, with limited follow-up about the subsequent legal proceedings in a particular case unless some type of a conviction is obtained.

The authors relied on secondary literature produced by other researchers and NGO advocacy networks to identify or verify the names of trafficking suspects and then formally corresponded with provincial justice ministries to obtain information on the court locations for specific cases. The authors then contacted the specific courts to request primary case documentation, eliciting varying responses. While some courts were helpful in providing the information, others required formal written requests before releasing the requested data and some courts simply did not respond to the authors' formal requests. Nearly half the requests submitted by Roots were lost or misplaced, and had to be re-filed, sometimes several times. In selected instances, Millar and O'Doherty contacted journalists and/or the named prosecution or defence counsel in media reports to verify specific *public* details about cases. Ultimately, Millar and O'Doherty were able to obtain some form of primary court documentation (an indictment, an information, a judgment and/or a sentencing decision) for 27 of 33 cases. Recent statistics produced by the Canadian Centre for Justice Statistics confirm this number of criminal convictions obtained across Canada since 2005.²²

In brief, the authors found that tracking cases from the point of arrest to completion is an onerous and time consuming task. Information on court appearances is provided exclusively to the involved parties. Members of the public must contact the court office and provide specific information, such as date of birth or file number, to obtain information on specific court dates for a case. Court dates, times and locations also change frequently and quickly without notification to the public. Finally, ordering court transcripts is an expensive endeavor. Combined with the delays in accessing court records in the first place, the challenges identified above severely hamper academic research efforts in trying to access primary court documentation.

²² See: M Karam, *Trafficking in Persons in Canada, 2014*, Statistics Canada, Ottawa, 2016, retrieved 30 June 2016, <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14641-eng.htm>

Accessing Interview Participants

In addition to the identified challenges in locating primary court records, both sets of researchers encountered challenges in obtaining interviews with frontline service providers and criminal justice practitioners/experts about their experiences with the formulation, enforcement and effects of anti-trafficking laws. Using a collaborative and participatory action research model,²³ Millar and O'Doherty conducted three focus group interviews with outreach workers and board members of SWAN Vancouver Society.²⁴ Collaborating with a frontline agency ensured co-creation and collective ownership of the rich knowledge generated. Millar and O'Doherty incorporated a knowledge uptake strategy; they sequenced the focus groups first in a reflexive effort to share the initial SWAN research findings—about the real and/or perceived effects of immigration and criminal anti-trafficking laws on their frontline work and the communities they serve—with those who develop and enforce these laws.

All three authors interviewed criminal justice practitioners (law enforcement officials, legal counsel, members of the judiciary), legal and academic experts and policymakers. Although both sets of authors were able to secure several interviews, they encountered some unexpected challenges. First, given relatively few trafficking in persons investigations and prosecutions, there are correspondingly few practitioners and experts with any relevant legal experience who can be interviewed and only a handful of practitioners who have expertise in more than one trafficking in persons case,²⁵ which also makes it difficult to protect the anonymity of interview respondents. Second, as independent academic researchers, they experienced relatively limited access to criminal justice practitioners who were willing to be interviewed, which they attribute in large part to a highly politicised context (a prevailing neo-Conservative law and order and prostitution-prohibitionist policy agenda) at the time of their research. Here, both sets of authors are mindful of having framed their study as a *critical appraisal* of the formulation and enforcement of Canadian anti-trafficking laws. Many

²³ For further discussion of this research method, see R Bowen and T O'Doherty, 'Participant-Driven Action Research (PDAR) with Sex Workers in Vancouver' in C Showden and S Majic (eds.), *Negotiating Sex Work: Unintended consequences of policy and activism*, University of Minnesota Press, Minneapolis, 2014, at pp. 53–74.

²⁴ Their decision to interview SWAN members, rather than im/migrant women sex workers, was deliberate, relating mainly to the complexities of conducting ethically sound and robust participatory action research with vulnerable and hidden populations. The authors recognise the omission of im/migrant women sex worker *direct voices* remains a critical deficiency for much of the Canadian human trafficking research and is an inherent limitation of their study.

²⁵ See, e.g., Farrell *et al.*, 2014 and 2016, who document similar challenges in the USA.

of those contacted either opted not to be interviewed or could not be interviewed without first receiving higher-level permission in view of formal agency policies that regulate cooperation with independent academic researchers. For example, provincial prosecutors in British Columbia and Ontario require senior-level approval for interviews with independent academic researchers and the authors were unable to secure this approval within their study time frame. Curiously, despite this policy, some prosecutors with whom the authors had personal connections participated in each of the studies.

While all three authors were able to conduct police interviews, the police were equally reluctant to speak to independent researchers. Out of six jurisdictions contacted by Roots, only two approved interviews. One of these jurisdictions needed the approval of the Chief of Police and the completion of a formal protocol where Roots was required to enter into a contractual agreement giving the police force permission to vet relevant research findings prior to publication. Although none of the police forces rejected the request outright, four of six contacted forces did not provide any response at all, despite several follow-up attempts. Millar and O’Doherty experienced a similar encounter with a municipal police agency which required completion of a formal interview protocol necessitating approval of the Chief Constable. Border enforcement officials simply did not respond to interview requests. While the challenges of conducting research with criminal justice personnel have been noted more generally by other Canadian socio-legal scholars,²⁶ our interviewees assert that the politicised nature of human trafficking makes accessing human trafficking related government data difficult for independent researchers.

Discussion and Recommendations

At the outset of both research studies, the authors aimed to explore the evidence of human trafficking, with a particular focus on investigating the complexities of formulating and enforcing Canada’s anti-trafficking laws. The authors were perhaps somewhat naïve in this undertaking, underestimating the degree of difficulty in accessing empirical legal evidence. Some of the challenges of collecting court records and substantiating charges were surmountable, as discussed above, but others remain serious impediments to understanding the scope of human trafficking—specifically accessing information that government agencies are unable or unwilling to share. Further, the authors did not anticipate the significant structural discrepancies in reporting mechanisms between

²⁶ See, e.g., E Sheehy, *Defending Battered Women on Trial: Lessons from the transcripts*, 2014, pp. 13–14; E Comack and G Balfour, *The Power to Criminalize: Violence, inequality and the law*, Fernwood Publishers, Halifax, 2004, pp. 14–17.

information sources (police reporting compared to court records, government publications, and media reporting on charges versus prosecutions). Hence, the authors' findings demonstrate not only how little empirical data exists, but also how challenging it is to obtain and triangulate primary legal data in Canada.²⁷

As a result, the authors were not able to substantiate the core claims about human trafficking in Canada. For example, most prosecuted cases did not have organised crime links,²⁸ as government, media and NGO discourse suggests. Instead, they frequently involved a single accused or typically not more than two accused persons, while the official legal definition of an organised criminal group is that it consists of three or more persons. Nearly all cases concerned domestic as opposed to transnational trafficking. Rather than expanding to new grounds of exploitation, human trafficking charges now target what used to be known as 'pimping,' particularly in relation to minor victims.²⁹ The replacement of 'pimping' with trafficking charges demonstrates a unidimensional understanding of human trafficking as an experience of exploitation within commercial sex work. Indeed, Canada has rarely prosecuted other forms of trafficking, which renders less visible the sexual exploitation that takes place in other labour contexts.

Court records and criminal justice practitioners' insights can provide important information about the scope of anti-trafficking legal efforts in Canada; however, the first-hand accounts of trafficked persons, and others (namely sex workers, migrant workers and workers in precarious work sectors) directly affected by anti-trafficking efforts are generally absent from anti-trafficking discourses. Academics and others who seek evidence-based policy would benefit from increased access to criminal justice practitioners, too. The authors' two studies do not adequately reflect the experiences of diverse criminal justice practitioners. There is an extensive literature on the myriad conceptual, ethical, and other

²⁷ For similar methods of locating and triangulating human trafficking cases, see: F Skodmin, R Dunham and D M Hughes, 'Analysis of Human Trafficking Cases in Rhode Island, 2009-2013', *Sage Open*, vol. 6, issue 2, 2016, pp. 1–12, at p. 2.

²⁸ The authors found one criminal labour trafficking case involving cross-charges pertaining to an organised criminal group. Similar dubious links between domestic trafficking and organised crime have been documented elsewhere: e.g., K Chin and J O Finckenauer, *Selling Sex Overseas: Chinese women and the realities of prostitution and global sex trafficking*, New York University Press, New York, 2012.

²⁹ See: K Roots, 'Trafficking or Pimping: An analysis of Canada's human trafficking legislation and its implications', *Canadian Journal of Law and Society*, vol. 28, issue 1, 2013, pp. 21–41. See also *Anti-Trafficking Review*, issue 6, Prosecuting Human Trafficking, 2016.

methodological challenges associated with conducting human trafficking research, including gaining access to criminal justice practitioners as interview participants.³⁰ Millar, O'Doherty and Roots contribute to this body of methodological knowledge by documenting several comparable challenges in the Canadian anti-trafficking empirical context where the authors encountered various institutional barriers.

For both studies, it remains unclear whether the reluctance by criminal justice practitioners to participate was due to a lack of political will or the difficulties in speaking candidly on a highly politicised subject matter, despite assurances of anonymity. Criminal justice personnel who did participate indicated that other issues affect institutional approval, such as fiscal concerns about ongoing government funding for anti-trafficking efforts if the extent of trafficking is less than what is publicly portrayed, and fear of an adverse rating by the USA in its annual *Trafficking in Persons Report*. Other factors include institutional or bureaucratic incapacity, such as an inadequate number of personnel to deal with such requests. At the same time, like the larger body of international research, the Millar, O'Doherty and Roots studies underscore the vital need to find innovative ways of ensuring that legal practitioner views and the direct voices of trafficked persons are adequately represented in anti-trafficking research and that anti-trafficking research and law enforcement actions be extended beyond the commercial sex sectors.

These studies demonstrate how much work needs to occur in Canada to comprehend the full scope and nature of human trafficking, and the effects of anti-trafficking legal efforts. As academics, the authors sought credible, verifiable information on which to base their claims. Due to serious problems related to transparency, ambiguous and inconsistent government and NGO definitions, and significant concerns about the misrepresentation of data to fulfil political goals, the authors remain deeply concerned about the state of empirical evidence on human trafficking at the national, regional and local levels. The fact that the authors were not able to substantiate the dominant claims does not necessarily mean the claims are inaccurate. For example, the lack of evidence of Indigenous complainants likely speaks to a systemic failure of the Canadian legal system to respond adequately to the victimisation of Indigenous women and girls, or that Indigenous women and girls do not fit into the narrow legal definition of what constitutes a 'trafficking victim'. The authors acknowledge the limitations in their methodologies: this process of investigating court records and other legal empirical data is limited to

³⁰ See: A T Gallagher, 2016, p. 3; and S X Zhang, 'Beyond the "Natasha" Story—A review and critique of current research on sex trafficking', *Global Crime*, vol. 10, issue 3, 2009, pp. 178–195, at pp. 187–193.

information which enters the formalised legal system in the first place and which then meets varying legal thresholds for prosecution. As a result, the only conclusions the authors are confident in substantiating are the significant discrepancies that exist between sources, and a general lack of credible evidence about the nature and extent of human trafficking in the country.

In conclusion, the authors offer five recommendations. First, the federal government must provide better access to information and increase the transparency in their reporting mechanisms, including increased rigour in data collection and legal definitions in resulting government publications. Second, in view of the highly politicised socio-legal context, and to address concerns about accuracy and transparency, Canada ought to develop a repository for human trafficking cases. A database could be developed and maintained in partnership with a university or NGO; it should be publicly accessible, easily searchable, sufficiently anonymised to protect privacy rights, and regularly updated. In this regard, the authors note the University of Queensland Online publicly accessible Migrant Smuggling Case Database as a potential best practice.³¹ Additionally or alternatively, Canada should continue to increase the expanse of its open access legal research platforms as other countries like Australia and the USA appear to be doing.³²

Third, the authors wish to see more financial support for independent (academic/university) socio-legal research,³³ with increased ability for criminal justice practitioners to participate in such research. Funding streams can be opened that are sufficiently distant from government politics for independent socio-legal organisations, such as the Law Foundations of each province, or the recently disbanded Law Commission of Canada. Practitioners have a wealth of information that is largely untapped in academic studies. Their knowledge is pivotal in understanding best practices, and institutional and other challenges in applying the law. We recommend creating opportunities for communication between representatives of formal institutions—for example, with members of

³¹ See: University of Queensland, *Migrant Smuggling Case Database*, available at <https://ssl.law.uq.edu.au/som-database/home.php>

³² See, e.g., L Mirando, 'Open Access, Free Access to Law and Access to Canadian Legal Scholarship (Part 2)', *Slaw*, 20 February 2014, retrieved 3 January 2017, <http://www.slaw.ca/2014/02/20/open-access-free-access-to-law-and-access-to-canadian-legal-scholarship-part-2/>

³³ In this regard, we note that the Law Reform Commission of Canada was a permanent body that previously provided such independent research, but was disbanded in 2006. We strongly recommend the reestablishment of such a Commission to ensure Canada's capacity to conduct arms-length legal empirical research.

parliament, Department of Justice members, police, health care providers, border and immigration agencies—and vulnerable groups to increase understanding of the individual and community needs. Open dialogue about unintended harms associated with law enforcement and/or health services could serve to reduce these existing harms and facilitate victimisation reporting. Likewise, access to criminal justice system representatives would assist NGOs and marginalised individuals to better understand legal parameters, evidentiary thresholds—and other key issues such as responsibilities and funding limitations—that affect law enforcement actions and priorities.

Fourth, criminal justice practitioners, judges and lawyers specifically, together with Canadian politicians and legislators more generally, need more education and training about legal and social science research methods, especially how to determine the validity and reliability of research data.³⁴ If lawyers are to effectively cross-examine and judges are to assess the degree of weight to attribute to an expert or an expert's report, and parliamentarians are to formulate and amend law and policy in an evidence-informed way, these individuals must have access to education and training on how to measure reliability and validity.

Finally, the authors ask for greater rigour and transparency in evaluating legal anti-trafficking efforts in Canada and the development and amendment of national laws and policies. The authors understand all too well the highly politicised nature of criminal justice in Canada, especially in relation to countering human trafficking. Despite this, they idealistically call for a move away from exaggerated claims and sensationalism, and encourage the use of non-partisan empirical evidence and rights-based approaches as the basis of Canadian law reform efforts.

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³⁴ See, e.g., J Lowman, 'In the Eye of the Storm: The abuse of research in the Canadian prostitution law reform debate', A paper presented at 'Sex Work and Human Rights: Lessons from Canada for the UK', Durham Law School, Durham University, 18–19 September 2014.

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Intensifying Insecurities: The impact of climate change on vulnerability to human trafficking in the Indian Sundarbans

Nicole Molinari

Abstract

Despite an enormous amount of attention paid to the factors that shape vulnerability to human trafficking, such as poverty and a lack of economic opportunity, the debate of evidence for what enables these factors to exist in the first place is relatively less explored. Presently, discussions of the relationship between climate change and human insecurity have been marginal to broader debates about vulnerability to trafficking. This paper argues that this signifies a gap in our understanding of the underlying drivers that push individuals and communities into situations where vulnerability to trafficking amplifies, but also that increase the pull of risky migration pathways and exploitative work situations. This paper proceeds by examining and problematising dominant conceptualisations of vulnerability in human trafficking and climate change discourses. Next, it presents a case study of the Sundarbans region of India to highlight how climate change impacts compound and exacerbate the same factors that shape vulnerability to human trafficking—including environmental degradation, loss of livelihood, destitution, and forced migration. Lastly, it argues for enhanced attention to climate change-related insecurity as evidence of vulnerability to trafficking and outlines what such insights can bring to anti-trafficking efforts.

Keywords: human trafficking, climate change, vulnerability, human security, gender, livelihoods

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Introduction

Debates of evidence in anti-trafficking work have contested the accuracy of the statistical data on the numbers of trafficked persons, the typical representations of the nature and experience of human trafficking, the viability of criminal justice systems to deal with human trafficking, and the perpetuation of ineffective anti-trafficking interventions.¹ While there has been an enormous amount of attention paid to the factors that shape vulnerability to human trafficking, such as poverty and uneven development, conflict and gender inequality, the debate of what enables these factors to exist in the first place is relatively less explored. As it stands, the relationship between climate change and human insecurity has been largely left unanalysed as evidence of vulnerability to trafficking. This paper argues that this signifies a gap in knowledge of the underlying drivers of vulnerability to trafficking.

This paper illustrates, using the example of the Sundarbans region of India, that to better understand the rooted drivers of vulnerability to human trafficking, key areas to account for in the evidence of vulnerability factors relate particularly to climate change and its linkages to environmental degradation, livelihood stress, impoverishment, and forced migration. The remainder of the paper is divided into three sections. The first outlines the ways in which vulnerability is conceptualised in mainstream human trafficking and climate change discourse, highlighting what remains unacknowledged and unaddressed as evidence of vulnerability to trafficking. The second introduces a case study of the Sundarbans to show how localised climate change impacts exacerbate the same factors that shape vulnerability to human trafficking. The concluding section argues for

¹ For more on how a lack of standard definitions and inaccurate data on human trafficking influence understandings of and responses to it, see: B Loff and J Sanghera, 'Distortions and Difficulties in Data for Trafficking', *The Lancet*, vol. 363, no. 9408, 2004, p. 566. For more on the prioritisation of a criminal law approach and marginalisation of a labour approach to anti-trafficking, see: H Shamir, 'A Labor Paradigm for Human Trafficking', *UCLA Law Review*, vol. 60, no. 1, 2012, pp. 76—137. For more on how a limited focus on sexual exploitation in anti-trafficking efforts leaves out those people trafficked into other sectors and misses the root causes of vulnerability, see: C van den Anker, 'Trafficking and Women's Rights: Beyond the sex industry to "other industries"', *Journal of Global Ethics*, vol. 2, no. 2, 2006, pp. 163—182.

increased attention to modes of climate change-related insecurity as evidence of vulnerability in anti-trafficking work.

This paper undertakes a review of the academic and grey literatures on vulnerability to human trafficking in the Sundarbans as well as in India, climate change and vulnerability/human insecurity; and climate change and human trafficking. In particular, research based on primary data, including qualitative interviews, focus groups, and surveys with trafficked and migrant persons and affected households themselves, was conducted by local NGOs,² scholars,³ and supranational organisations⁴ to better understand the multifaceted conditions, processes, and outcomes of migration and trafficking. Methodologically comprehensive and robust, these studies highlight the experiences and perspectives of affected persons and are further informed by primary data that included participant observation, qualitative interviews and meetings with civil society, government, and policy-maker stakeholders, quantitative socioeconomic and demographic survey data, and secondary data

² Local NGOs include: A Ghosh, *Living with Changing Climate: Impact, vulnerability and adaptation challenges in Indian Sundarbans*, Centre for Science and Environment, New Delhi, 2012, p. 4, retrieved 23 September 2015, <http://cseindia.org/userfiles/Living%20with%20changing%20climate%20report%20low%20res.pdf>; Jagori, 'Migration, Trafficking, and Sites of Work: Rights and vulnerabilities' in K Kempadoo, J Sanghera and B Pattanaik (eds.), *Trafficking and Prostitution Reconsidered: New perspectives on migration, sex work, and human rights*, Paradigm Publishers, Boulder, Colorado, 2012, pp. 159–74; and Sanlaap, *Real Lives...Real Options: A study exploring the livelihood options for trafficked survivors in rural and urban areas*, 2008, retrieved 28 October 2015, http://www.childtrafficking.com/Docs/real_lives_0509.pdf

³ Scholars include: A Poncelet *et al.*, 'A Country Made for Disasters: Environmental vulnerability and forced migration in Bangladesh' in T Afifi and J Jäger (eds.), *Environment, Forced Migration and Social Vulnerability*, Springer-Verlag, Berlin Heidelberg, 2010, pp. 211–222; N Ray, 'Vulnerability to Human Trafficking: A qualitative study', Brown School of Social Work Dissertation, Washington University, Saint Louis, Missouri, 2008; and U Vindhya and V Swathi Dev, 'Survivors of Sex Trafficking in Andhra Pradesh: Evidence and testimony', *Indian Journal of Gender Studies*, vol. 18, no. 2, 2011, pp. 129–165.

⁴ Supranational organisations include: International Labour Organization (ILO), *Child Migration, Child Trafficking and Child Labour in India*, International Labour Office, International Programme on the Elimination of Child Labour, Geneva, ILO, 2013, retrieved 27 October 2015, http://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_23898/lang=en/index.htm; and World Bank, *Building Resilience for Sustainable Development of the Sundarbans: Strategy report*, Washington, DC, World Bank Group, 2014, retrieved 20 September 2015, <http://documents.worldbank.org/curated/en/2014/01/20162806/building-resilience-sustainable-development-sundarbans-strategy-report>

sources. A few of these articles⁵ hone in on the gendered processes at play and feature the voices of trafficked and migrant women.

This paper examines and weds the disjointed literatures on climate change and human insecurity, and vulnerability to human trafficking in order to gain a deeper understanding of the complex and myriad forces that underpin vulnerability to trafficking in a case study of the Sundarbans. A gendered perspective is employed to focus attention on the myriad forces that shape vulnerability, and the ways in which vulnerability is gendered and intersects with other social locations of difference such as caste and class.⁶

Conceptual Frameworks of Vulnerability to Human Trafficking and Climate Change

How vulnerability is conceptualised has implications for how it is taken up and addressed in research, policy, and programming. Vulnerability is a key element of the dynamics of human trafficking and the effects of climate change, and there are parallels in the ways in which vulnerability to climate change impacts and human trafficking are understood. In both contexts, conceptualisations of the drivers and features of vulnerability are informed by a variety of distinct approaches, interpretations, and ideologies, but which tend to de-emphasise the dynamic, contextual, and socio-structural dimensions of vulnerability.

In regards to climate change discourse, two distinct conceptualisations of vulnerability have emerged: outcome vulnerability and contextual vulnerability. Outcome vulnerability, which is mediated by adaptation capacities, is informed by a scientific framework that sees vulnerability as a linear process and direct product of climate change effects on exposed biophysical or social entities. This approach views the biophysical and social as separate spheres and places emphasis on the former. In contrast, contextual vulnerability is influenced by a human security framework that accounts for the ways in which multiscale social, political, and economic conditions and processes and uneven relations of power mediate the opportunities, resources, and capacities necessary to cope with and adapt to climate pressures. This approach acknowledges differentiated forms and outcomes of

⁵ In particular, these include Jagori, 2012; Ray, 2008; Vindhya and Swathi Dev, 2011, the former of which saw the transformation of research into an action-research project.

⁶ This perspective is further explored in the following section.

vulnerability across and between groups and regions.⁷ Although there is an increasing recognition that the consequences of climate change are socio-structurally mediated and unevenly distributed, with the world's most impoverished and marginalised peoples, regions, and countries bearing the disproportionate burden of climate change-related hazards, vulnerabilities, and costs,⁸ conceptualisations of outcome vulnerability and their concomitant technoscientific fixes, continue to dominate climate change research and international policy forums.⁹

In the dominant trafficking discourse, an account of the contextual factors that underlie vulnerability is also largely missing. Human trafficking is contingent on the interaction of push factors that motivate or compel people to leave their homes in a search of better prospects and pull factors that generate demand for exploitation.¹⁰ In India, the principal factors that contribute to vulnerability to trafficking are acknowledged as poverty, uneven development, social discrimination, gender-based violence, family or marital separation or dysfunction, lack of educational or economic opportunity, poor social infrastructure, a lack of awareness of trafficking, and cultural practices that sanction or tolerate trafficking.¹¹ However, these factors tend to be applied to trafficking-prone regions and vulnerable peoples in a general manner. In the case of both climate change and trafficking, dominant conceptualisations of vulnerability tend to be generalised, individualised, and naturalised, with limited ability to inform robust knowledge and responsive policy and practice. There is

⁷ K O'Brien *et al.*, 'Why Different Interpretations of Vulnerability Matter in Climate Change Discourses', *Climate Policy*, vol. 7, issue 1, 2007, pp. 73–88.

⁸ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Impacts, adaptation, and vulnerability. Part A: Global and Sectoral Aspects*, Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, New York, 2014, p. 803, 816, retrieved 5 October 2015, http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-PartA_FINAL.pdf; United Nations Development Fund, *Human Development Report 2007/2008. Fighting Climate Change: Human solidarity in a divided world*, 2007, pp. 58–9, retrieved 20 September 2015, http://hdr.undp.org/sites/default/files/reports/268/hdr_20072008_en_complete.pdf; Intergovernmental Panel on Climate Change, pp. vii–1101.

⁹ O'Brien *et al.*, p. 76, 85.

¹⁰ C Jasparro and J Taylor, 'Climate Change and Regional Vulnerability to Transnational Security Threats in Southeast Asia', *Geopolitics*, vol. 13, no. 2, 2008, p. 240.

¹¹ B Ghosh, 'Trafficking in Women and Children in India: Nature, dimensions and strategies for prevention', *The International Journal of Human Rights*, vol. 13, no. 5, 2009, pp. 716–738; International Development Law Organization (IDLO), *Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies*, 2011, p. 4, retrieved 20 September 2015, <http://www.idlo.org/Publications/FinalReportGirlsProject.pdf>; ILO, pp. 2–13, 25.

little examination of the rooted, contingent, and context-specific forces that underlie, exacerbate, and perpetuate these vulnerability factors, thus limiting what is counted as evidence of vulnerability to trafficking.

Human trafficking in India is narrowly construed as a problem of sexual exploitation, with women and children deemed inherently vulnerable and helpless victims in need of protection and rescue.¹² Likewise, in the case of climate change, in efforts to bring greater attention to gender in debates, some scholars and activists have employed narrow analyses of gender and vulnerability that have discursively positioned women, particularly poor women from the Global South, as essentially and universally vulnerable to the forces of climate change.¹³ In another similar vein, essentialised notions of vulnerability have fed into discourses of mobility, migration, and movement associated with trafficking as well as climate-induced migration and displacement, with implications for what kinds of responses are envisioned and carried out. Paradoxically, while both view vulnerability as inherent in particular groups, anti-trafficking and climate adaptation responses emphasise national security over human security concerns and focus on reactive interventions over prevention strategies.¹⁴ Just as typical anti-trafficking efforts continue to prioritise border security and criminal law responses, there are increasing calls for climate adaptation plans to account for migration and displacement outcomes and manage flows of people, even while existing frameworks are deemed inadequate to deal with the complexity of such issues.¹⁵

¹² R Kapur, 'India' in *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, Global Alliance Against Traffic in Women, Bangkok, 2007, p. 114, 137, retrieved 15 November 2015, http://www.gaatw.org/Collateral%20Damage_Final/CollateralDamage_%20INDIA.pdf; P Kotiswaran, 'Vulnerability in Domestic Discourses on Trafficking: Lessons from the Indian experience', *Feminist Legal Studies*, vol. 20, 2012, pp. 245—6.

¹³ S Arora-Jonsson, 'Virtue and Vulnerability: Discourses on women, gender and climate change', *Global Environmental Change—Human and Policy Dimensions*, vol. 21, no. 2, 2011, p. 744; S MacGregor, "'Gender and Climate Change?": From impacts to discourses', *Journal of the Indian Ocean Region*, vol. 6, no. 2, 2010, p. 223.

¹⁴ In the context of climate change, see: N Detraz and L Windsor, 'Evaluating Climate Migration', *International Feminist Journal of Politics*, vol. 16, no.1, 2014, p. 127.

¹⁵ To see how this links to projected heightened and uncertain consequences, non-binding and voluntary action, poor institutional cooperation, non-standardised responses, barriers to access for the most vulnerable, and reinforcement of social inequities, see the Cancun Adaptation Framework in K Warner, 'Human Migration and Displacement in the Context of Adaptation to Climate Change: The Cancun Adaptation Framework and potential for future action', *Environment and Planning C: Government and Policy*, vol. 30, 2012, pp. 1061, 1072—3. For more on what the emphasis of a criminal law approach to trafficking misses, see Shamir, particularly footnotes 64 and 65 on pp. 126—7.

Attending to the ways in which vulnerability is both conceptualised and responded to shows what is obscured. A gendered perspective challenges problematic notions of vulnerability by highlighting how powerful interests, ideologies, and assumptions of gender, race, and class mask the social, structural, and discursive articulations of vulnerability and reinforce social inequities and uneven relations of power. It reframes vulnerability as arising out of embeddedness in the world yet accounting for the ways in which the severity of vulnerability is unevenly distributed between different groups and regions. From this standpoint, vulnerability is understood as entangled and negotiated within uneven and multi-scalar relations of power, political economic structures, social processes, and material conditions.¹⁶

Critical commentators have expanded evidence of vulnerability to trafficking by revealing the ways in which vulnerability to trafficking articulates with macro processes of globalisation and neoliberalisation that entrench social disparities, intensify dispossessions, and compel a rising number of people to migrate for survival.¹⁷ In India, economic liberalisation since the 1990s in particular has contributed to the widespread urbanisation, informalisation, and deregulation of employment and the flexibilisation and feminisation of labour markets. During this time, the power of capital was secured while the interests of labour were undermined. Global competitive pressures and profit imperatives generate demand for cheap, controllable, exploitable, and expendable workers. Discrimination based on gender, age, caste, class, religion, ethnicity, and migrant status constructs certain groups as more suitable for highly exploitative, low-skill, low-wage informal work. The erosion of rural and traditional livelihoods as well as depressed wages and poor working conditions for the majority of workers contributes to rising household insecurity. At the same time, the feminisation of informal work combines with changing gender norms, desires, and opportunities for work and mobility to catalyse the large-scale labour migration of Indian women and children, largely from poor households.¹⁸

¹⁶ For climate change, see: Arora-Jonsson, p. 223. For trafficking, see: K Kempadoo, 'Abolitionism, Criminal Justice, and Transnational Feminism: Twenty-first-century perspectives on human trafficking' in K Kempadoo *et al.*, 2012, pp. vii–xlii; A Szörényi, 'Rethinking the Boundaries: Towards a Butlerian ethics of vulnerability in sex trafficking debates', *Feminist Review*, vol. 107, 2014, pp. 20–36.

¹⁷ C van den Anker, 'Contemporary Slavery, Global Justice and Globalization' in C van den Anker (ed.), *The Political Economy of New Slavery*, Palgrave Macmillan, New York, 2004, pp. 15–36; K Kempadoo, pp. xxvi–xxvii.

¹⁸ Asian Development Bank, *Combating Trafficking of Women and Children in South Asia. Regional Synthesis Paper for Bangladesh, India, and Nepal*, 2002, p. 31, retrieved 18 November 2015, <http://www.adb.org/sites/default/files/publication/30364/combating-trafficking-south-asia-paper.pdf>; Jagori, pp. 169, 171–2; Vindhya and Swathi Dev, pp. 130–1.

While women's participation in wage work has increased over time, the majority still remain at the bottom of the labour market hierarchy, entrenching their disadvantage. In this context, girls and women face structural forms of vulnerability to 'different kinds of abuse, exploitation and violation of rights almost routinely' in their migration and work trajectories and outcomes, shaping risk for trafficking.¹⁹ According to the US Trafficking in Persons Report, trafficking is a major problem in India. In contrast to the over-emphasis on trafficking for sexual exploitation in anti-trafficking discourse and policy, the majority of trafficked persons in India are exploited for forced labour and debt-bondage in various sites and sectors.²⁰ Additionally, there has been an expansion of sectors that use forced labour,²¹ and the number of persons facing extreme forms of labour exploitation appears to be rising.²²

In sum, critical work has reconceptualised and vitally enhanced evidence of vulnerability to trafficking by accounting for intersecting axes of social difference and political economic forces that mediate and intensify conditions and processes of impoverishment, dispossession, and displacement. Yet, given that poverty, loss of livelihood, and forced migration are key determinants of vulnerability to trafficking, and despite growing evidence of their links to climate and environmental change, particularly in the Global South,²³ it is surprising that climate change-related insecurity has been largely left unexamined as evidence of vulnerability to trafficking.

While the reasons for the lack of account of climate change effects in anti-trafficking discourse and policy can only be speculated, it likely stems, at least partially, from limited conceptualisations and evidence of vulnerability and the privileging of a criminal justice approach to deal with trafficking. For example, the UN Trafficking Protocol, which situates trafficking as a criminal act and focuses on transnational

¹⁹ Jagori, p. 172; Kempadoo, p. x, xix.

²⁰ Although caution is warranted in utilising statistics of human trafficking (see Kapur, p. 115), the US Trafficking in Persons report recognises the immense scale of labour exploitation in the estimation that 20–65 million people are subject to forced labour conditions and that ninety per cent of trafficking is believed to occur within India's borders (p. 203). For more, see United States Department of State (USDS), *Trafficking in Persons Report—India*, 2014, retrieved 2 December 2015, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226740.htm>

²¹ USDS, p. 203.

²² United Nations Office on Drugs and Crime (UNODC), *Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti-Human Trafficking*, 2013, p. 9, retrieved 2 December 2015, http://www.unodc.org/documents/southasia/reports/Human_Trafficking-10-05-13.pdf

²³ IPCC, pp. vii-1101.

crime,²⁴ has shaped subsequent national and regional anti-trafficking law, policy, and intervention across the globe. The criminal justice framework of anti-trafficking has displaced crucial alternative perspectives and approaches, shaping and bolstering particular responses to trafficking.

The UN Trafficking Protocol is structured around three key dimensions—the prosecution of traffickers, protection of trafficked persons, and prevention of trafficking. Yet, there are widespread criticisms that prosecution has been prioritised at the expense of protection and prevention.²⁵ Furthermore, the emphasis on criminalisation deals with the problem of trafficking after the fact rather than beforehand through prevention. A meaningful account and address of the underlying social, economic, political, and environmental drivers of vulnerability to trafficking remains marginal. And reactive criminal justice measures give the appearance that something is being done to tackle trafficking while the structural and material conditions and power relations that contribute to vulnerability remain intact and instances of trafficking persist.²⁶ Despite the political rhetoric, in reality, long-term, comprehensive, and systematic prevention efforts have yet to be undertaken.²⁷

Climate change-related vulnerability, which entails uneven, uncertain, and complex processes contingent on myriad factors, does not fit neatly into dominant criminal justice-oriented anti-trafficking initiatives that are informed by limited evidence and understandings of vulnerability, target individual perpetrators, and produce immediately visible results. Although anti-trafficking, as well as climate change, has been highly contested terrain, both arenas are dominated by powerful interests that are profoundly reluctant to account for and address particular forms and dynamics of capitalism and capital and state relations that structure conditions of insecurity and exploitation. Instead, powerful state and capitalist interests and agendas, including migration and labour control, underpin mainstream anti-trafficking efforts. Yet, this is obscured and enabled through sensationalised trafficking narratives. In the case of climate change,

²⁴ This is evident given that the international human trafficking legal framework is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, located within the United Nations Convention Against Transnational Organized Crime.

²⁵ For a good critique of this, see: J Chuang, ‘Beyond a Snapshot: Preventing human trafficking in the global economy’, *Indiana Journal of Global Legal Studies*, vol. 13, no. 1, 2006, pp. 137–163; and J Todres, ‘Widening Our Lens: Incorporating essential perspectives in the fight against human trafficking’, *Michigan Journal of International Law*, vol. 33, no. 1, 2011, pp. 53–75.

²⁶ Chuang, p. 137, 148, 155–6 and Todres, pp. 57, 61–3, 74.

²⁷ Chuang, p. 154.

its slow onset impacts do not align with such narratives based on inherently vulnerable women being sold or abducted and forced into sexual slavery. Furthermore, blame and responsibility for the conditions and outcomes of trafficking cannot be easily pinned to deviant and malevolent perpetrators, organised crime rings, or patriarchal, backward communities.²⁸

Climate Change-Related Insecurity and Vulnerability to Human Trafficking in the Sundarbans

In the vast literature on climate change and human security there are some, although not widespread, connections made between climate change, intensifying vulnerabilities, and human trafficking.²⁹ For instance, research in Bangladesh and Vietnam, which assessed the relationship between environmental change and forced migration, found that recurrent climate change-related disasters and environmental degradation led to a loss of livelihoods, heightened poverty and indebtedness, and created opportunities where exploitation and trafficking thrived.³⁰ In contrast, in literature on human trafficking, climate change remains unanalysed and under-conceptualised as evidence of the rooted drivers of vulnerability. Examining specific examples of regions and communities understood to be prone to trafficking, as in the following case study, can reveal how dominant conceptualisations of vulnerability, especially those that ignore the materiality of livelihoods and community practices, limit what is counted as evidence in trafficking research and policy.

²⁸ Chuang, pp. 153—4; Todres, p. 55, 61.

²⁹ F Laczko and C Aghazarm, *Migration, Environment and Climate Change: Assessing the evidence*, International Organization for Migration, Geneva, 2009, retrieved 9 October 2015, http://publications.iom.int/system/files/pdf/migration_and_environment.pdf; C Nellemann, R Verma and L Hislop (eds.), *Women at the Frontline of Climate Change: Gender risks and hopes. A rapid response assessment*, United Nations Environment Programme, GRID, Arendal, 2011, retrieved 20 September 2015, <http://www.grida.no/publications/rr/women-and-climate-change/>

³⁰ Laczko and Aghazarm, pp. 199—200, 218; Poncetlet *et al.*, pp. 215—219.

In India, the Sundarbans region of West Bengal has been identified as both highly vulnerable to climate change³¹ and prone to trafficking.³² In contrast to the uniform application of push and pull factors that renders a simplified account of vulnerability to trafficking, an examination of localised conditions in the trafficking prone Sundarbans region produces grounded and more comprehensive understandings of the drivers of vulnerability. What emerged as key contributors to peoples' vulnerability to trafficking was a lack of social or educational infrastructure, inequities based on gender, caste, class, religion and indigeneity, high rates of gender-based violence, major disruptions within households, landlessness and lack or loss of livelihoods, food insecurity and hunger, severe poverty and indebtedness, natural disasters and environmental degradation, and displacement or forced out-migration.³³ Although these contexts are amplified by climate change, the impact of climate change was unaccounted for in evidence of vulnerability to trafficking. Instead, evidence of the relationship between climate change impacts and vulnerability to human trafficking emerged as a side note of climate change research in the region.³⁴

The Indian Sundarbans is situated in a coastal delta at the confluence of major river systems on the Bay of Bengal, and is prone to natural disasters such as cyclones and floods.³⁵ The region is comprised of isolated, low-lying islands densely populated by 4.4 million people, the majority of whom face severe impoverishment and insecurity.³⁶ Low human development characterises the region, with wide gender inequities in multiple arenas including educational attainment, work participation, and gender-based violence.³⁷ The Sundarbans has a high representation of Muslim, Scheduled Caste, and Scheduled Tribal groups, as well as undocumented Bangladeshi migrants and landless households that have

³¹ Ghosh, *Living with Changing Climate*, p. 4; Development and Planning Department (DPD), *District Human Development Report South 24 Parganas*, HDRCC, Government of West Bengal, 2009, pp. 202, 217, retrieved 3 October 2015, http://www.undp.org/content/dam/india/docs/hdr_south24_parganas_2009_full_report.pdf; World Bank, p. 85, 126.

³² The Sundarbans is comprised of two districts, North and South Parganas, both with particular areas known for high incidence of trafficking. See: DPD, '*District Human Development Report*', p. 203, 318; Ghosh, 'Trafficking in Women and Children in India', p. 728; IDLO, p. 7; Sanlaap, *Real Lives*, p. 38; UNODC, p. 154.

³³ DPD, *West Bengal Human Development Report*, Government of West Bengal, 2004, pp. 202–3, retrieved 9 November 2015, http://planningcommission.nic.in/plans/stateplan/sdr_pdf/shdr_wb04.pdf; Ray, p. 155.

³⁴ Ghosh, *Living with Changing Climate*, p. 4, 78; World Bank, p. 15, 38.

³⁵ Ghosh, *Living with Changing Climate*, p. 4.

³⁶ World Bank, pp. 13–14, 88.

³⁷ DPD, *District Human Development Report*, pp. 286–9.

historically and contemporaneously faced discrimination, marginalisation, and poverty.³⁸ These social and biophysical dimensions intersect and cumulate to render the region and its people highly vulnerable to climate and environmental change³⁹ and human trafficking.⁴⁰

In the Sundarbans, climate change has brought about far-reaching and devastating impacts, exacerbating socio-ecological and economic pressures, which in turn mediate climate change-related insecurity.⁴¹ The local people are interdependent on the natural environment for income generation, sustenance, and survival. The majority of the population engages in agriculture, fisheries, aquaculture, and the collection of prawn seeds and non-timber forest produce for their livelihood. Because these livelihoods, and the peoples and communities dependent on them, are highly reliant on stable weather, healthy soil and water, and abundant mangrove ecosystems, they face high exposure and sensitivity to climate change impacts.⁴²

Although the Sundarbans is home to one of the largest and most biodiverse mangrove ecosystems on earth, life-sustaining soil, water, and mangrove biodiversity have been depleted due to climate change effects in addition to deforestation, over-exploitation, and industrial pollution. Stronger and more recurrent floods and cyclones, erratic rainfall, increased temperatures, and encroaching sea-level rise have contributed to soil and water salinisation, crop losses, soil infertility, and significant long-term reductions in agricultural yields, adversely impacting local livelihoods.⁴³

Yet, climate change impacts are not neutral but have gendered dimensions and differentiated outcomes. Because social arrangements of ‘production, reproduction, and distribution’ shape relationships to the environment,⁴⁴ poor, rural, low-caste, and indigenous women are most affected by and vulnerable to climate change and environmental degradation. This is due to discrimination in

³⁸ *Ibid.*, p. 85; S Bose, ‘Illegal Migration in the Indian Sunderbans’, *Forced Migration Review*, vol. 45, 2014, retrieved 3 March 2016, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/crisis/bose.pdf>

³⁹ Laczko and Aghazarm, 2009, p. 47, 323; Nellemann, Verma and Hislop, p. 21.

⁴⁰ Ghosh, ‘Trafficking in Women and Children in India’, p. 731.

⁴¹ For the local context, see: Ghosh, *Living with Changing Climate*, pp. 21–53.

⁴² *Ibid.*, p. 43; World Bank, pp. 6, 13, 79–87, 110.

⁴³ Ghosh, *Living with Changing Climate*, pp. 21–28; 44–53, 96; DPD, *District Human Development Report*, p. 217, 299; Ray, 2008, p. 133, 157; Bose, 2014, p. 22; World Bank, pp. 4, 14–15, 86–8, 126, 158, 202, 241.

⁴⁴ B Agarwal, ‘The Gender and Environment Debate: Lessons from India’, *Feminist Studies*, vol. 18, no. 1, 1992, p. 127.

access to income, resources, opportunities, decision-making, and entitlements necessary to cope with and adapt to socio-ecological shifts as well as particular social roles and responsibilities for household subsistence needs and agricultural production.⁴⁵

In the context of increasingly degraded environments and natural resources, women have to travel farther and spend more time on the collection of water, fuel, fodder, and forest produce, in addition to livestock and agricultural production. As access to productive and reproductive resources become more scarce and women's work burdens intensify, there is less time available for education and alternative income generation activities. Additionally, when men migrate out due to resource pressures and loss of livelihood, women's work burdens deepen further. In such contexts, children may be removed from school to help the family with domestic or wage work.⁴⁶

Compounding these climate change impacts, local agrarian communities have also been faced with socio-economic pressures such as reduced state agricultural subsidies, the rising cost of agricultural inputs and decreasing returns, and a highly inequitable distribution and marginalisation of landholdings.⁴⁷ Almost half of households in the Sundarbans are landless and reliant on wage labour,⁴⁸ yet work has been increasingly hard to find. Agriculture, comprising a large proportion of local production and reproduction, has been rendered fruitless and unprofitable. This has entrenched widespread food and livelihood insecurity and poverty for agriculture-dependent labourers—predominately women—and their households, compelling a search for alternative livelihoods. While the ability to obtain alternative livelihoods is essential to the wellbeing of households facing such threats, marginal and less secure forms of work have expanded while standard and more secure forms of work have contracted, contributing to high unemployment and underemployment.⁴⁹ At the same time, local rural employment and social welfare schemes, aiming to mitigate everyday forms of insecurity, are difficult to access and are largely ineffective.⁵⁰

In addition to food and livelihood insecurity, sea-level rise and intensified cyclones, storm surges, and floods have inundated and further eroded land. If current climate change projections and conditions hold, in as little as fifty years, half of

⁴⁵ Nellemann, Verma and Hislop, pp. 19–21, 24, 29.

⁴⁶ *Ibid.*, pp. 19–20, 38.

⁴⁷ DPD, *District Human Development Report*, pp. 32–6.

⁴⁸ DPD, *West Bengal Human Development Report*, p. 202.

⁴⁹ DPD, *District Human Development Report*, pp. 36, 50–1; World Bank, p. 90, 83, 199, 202.

⁵⁰ World Bank, p. 161.

productive land in the Indian and Bangladeshi Sundarbans will likely be submerged.⁵¹ The loss of coastal lands and entire low-lying islands in the Sundarbans has displaced countless people and increased the number of those landless.⁵² When cyclone Aila hit the Sundarbans in 2009, over a million people were displaced or severely impacted.⁵³ Although the Bay of Bengal experiences less than six per cent of the world's cyclones, this region accounts for over ninety per cent of the consequent devastation and death.⁵⁴ It is reported that, post-disaster, higher rates of gender-based violence, exploitation, and trafficking, particularly of girls and women, occur as a result of family fragmentation and stress, a loss of livelihoods and support networks, a disruption of social norms and controls, displacement into insecure disaster relief camps, and heightened physical and socio-economic precarity.⁵⁵

Climate change-related floods, cyclones, and sea-level rise destroy lives and livelihoods, land and crops, homes and infrastructure, assets and livestock.⁵⁶ Poor or non-existent disaster infrastructure and institutional support have exacerbated adverse outcomes.⁵⁷ Although the people of the Sundarbans have adapted to environmental stressors for centuries, more frequent and severe climate change hazards have created unceasing pressures and losses, impeding the ability to recover and adapt.⁵⁸ In order to cope with the often continual need to rebuild homes and livelihoods, households are compelled to sell off their land and assets, take on debt, decrease consumption, take children from school to help with work, and send family members away in search of work.⁵⁹ While these strategies may alleviate insecurities in the short-term, they tend to compromise resilience in the long-term, resulting in destitution, heightened deprivation, and chronic hardship over time.⁶⁰ And given that the ability to recover and adapt to climate stressors is gendered, marginalised women and their children face disproportionate adverse outcomes, exacerbating gender disparities.⁶¹

⁵¹ The India Meteorological Department in: Ghosh, *Living with Changing Climate*, pp. 24—6.

⁵² Bose, p. 22; Ghosh, *Living with Changing Climate*, pp. 23—24; World Bank, p. 14, 131.

⁵³ World Bank, p. 88.

⁵⁴ *Ibid.*, p. 103.

⁵⁵ Nellemann, Verma and Hislop, pp. 6—8, 46.

⁵⁶ Ray, p. 25; World Bank, p. 86, 108.

⁵⁷ DPD, *District Human Development Report*, pp. 218—219; S Bose, p. 22; World Bank, p. 86, 134.

⁵⁸ World Bank, pp. 83, 86, 125—6.

⁵⁹ Ghosh, *Living with Changing Climate*, p. 77; Ray, p. 124; Nellemann, Verma and Hislop, p. 20, 40; World Bank, p. 38, 86.

⁶⁰ IPCC, p. 802; UNDP, pp. 74, 83, 88—9.

⁶¹ IPCC, p. 796, 804.

Climate and environmental pressures profoundly impact migration flows.⁶² Mass human displacement and migration may be one of the greatest outcomes of climate change.⁶³ In the Sundarbans, more recurrent and intensified sudden onset disasters coupled with slow onset ecological degradation render local environments uninhabitable and livelihoods unviable, creating a crisis of survival and threatening not only population displacement but also gradual and more permanent forms of out-migration.⁶⁴ From affected households, able men, women, and children may migrate in search of greater security.⁶⁵ Post cyclone Aila, in many areas of the Sundarbans surveyed, three-quarters of households reported the labour migration of at least one family member, with children comprising a fifth of those out-migrating.⁶⁶

Although labour migration brought in remittances that enhanced household living conditions, much of the work was reported to be low-skilled, highly precarious, and dangerous.⁶⁷ Labour migration processes and outcomes are contingent on social networks, resources, and skills⁶⁸ as well as broader political and economic conditions. Low levels of education, limited economic skills, and severe poverty—disadvantages predominately faced by low-caste or indigenous women—hamper the ability to undertake secure migration and negotiate the type and conditions of work.⁶⁹ Insecure labour migration—in this case undertaken in the context of degraded environments, unviable livelihoods, destitution, and survival need—amplify vulnerability to forced labour and trafficking.⁷⁰ At the same time, it is these unsustainable conditions that restrict the ability of people who have fallen into exploitation to return home. In another scenario, households with extremely limited resources may not be able to migrate at all.⁷¹ As these households remain in inhospitable environments associated with intensifying deprivation, its members are also made vulnerable to trafficking.

⁶² Poncelet *et al.*, p. 212.

⁶³ Laczko and Aghazarm, 2009, p. 43, 271.

⁶⁴ *Ibid.*, pp. 214, 271—2; R McLeman and O Brown, ‘Climate Change and Human Migration’ in K Koser and S Martin (eds.), *The Migration-Displacement Nexus: Patterns, processes, and policies*, Berghahn Books, New York, 2011, p. 172; Ray, p. 155.

⁶⁵ World Bank, p. 16, 214.

⁶⁶ Ghosh, *Living with Changing Climate*, p. 77.

⁶⁷ *Ibid.*, pp. 80—1.

⁶⁸ Laczko and Aghazarm, p. 281; McLeman and Brown, pp. 181—3.

⁶⁹ Ghosh, *Living with Changing Climate*, p. 81.

⁷⁰ ILO, p. 26.

⁷¹ Laczko and Aghazarm, p. 218.

The rise in unscrupulous recruitment agents that facilitate labour migration out of rural communities to places with high demand for cheap labour have been linked to outcomes such as forced labour.⁷² In the Sundarbans, in the aftermath of climate change-intensified disasters, large-scale out-migration and a surge in trafficking ensued. It was reported that labour recruiters and contractors exploited the precarious circumstances in communities to recruit people, particularly women and children, with deceptive promises of work or marriage. Reflecting the gendered division of labour, many of these women and girls were subsequently trafficked into high demand sectors such as domestic work, the sex industry, and forced marriage while boys were trafficked for forced labour into various sectors.⁷³ While rigorous evidence of the relationship between climate change impacts and vulnerability to trafficking remains scarce in anti-trafficking research, these anecdotal reports are supported by both local and broader climate change studies which found that climate change-related disasters, loss of livelihood, and heightened poverty link to gendered vulnerability to trafficking.⁷⁴

As highlighted, climate change impacts compound and exacerbate the same factors that shape vulnerability to human trafficking. Climate change degrades the environment, diminishes income, assets, and land, dislocates rural livelihoods, entrenches food insecurity, worsens impoverishment, fragments households, and displaces populations. All these contexts have gendered impacts and implications that are differentially experienced across axes of social difference such as caste, class, age, and indigeneity. Although migration itself can be an adaptation strategy under such threats,⁷⁵ the high incidence of compelled out-migration, displacement, and human trafficking from the Sundarbans signifies limited alternatives and resources for survival, severe vulnerability, and poor resilience in the face of climate change.⁷⁶

⁷² USDS, p. 184.

⁷³ See news reports: A Ghosh, 'Lured by marriage promises, climate victims fall into trafficking trap', *Reuters*, 8 March 2015, retrieved 3 March 2016, <http://in.reuters.com/article/trafficking-sundarbans-scam-idINKBN0M406720150308>; and S Eaton, 'After the floods come the human traffickers, but these girls are fighting back', *PRI's The World*, 15 September 2015, retrieved 3 March 2016, <http://www.pri.org/stories/2015-09-15/after-floods-come-human-traffickers-these-girls-are-fighting-back>

⁷⁴ See: Ghosh, 2012, or the World Bank, 2014, for a localised study, or Laczko and Aghazarm, 2009 or Nellemann, Verma and Hislop, 2011 for a broader study.

⁷⁵ Poncelet *et al.*, p. 221.

⁷⁶ Laczko and Aghazarm, p. 233, 269, 295.

Conclusion: Implications for anti-trafficking research and action

The examination of dominant conceptualisations of vulnerability alongside the case study of climate change effects in the Indian Sundarbans highlights how limited our understandings and evidence of the push and pull factors of trafficking are. To redress this, it is pertinent to deepen and expand knowledge of the complex and context-specific ways in which vulnerability arises. In order to garner more robust and comprehensive evidence of the forces that underlie and amplify vulnerability to trafficking, future research must examine how climate change shapes existing and acknowledged socio-ecological pressures—including a loss of livelihoods, destitution, and forced migration—and how this links to trafficking dynamics in specific contexts.⁷⁷ Given that climate change consequences are mediated by political, economic, and social contexts, future research is apt to assess the interconnections and interactions between wider political and economic processes, localised ecological and socio-economic conditions, and contingent modes of insecurity. Such work can be used to compare similarities and specificities that will manifest for peoples in other regions hard hit by climate change, with implications for anti-trafficking efforts. Place-based qualitative and documentary case studies and collaborative action-oriented research that prioritises the experiences, perspectives, and needs of affected peoples can contribute to more specific knowledge and grounded evidence of vulnerability factors to inform the development of responsive, just, effective, and community-engaged anti-trafficking efforts.

At present anti-trafficking efforts do not systematically consider climate change effects and environmental protection as measures to reduce vulnerability. And climate change mitigation and adaptation strategies neither explicitly consider trafficking dynamics nor systematically incorporate poverty reduction or livelihood diversification schemes.⁷⁸ India does include human development imperatives that bolster the adaptive capacity of the population in its climate mitigation and adaptation goals.⁷⁹ Yet, similar to anti-trafficking initiatives that on paper read as positive steps towards reducing vulnerability, given the non-binding nature and loose focus of such agreements,⁸⁰ it is uncertain as to how

⁷⁷ O'Brien *et al.*, p. 80.

⁷⁸ IPCC, p. 816; Laczko and Aghazarm, p. 362.

⁷⁹ See: *India's Intended Nationally Determined Contribution: Working towards climate justice*, n.d. pp. 4, 19–25, retrieved 15 November 2016, <http://www4.unfccc.int/submissions/INDC/Published%20Documents/India/1/INDIA%20INDC%20TO%20UNFCCC.pdf>

⁸⁰ H Pandave, 'India's National Action Plan on Climate Change', *Indian Journal of Occupational Environmental Medicine*, vol. 13, no. 1, pp. 17–19.

such schemes are being implemented and accessed in communities and if they are responsive to grounded realities and particular needs. For instance, while disaster risk reduction and response and rural employment schemes are included in such agreements, in both cases they have been non-existent, incapacitated, or difficult to access in the Sundarbans.⁸¹

Anti-trafficking work in the Sundarbans has predominantly focused on rescue, repatriation and rehabilitation initiatives. However, such interventions are primarily targeted to girls and women in the sex industry and are documented to have potentially harmful consequences⁸² including re-victimisation and re-trafficking due to a scarcity of locally viable livelihoods and poor ability to reintegrate into communities.⁸³ Less innocuous anti-trafficking interventions include sensitisation programmes and awareness campaigns targeted to the community, local government, and police, stakeholder networking and capacity building, and the creation of community vigilance committees and missing child alerts.⁸⁴ While these are necessary steps, they are insufficient to deal with the complex forces that underpin vulnerability. Local anti-trafficking units are incapacitated and lack adequate training on trafficking dynamics.⁸⁵ Laws, policies, and programmes to substantially reduce social, economic, and gender inequities and insecurities have been either ineffective or unimplemented. A lack of government will to combat trafficking in the region has shifted the responsibility for implementing interventions to under-resourced local groups and community organisations.⁸⁶ In addition, the delivery of programmes and resources are primarily retroactive, underfunded, fragmented, and unable to reach remote areas. Lastly, the emphasis on information and awareness to prevent trafficking is disengaged from local socio-economic and environmental realities.⁸⁷ As it

⁸¹ These issues are outlined in the case study in section 3.

⁸² K Kempadoo, p. xxv-xxvi.

⁸³ See local experiences in Sanlaap, *Crossing the Hurdles: Strengthening the legal protection framework for girls in developing countries*, n.d., p. 19, retrieved 12 November 2016, <http://www.idlo.org/Documents/FinalProjectStrengthening.pdf>; VK Tikoo *et al.*, *Child Rights Violation in West Bengal. Focus on Trafficking Part-I. Follow up on Visit to MALDA Hospital & Gangetic Chars – Part-II*, National Commission for Protection of Child Rights, New Delhi, n.d., pp. 10, 16-7, retrieved 8 March 2015, http://ncpcr.gov.in/view_file.php?fid=28

⁸⁴ Sanlaap, *Crossing the Hurdles*, p. 1—31; Shakti Vahini, *Annual Report Shakti Vahini 2014—2015*, n.d., retrieved 12 November 2016, https://www.scribd.com/document/283247003/ANNUAL-REPORT-SHAKTI-VAHINI-2014-2015-pdf#download&from_embed

⁸⁵ Tikoo *et al.*, p. 14, 21.

⁸⁶ World Bank, p. 5, 38.

⁸⁷ *Ibid.*, p. 5, 38; see rehabilitation outcomes in Sanlaap, *Real Lives*, p. 40; Sanlaap, *Crossing the Hurdles*, p. 29

stands, anti-trafficking efforts target individual or community level rather than structural change. While there is massive need to mitigate insecurities in communities in the Sundarbans, anti-trafficking efforts seem to remain separate from climate adaptation and disaster risk reduction strategies.

This case study of the Sundarbans highlights specific location-based climate change outcomes and differentiated insecurities and draws attention to the necessity of deeper, more expansive evidence of the rooted drivers of vulnerability to trafficking. It showed how the linkages between climate change-related insecurity and vulnerability to trafficking must be systematically analysed to garner rich insights into the complex conditions and processes that contribute to vulnerability for communities impacted by climate and environmental change. It also shows how these insights are pertinent to inform strategies that integrate climate change adaptation, environmental protection, and anti-trafficking goals. Such integrated and mutually reinforcing strategies are better able to strengthen local capacities to respond to different and interacting ecological and socio-economic pressures. As an example, local projects to implement sustainable, flood tolerant agriculture and restore mangrove forests⁸⁸ simultaneously support the training and capacitation of women's self-help collectives, food security, and rural livelihoods.

Current and predicted climate change outcomes are far-reaching, cumulative, unevenly distributed, highly complex and uncertain, and potentially catastrophic.⁸⁹ Disaster, degradation, and displacement are not the outcome of only natural phenomena; their causes and consequences are located within uneven processes of colonialism, imperialism, and capitalism.⁹⁰ The actors and systems disproportionately culpable for historical and ongoing ecological and social injustices must commit the will and resources to meaningfully address climate change-related insecurity and vulnerability to trafficking. While massive amounts of financial and human resources are dedicated to anti-trafficking efforts, the dominant approach, informed by limited evidence and understandings of vulnerability to trafficking, has been inadequate to reduce it.⁹¹ Addressing both climate and environmental change and trafficking requires a diversity of approaches, long-term commitment, and comprehensive and socially transformative strategies.

⁸⁸ Sundarban Social Development Centre, '*Annual Report 2013-2014*', n.d., retrieved 12 Nov 2016, <http://www.ssdcindia.org.in/gallery/1440753069SSDC%20Annual%20report%202013-2014.pdf>

⁸⁹ UNDP, p. 74—5.

⁹⁰ S Dalby, *Security and Environmental Change*, Polity Press, Malden, MA, 2009, p. 65.

⁹¹ Criminal justice responses remain the overwhelming emphasis of anti-trafficking initiatives even though there has been a consistently low number of prosecutions, see: Todres, pp. 65—6.

Anti-trafficking efforts must give more attention to the underlying socio-political, economic, and ecological contexts that contribute to vulnerability. In this regard, anti-trafficking efforts must seek to transform the unjust processes, structures, and relations within the global political-economic system that allows uneven development, human insecurity and exploitation to flourish. This can be achieved by protecting local economies and ecologies, strengthening social supports and entitlements, guaranteeing labour and migration rights and protections, supporting and diversifying local livelihoods, and ensuring meaningful climate action. Until then, as climate change continues to render environments unviable and dismantle ways of living and livelihood that are inseparable from the land, the number of people facing desperate vulnerability will rise, and in their search for survival and security they will continue falling into the hands of exploiters.

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Acting in Isolation: Safeguarding and anti-trafficking officers' evidence and intelligence practices at the border

Jennifer K. Lynch and Katerina Hadjimatheou

Abstract

Internationally, the border has been presented as a site of unique opportunity for the identification and protection of victims of human trafficking. In the UK, the establishment of specialist safeguarding and anti-trafficking (SAT) units within the border force has raised questions about the challenges for border force officers (BFOs) of balancing the enforcement of strict immigration rules with the protection of victims under anti-trafficking legislation. In this paper we draw on data collected from a study of anti-trafficking initiatives at Heathrow airport to consider a particular area of BFO frustration with SAT work: the collection and use of evidence and intelligence to support investigation and pursuit of potential SAT cases at the border. Our findings focus on the use of intelligence and data to inform initiatives and develop a comprehensive understanding of the trafficking problem; and the scope of BFO powers of evidence-collection on the frontline. The experience of BFOs points to a team often working in isolation as they attempt to traverse gaps in data collection and limits to their powers to gather evidence in pursuit of their duty to identify victims of trafficking at the UK border. We conclude by making proposals for how the border force and central government could improve evidence and intelligence practices in ways that translate into both more coherent anti-trafficking policy and better identification and support for victims.

Keywords: human trafficking, border force, intelligence, evidence, United Kingdom

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Introduction

As international focus turns ever-more urgently to the need to combat human trafficking, the border has been presented as a site of unique opportunity for the identification and protection of potential victims of trafficking (PVOTs).¹ In the United Kingdom (UK), the establishment of specialist safeguarding and anti-trafficking (SAT) units within the border force has itself raised questions about the challenges for officers of balancing the requirement to keep irregular migrants out of the country with the protection of potential victims under anti-trafficking legislation.²

In a recent paper, we explored these challenges, drawing on findings from our study of SAT work at London's Heathrow airport.³ We argued that border force officers (BFOs) demonstrated a moral and practical commitment to carrying out what they viewed as their 'humanitarian duty' to identify and protect potential victims of trafficking. Nonetheless, BFOs also expressed frustrations with aspects of their anti-trafficking work.

¹ See, for example, European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*, 19 June 2012, Office for Official Publications of the European Communities, Brussels, pp. 1–20; European Migration Network, *Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures*, March 2014, pp. 1–42, European Commission, Brussels, retrieved 2 December 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_synthesis_identification_victims_trafficking_final_13march2014.pdf; Frontex, *Anti-Trafficking for Border Guards: Trainer's manual*, 2012, provided to the authors by Frontex Anti-Trafficking Unit; International Organization for Migration, *Identification and Protection of Victims of Trafficking: Training of border police and customs officials in identifying and providing assistance to victims of trafficking*, 2005, IOM, Brussels, retrieved 2 December 2015, http://www.vlada.si/fileadmin/dokumenti/si/projekti/IOM_izobrazevanje_policistov_carinikov_EN.pdf

² For academic analyses of these tensions, see: K F Aas and H O I Gundhus, 'Policing Humanitarian Borderlines: Frontex, human rights, and the precariousness of life', *British Journal of Criminology*, vol. 55, issue 1, 2015, pp. 1–18; J A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *The American Journal of International Law*, vol. 108, issue 4, 2014, pp. 609–649; L Weber and S Pickering, *Globalization and Borders: Death at the final frontier*, Palgrave Macmillan, London, 2011; J M Chacon, 'Tensions and Trade-offs: Protecting trafficking victims in the era of immigration enforcement', *University of Pennsylvania Law Review*, vol. 158, 2010, pp. 1609–53.

³ K Hadjimatheou and J K Lynch, "'Once they pass you, They may be gone forever": Humanitarian duties and professional tensions in safeguarding and anti-trafficking at the border', *British Journal of Criminology*, doi:10.1093/bjc/azw027, 2016, pp. 1–19.

In this paper we direct our focus to a particular area of BFO frustration: the collection and use of evidence and intelligence to support investigation and pursuit of potential SAT cases at the border. As has long been recognised by different anti-trafficking stakeholders, the ability to gather evidence, share information and monitor activity are key components of a successful anti-trafficking programme.⁴ Our research sheds light on current anti-trafficking practices at the border and our findings indicate that the gathering and use of intelligence by government personnel is both inadequately systematic and inadequately supported by guidance and regulation by relevant authorities with oversight in anti-trafficking work. They reveal deep dissatisfaction amongst BFOs with the limitations of their evidence-gathering powers, in particular with respect to European Economic Area (EEA) nationals⁵ and the search of electronic devices and internet and social media. In addition, they suggest that the monitoring of SAT work and outcomes is insufficiently developed or robust, which in turn prevents the building of an evidence base to understand the impact of this work and to inform future practice. We argue that these shortcomings reflect broader problems with poor use and collection of data on human trafficking from the government and those operating at the border.

Our work contributes to a small but growing body of literature examining border forces' implementation of their newly acquired humanitarian duties from the perspective of those responsible for managing the border on the frontline. It provides an in-depth analysis of the views of officers engaged in anti-trafficking work, which has rarely been analysed before.⁶ It also proposes concrete improvements to anti-trafficking evidence and intelligence practices. Finally, it provides specialist focus to more general examinations of the conditions under and the basis on which BFOs make immigration and other decisions at UK ports.⁷

⁴ See, for example, United Nations Inter-Agency Coordination Group Against Trafficking in Persons (ICAT), *Pivoting Toward the Evidence: Building effective counter-trafficking responses using accumulated knowledge and a shared approach to monitoring, evaluation and learning*, 2016, pp. 1—48; A Gallagher and R Surtees, 'Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?', *Anti-Trafficking Review*, issue 4, 2012, pp. 10—30.

⁵ Under EU legislation citizens of a specified list of countries (EEA) can travel and live within those countries without visas.

⁶ A notable exception is S Pickering and J Ham, 'Hot Pants at the Border: Sorting sex work from trafficking', *British Journal of Criminology*, vol. 54, issue 1, 2014, pp. 2—19.

⁷ See also L Weber, 'Down that Wrong Road: Discretion in decisions to detain asylum seekers arriving at UK ports', *The Howard Journal*, vol. 42, issue 3, 2003, pp. 248—262; M McAdam, 'Who's Who at the Border? A rights-based approach to identifying human trafficking at international borders', *Anti-Trafficking Review*, issue 2, 2013, pp. 33—49; J Ham, M Segrave and S Pickering, 'In the Eyes of the Beholder: Border enforcement, suspect travellers, and trafficking victims', *Anti-Trafficking Review*, issue 2, 2013, pp. 51—66.

While our findings will be of relevance to ongoing debates about the impact of anti-trafficking measures on human rights, we can only touch on those issues here. Similarly, in privileging the perspectives of border force officials in this paper, we do so with the acknowledgement that valuable work in critical border studies has asserted the political nature of border processes, highlighting how the technocratic acts of surveillance and monitoring, and political acts of ‘sorting’ migrants (through reliance on racialised and gendered assumptions) undoubtedly give considerable discretionary power to border officials in (co-) producing the border with state and non-state actors.⁸ Finally, we did not ask BFOs directly about their use of evidence or intelligence. Rather, we asked them what their job involved and how they identified victims. In responding, BFOs referred to their gathering of information about possible trafficking situations—e.g. documents in luggage that resemble a script for individuals to use when questioned by officials—as ‘evidence’ of trafficking. Intelligence was used to refer to information provided by police or the resident intelligence officer about risky situations, e.g. sponsors with a trafficking-related criminal history.

This article begins by outlining our study methodology and the political and policy context that provides the backdrop to the anti-trafficking practices we examine. We then present our findings in two sections, corresponding to anti-trafficking evidence and intelligence processes. The first examines limits to the scope of BFO powers of evidence-collection for victim identification and assistance on the front-line. The second considers the use of intelligence and data to inform UK Border Force (UKBF) initiatives. We conclude by making proposals for how UKBF and the central government could improve evidence and intelligence practices in ways that translate into both more coherent anti-trafficking policy and better identification and support for victims.

Methodology

Our study of anti-trafficking initiatives was conducted at Heathrow airport, which has been at the forefront of implementing the UK government’s Modern Slavery Strategy.⁹ It was the first UK airport to establish a SAT team and is considered by

⁸ For discussion of these issues, see: K Rygiel, ‘Bordering Solidarities: Migrant activism and the politics of movement and camps at Calais’, *Citizenship Studies*, vol. 15, issue 1, 2011, pp. 1—19; N Laurie *et al.*, ‘Post-trafficking Bordering Practices: Perverse co-production, marking and stretching borders’, *Political Geography*, vol. 48, 2015, pp. 83—92; K Cote-Boucher, F Infantino and M B Salter, ‘Border Security as Practice: An agenda for research’, *Security Dialogue*, vol. 45, no. 3, 2014, pp. 195—208.

⁹ HM Government, *Modern Slavery Strategy*, Crown, London, 2014.

other UK ports to be an example of best practice for its work in this area. All Heathrow BFOs receive basic training in SAT measures. In addition, the airport currently has a 15-strong team of specially trained officers to whom all SAT-related concerns must be referred. Our research draws on interviews with members of this team. The work of the team is varied. As well as undertaking enhanced training¹⁰ in identifying potential victims of trafficking (PVOTs),¹¹ the team liaises regularly with external agencies, such as social service departments and charities. They also direct targeted operations based on information shared by a dedicated Heathrow SAT intelligence officer. SAT duties typically involve walking among incoming passengers to observe behaviour and look out for indicators of vulnerability—referred to amongst BFOs as ‘floor-walking’²—and SAT case-management, including interviewing potential victims and investigating their claims by making phone calls to sponsors or external agencies. SAT officers’ priority is to uphold the welfare of potential victims over and above immigration concerns. As officially-designated trafficking ‘first responders’ they also refer victims to the National Referral Mechanism (NRM), the UK’s system for processing individual applications for formal recognition of victim status.¹²

SAT work at Heathrow involves a range of evidence and intelligence-related activities at nearly every stage of the process, from the selection of individuals for questioning to the closing of a case and the notification of the Home Office—the lead government department for immigration and passports, drugs policy, crime, fire, counter-terrorism and police. For an overview, the stages in the SAT process are represented schematically as a cycle in Figure 1 below. Our analysis sheds light on each of the stages depicted in the cycle.

¹⁰ Similar training is now undertaken in many other countries. See, for example: European Commission, *Guidelines for the Identification of Victims of Trafficking in Human Beings, Especially for Consular Services and Border Guards*, 2013, retrieved 29 January 2017, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_on_identification_of_victims_1.pdf

¹¹ While we are cognizant of the sensitivities around the use of the term ‘victim’ in this context (see, for example, R Broad, ‘A Vile and Violent Thing: Female traffickers and the criminal justice response’, *British Journal of Criminology*, vol. 55, issue 6, 2015, pp. 1—18; S Walklate, *Imagining the Victim of Crime*, Open University Press, 2007) the scope of this paper does not permit us to rehearse them here. In line with our participants, consistency with practitioner usage of terminology is maintained throughout, without implying endorsement of it.

¹² Formal recognition as a victim provides access to rights and benefits including health services, accommodation, protection, and potentially temporary leave to remain in the UK.

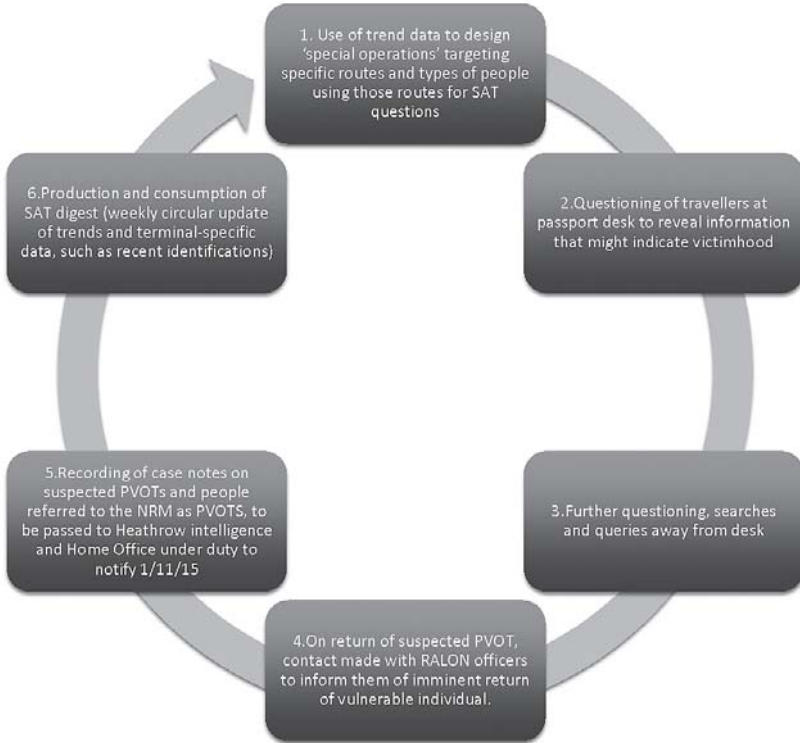


Figure 1 Safeguarding and anti-trafficking processes

We conducted semi-structured interviews with nine of the fifteen officers comprising the SAT team, including those in administrative roles as well as those in senior management.¹³ Due to staff rotas and pressures on the team resulting from general staff shortages, we were unable to interview the whole SAT team. As this was an exploratory study, we were particularly interested in participants’ own accounts of SAT work—their experiences and attitudes towards this part of their role. To this end, we took a narrative approach to data collection and analysis, keeping questions open-ended and minimal, and focusing on emergent issues. In

¹³ We received full ethical approval for conducting fieldwork at Heathrow from the University of Warwick’s Research Ethics Committee on 14 November 2014 (ref. 40/14-15). We were required to comply with British Airports Authority conditions for access to Border Force Officers ‘airside’ at Border Control, which consisted of providing photo ID and adhering to restrictions currently in place for all passengers travelling from the airport.

line with narrative inquiry, analysis became an iterative process of reflexive meaning making, involving some thematic analysis but also ensuring theorising resulted from the narratives ‘intact’, emphasising the importance of participants’ construction of their experiences and sense of professional identity.¹⁴ Participants were asked directly about certain aspects of their evidence and intelligence practices, such as search powers, but many of the findings relating to weaknesses in monitoring and intelligence emerged from narratives about the challenges they faced as SAT officers.

Background: Gathering evidence at the border

The UK’s Modern Slavery Strategy highlights the border as a key site for anti-trafficking initiatives. It also stresses UKBF’s ability to work collaboratively with multiple agencies ‘to intercept traffickers, prevent victims from being trafficked to the UK in the first place and provide enhanced support and protection against re-trafficking’.¹⁵ It is clear that UKBF’s role in addressing such a complex challenge can only succeed through co-operation with a number of government agencies and non-governmental organisations. In our own study, officers reported daily interactions with external organisations as a fundamental part of managing potential trafficking cases. Yet the focus on the border as strategically important appears to belie a lack of infrastructure supporting UKBF anti-trafficking activities. A report by the Centre for Social Justice (CSJ), a UK-based research and policy institute, claimed that a lack of information, data and intelligence exchange between agencies is impeding investigations into human trafficking cases. In reference to the border, it claimed that despite the value of the SAT training given to UKBF staff, BFOs are effectively ‘acting in isolation’ when conducting anti-trafficking operations.¹⁶ The CSJ has called for Anti-Slavery Commissioners to be established in all countries of the European Union to facilitate the sharing of best practice and data. Meanwhile, in a damning report, the All Party Parliamentary Group on Human Trafficking and Modern Slavery has demanded that ‘an early task for the Anti-Slavery Commissioner should be to conduct an information audit and establish a national data collection plan’ because ‘there are disparate

¹⁴ K Etherington, *Becoming a Reflexive Researcher: Using our selves in research*, Jessica Kingsley, London, 2004; C Riessman, *Narrative Methods for the Human Sciences*, Sage, Los Angeles, 2008.

¹⁵ HM Government, p. 55.

¹⁶ The Centre for Social Justice, *A Modern Response to Modern Slavery*, The Centre for Social Justice, April 2015, p. 56, retrieved 2 December 2015, http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJJ3202_Slavery_report_04.15_WEB.pdf

sources of information which are currently not brought together anywhere'.¹⁷ In response to these concerns, the post of Anti-Slavery Commissioner was created in 2014, and the first Commissioner made the issue of data collection and sharing a key part of his Strategic Plan 2015—17. However, the information audit requested by the All Party Parliamentary Group has not as yet taken place.

Moves towards improvements in data collection are also apparent in the recent guidelines for frontline Home Office staff issued at the beginning of 2016, and in the Modern Slavery Act's duty on public authorities to notify the Home Office of potential victims of trafficking. But there is no indication of how this information will be collated, presented, shared or analysed for policy purposes.¹⁸ The Anti-Slavery Commissioner's strategic plan reflects the concern that a lack of access to data could inhibit the development of best practice in SAT work.

As our analysis will demonstrate, this concern was shared by our UKBF participants, who were keen to learn from their experiences of SAT cases and managed their own data on internal systems but were frustrated by the lack of a joined-up strategic approach to sharing information between stakeholders.

The Use of Evidence and Intelligence: Gathering powers to identify victims of trafficking on the frontline

Under UK customs, excise and immigration law, BFOs have substantial powers to stop, question, and search travellers at the border. While powers to search luggage are authorised under customs and excise law,¹⁹ both immigration and customs and excise law empower officers to search and detain individuals and to ask questions.²⁰ The distinction between customs and excise and immigration functions has become less pronounced since 2008 when the two were merged within the role of the Border Force Officer. While BFO powers are dwarfed by those afforded to law

¹⁷ All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery, *Inquiry into the Collection, Exchange and Use of Data about Human Trafficking and Modern Slavery*, January 2014, p. 8, retrieved 23 June 2016, <http://humantraffickingfoundation.org/sites/default/files/DataInquiry2014.pdf>

¹⁸ See: Home Office, *Duty to Notify the Home Office of Potential Victims of Modern Slavery: Guidance for specified public authorities*, Version 2.0, 18 March 2016, retrieved 23 June 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508817/Duty_to_Notify_Guidance__Version_2.0_.pdf

¹⁹ See UK Customs and Excise Management Act 1979, especially part XI at <http://www.legislation.gov.uk/ukpga/1979/2/contents>

²⁰ See UK Immigration Rules: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423477/20150424_mmigration_rules_app_v_final_v2.pdf

enforcement officers under terrorism legislation,²¹ they are significant compared to the routine stop and search powers of police patrolling the streets because they enable the search of pockets and luggage in the absence of suspicion of a criminal offence.²²

Customs, excise and immigration powers of question and search are put to use by SAT officers in order to gather evidence of PVOT status, which is then used to inform potential victims of trafficking about their possible exploitation, offer them assistance, and to support their referral to the NRM for further care. We asked SAT Officers to describe their use of questions, queries and searches and talk about the challenges of this work. In this section we highlight three such challenges—European freedom of movement, powers to search electronic devices, and the use of internet and social media searches for intelligence purposes.

Challenge 1: No evidence or intelligence gathering powers with EEA nationals

Unlike asylum seekers, PVOTs do not tend to self-identify as victims of trafficking at borders. The reasons for this include the fact that they are often subjects of deception; controlled by traffickers; or planning to work illegally and as such unwilling to provide honest answers to BFOs about their intentions. The implications of this for SAT work are that BFOs must take proactive measures to uncover indicators and evidence of victimhood and propose referral to the NRM.

Use of questioning was reported as the primary and essential means of revealing initial indicators of vulnerability, which could then be probed further. Yet BFOs revealed that they are prevented from taking such proactive measures with EEA nationals, as a result of political agreements ensuring freedom of movement. All the officers we spoke to felt that restrictions on enacting SAT measures with EEA nationals is a serious challenge to their ability to gather and act on evidence of victimhood, and thus to identify and offer assistance to PVOTs.

²¹ For example, Schedule 7 of the Terrorism Act 2000 stipulates (not uncontroversially) that law enforcement officers are authorised even in the absence of reasonable suspicion to stop and search individuals and their property at borders, including their mobile phones, from which information can also be downloaded and copied.

²² Not all immigration offences are criminal offences in the UK. See the following briefing from the Oxford Migration Observatory: *Immigration Offences: Trends in legislation and criminal and civil enforcement*, 12 October 2016, retrieved 20 October 2016, <http://www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-offences-trends-in-legislation-and-criminal-and-civil-enforcement/>

Because the freedom of movement, the pressure is these people must go through the borders. So, we have a very small service level agreement in terms of—which is agreed at the highest level—how quickly we will process people through our European desks. And we have to keep to it, and that's 15 minutes. We can't go beyond that. 25 minutes I think it has now been increased to... how do you interact with somebody that you have no conversation with at all? Or if you do, you know, it's very, very cursory. [P8]

Many participants also expressed concern with the increasing use of electronic border gates for European nationals, as these precluded any interaction at all with a BFO, thus removing the opportunity to reveal and respond to evidence of trafficking:

So if somebody wants to use the e-gates, how am I going to know whether or not they're being trafficked? I'm not. They're using a machine to come through, and as long as their face matches that face in the passport and there's no other information on them, then they can leave and go as freely as they want. We don't have any contact with them. And they want more machines as well! [P5]

As one participant pointed out, the limits on BFO interaction with EEA travellers not only constrains their ability to identify victims, it also restricts Border Force's scope for building a picture of the extent of human trafficking in the country, especially in light of the fact that, according to UK government statistics from the last three years, the majority of victims of trafficking identified as such are of EU nationality.²³ According to figures from 2013, this rises to 78% in relation to those identified as trafficked for labour exploitation.²⁴ Another participant spoke for all when they said:

I think that we should be given more powers to stop and interview European passengers. [P6]

Recent political events in the UK suggest that this wish may indeed be granted: on 23 June 2016 UK citizens voted in a national referendum to leave the European Union.

²³ National Crime Agency Statistics (2014, 2015, 2016), available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>

²⁴ National Crime Agency, *Strategic Assessment of the Nature and Scale of Human Trafficking in 2013*, 30 September 2014, retrieved 23 June 2016, <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

However, if and until immigration restrictions are reinstated, the current situation will continue to be perceived by BFOs as having a detrimental effect on their ability to better understand the scale of trafficking at their terminal and, it follows, to pass on that information to UKBF or the Anti-Slavery Commissioner's office to enable a better-informed national picture.

Challenge 2: No powers to search mobile phones and electronic devices

While concerns about EU freedom of movement were consistently cited as the primary challenge to BFOs' ability to enact their SAT role, their lack of legal powers to search mobile phones and electronic devices (unlike in the USA, Australia, and Canada) came a close second.

Indeed, the BFOs participating in this study were united in their belief that, given both the amount and obvious relevance of information contained therein, greater powers to search electronic devices would improve their ability to gather evidence leading to identification of victims of trafficking and therefore should be available to them:

Mobile phones is my number one thing... I've got a child who arrives, say, they're 15. They have travelled on a ticket that I know is associated with a travel agent that brings in people that have historically been found to have been exploited; [...]. They've got no money, they've got no return ticket, they're just here. 15, they've got a phone, what do I do with that phone? What can I do with that phone? I can't do anything with that phone because I have no power. What if I've got a 20 year old...travelling with this fella that she's known for three months. He's booked the ticket, she's got no money. She's got a little trolley bag that's got lingerie in it. And I say to her, I'm really worried about you. She goes, no, I'm alright. She's got a phone. She gets instructions by phone. I can't do anything with that phone. Why can't I? [P3]

One participant expressed frustration that UKBF is expected to implement immigration, customs, and indeed anti-trafficking laws, but its officers are denied the means that are afforded to police officers:²⁵

I do think it's a major issue [that UKBF cannot look at electronic devices] and I do think as an agency—not an agency—as a border force who are concerned with securing the borders, we are a law enforcement operation, that to not be able to access that sort of information is ridiculous, in the same way that the police can, for instance, it's just completely ridiculous. [P8]

²⁵ Such powers are afforded for counter-terrorism purposes under Schedule 7 of the Terrorism Act 2000, cited in note 16 above.

Meanwhile, some BFOs contrasted their lack of powers with respect to electronic devices with their almost limitless powers to access material found in luggage. As one BFO described:

Anything that's found in a luggage in a paper format, a readable format, without having to log on and that sort of thing, absolutely, is open to disclosure. We can look at it, we can photocopy it, we can share it with partners, that sort of thing. Anything that involves IT, currently our legislation does not allow us to access that. [P8]

Some BFOs saw the prohibition on searching electronic devices as inconsistent with their ability to access all material found in a suitcase, however intimate or personal that might be:

And like we said, so what's the difference? There is no difference. But we can't. I mean, what was in their phone, we can't use, but what's in their diary, we can. I just don't understand the difference between that. Because at the end of the day, who has a diary? Everybody's stuff is in their phone [laugh]. So yeah, I think they need to allow us permission to use their phone. [P1]

The question of whether BFOs *should* have powers to examine electronic devices for evidence relating to the enforcement of immigration and customs law and/or to safeguard vulnerable individuals is a normative one that cannot be addressed adequately here. However, it is only proper that it is raised and equally that the policy makers, practitioners and academics are invited to address it, especially given that current arrangements arguably hamper the identification of victims of an organised criminal activity that is planned almost entirely through digital devices. Existing studies of BFO decision-making with respect to victims of trafficking suggest that any attempt to reconsider current arrangements should take into account the way in which BFOs interpret and use the evidence available to them. For example, Pickering and Ham's work in an Australian context reveals how BFO preconceptions around gender and race can influence the identification of victims. Women whose phones contained 'sexy messages' suggesting to border officers that they were involved in prostitution, were deemed to have 'too much' agency and not seemingly vulnerable enough to be viewed as potential victims of trafficking.²⁶

²⁶ Pickering and Ham, 2014, p. 11; Ham, Segrave and Pickering, 2013, p. 61. See also A Pratt, 'Between a Hunch and a Hard Place: Making suspicion reasonable at the Canadian Border', *Social & Legal Studies*, vol. 19, issue 4, 2010, pp. 461—480; A Pratt and S K Thomson, 'Chivalry, "Race" and Discretion at the Canadian Border', *British Journal of Criminology*, vol. 48, 2008, pp. 620—40, for discussions about use of 'racialised knowledge' at the border.

Analysis of the expectations of privacy of passengers is also relevant, and significant work has been done in the US and in Canada not only to ascertain those expectations, but to influence and manage them.²⁷ Indeed, the issue of privacy at border crossings is a matter of live (and lively) public debate. In the UK, in contrast, such issues have less public resonance. While they have been examined to some degree in relation to the use of biometric passports,²⁸ searches of electronic devices have only been discussed briefly in the media in relation to the perceived excesses of police exercise of anti-terrorism powers.²⁹ In the UK and Canada, the consensus appears to be that expectations of privacy are reduced significantly at border crossings, and that searches are therefore justified for routine customs and immigration purposes, not only the prevention and detection of serious crimes. Debate focuses instead on the proper limits to the scope of such search powers. While the lack of public discussion of this issue makes its interpretation less easy to achieve reliably in the UK, one might speculate that the relative lack of search powers of UK border officers relates to the fact that most kinds of irregular immigration are not criminal offences.

²⁷ In Canada, which has arguably the most sophisticated privacy oversight system in the world, passengers' rights and border officer powers are laid out in an explanation sheet on the privacy commissioner's website: 'Your Privacy at Airports and Borders', 2016, retrieved 11 October 2016, <https://www.priv.gc.ca/en/privacy-topics/public-safety-and-law-enforcement/your-privacy-at-airports-and-borders/>. In the USA, the Department of Homeland Security's Chief Privacy Officer carried out a Privacy Impact Assessment of Border Searches of Electronic Devices in 2009 and published a paper setting out the rationale for the sweeping search powers: 'Privacy Issues in Border Searches of Electronic Devices', 2009, retrieved 11 October 2016, https://www.dhs.gov/sites/default/files/publications/privacy_privacy_issues_border_searches_electronic_devices.pdf

²⁸ J Bustard, 'The Impact of EU Privacy Legislation on Biometric System Deployment: Protecting citizens by constraining applications', *IEEE Signal Processing Magazine*, vol. 32, issue 5, 2015, pp. 101–108.

²⁹ See, for example, T Hardy, 'Welcome to Britain: Border control officers can seize personal data without suspicion', *The New Statesman*, 19 August 2013, retrieved 11 October 2016, <http://www.newstatesman.com/law/2013/08/welcome-britain-border-control-officers-can-seize-personal-data-without-reasonable-suspi>

Challenge 3: No policy around use of social media and internet searches for intelligence gathering at the border

We asked BFOs about their use of social media and online searches to gather intelligence about the intentions and situation of vulnerable individuals, which could then be used to persuade them to agree to be referred via the NRM. One of our aims in probing such practices was to compare SAT work at UK borders with its Australian counterpart. In a 2014 paper, Pickering and Ham reported that border guards sometimes access passenger lists, check the Facebook profiles of passengers in advance of their arrival in Australia, and then use the intelligence gathered to assess the credibility of passengers.³⁰ A lack of credibility is considered by BFOs to be an indicator of trafficking, because PVOs may lie to cover up their intention to work rather than have a holiday, or because they are travelling with a fake passport, or because they are repeating a script given to them by their smugglers or traffickers. Our findings suggest that such searches are being used at Heathrow, both to assess credibility and to assess other aspects of the risk to individuals of potential exploitation in the UK. However, as our findings illustrate, this practice at Heathrow is, unlike in Australia, inconsistent and piecemeal, with a lack of clear guidance from UKBF on how such sources of intelligence should be used.

The value of social media searches in providing intelligence was almost universally recognised by participants, but reported practice varied widely. Access to social media sites is barred on Home Office computers, but this was perceived by participants as being due to misuse by Home Office staff for personal communication rather than because of concerns for the online privacy, data protection, or other rights of passengers. Some BFOs reported using their own devices to undertake these searches, albeit unofficially:

It's not policy. I do it personally because I believe, you know, sometimes people put things—and I have seen it myself—they'll put things up on Facebook that they haven't told us at the desk. But we have no access to that information and we have no access via work, it's something I'll do off my own personal phone. [P7]

Others said they were not able to conduct social media searches unless a passenger agreed in advance. Others still expressed frustration at what they understood as an outdated prohibition on access to social media, appearing unaware of the possibility and practice of using personal devices:

³⁰ Pickering and Ham, 2014, p. 13.

[The inability to access social media sites], to me, seems a real disconnect, given now that for the majority of younger people...it's the only way you communicate. So whereas before you'd get a suitcase with loads of cards saying, go and enjoy your new life in England, all of that's on Facebook now, which we, of course, can't see. For us it would be so useful if we could, because it would help us with our enquiries so much, especially now every single thing is on social media. So that would be a brilliant way forward for us, but at the moment we're not allowed to do it, we don't have the access.

[P10]

As this suggests, it seems that there is as yet no developed policy at Heathrow border force on using social media searches for SAT purposes (nor indeed for immigration control). In light of this and the inconsistent reports of practice and understanding of policy that we observed, we recommend that UKBF undertake research assessing the value of such intelligence-gathering tactics in SAT work, and take steps to draft guidelines for the use of such sources of intelligence in the future.

The Use of Evidence and Intelligence: Developing an intelligence-led response to trafficking

The Border Force Business Plan 2015—18 states that UKBF intends to become a wholly ‘intelligence led’ organisation but progress on this in the area of anti-trafficking measures has been piecemeal.³¹ In this section we highlight current strengths and weaknesses in SAT intelligence practices at the border.

There are clear examples of where intelligence gathering has worked well. For example, the Modern Slavery Strategy emphasised the value of partnership working between UKBF and Nigerian authorities that led to a successful operation targeting a number of flights based on shared intelligence.³² One intelligence officer in our study spoke passionately about how the border force had gathered and acted on data by tracking a Nigerian travel agent, leading to the ‘rescue’ of two girls at risk of sexual exploitation—describing the outcome as ‘the best day of my life’ [P3]. Such operations were portrayed to us as transforming anti-trafficking activities, with the intelligence team becoming integral to the work and regularly involved in cross-checking information held about potential human trafficking cases:

³¹ Cited in Independent Chief Inspector of Borders and Immigration, *An Inspection of Border Force Operations at Manchester Airport*, July to October 2015, Crown, London, p. 9.

³² HM Government, p. 23.

We will run operations as a result of intel that we've got... We didn't do that before because if we'd gathered any intel, it went off into a big, black hole and we never saw it again. But that's not the case now... people from intel will badger and say what are you doing about this? This is happening or we think this is happening, what's going on? And we didn't have that kind of connection before, we didn't have that interface with them. [P8]

Furthermore, this reciprocal relationship of gathering and sharing intelligence between officers at Heathrow was seen as empowering for BFOs managing trafficking cases that otherwise often culminated in a frustrating end result:

So what we're trying to do with our teams and our officers is say okay, ultimately, you may not be able to do anything at all to safeguard this person, but if you can gather the intel, we can build a bigger picture, not just for us but for... you know, when the police knock on the door of Joe Blogs and they find ten women there, when they run their checks, they will see that Joe Blogs has been raised as a concern issue at the port. So it's all about feeding information in that may or may not, in the future, influence legislation. [P8]

Targeted operations were also considered a useful way of overcoming the challenge of interacting with EEA citizens without coming into conflict with their right to freedom of movement. Being able to act on trend data disseminated by the intelligence team provided a crucial power to BFOs that was not afforded through other means:

European nationals... are the highest number of people that are identified as trafficked victims when they're picked up by the police in brothels or on farms, and that sort of thing. But at the border, it's almost impossible, unless you have a targeted operation... [P8]

However, such operations are currently not the norm at Heathrow, largely due to a shortage of resources invested in intelligence gathering (at present, just two part-time posts). And while locally-gathered intelligence appears to have had an impact on practice at Heathrow, it did not seem to be effectively scaled up in a way that would allow it to shed light on the broader nature of human trafficking in the UK. For example, while key resources for tackling human trafficking have been ploughed into strategically significant airports, such as Heathrow, Gatwick and Manchester, the CSJ has stressed the limited nature of information on trafficking routes, warning of a complex picture due to the variety of entry points open to organised crime groups and citing anecdotal evidence from the police as the best available estimate.³³ One step forward may be the European Council's

³³ CSJ, p. 56

decision to adopt a directive on the use of passenger name record (PNR) data by member states, for which the CSJ lobbied. Such data will give authorities real-time information on the movement of traffickers and goes some way to mitigating the unintended consequences of free movement.

Participants in our study reported that data on their interactions with PVOTs were routinely gathered and held on a database that was accessed daily by intelligence officers. However, while they were confident that the local picture was well understood, they were less certain about if and how that information was being used by the Home Office and other stakeholders. A common problem reported to us was managing data on individuals about whom BFOs had concerns but could not record as potential trafficking cases:

[There was a case] that would never have been flagged up as a trafficking issue because [the person] was not willing to be put on the NRM. Non, it was passed on to Intel, so they would have the details logged as a statistic for them. But in terms of being processed to the Human Trafficking Centre, they wouldn't have known that. [P5]

This statement points to glaring missed opportunities to gain a deeper understanding of the crime. The UK government has sought to address the problem of incomplete knowledge by introducing a duty on certain public authorities to notify the Home Office of any individual they suspect of being a potential victim of trafficking.³⁴ Nevertheless, concerns must be raised about the insistence that, should the said individual refuse help through the NRM, the data must be anonymised unless he/she consents to being identified. As this effectively closes the case, it means that future opportunities to safeguard the person are likely to be lost.

The lack of available identifiable information just described added to another frustration expressed by BFOs in our study—that they were rarely informed about the outcome of their PVOT cases and were rarely aware of where the data they were collecting was going. Describing the case of a woman who had been identified as a PVOT at the border but refused help through the NRM, one officer told us:

She did say, look, I'm going back to [country of origin] but you can use all my details, you can use it for intel and stuff like that. So we have that information. I don't know what the police are doing with it, because the police were there, they were taking all the details down. [P1]

³⁴ Home Office, *Duty to Notify*, pp. 1—4.

One consequence of the lack of feedback channels to BFOs on the progress and outcomes of cases they have dealt with is that they have a poor understanding of the effect of their anti-trafficking interventions on the welfare of those they aim to protect. This is reflected in the fact that a significant number of our participants expressed the view that forcibly returning people to their country of origin was an effective safeguarding tactic in the absence of any evidence to support such a view. Indeed, recent research suggests that there is a systematic failure to investigate let alone promote good practice with respect to the post-trafficking experiences of victims, whether they remain in the destination country³⁵ or not—a fact that can lead in turn to a failure to investigate whether anti-trafficking actions are genuinely protective of victims' rights.³⁶ It also makes it difficult for SAT officers to learn from the cases they handle and to develop best practice. UKBF and the Home Office should take measures to establish more effective evidence and intelligence practices, and to ensure that the data collected in the context of these is utilised to build a comprehensive overview of trafficking in the UK and, more specifically, of what works in terms of attempts to identify and restore rights to victims. Until that happens, the highly emotive and urgent tone of the political discourse around trafficking remains at odds with how the rights of victims are (as Aas and Gundhus note with respect to the humanitarian actions at sea crossings of the EU border agency Frontex) 'institutionally anchored in the agency's performance measures and its mechanisms of knowledge production'.³⁷

Conclusion

Our analysis gives rise to a number of conclusions and recommendations. First, it has shown that European freedom of movement reduces opportunities to identify victims of trafficking at the border—a fact which is highlighted here not in order to cast critical light on that freedom, but rather to inform political

³⁵ For recent work that criticises the approach of England and Wales once victims' 45-day 'rest and recovery' period has finished, see Human Trafficking Foundation, 'Day 46: Is there life after the safe house for survivors of modern slavery?', October 2016, retrieved 20 January 2017, <http://www.humantraffickingfoundation.org/sites/default/files/Human%20Trafficking%20Foundation%20Report%202016%20Day%2046.PDF>. Similar concerns about care of victims who have testified against traffickers in court were identified three years earlier in the UK's Anti-Trafficking Monitoring Group 2013 report, see R Annison, 'In the Dock: Examining the UK's criminal justice response to trafficking', retrieved 20 January 2017, http://www.ecpat.org.uk/sites/default/files/in_the_dock_atmg_2013.pdf

³⁶ Laurie *et al.*, 2015, pp. 83–92.

³⁷ Aas and Gundhus, 2015, p. 10.

expectations of what SAT work can realistically achieve at the border. Second, it suggests that the UK Home Office would do well to reconsider the prohibition on BFOs' access to electronic devices, if only to clarify the justifying grounds for distinguishing between these objects and luggage. Third, in relation to online intelligence-gathering practices, our analysis suggests that UKBF would add value to SAT investigations by conducting a systematic assessment of the value of internet and social media searches and then drafting a consistent UKBF-wide policy with respect to such practices. Finally, the exchange of information (between agencies) must be a priority. UKBF cannot continue to work in isolation when it comes to managing and acting on data about potential SAT cases. Clear processes for sharing information and providing feedback across key organisations must be put in place to advance good practice and to better understand the opportunities and constraints of conducting SAT work at the border.

More broadly, our research at Heathrow serves to highlight the border as an example of anti-trafficking work that lacks a clear evidence base. The border has become a focus of heightened political and public scrutiny—painted as a site of unique opportunity to control the flow of people and identify and protect potential victims of human trafficking. Yet this strategy has been anything but successful: just 3% of victim referrals to the UK's NRM in the second quarter of 2016 came from the Border Force.³⁸ Indeed, a joint report of the Independent Chief Inspector of Borders and Immigration and the Independent Anti-Slavery Commissioner delivered to the UK Parliament on 2 February 2017 warned that identification at the border of both victims and perpetrators of human trafficking needs 'urgent improvement'.³⁹ This lends support to concerns about the disconnect in anti-trafficking initiatives 'between activities and intended outcomes and a reliance on unarticulated assumptions or hypotheses that are not supported by available data'.⁴⁰ If the border is to remain central to global anti-trafficking strategies, a more transparent political dialogue is required to ascertain what success should look like and what resources must be made available to achieve it.

³⁸ National Crime Agency, *Human Trafficking: National Referral Mechanism Statistics—April to June 2016*, National Crime Agency, January 2017, p. 10, retrieved 29 January 2017, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/765-human-trafficking-national-referral-mechanism-statistics-april-to-june-2016-v2/file>

³⁹ D Bolt, *An Inspection of Border Force's Identification and Treatment of Potential Victims of Modern Slavery—July to October 2016*, Independent Chief Inspector of Borders and Immigration, February 2017, retrieved 2 February 2017, <http://icinspector.independent.gov.uk/wp-content/uploads/2017/02/Potential-Victims-of-Modern-Slavery-Inspection-report.pdf>

⁴⁰ ICAT, 2016, p. vi. See also Davy, 2016 and Gallagher and Surtees, 2012 for more debate on evaluating anti-trafficking initiatives.

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What's Wrong with the Global Slavery Index?¹

Anne T. Gallagher²

Abstract

The Global Slavery Index (GSI), which has been produced by the Walk Free Foundation in 2013, 2014 and 2016, seeks to calculate the number of victims of human trafficking (or ‘modern slavery’) in each country and to assess and rank government responses. Using the latest iteration of the Index, this article examines each of the three elements (vulnerability measurement; prevalence measurement and response measurement), making some preliminary findings about the quality of the methodology and its application under each heading. It concludes with a consideration of two broader issues: (i) the conspicuous lack of critical engagement with the Index; and (ii) what the Index reveals about the changing face of anti-trafficking/anti-slavery work—most particularly, the growing involvement of metrics-focused strategic philanthropy in defining the ‘problem’ and directing responses.

Keywords: human trafficking, slavery, modern slavery, measurement, assessment, Global Slavery Index

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² This article is a revised and extended version of: A Gallagher, ‘Unraveling the Global Slavery Index’ published in two parts in openDemocracy on 28 June 2016: <https://www.opendemocracy.net/anne-gallagher/unravelling-2016-global-slavery-index> and <https://www.opendemocracy.net/5050/anne-gallagher/unravelling-2016-global-slavery-index-part-two>. It also draws on A Gallagher, ‘Worst-offender lists biased towards rich countries won’t help us fight slavery’, *The Guardian*, 1 July 2016, retrieved 5 November 2016, <https://www.theguardian.com/global-development/2016/jun/30/slavery-exploitation-worst-offender-lists-biased-towards-rich-countries-wont-help>

Introduction

Since trafficking emerged, almost two decades ago, as an issue of international concern, the quest to quantify the size of the problem—and to find some way of assessing how well States are responding—has dominated the discourse and directly influenced the shape of national, regional and international responses. This is part of a much broader trend: quantification of a practice or phenomenon identified as problematic is widely seen to be an essential pre-requisite to any kind of meaningful action.³ And across the board, contemporary governance has come to rely heavily on rankings and indicators. Particularly in complex areas such as human development,⁴ corruption⁵ and the rule of law,⁶ indexes and other measurement tools provide (or are treated as providing) the otherwise elusive ‘evidence base’ that helps to secure support for particular responses and to rationalise decision making.⁷

The *Global Slavery Index* (GSI), which seeks to calculate the number of victims of human trafficking (or ‘modern slavery’) in each country and to assess and rank government responses, is very much a creature of this environment. The first version of the Index was released in 2013⁸ and a revised version issued the following year.⁹ The most recent Index was launched in 2016.¹⁰ Its rationale was

³ See generally the collection of essays in P Andrees and K M Greenhill (eds.), *Sex, Drugs and Body Counts: The politics of numbers on global crime and conflict*, Cornell University Press, New York, 2010.

⁴ United Nations Development Programme, *Human Development Index* (HDI), UNDP, 2015, retrieved 5 November 2016, <http://hdr.undp.org/en/content/human-development-index-hdi>

⁵ Transparency International, *Corruption Perception Index*, TI, 2016, retrieved 5 November 2016, <http://www.transparency.org/research/cpi/overview>

⁶ World Justice Project, *World Justice Project (WJP) Rule of Law Index*, WJP, 2016, retrieved 5 November 2016, <http://worldjusticeproject.org/rule-of-law-index>

⁷ See generally, K E Davis, A Fisher, B Kingsbury and S E Merry (eds.), *Governance by Indicators: Global power through quantification and rankings*, Oxford University Press, Oxford, 2015. On the use of indicators in trafficking, see the chapter by A Gallagher and J Chuang, ‘The Use of Indicators to Measure Government Responses to Human Trafficking’, p. 326.

⁸ Walk Free Foundation, *The Global Slavery Index (2013)*, WFF, 2013, retrieved 5 November 2016, http://www.ungift.org/doc/knowledgehub/resource-centre/2013/GlobalSlaveryIndex_2013_Download_WEB1.pdf

⁹ Hope for Children Organization Australia Ltd, *The Global Slavery Index 2014*, 2014, retrieved 5 November 2016, http://reporterbrasil.org.br/wp-content/uploads/2014/11/GlobalSlavery_2014_LR-FINAL.pdf

¹⁰ Walk Free Foundation, *The Global Slavery Index 2016*, WFF, 2016, retrieved 5 November 2016, <http://www.globalslaveryindex.org>

made clear from the outset. As Bill Gates advised fellow billionaire philanthropist Andrew Forrest, in order to secure traction on the issue that Forrest had committed his reputation and an undisclosed slice of his personal fortune to eradicating, he had to find some way of quantifying the problem. In Gates' words: 'if you can't measure it, it doesn't exist'.¹¹ Just as importantly, if you can't measure it, you cannot reliably demonstrate the impact of any interventions.

Through rigorous measurement, Gates has been able to show, very convincingly, that the work of his Foundation is making a real difference to the global disease toll. But despite references by the GSI's authors to 'an unfolding epidemic',¹² it is critical to point out that measuring modern slavery and quantifying disease are worlds apart. Determining whether someone has malaria or HIV; the extent to which a particular community is affected; and even the vulnerability of a given population to contracting that disease is relatively straightforward. State, private and academic institutions exist whose sole function is to do just that. They all use the same, replicable method and criteria and they all come up with results that can generally be relied upon—or at least challenged against those same methods and criteria. (While determining vulnerability to such diseases can be more difficult, the protocols are now well established.) Extrapolation—the technique of using known data to arrive at a conclusion about what is happening beyond that data range—works well in the field of public health as a way of estimating disease prevalence because our understanding of disease, our definitions and our diagnostic tools are sound and universally accepted, having emerged from a long history of inquiry, analysis and refinement.¹³ Disease measurement is also helped by the fact that the test population is generally readily identifiable and able to be engaged as subjects of study. Of course, these factors can come together in very different contexts. The Index's authors note elsewhere that in the mid-nineteenth century the United States was able to accurately measure the size of its slave population.¹⁴ But this is

¹¹ E Behrmann, 'Gates Helps Australia's Richest Man in Bid to End Slavery', *Bloomberg*, 15 April 2013, retrieved 5 November 2016, <http://www.bloomberg.com/news/articles/2013-04-10/gates-helps-australia-s-richest-man-in-bid-to-end-slavery>. On the launch of the 2016 Index see A Whiting, 'Almost 46 Million People Trapped in Slavery with North Korea, India Key Offenders: Global Index', *Thompson Reuters*, 31 May 2016, retrieved 5 November 2016, <http://www.reuters.com/article/us-slavery-index-data-idUSKCN0YMIYO>

¹² J Larsen, M N Datta and K Bales, 'Modern Slavery: A global reckoning', *Significance*, vol. 12, issue 5, 2015, p. 33.

¹³ For useful insight into these aspects of disease measurement, see D Coggan, D Barker and G Rose, *Epidemiology for the Uninitiated*, 5th Edition, BMJ Publishing Group, London, 2003. Fourth edition available online at: <http://www.bmj.com/about-bmj/resources-readers/publications/epidemiology-uninitiated>

¹⁴ Larsen *et al.*, 2015.

because everyone involved knew exactly what was being counted: slavery back then was a legal fact as well as a physical reality; records were kept and the subjects of measurement were clearly not going anywhere.

‘Modern slavery’ is something quite different, not least because it is a made-up concept to which no international legal definition is attached. As used by the GSI, the term seeks to encompass under its expansive umbrella a raft of exploitative practices and a myriad of victims: from the schoolgirls abducted by Boko Haram to the abused maids of diplomatic households in London and Washington; from orphanage tourism in Cambodia to the recruitment of child soldiers by the so-called Islamic State. Even the authors of the Index have recalibrated their conception of ‘modern slavery’ from year to year, which makes comparison between their own reports a challenging exercise.¹⁵ That recalibration may also help to explain the extra ten million slaves uncovered between the Index of 2014 and that of 2016 (perhaps more convincingly than the proffered explanation that this dramatic increase reflects improvements in the methodology).¹⁶ To take the disease analogy further, there is no *epidemiology* of what is referred to as modern slavery: no scientific or rational basis for studying patterns, causes and effects. We don’t yet have universally accepted diagnostic criteria or credible tools of measurement—which means that universal, reliable calculation of the size of the problem, while an important goal to strive for, is not yet possible.

These difficulties are well known to those working in the field. Early editions of the US *Trafficking in Persons Report* (TIP Report), discussed further below, cited global figures that were later questioned by the US Government Accountability Office, which noted that ‘the accuracy of the estimates is in doubt because of

¹⁵ The 2013 Index states that: ‘The Walk Free definition of modern slavery includes the [international legal] definitions of [trafficking in persons, slavery and forced labour].’ (Walk Free Foundation, 2013, p. 2). The 2014 Index extends ‘modern slavery’ to include debt bondage, forced or servile marriage, and sale or exploitation of children (Hope for Children Organization Australia Ltd, 2014, p. 12). The 2016 Index states that: ‘While definitions vary, in this report, modern slavery refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, abuse of power or deception, with treatment akin to a farm animal. For example, their passport might be taken away if they are in a foreign country, they may experience or be threatened with violence or their family might be threatened.’ (Walk Free Foundation, 2016, p.12).

¹⁶ Walk Free Foundation, *The Global Slavery Index 2016*.

methodological weaknesses, gaps in data, and numerical discrepancies'.¹⁷ The TIP Reports no longer provide global or even country estimates of prevalence, instead restricting their hard data to numbers of victims identified and traffickers prosecuted and convicted. In recent years, the International Labour Organization (ILO) has felt pressure to affirm the scale of a problem that is central to its *raison d'être*.¹⁸ The ILO has a head start: forced labour is complex but, unlike modern slavery, it is defined in international law and generally well understood. Even so, the hurdles of its measurement are immense. For example, a 2005 ILO estimate of 'at least 12.3 million people in forced labour' increased, seven years later (under 'a new and improved statistical methodology'), to more than 20 million.¹⁹ But despite its recent opportunistic and legally indefensible adoption of the new language of 'modern slavery',²⁰ the ILO has tried to be open about the difficulties of measuring the number of those in forced labour, the fragility of the resulting data and the highly provisional nature of any conclusions based on that information.²¹

The Index is untroubled by such inclinations to modesty, setting itself three Herculean tasks: (i) calculating the vulnerability of individuals within each country to enslavement; (ii) measuring the total number of slaves in every country; and (iii) assessing the overall quality of government responses to modern slavery. Seeking to work out how—and how well—this has been done is itself a daunting prospect. The methodology used by the Index is complex and, in parts, opaque

¹⁷ See, for example, Government Accountability Office, *Human Trafficking: Better data, strategy and reporting needed to enhance U.S. anti-trafficking efforts abroad*, GAO, 2006, p. 2, retrieved 5 November 2016, <http://www.gao.gov/new.items/d06825.pdf>. The latest version of the Report is open about the obstacles of going further: 'Given the complex nature of human trafficking, it is difficult to amass reliable data to document local, regional, and global prevalence' (US Department of State, *Trafficking in Persons Report*, 2016, p. 10, retrieved 5 November 2016, <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>).

¹⁸ International Labour Organization, *ILO Global Estimate of Forced Labour: Results and methodology*, ILO, 2012, retrieved 5 November 2016, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

¹⁹ International Labour Organization, *ILO Minimum Estimate of Forced Labour in the World*, 2005; *ILO Global Estimate of Forced Labour: Results and methodology*, 2012.

²⁰ See, for example, International Labour Organization, *ILO Data Initiative on Modern Slavery*, ILO, 2015, retrieved 5 November 2016, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_364025.pdf. See also *ILO Global Estimates of Modern Slavery*, ILO 2017, retrieved 20 March 2017, http://www.ilo.org/global/topics/forced-labour/news/WCMS_547304/lang-en/index.htm

²¹ ILO, 2012, pp. 3–4.

and incomplete, requiring considerable persistence to unravel and analyse.²² But that task, which I can only begin here, is an important one. The purpose of the Index is not just to raise awareness about human exploitation, it is also intended to provide an evidence base for '[advocating and building] sound policies that will eradicate modern slavery', as well as a raft of initiatives loosely linked to Walk Free including those of a number of funds that are expected to disburse millions of dollars to support anti-slavery efforts. Others, including governments, corporations engaging in the new 'redemptive capitalism' around trafficking and modern slavery,²³ and the many civil society bodies operating in this space will certainly use the Index selectively to advance their own agendas and interests. For these reasons alone, the Index deserves rigorous scrutiny.

This article briefly explores each of the three elements of the Index (vulnerability measurement; prevalence measurement and response measurement), making some preliminary findings about the quality of the methodology and its application under each heading. It then turns to a number of broader issues raised by the Index. Perhaps the most important of these is the lack of critical engagement from those who have the capacity—and, as I have previously argued, the responsibility—to interrogate this work carefully, openly and honestly.²⁴ What is behind their near-complete silence? To what extent does fear of exclusion from the deep-pocketed, high profile and increasingly glamorous 'modern slavery' club, that counts movie stars and presidents amongst its members, play a role? Does it even matter? Is there value to the argument, which has been repeatedly made to me, that it is unfair and counterproductive to criticise those who are genuinely seeking to do good and useful work? The second, closely related issue considered in the final section, concerns the changing face of anti-trafficking work—most particularly, the growing influence of metrics-focused strategic philanthropy over how the

²² Walk Free Foundation, *Global Slavery Index 2016: Detailed Methodology*, 2016, retrieved 5 November 2016, <http://assets.globalslaveryindex.org/downloads/GSI+Methodology+Paper.pdf>

²³ E Bernstein, 'Redemptive Capitalism and Sexual Investability' in A Orloff, R Ray and E Savci (eds.), *Perverse Politics? Feminism, anti-imperialism, multiplicity (Political Power and Social Theory, Volume 30)*, Emerald Group Publishing Limited, West Yorkshire, 2016, pp. 45–80.

²⁴ A Gallagher, 'The Global Slavery Index is based on Flawed Data: Why does no one say so?' *The Guardian*, 28 November 2014, retrieved 5 November 2016, <https://www.theguardian.com/global-development/poverty-matters/2014/nov/28/global-slavery-index-walk-free-human-trafficking-anne-gallagher>. Extended version published as A Gallagher, 'The Global Slavery Index: Seduction and obfuscation', *openDemocracy*, 4 December 2014, retrieved 5 November 2016, <https://www.opendemocracy.net/5050/anne-gallagher/global-slavery-index-seduction-and-obfuscation>

‘problem’ of trafficking is defined and how responses are crafted and justified. The involvement of ‘philanthrocapitalists’ such as Andrew Forrest has undoubtedly had positive effects: injecting much-needed resources and energy into an issue that has been unconscionably marginalised by States and the international community for too long. But at what cost? Does the tale of the *Global Slavery Index*, recounted here, herald a new way of approaching challenges that seem beyond the capacity of traditional institutions and approaches to address effectively? Or does it rather serve as a warning against abdicating power and responsibility to a political force that is, at its core, both undemocratic and unaccountable?

The Index’s Assessment of Country-level Vulnerability to Modern Slavery

The vulnerability measure assigned to each country is important because, as explained below, it is a major element in assessing the prevalence of slavery. The measure, which is significantly different to that employed by the 2014 Index, uses several dozen variables divided into four categories to work out the risk of enslavement in a particular country: (i) civil and political protections; (ii) economic, health and other social rights; (iii) personal security; and (iv) refugees and conflict.²⁵ A country’s final ‘vulnerability score’ is calculated by averaging the sum of the variables for each category and then averaging the four resulting scores. For example, the country with the lowest vulnerability rating, Denmark, scores highly across all categories and most variables. The country with the highest vulnerability rating, the Central African Republic, receives low scores across the board.

The categories themselves generally make sense. Individuals and communities caught up in conflict will inevitably be more vulnerable than others to exploitation. Poverty and personal insecurity (measured in the Index by proxies such as being in debt and inability to raise emergency funds) also seems to be relevant as a vulnerability factor because we know that fewer resources inevitably compromise life choices and lead to risky strategies, such as irregular and debt-financed migration. But some factors chosen to assess vulnerability are less easy to reconcile and no explanation is offered. Where is the evidence to support the assertion that ‘less cell phone subscriptions per 100 people in each country is considered to be ... a vulnerability factor to slavery’ or that greater access to weapons correlates with (let alone *causes*) increased vulnerability to slavery? Except as proxies for poverty, what do the rate of tuberculosis, undernourishment and ‘access to an improved water source’ tell us about vulnerability? Sexual orientation and disability rights are now

²⁵ Walk Free Foundation, *Global Slavery Index 2016: Detailed methodology*, pp. 1–10.

staples of the international human rights agenda, but we are a long way from establishing a credible link between denial of these rights and increased risk of modern slavery. To turn this analysis on its head, a government that adopts an arms-reduction programme, or that actively works to reduce its tuberculosis rate, or that increases access to cell-phones through subscription can be said to be reducing vulnerability to slavery—even though none of these measures can be seriously expected to affect the national rate of forced labour, forced marriage or any other form of exploitation.

Suspicion that the seductive science of statistics and probability has trumped experience and common sense when it comes to working out vulnerability is heightened when one considers what is missing amongst the vulnerability indicators. Corruption, for example, is a straightforward vulnerability factor for exploitation. But while corruption is a heavily weighted GSI criterion for measuring the quality of government response,²⁶ it was removed from the list of variables with an impenetrable explanation about co-linearity, Variance Inflation Factor and tolerance factors. Indeed, there are compelling indications that the availability of data points influenced, and in some cases determined, the selection of vulnerability factors and not just in relation to the criteria cited above of cell phone usage, weapons availability, health and access to water. For example, confidence in the judiciary is cited as a vulnerability factor, rather than what is perhaps the most well-established and defensible measure of vulnerability to forms of exploitation associated with modern slavery: the capacity of the State to protect citizens from violence including violent crime.²⁷ Presumably this is because the former is supported by a contemporary data source and the latter is not.

Other oddities in the final vulnerability assessment appear to affirm fundamental weaknesses in the GSI methodology and in its application. For example, Brunei makes it on to the list of the top ten most vulnerable countries to modern slavery, above Iraq and Pakistan. This is baffling. A relatively poor score on the category of civil and political rights is probably justified for Brunei. But the Index's assertion that tiny, oil-rich, low-crime Brunei is the worst in the world for personal security is nonsensical. It also comes as a surprise to learn that this country, which has not experienced internal conflict in living memory and neither produces nor accepts refugees, is considered by the GSI to be in poorer shape than Lebanon, Turkey and Yemen in the 'Conflict and Refugees' category. Another risible assertion is that, of the 167 countries surveyed, only Iceland and Denmark rank higher than Singapore as the countries where one is safest from modern slavery. Certainly, it is true that

²⁶ Walk Free Foundation, *The Global Slavery Index 2016*, pp. 5–8.

²⁷ G Haugen and V Boutros, *The Locust Effect: Why the end of poverty requires the end of violence*, Oxford University Press, Oxford, 2014.

Singaporeans (much like their citizen-counterparts in Brunei) are very well insulated from the risk of exploitation. But the same cannot be said of Singapore's 870,000 non-residents, many of whom are denied the right to unionise—and, in some sectors, the protection of a mandated minimum wage and standardised working hours.²⁸ Exploitation of migrant workers in Singapore, especially in the construction and domestic service industries is a widely acknowledged and well-documented reality.²⁹

The Index's Assessment of Country-level Prevalence

Prevalence, in this context, refers to the number of persons within a given country who, sometime over the past five years, have been subject to modern slavery, whether at home or abroad—or, in the legally unhinged language of the GSI: persons whose '*individual freedom has been restricted in order to exploit them*'. For 25 of the 167 countries assessed by the GSI, prevalence figures are based on information secured through random sample surveys conducted by the polling company Gallup during the period 2013 to 2015. Around one thousand people were interviewed in each country. Of the total pool of 29,000 respondents, just 470 affirmed that they or someone in their immediate family were or had been in a situation of forced labour or forced marriage in the past five years.³⁰ The modest nature of these figures must be highlighted because, as discussed below, it is these 470 individuals who provide the raw data on which the entire prevalence structure of the Index is built.

For an additional two countries, the United Kingdom and the Netherlands, slavery prevalence was determined on the basis of two studies that examined rates of human trafficking (which, as the Index's own definition admits, is not the same as 'modern slavery'). Both studies used 'multiple systems estimation' (MSE), a statistical methodology popular in human rights and conflict research that utilises overlaps between incomplete information sources to estimate what might

²⁸ M Sacco, 'What Does Singapore Owe its Migrant Workers?', *Carnegie Council*, 2016, retrieved 5 November 2016, http://www.carnegiecouncil.org/publications/ethics_online/0114

²⁹ A Zwenyert, 'Singapore's Foreign Maids Exploited by Agents, Employers', *Thompson Reuters*, 2015, retrieved 5 November 2016, <http://in.reuters.com/article/rights-domesticworkers-singapore-idINKBNOOB2LO20150526>

³⁰ The final country count does not distinguish between persons involved in 'slavery' in the country of survey and persons involved in 'slavery' outside that country. This means that in relation to the Gallup survey countries, a positive response will be recorded against that country, even if the individual concerned was exploited elsewhere.

be termed the ‘dark figure’ (in this case, the number of victims who have not come to public attention and are therefore not on any available list). MSE is considered to be an alternative when the suspected low rates of prevalence make low-number random surveys unworkable. Application of this methodology by the UK National Crime Agency in 2013 supported a conclusion that the ratio between the number of detected and undetected victims is around one in four. The GSI uses that information to assert that there are presently 11,500 victims of ‘modern slavery’ in the UK—0.02% of the population. In relation to the Netherlands, the Index relied on a study commissioned by the UN Office on Drugs and Crime.³¹ Using the same methodology, the study found prevalence rates to be more than five times higher, at 0.104%. These substantial differences between two countries with very similar risk profiles (and consideration of the very different ways in which States identify and record victims in the first place)³² indicate that the MSE methodology requires further interrogation before it is endorsed as the go-to backup in situations where the already-problematic standard survey approach cannot be presented as a credible option.

The remaining 139 countries—those without any survey or other data point—were then divided into 12 groups, each considered, with reference to the vulnerability data, to have a common or at least similar risk profile. Each of the 12 groups was then assigned one or more of the 27 data points, (25 country survey results, the UK MSE estimate and a six-year-old survey of sexual violence in the Democratic Republic of the Congo that replaced the Netherlands MSE data). Regrettably, the detailed methodology attached to the Index does not tell us

³¹ United Nations Office on Drugs and Crime, *Multiple Systems Estimation for Estimating the Number of Victims of Human Trafficking Across the World*, UNODC, 2016, retrieved 5 November 2016, <https://www.unodc.org/documents/data-and-analysis/tip/TiPMSE.pdf>

³² Even within Europe, where considerable effort has gone into standardising identification procedures, victim identification rates are not comparable because of differences in how individual States formally identify (register) victims. In the UK, for example, each potential victim who is referred to the national system for identification is noted as a potential victim for purposes of EU data collection, although it is only subsequently that a conclusive determination is made by the competent authorities as to whether or not the individual is indeed a victim of trafficking. By contrast, in other countries, such as Romania, a person is only identified as a victim of trafficking if there are criminal proceedings against a perpetrator. Accordingly, data collected across the EU on the number of victims of trafficking can only be interpreted as a sample of the problem, not the real extent of it. See A Gallagher and K Skrivankova, ‘Human Rights and Trafficking in Persons’, ‘Background Paper prepared for the 15th Informal ASEM Seminar on Human Rights’, 2015, pp. 76–77, retrieved 5 November 2016, http://www.asef.org/images/docs/ASEF%2015th%20Human%20Rights%20Seminar%20Publication_v5.pdf

which of the 139 countries made it into which group and how multiple data points within each group were used to calculate individual country prevalence. For example, we are only told that Group 1 comprises 13 unspecified countries, the prevalence estimates of which are based on survey data from Pakistan and Nigeria and the sexual violence study from the Democratic Republic of the Congo. Group 11 comprises 17 countries, also unspecified, whose prevalence estimate is based on the MSE data from the United Kingdom. Survey data from Hungary forms the basis of prevalence estimates for 11 countries placed in Group 12.

Additional, unspecified refinements (affecting 40 of the 139 countries for which there was no survey or other data point) sought to adjust the raw group allocations to take account of unique or particular factors such as conflict and the existence of state-imposed forced labour. For example, the prevalence estimate for Uzbekistan, which would have been calculated with exclusive reference to the survey results for Russia, was recalibrated to account for the known existence of forced labourers in the agricultural sector. Other, untestable adjustments were made when the results of the extrapolation exercise failed to produce the desired results—or, in the words of the Index, when ‘selected stakeholders and country experts’ felt such adjustments were necessary to ‘better reflect known realities’. For example, while the vulnerability data on China indicated that prevalence should be measured with reference to countries such as Myanmar and India, factors such as high internet penetration, stronger infrastructure and a dramatically different level of economic growth were considered sufficiently relevant to push it to being measured with reference to Vietnam, whose country survey indicated much lower levels of vulnerability. But the reasoning behind most of the expert adjustments is much less specific. And in some cases, it doesn’t make sense. For example, Iceland, Finland, Portugal and Italy were all subject to unspecified ‘geopolitical adjustments’ on the basis of their ‘geopolitical similarities to Western Europe’.³³ Unfortunately, the Index’s authors do not reflect on what the perceived need for such adjustments tells us about the validity of the underlying data.

The Index’s Assessment of Government Responses

It is impossible to explore this aspect of the Index without reference to its unacknowledged lodestar: the annual US State Department Trafficking in Persons (TIP) reports which, since 2001, have been assessing and ranking national responses to trafficking in every country, every year.³⁴ Many States understandably object to

³³ Walk Free Foundation, *Global Slavery Index 2016: Detailed methodology*, pp. 30–31.

³⁴ For the full archive of reports, see: <http://www.state.gov/j/tip/rls/tiprpt/>

heavy-handed scrutiny and criticism from the United States Government. But few would question their influence on legal, institutional and attitudinal change in this area. The assessment criteria used in the Reports are set out in the relevant federal statute and cover a range of factors that all fall loosely under the headings of prevention, protection and prosecution. As I have explored elsewhere, the criteria, which have been repeatedly expanded and refined through amendments to the relevant federal statute, more or less track the international legal obligations that govern State conduct in this area. The standard of the reports has improved dramatically over the years and the individual country assessments paint a necessarily incomplete but generally realistic picture of the trafficking situation and of the quality of the relevant government's response.³⁵

The GSI's assessment methodology, while clearly based on the US TIP Report approach, is much more complex. It is structured along the lines of a logical framework for a development project—complete with five overarching milestones (broad goals, sometimes confusingly referred to in the narrative as 'outcomes'); several dozen intermediate outcomes (more specific goals, sometimes referred to in the Index as 'activities'); almost one hundred general indicators of 'good practice' attached to the outcomes; and many more specific 'description' indicators that explain exactly what should and should not be taken into account. For example, under the milestone 'effective criminal justice responses', one of the three stipulated outcomes is: 'increased number of quality prosecutions'. Attached to this outcome are seven positive indicators (e.g., training of prosecutors, establishment of special police units, etc.) and two negative ones (e.g., disproportionate punishments). The detailed descriptor indicators explain, for example, that in relation to training of prosecutors, this element requires that comprehensive training has been undertaken at least once in the past six years and that the element would not be satisfied merely with the distribution of an information booklet on relevant laws. But it's not clear how many or what proportion of prosecutors needed to be trained or indeed, beyond proportionate sentencing, what a 'quality' prosecution actually looks like.

Throughout, there appears to be an in-built bias in the assessment tool towards wealthier countries. At the most basic level, the Index places a high premium on information availability, which is directly related to both capacity and resources: if information relevant to an indicator is not available, the country receives a zero score against that indicator. In other words, being unable to produce or locate

³⁵ A Gallagher, 'Without Trafficking, What Would Happen to Global Wealth and Productivity?', *The Guardian*, 28 July 2015, retrieved 5 November 2016, <http://www.theguardian.com/global-development/2015/jul/28/without-trafficking-global-wealth-productivity-trafficking-in-persons-report>

information on whether long-term reintegration services have been offered to victims is treated exactly the same as not having offered any such services at all. It is only wealthy countries that could hope to meet some of the indicators such as funding or undertaking research—or developing and implementing expensive victim support programmes. And one entire milestone, ‘governments stop sourcing goods and services linked to modern slavery’, reflects an advanced response that is understandably not on the agenda of any poor or even middle-income country. A table that rates government response against GDP provides important additional perspective and balance: for example, serving to highlight Singapore’s relatively poor performance when measured against financial capacity, and the Philippines’ relatively strong one. But this one table cannot remove the in-built distortions that, like the TIP Report, will almost always see wealthy countries of destination come out on top. That is misleading on multiple levels, not least because it fails to take account of the reality that wealthy countries benefit disproportionately from the goods and services produced through cheap and exploitable labour; that the supply chains of corporations owned and run by the nationals of top-ranked countries are tainted with forced labour; and that corporate profits flowing back to these countries are vastly inflated by the cheap, exploitable labour that is often supplied by countries whose ‘anti-slavery’ responses have been judged most wanting.

Despite these critical weaknesses, the framework for assessing government response nevertheless appears to broadly reflect the current, imperfect state of our knowledge about what can be done to address ‘modern slavery’ and what might make it worse. But the Index refuses such a humble role for itself, rather projecting the framework as something much more precise and definitive. This approach is highly problematic, not least because complexities in the methodology obscure multiple assumptions and value judgments on the part of those who oversaw its creation.

These problems are brought into sharp relief when considering how country ratings are calculated. Groupings of indicators (outcomes) are evenly weighted and, with just a few exceptions, the 98 good practice indicators also receive the same weighting. What this means is that an intermediate outcome such as ‘victim-determined support is available for all identified victims’, (the holy grail of a victim-centred response that has not yet been achieved anywhere in the world), has the same value for assessment purposes as ‘domestic legislation is in line with international conventions’. It also means that both these outcomes have the same value as ‘safety nets exist for vulnerable populations’ (a wide-ranging outcome that includes indicators for markers as diverse as public sector corruption and complicity, non-discriminatory access to primary education, training of consular staff and provision of documentation to facilitate victim repatriation). Furthermore, equivalence in indicator weighting means that the indicator ‘government facilitates and funds research’ has the same absolute value as

‘government facilitates and funds labour inspections’ and that ratification of the highly contested and substantively problematic UN Migrant Workers Convention³⁶ has the same value as ratification of the critically important UN Trafficking Protocol.

The problem is not just the false assumption of like for like across both outcomes and indicators, but also the Index transforming qualitative information into quantitative data. In order to calculate precise rankings, the Index applies a 1=yes, 0=no formula to situations, conduct or actions that can never be captured in this binary way. For example, the indicator: ‘government interventions . . . are evidence based’ (or, as the attached description clarifies: ‘interventions are based on strategies or theories of change identified by research’) is impossible to measure on a yes-no scale for a myriad of reasons, including the fact that research in this area is of an uneven and often very low standard and, critically, that governments themselves rarely articulate the evidence base or theory of change on which their intervention is based.

And the devil is also in the detail of how the assessment framework is actually applied. The US Government flexes its considerable political muscle to effectively coerce governments into providing certain information on their response to trafficking. This information is checked and supplemented through in-country work by the State Department that mobilises the abundant resources and contacts of US embassies throughout the world.³⁷ The GSI assessment of government responses against each indicator uses a range of sources: desk reviews of publicly available information (including, evidently, the TIP Reports themselves); information received from governments who responded to a questionnaire (38 of the 161 countries assessed); and other information obtained through ‘in-country experts’ and online (survey-monkey) responses from and interviews with information sources identified only as ‘NGOs and partners’.³⁸

Certainly, it can be expected that this process yielded useful insights but there is no way to assess the quality of different information sources or indeed, to replicate the results. Thus, it is not possible to work out why the Netherlands (which was awarded the highest ranking overall in the category ‘government responses’) is so

³⁶ Further on the Migrant Workers Convention, particularly in relation to its ambiguous place within the international legal framework around trafficking, see A Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, New York, 2010, pp. 172–176.

³⁷ US Department of State, *Trafficking in Persons Report*, 2016, p. 10.

³⁸ Walk Free Foundation, *Global Slavery Index 2016: Detailed methodology*.

much better than the United Kingdom (which received the third-highest ranking overall). Singapore and Brunei are much closer to each other in this assessment than in relation to the other measures of vulnerability and prevalence but this convergence is not readily explicable. It is equally difficult to determine exactly *how* the governments of Saudi Arabia, Lao PDR and China are performing better than the governments of Singapore, South Korea and Timor Leste when it comes to responding to modern slavery. They may well be, but we have to take the Index's word for it.

The GSI and the Politics of Funding and Influence

Since it first appeared in 2013, media coverage of the Index has been overwhelmingly superficial and fawning.³⁹ And the response from the broader anti-trafficking community has been oddly muted, especially when compared to the strong attack, (many of them amply justified), that have been launched against the US's 'name and shame' TIP report.⁴⁰ The lack of critical engagement with the *Global Slavery Index* from every quarter and with only very limited exceptions, is troubling and deserves scrutiny.

One powerful disincentive to criticism, devastating in its chilling effect, is the implication or accusation that attacking good works is ungenerous and unsporting. Or, as the argument has been directly put to me: 'we are doing our best: why are you trying to undermine us?' In public, GSI founder and funder

³⁹ For coverage of the 2016 report, see: CNN, *Global Slavery Index: 45.8 million enslaved*, YouTube, 2016, retrieved 5 November 2016, <https://www.youtube.com/watch?v=ZerZIoMUOs>; R Gladstone, 'Modern Slavery Estimated to Trap 45 Million People Worldwide', *The New York Times*, 31 May 2016, retrieved 5 November 2016, <http://www.nytimes.com/2016/06/01/world/asia/global-slavery-index.html>; and A Chughtai and A Abujbara, 'Modern-Day Slavery: The numbers', *Al Jazeera*, 16 August 2016, retrieved 5 November 2016, <http://www.aljazeera.com/indepth/interactive/2016/08/modern-day-slavery-numbers-160816132255063.html>. A standout exception to the deferential coverage of the Index and unquestioning acceptance of its findings is an article by the Washington Post 'Fact checker' on the 2014 GSI: G Kessler, 'Why You Should be Wary of Statistics on "Modern Slavery" and "Trafficking"', *The Washington Post*, 24 April 2015, retrieved 5 November 2016, <https://www.washingtonpost.com/news/fact-checker/wp/2015/04/24/why-you-should-be-wary-of-statistics-on-modern-slavery-and-trafficking/>

⁴⁰ See, for example: J Chuang, 'The United States as Global Sheriff: Using unilateral sanctions to combat human trafficking', *Michigan Journal of International Law*, vol. 25, 2006, p. 437.

Forrest has dismissed his critics as mere ‘academics’⁴¹ and, in his preface to the 2016 GSI Index, implies that those who point out the imperfections of the Index without offering alternatives are obstructing the ‘emancipation journey’.⁴² Such sentiments are not uncommon. A major Australian charity exposed for recruiting a Cambodian child to impersonate a miserable, mud-smeared sex worker for a fund-raising campaign reacted swiftly to charges of exploitation, accusing its critics of misunderstanding what was needed to ‘bring the horror home’.⁴³ A US-based organisation that stages high profile, ethically compromised ‘rescue’ operations in impoverished countries responded with anger and bewilderment (and eventually the threat of a defamation lawsuit against the present author) when its actions were publicly challenged.⁴⁴ This is all wrong. Good intentions matter but they are not enough, especially in relation to an area where the capacity to do harm—to make bad situations even worse—is demonstrably real.⁴⁵

Other silencing forces, directly related to the politics of funding and influence, are also hard at work. Walk Free, the organisation that produces the GSI, and its many offshoots have come to the big table with a seductive promise of abundant funding at a time when previously generous government donors are flagging. A number of international organisations and individual experts who would be in a strong position to critically evaluate the Index have been effectively co-opted

⁴¹ A Burrell, ‘Pope’s Man Walks Free from Andrew Forrest’s Anti-Slavery Push’, *The Australian*, 28 July 2015, retrieved 5 November 2016, <http://www.theaustralian.com.au/news/popes-man-walks-free-from-andrew-forrests-antislavery-push/news-story/c4b530c71da93be7fe7a6ad6c31338cd>

⁴² Walk Free Foundation, *The Global Slavery Index (2016)*, p. 3. For a recent effort of the present author to consider alternatives, see: A Gallagher, ‘Worst-offender lists biased towards rich countries won’t help us fight slavery’, 2016.

⁴³ L Murdoch, ‘“Poverty Porn” and “Pity Charity” the Dark Underbelly of a Cambodia Orphanage’, *The Sydney Morning Herald*, 5 June 2016, retrieved 5 November 2016, <http://www.smh.com.au/world/poverty-porn-and-pity-charity-the-dark-underbelly-of-a-cambodia-orphanage-20160602-gpacf4>

⁴⁴ A Gallagher and C Rover, ‘Chasing the Slave Traders: A law enforcement perspective on Operation Underground Railroad’, *The Huffington Post*, 31 July 2016, retrieved 5 November 2016, http://www.huffingtonpost.com/anne-gallagher/chasing-the-slave-traders_b_7913104.html

⁴⁵ A Gallagher, ‘Human Rights and Human Trafficking – Quagmire or firm ground?’, *Virginia Journal of International Law*, vol. 49, 2009, pp. 789–848, at pp. 831–832, retrieved 5 November 2016, http://www.vjil.org/assets/pdfs/vol49/issue4/49_789-848.pdf

through partnerships and advisory roles.⁴⁶ The example of the perennially cash-strapped ILO is particularly revealing in this regard.⁴⁷ The dense web of private philanthropy woven around the modern slavery movement is evidently one that few organisations or individuals operating in this sector (with the striking exception of the Vatican)⁴⁸ can afford to ignore or offend.

This situation has rendered the GSI virtually immune to criticism, even from the individuals and international organisations with the capacity to undertake a rigorous critical review of its methodology. While few have come out in open support,⁴⁹ the silence from all quarters is striking. Criticising the actions of the powerful, the publicly lauded and the well-connected is never easy, especially when funding and access to influence are at stake. (The lengthy, shocking silence over the widely-known deceptions of multi-award winning anti-trafficking

⁴⁶ For example, the three major intergovernmental organisations involved in counter-trafficking—ILO, the International Organization for Migration and the UN Office on Drugs and Crime—have all entered into cooperative relationships with Walk Free, see: <http://www.globalslaveryindex.org/media> and http://www.ilo.org/pardev/partnerships/public-private-partnerships/WCMS_456482/lang-en/index.htm

⁴⁷ Despite its position as the only intergovernmental organisation undertaking comparable work, the ILO has pointedly refrained from publicly analysing or even commenting on the GSI methodology and approach. In 2017 it entered into a formal partnership with Walk Free to produce an agreed, authoritative ‘Global Estimate of Modern Slavery’, see ILO *Global Estimates of Modern Slavery*, ILO 2017. This initiative will replace previous ILO efforts to estimate global rates of forced labour. It is not clear whether it will also replace the Global Slavery Index.

⁴⁸ Four Corners, ‘Vatican Accuses Andrew “Twiggy” Forrest of Exploiting Pope Francis over Anti-Slavery Campaign’, *ABC News*, 5 August 2015, retrieved 5 November 2016, <http://www.abc.net.au/news/2015-08-05/vatican-accuses-andrew-forrest-of-exploiting-pope-francis/6673720>

⁴⁹ Thus far, only those closely connected with Walk Free have publicly come to the Index’s defence. For example, Nick Grono, former CEO of the Walk Free Foundation, now CEO of the Freedom Fund, which is funded, in part, by Walk Free, champions the Index’s methodology and censures the critics who, in his words, ‘invariably fail to provide an alternative method to estimate slavery—all the while asserting the fundamental importance of measurement.’ Nick Grono, ‘Measuring Slavery Encourages Governments to do Better’, *Thomson Reuters Foundation*, 16 July 2016, retrieved 5 November 2016, <http://news.trust.org/item/20160716164413-tig2w>

activist Somaly Mam⁵⁰ is a sobering reminder in that regard.) But such deference is bad for the Index and for the anti-slavery movement as a whole, trapping us all in an echo chamber of like-minded and right-thinking souls who provide each other little incentive or encouragement to really interrogate how we are thinking and working.

Both the GSI and the organisation that produced it are products of ‘philanthrocapitalism’: the application of metrics and results-driven business techniques to philanthropy ‘by a new generation of self-made, hands-on donors’.⁵¹ GSI inspiration Bill Gates is the embodiment of a growing group of business leaders, entrepreneurs and former political leaders who are seeking to leverage their high public profile, along with their considerable experience, resources and contacts to engineer massive social change. Similarly prominent examples include Facebook founder Mark Zuckerberg, who is seeking to provide universal Internet access by 2020;⁵² the Clinton family, whose eponymous foundation is working across a broad range of issues from health to climate change;⁵³ and George Soros, whose grant-making network the Open Society Foundations has been supporting democracy and human rights throughout the world for over two

⁵⁰ See H Hoefinger, ‘Neo-liberal Sexual Humanitarianism and Story-telling: The case of Somaly Mam’, *Anti-Trafficking Review*, issue 7, 2016, pp. 56—78, www.antitraffickingreview.org. In 2015 a cable from the US Embassy in Phnom Penh to the State Department came to light, confirming that the local anti-trafficking community was well aware of the deceptions and malpractice within Mam’s organisation, but feared that speaking out would damage relations with donors. See D Pye and A Cuddy, ‘US was on to Somaly Mam’, *The Phnom Penh Post*, 1 June 2015, retrieved 20 March 2017, <http://www.phnompenhpost.com/national/us-was-somaly-mam>

⁵¹ G W Jenkins, ‘Who’s Afraid of Philanthrocapitalism?’, *Case Western Law Review*, vol. 61, no. 3, pp. 753—821, p. 755, 2011. See also, ‘The Birth of Philanthrocapitalism: The leading new philanthropists see themselves as social investors’, *The Economist*, 23 February 2006, retrieved 5 November 2016, <http://www.economist.com/node/5517656>

⁵² See generally Facebook, *Internet.org*, Facebook, 2016, retrieved 5 November 2016, <https://info.internet.org/en/>. Zuckerberg, the Gates Foundation and others have been credited with a leading role in formulating and adopting UN Sustainable Development Goal 9.c: ‘significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020’. See: Connect the World, *Press*, retrieved 5 November 2016, <http://connecttheworld.one.org/press.html>

⁵³ See generally: Clinton Foundation, *Girls and Women*, The Clinton Foundation, 2016, retrieved 5 November 2016, <https://www.clintonfoundation.org>

decades.⁵⁴ While a belated focus of attention, the modern slavery movement is increasingly being funded—and shaped—by this new brand of philanthropy.⁵⁵

The philanthrocapitalism model is a highly attractive one. Governments, with their short-term perspectives and aversion to risk, have shown themselves singularly incapable of addressing many of the most serious global afflictions—from poverty to climate change, from disease to environmental degradation. Their inaction in such areas is compounded by the failures of international institutions to foster the cooperation between countries that is required to deliver real and lasting change. The new philanthropists can bypass many of these obstacles. With ‘far-reaching time horizons and almost no one they have to please’,⁵⁶ they can take on seemingly intractable social problems and assume risks that would be unacceptable to most States. The new philanthropists are also more likely than governments and governmental institutions—in theory at least—to embrace a culture of adaptive learning in which mistakes are tolerated as long as they lead to new and better ways of doing things. They have also demonstrated a much greater capacity than anyone else to build strong coalitions for change: bringing business, civil society groups, governmental bodies and intergovernmental organisations together in ways never previously possible. This can help clarify goals and can be especially useful in reducing fragmentation of effort and resources.

But the new philanthropy has also raised questions, some of them rooted in the very strengths outlined above. For example, while being answerable to nobody can certainly work to improve creativity and effectiveness, it also means a lack of

⁵⁴ See Open Society Foundations, *Home Page*, Open Society Foundations, 2016, retrieved 5 November 2016, <https://www.opensocietyfoundations.org>. In response to the recent migrant ‘crisis’ in Europe, Soros has pledged to make half a billion dollars of investments ‘that specifically address the needs of migrants, refugees and host communities’. His explanation of how this will happen provides a useful example of philanthrocapitalism in action: ‘I will invest in startups, established companies, social-impact initiatives and businesses founded by migrants and refugees themselves. Although my main concern is to help migrants and refugees arriving in Europe, I will be looking for good investment ideas that will benefit migrants all over the world. ... Our goal is to harness, for public good, the innovations that only the private sector can provide.’ G Soros, ‘Why I’m Investing \$500 Million in Migrants’, *GeorgeSoros.com*, 20 September 2016, retrieved 5 November 2016, <https://www.georgesoros.com/essays/why-im-investing-500-million-in-migrants/>

⁵⁵ For a deep and considered analysis, see: J A Chuang, ‘Giving as Governance: Philanthrocapitalism and modern day slavery abolitionism’, *UCLA Law Review*, vol. 62, 2015, pp. 1516—1556.

⁵⁶ J Surowiecki, ‘In Defense of Philanthrocapitalism’, *New Yorker*, 21 December 2015, retrieved 5 November 2016, <http://www.newyorker.com/magazine/2015/12/21/in-defense-of-philanthrocapitalism>

transparency and accountability. Adaptation through learning may happen more quickly than might be possible within the constraints of a government aid agency, but if it does not, there is no recourse. In their business dealings, the new philanthropists remain accountable to shareholders, boards and the governments of countries within which they are headquartered and/or operating. Few if any of these constraints operate in relation to their charitable engagement. This ‘democratic deficit’, especially when coupled with expensive and efficient public relations machinery, provides effective insulation from scrutiny and criticism. To the extent that international governmental institutions allow themselves to be co-opted as partners, this deficit and its effects multiply exponentially.

And then there is the distorting effect of money and power on how a complex problem is understood and how preferred solutions are developed. As Janie Chuang has shown so well in the context of the modern slavery sector, a handful of rich, private actors have utilised their substantial resources and elite networks to directly engage in global anti-trafficking policymaking, claiming a role in global governance that has allowed them to ‘significantly influence the substantive approach to this complex problem, and even reconfigure the roles of other international actors in the field’.⁵⁷ Chuang documents one prominent result of this influence: the shift in language from the painstakingly defined legal term ‘trafficking in persons’ to the legally empty but highly emotive and galvanising term ‘modern slavery’.⁵⁸ Another, more recent change that can be directly traced to the influence of these new players is the growing (and it may be argued, somewhat naïve) faith in business cleaning up its ‘supply chains’ as the solution to exploitation for private profit.

Critics also point to philanthrocapitalism as treating symptoms, rather than deeper structural causes⁵⁹—perhaps an inevitable side effect to an approach that values only what can be measured. The new, highly corporatised anti-slavery movement is vulnerable on this ground. As noted previously, the GSI is intended

⁵⁷ Chuang, 2015, p. 1518.

⁵⁸ Since Chuang’s work was published, the United Kingdom has rebranded its approach to trafficking in persons, in 2015 passing the *Modern Slavery Act* and creating the position *Independent Anti-Slavery Commissioner*.

⁵⁹ Gates’ work in disease control for example, is faulted for not engaging with the dysfunctional systems that fail to protect and provide for the poor and the powerless. As one critic has noted, private initiatives to address HIV/AIDS that ignore the importance of building public health infrastructure might secure important, short-term gains, but are likely doomed to failure over the longer term. See M Edwards, *Just Another Emperor? The Myths and realities of philanthrocapitalism*, Demos, New York, 2008.

to provide the evidence base for private and public action against slavery. But that role is fatally compromised by the very assumptions upon which it is based. Put simply, the Index embodies and perpetuates a distorted—if comforting—belief that slavery is all about bad individuals doing bad things to good people. At the root of that belief is an unshakeable faith in being able to eliminate the myriad practices captured under ‘modern slavery’ without fundamentally changing how our societies and economies are organised; without a radical shift in the distribution and exercise of political and economic power. At no point does the Index or its parent organisation, Walk Free, challenge—or even gently interrogate—the underlying structures that perpetuate and reward exploitation, including a global economy that relies heavily on the exploitation of poor people’s labour to maintain growth and a global migration system that entrenches vulnerability and contributes directly to trafficking.

The GSI prevalence index implies that countries with the highest proportion of ‘slaves’ are the worst, and countries with the lowest proportion are the best. But those figures actually reveal very little about where these people are being exploited and who is benefiting from that exploitation. These weaknesses in logic are carried through to the assessment of individual country performance. Like the US TIP Report, the rankings awarded by the GSI fail, spectacularly, to tell us what is really happening. And, as shown above, they present a picture of the world that hides the benefits of cheap and exploitable labour that accrues to wealthy countries and their corporations.⁶⁰ In this way, the GSI and its promoters embody what has been aptly termed ‘philanthropic colonialism’, a form of advocacy and giving that ‘just keeps the existing structure of inequality in place’.⁶¹

Ultimately, there is something deeply worrying about the commodification of structural social problems, such as human trafficking, by unaccountable private players—and the corresponding marginalisation of governments as responsible agents of change. Policy analyst David Rieff captures well the underlying paradox:

For the first time in modern history, it has become the conventional wisdom that private business—the most politically influential, the most undertaxed and least regulated, and, most importantly, the least democratically accountable sector among those groups that dispose of real

⁶⁰ See further A Gallagher, ‘Worst Offender List biased towards rich countries won’t help us fight slavery’.

⁶¹ P Buffett, ‘The Charitable-Industrial Complex’, *New York Times*, 26 July 2013, retrieved 5 November 2016, http://www.nytimes.com/2013/07/27/opinion/the-charitable-industrial-complex.html?_r=0

power and wealth in the world—are best suited to be entrusted with the welfare and fate of the powerless and hungry. No revolution could be more radical, no expectation could be more . . . counterintuitive, more antihistorical, or require a greater leap of faith.⁶²

Conclusion

The introduction to this article noted that the *Global Slavery Index* did not arise in a vacuum. The use of metrics to establish the scope of a problem, to assess progress and to legitimise responses is well entrenched across many areas. In general, the attachment to evidence that underlies this trend is to be welcomed. An accurate understanding of the scope of a particular situation—such as the number of asylum seekers and displaced in the world; the number of child soldiers; or the amount of profit generated by the illegal weapons trade—must surely help to shape more realistic policies and more effective interventions. But numbers can be manipulated to suit certain policy goals. They can be used to obfuscate as well as to clarify, to assert certainty where none exists. For trafficking, where the pressures to quantify appear to be particularly acute, the above analysis has shown that such risks are very real. It has also amply demonstrated that we do not yet have the information or the tools that are necessary to do the job properly, let alone the infinitely more complicated task of ranking the responses of every government on earth from worst to best.

The impact of a generalised failure to admit to this reality—a failure to engage honestly and openly with the problems of measurement—extends well beyond the GSI, infecting broader policy goals and processes. For example, despite widespread understanding of the difficulties attached to measuring prevalence, the new UN Sustainable Development Goals (SDG), perhaps the most important global policy initiative of this decade, will seek to assess, as a measure of progress the ‘*number of victims of human trafficking per 100,000 population, by sex, age group and form of exploitation*’.⁶³ Multiple states, institutions, organisations and individuals

⁶² D Reiff, ‘Philanthrocapitalism: A (self) love story’ in *The Reproach of Hunger: Food, justice and money in the twenty-first century*, Verso, London, 2015, p. 229.

⁶³ This indicator (16.2.2) is attached to Goal 8.7 (*Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms*). See further: United Nations Department of Economic and Social Affairs, *Sustainable Development Goals*, UN, 2016, retrieved 5 November 2016, <http://sustainabledevelopment.un.org/sdg8>

have been quick to claim credit for getting trafficking and slavery into the SDG. However, in an apparent conspiracy of silence that echoes the lack of any serious critical interrogation of the GSI, none has publicly questioned the credibility of this critical measure of progress. To the extent that this situation is being fed by the new politics of funding and influence, it is a cause for great concern.

There are tentative but perceptible signs that we are on the verge of a transformative social revolution—a fundamental, worldwide shift in our common understanding of what one human being owes to every other. In this new moral and political universe, the idea and practice of human exploitation for private profit will be unthinkable. Andrew Forrest, Roosevelt’s ‘man in the arena’,⁶⁴ deserves credit for daring greatly and striving valiantly in the cause of this revolution. But none of us working in this space is safe from the risk of mistake, overreach and hubris. It follows that no aspect of our work should be considered off-limits to scrutiny, criticism and debate.

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⁶⁴ Almanac of Theodore Roosevelt, *The Man in the Arena*, 1910, retrieved 5 November 2016, <http://www.theodore-roosevelt.com/trsorbonnespeech.html>

Constraints to a Robust Evidence Base for Anti-Trafficking Interventions

Benjamin Harkins

Abstract

Over fifteen years after the UN Trafficking Protocol was adopted, the evidence available to determine how much progress has been made in combatting human trafficking remains very limited. This paper provides a practitioner's perspective on some of the main reasons for the continuing lack of meaningful results documented in the context of anti-trafficking projects. A key finding is that limitations in the practice of monitoring and evaluation (M&E) pose the greatest constraint rather than the clandestine nature of trafficking in persons. There are currently few incentives to be rigorous in pursuing evidence, especially of the contribution made to long-term reductions in human trafficking. Bean counting the direct outputs of activities rather than assessing the outcomes that are intended to flow from them remains the core approach to M&E in the sector. Because the collection and analysis of data has not been prioritised, anti-trafficking initiatives without a strong empirical basis are reflexively continued for years—particularly notable in some of the untested assumptions about the central importance of an effective criminal justice response. Increased commitment by donors and practitioners to raise their standards of evidence for anti-trafficking projects is necessary to move beyond basic accountability and start leveraging learning, including greater willingness to document in rich detail where interventions have failed to produce their intended outcomes.

Keywords: human trafficking, forced labour, anti-trafficking, monitoring and evaluation, impact assessment, results, evidence

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Introduction

Over a decade and a half since the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol) was passed, there is still very limited evidence available to determine the extent of progress that has been achieved towards its core objectives of prevention, protection and prosecution. At all levels of anti-trafficking work, the collection and analysis of data to support a results-based approach continues to be underemphasised, particularly in comparison to the use of emotionally-charged rhetoric and hyperbole.¹

This curious allergy to providing valid supporting evidence extends to the highest profile reviews produced within the sector. In the *2015 Trafficking in Persons Report* (TIP Report), the US State Department trumpeted that the progress made since the UN Trafficking Protocol was adopted ‘has been nothing short of profound’.² In the small print much further into the report, it is stated that the key statistical data which the report collects on victims identified, prosecutions and convictions are still ‘estimates only’,³ raising questions about the empirical basis for making such a claim.

In recent years, there have been increased efforts to generate macro-level estimates of the prevalence of human trafficking and forced labour to raise awareness of the scale of the problem, most notably through the Walk Free Foundation’s *Global Slavery Index* and the International Labour Organization’s *Global Estimate of Forced Labour*. While the figures calculated have been widely cited and arguably have succeeded in increasing attention to the issue of labour exploitation, the validity of the methodological approaches for obtaining these figures has been questioned by researchers given the clear gaps that exist in national survey data from which to extrapolate.⁴

¹ R Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and institutionalization of a moral crusade’, *Politics & Society*, vol. 35, issue 3, 2007, pp. 447–475; B Anderson, *Us & Them? The dangerous politics of immigration control*, Oxford University Press, Oxford, 2013, pp. 137–145; S Zhang, ‘Measuring Labor Trafficking: A research note’, *Crime, Law and Social Change*, vol. 58, issue 4, 2012, pp. 469–482.

² US State Department, *Trafficking in Persons Report*, Washington DC, 2015, p. 13.

³ *Ibid.*, p. 48.

⁴ R Weitzer, ‘New Directions in Research on Human Trafficking’, *The Annals of the American Academy of Political and Social Science*, vol. 653, issue 1, 2014, pp. 6–24; A Guth, R Anderson, K Kinnard and H Tran, ‘Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An examination of the Global Slavery Index’, *Social Inclusion*, vol. 2, no. 4, pp. 14–22; J Brunner, *Inaccurate Numbers, Inadequate Policies: Enhancing data to evaluate the prevalence of human trafficking in ASEAN*, East-West Center, Honolulu, 2015.

In a rather extraordinary report published by the US Government Accountability Office, it was acknowledged that despite spending USD 447 million to combat human trafficking over the course of six years, ‘US government-funded anti-trafficking projects often lack some important elements that allow projects to be monitored, and little is known about project impact due to difficulties in conducting evaluations.’⁵ Though published back in 2007, a strong argument can be made that little has fundamentally changed in the quality of Monitoring and Evaluation (M&E) carried out for anti-trafficking initiatives today.

Constraining Factors

This paper provides an analysis of nine key reasons for the continuing lack of meaningful results documented in the context of anti-trafficking projects—including an unsubstantiated focus on criminal justice responses, vertical decision-making in defining outcomes and a quantitative bias in methodology applied—and makes a number of suggestions on a way forward. It presents these issues from an M&E practitioner’s point of view and bases its findings mainly on initiatives implemented in Southeast Asia, though many of the challenges identified are shared more broadly.

The analysis was primarily drawn from the author’s experience of working in the sector, including as the M&E focal point for a series of regional projects on labour exploitation, an external evaluator for United Nations agencies, a project and programme designer for several non-governmental and international organisations and a researcher on a number of trafficking and forced labour related studies. To mitigate the potential for personal bias, the findings were triangulated with secondary sources, including a wide range of relevant research studies and practice-oriented literature. The article also benefitted from review by several M&E specialists working on regional anti-trafficking projects within Southeast Asia, who contributed to the validation and revision of several drafts.

1. *Absence of Definitional Clarity*

Despite the success of advocacy to incorporate the definition of human trafficking from the UN Trafficking Protocol into national legal frameworks, what constitutes

⁵ US Government Accountability Office, *Human Trafficking: Monitoring and evaluation of international projects are limited, but experts suggest improvements*, Washington DC, 2007, p. 3.

‘trafficking’ in practice remains broadly open to interpretation.⁶ As a result, the officials responsible for enforcing anti-trafficking laws often apply the concept in a manner that suits their own agenda, notably in justifying crackdowns on irregular migrants and sex workers.⁷

Even among experts, discussions of ‘is it trafficking?’ can easily degenerate into a morass of anecdote and assumption rather than achieving greater clarity.⁸ The lengthy investigative processes required for authorities to make a determination on victim identification are sometimes in themselves an obstacle to addressing the underlying labour rights violations that have much more plainly occurred. Without a more practically defined concept, obtaining verification of whether or not interventions tasked with reducing or eliminating trafficking have been effective will continue to be problematic.

It has been pointed out that discursive competition between the organisations working on issues of exploitation has further muddied the definitional water.⁹ Increasingly, the trend has been to build alliances between the various actors involved by using the terms ‘human trafficking,’ ‘forced labour’ and ‘modern slavery’ interchangeably, as though they all in essence refer to the same phenomenon. While the argument that it is better not to get caught up in territorial disputes between organisations in the fight against exploitation certainly has merit,¹⁰ it creates further challenges for an already inadequate set of methodologies for assessing the prevalence of these abuses. Ranging from the esoteric to the indefensible, the research methodologies available have tended to generate high profile figures which are cited heavily without adequately examining their limitations. The data produced by these different methodologies is also not comparable, contributing to knowledge gaps and redundancies rather than a comprehensive understanding of the scope of exploitation occurring.

⁶ A T Gallagher, ‘Two Cheers for the Trafficking Protocol’, *Anti-Trafficking Review*, issue 4, 2015, pp. 14–32, www.antitraffickingreview.org

⁷ M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, *Anti-Trafficking Review*, issue 4, 2015, pp. 56–79 at pp. 71–76, www.antitraffickingreview.org; Open Society Foundation, ‘Sex Work and Trafficking: A donor–activist dialogue on rights and funding’, Conference Report, 2009, pp. 11–15, retrieved 15 February 2017, https://www.opensocietyfoundations.org/sites/default/files/dndreport_2009.pdf

⁸ S Molland, ‘“I am Helping Them”: “Traffickers”, “anti-traffickers” and economies of bad faith’, *The Australian Journal of Anthropology*, vol. 22, issue 2, 2011, pp. 246–250.

⁹ J A Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’, *The American Journal of International Law*, vol. 2018, no. 4, 2014, pp. 609–649.

¹⁰ F David, ‘When it Comes to Modern Slavery, do Definitions Matter?’, *Anti-Trafficking Review*, issue 5, 2015, pp. 150–152, www.antitraffickingreview.org

Instead of attempting to build cooperation through semantic flexibility, greater agreement on specific and operable definitions is needed if progress against trafficking is to be more clearly assessed. The development of a methodology to measure the relevant indicator in the UN Sustainable Development Goals (SDGs) could provide an opportunity to reach such a consensus but so far the United Nations Office on Drugs and Crime has been appointed as sole custodial agency for its calculation.¹¹ A more inclusive dialogue has been initiated under the multi-stakeholder ‘SDG Alliance 8.7’, which importantly offers a space for NGOs, trade unions and private sector firms to contribute to discussions of measurement. But if progress for SDG 8.7 is to be comprehensively assessed, it must include metrics for the ‘eradication of forced labour, modern slavery, human trafficking, child labour and the use of child soldiers,’ which have all been aggregated into one goal. So far, the only indicator proposed for SDG 8.7 relates to child labour,¹² reflecting the current lack of an international standard on how to measure the prevalence of the other phenomena referenced.

2. *Unsubstantiated Focus on Criminal Justice Responses*

Perhaps the clearest disconnect between evidence and practice in efforts to counter exploitation is the continued emphasis placed on improving the criminal justice response. There seems to be a stubborn unwillingness among many anti-trafficking actors to interpret the very limited results achieved in investigating and prosecuting cases as indicative of the need to develop alternative approaches. Judging by the massive amounts that continue to be spent on such projects, an almost magical thinking seems to persist: that criminal law officers will one day be able to enforce human trafficking laws in a manner that will eliminate exploitation if enough resources are finally brought to bear.

Although no organisation has of yet been willing to suggest that the small number of offenders who have been prosecuted and convicted¹³ has had a significant impact in reducing trafficking, the trope has been that the trafficking industry continues to grow and the anti-trafficking industry must grow in

¹¹ SDG Indicator 16.2.2: ‘Number of victims of human trafficking per 100,000 population, by sex, age group and form of exploitation.’

¹² SDG Indicator 8.7.1: ‘Proportion and number of children aged 5—17 years engaged in child labour, by sex and age.’

¹³ K Kangaspunta, ‘Was Trafficking in Persons Really Criminalised?’, *Anti-Trafficking Review*, issue 4, 2015, pp. 80—97, www.antitraffickingreview.org

response.¹⁴ How evidence-based such conclusions are should be more thoroughly questioned as it is well-established that criminal justice authorities are often unwilling or unable to share data on trafficking: ‘Some countries—including a few very big ones—do not even inform us about the problem in their midst. Either they are too disorganized to collect the information, or they are unwilling to share it.’¹⁵ The issue is not limited to the developing world as a recent study in Canada found significant discrepancies in data on human trafficking cases both within and among law enforcement agencies, as well as considerable institutional barriers to obtaining information.¹⁶

Due to the combination of inadequate measurement of results and a significant lack of transparency concerning spending on anti-trafficking activities,¹⁷ a detailed assessment of the value for money obtained through funding of criminal justice interventions is not possible. However, considering the estimate generated by the Walk Free Foundation that the top twelve providers of official development aid spend an average of USD 124 million per year on anti-trafficking initiatives,¹⁸ much of which is earmarked for criminal justice initiatives, *suggests that the marginal progress achieved has not come cheaply.*

How entrenched the focus on criminal justice responses to trafficking has become can be debated but it is fairly clear that the supply of organisations available to implement projects rather than the results they produce has been driving strategy development for many years. Given the massive amount of donor funding spent on such projects, it is striking that so little money has been allocated to testing the fundamental assumption that successful prosecution of offenders creates an effective deterrent against trafficking.

¹⁴ J Goodey, ‘Human Trafficking: Sketchy data and policy responses’, *Criminology and Criminal Justice*, 2008, vol. 8, no. 4, p. 434.

¹⁵ UNODC, ‘“Denial and Neglect Undermine the Fight against Human Trafficking”, says UNODC Director’, 12 February 2009, retrieved 25 June 2016, <https://www.unodc.org/unodc/en/press/releases/2009/February/2009-02.12.html>

¹⁶ H Millar, T O’Doherty and K Roots, ‘A Formidable Task: Reflections on obtaining legal empirical evidence on human trafficking in Canada’, *Anti-Trafficking Review*, issue 8, 2017, www.antitraffickingreview.org

¹⁷ M Dottridge, ‘Editorial: How is the money to combat human trafficking spent?’ *Anti-Trafficking Review*, issue 3, 2014, pp. 3—14, www.antitraffickingreview.org

¹⁸ M Ucnikova, ‘OECD and Modern Slavery: How much aid money is spent to tackle the issue?’, *Anti-Trafficking Review*, issue 3, 2014, pp. 133—150, www.antitraffickingreview.org

The often superficial and sensationalistic media coverage surrounding human trafficking arrests and court cases is an important factor in maintaining this agenda, as it has contributed to an over-simplified understanding of the issue among the public as one of criminality alone.¹⁹ Rather than engaging with the complex and uncomfortable matters of structural inequality involved, representations of trafficking in the media tend to emphasise a simpler and more palatable narrative of victims and criminals that has influenced public attitudes.²⁰ These attitudes matter because decision-makers can be drawn into introducing policies in accordance with public preferences (actual or perceived),²¹ creating demand for a strong criminal justice response whether it makes a major difference in reducing trafficking or not.

Considering the context where human trafficking is thought to be the most prevalent—developing countries where rule of law is limited—the goal of substantially improving criminal prosecution within a brief project timeframe is often unrealistic. Meaningful action by law enforcement officials on trafficking cases is restricted not only by capacity and resource constraints but also endemic corruption,²² adding further questions about how strategic siloed criminal justice responses may be. In Thailand, for instance, several studies have documented that the police have not only been ineffective in enforcing anti-trafficking laws but are themselves heavily complicit in trafficking in persons.²³

Bringing in western law enforcement officers to provide assistance to their counterparts in less developed nations is a favoured capacity building approach for criminal justice projects. For example, the Asia Regional Law Enforcement Management Program has provided training to over 750 police from 25 countries

¹⁹ Human Trafficking Working Group, 'Human Trafficking in the Media', 2010, available at <https://law.uq.edu.au/research/our-research/human-trafficking-working-group/human-trafficking-media>

²⁰ R Andrijasevic and N Mai, 'Editorial: Trafficking (in) representations: Understanding the recurring appeal of victimhood and slavery in neoliberal times', *Anti-Trafficking Review*, issue 7, 2016, pp. 1—10, www.antitraffickingreview.org

²¹ H Crawley, *Understanding and Changing Public Attitudes: A review of existing evidence from public information and communication campaigns*, Swansea University, 2009.

²² K Kangaspunta, 2015; Verite, 'Corruption & Labor Trafficking in Global Supply Chains', Amherst, 2013, retrieved 15 February 2017, www.verite.org/sites/default/files/images/WhitePaperCorruptionLaborTrafficking.pdf

²³ Environmental Justice Foundation, *Slavery at Sea: The continued plight of trafficked migrants in Thailand's fishing industry*, London, 2014, p. 31; C Robinson *et al.*, *Anti-Human Trafficking in Thailand: A stakeholder analysis of Thai Government efforts, the U.S. Tip Report and Rankings, and Recommendations for Action*, Washington DC, 2016, pp. 55—58.

through a partnership with the Australian Federal Police.²⁴ A concern with such trainings is that they typically fail to adequately address the massive differences in operating environments that limit the utility of training individual police personnel in western law enforcement techniques. Moreover, as only 17 persons have actually been convicted of human trafficking based on the investigations of the Australian Federal Police since 1999,²⁵ it could also be questioned how much more effective western authorities are at enforcing anti-trafficking laws.

3. *Vertical Decision-Making*

In recent years, some progress has been made in advocating for a more ‘victim-centred approach’ to adjudication of anti-trafficking cases, with governments adopting additional policy measures to treat victims as rights holders.²⁶ However, the process of defining positive outcomes for those faced with exploitation is still primarily driven by donors and governments rather than the voices of trafficked persons themselves. Most major aid agencies now establish organisational performance indicators to which their implementing partners are required to contribute. While this standardisation of data can produce valuable comparisons, it also means that priorities are decided by bureaucracies located in headquarter offices—far away from their intended beneficiaries and the practitioners who work with them directly.²⁷

²⁴ Viet Nam News, ‘VN police being trained to combat human trafficking’, Viet Nam News, December 2015, retrieved 15 February 2017, www.vietnamnews.vn/society/278442/vn-police-being-trained-to-combat-human-trafficking.html#QjfKS8eehdz1AZid.99

²⁵ University of Queensland, ‘Statistics’, 2015, available at <https://law.uq.edu.au/research/research-activities/human-trafficking/statistics>

²⁶ US State Department, *Trafficking in Persons Report*, Washington DC, 2015, pp. 80—356; European Commission, *Report on the Progress Made in the Fight Against Trafficking in Human Beings (2016)*, Brussels, pp. 11—12.

²⁷ According to the USAID website, ‘Because the Agency needs to be able to report externally on the results produced by its development investments, USAID has identified some performance indicators as the best choices for characterizing progress in each of the sectors and technical areas in which it works. This set of indicators, called standard indicators, is to be given priority over alternatives wherever a particular standard indicator would be applicable.’ See USAID, *Standard Indicators*, available at <http://usaidprojectstarter.org/content/standard-indicators>

An important example of centralised decision-making on the normative outcomes of anti-trafficking work is the above-mentioned emphasis on prosecution of offenders. Rather than supporting trafficked persons to seek financial compensation or other remedies so that they can move on with their lives, many are re-victimised by criminal justice systems—forcing them to remain institutionalised without freedom of movement or the opportunity to work until their cases are resolved. A global review of the unintended impacts of anti-trafficking interventions in 2007 revealed that access to assistance and protection for trafficked persons is usually conditional on cooperation with law enforcement officials, often in the form of statements to be used as evidence in prosecuting suspected traffickers.²⁸ More recent reports confirm that survivors in many countries continue to face conditional and even forced assistance after being trafficked, with long and compulsory shelter stays delaying or even undermining their recovery.²⁹

It is only a fairly recent development that obtaining timely financial compensation for trafficked persons has emerged as a high priority issue, supporting the use of alternative mechanisms for redress such as mediation, administrative hearings and labour and civil court judgements. Traditionally, compensation has been viewed as the last step in the long and legalistic process of providing access to justice for trafficking victims, which often meant that they were repatriated before any compensation was paid.³⁰ The shift towards seeking more responsive remedies is in part due to increased funding of local NGOs and trade unions to deliver legal assistance services, which has served to highlight the personal priorities of trafficked persons. However, it remains something of an afterthought for a number of major anti-trafficking donors, including the US State Department's Office to Monitor and Combat Trafficking in Persons which currently does not include any reference to financial compensation for victims within its framework of common performance indicators.

²⁸ Global Alliance Against Traffic in Women, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, Bangkok, 2007, p. 14.

²⁹ R Surtees, *After Trafficking: Experiences and challenges in the (re)integration of trafficked persons in the Greater Mekong Sub-region*, UNIAP/Nexus Institute, Bangkok, 2013, pp. 6—7; European Commission, 2016, pp. 11—12.

³⁰ La Strada International, *Toolkit on Compensation for Trafficked Persons*, 2012, Amsterdam, pp. 12—15.

4. Quantitative Bias

The growing recognition of the gap in evidence within the anti-trafficking field has led to donor pressure on grant recipients to produce more data on their results. Unfortunately, it has also contributed to a significant methodological bias favouring quantitative over qualitative approaches due to the donor preference for ‘hard data’. This mirrors the trend in development research more broadly, in which qualitative methods are increasingly considered of secondary importance to empirical investigations.³¹ Examining why such biases exist, one evaluation expert has suggested that ‘numbers convey a sense of precision and accuracy even if the measurements that yielded the numbers are relatively unreliable, invalid and meaningless’.³²

Particularly for some of the private foundations and philanthropic funds that have become significant players in the anti-trafficking sector in recent years, the language and methods are largely borrowed from their heralded counterparts in the global health field, such as the Gates Foundation. While there is certainly reason to draw upon good practices from these actors given some of their notable successes, questions should be asked about how well-adapted the strategies are given the differences in clarity between measuring the outcomes of health and anti-trafficking interventions. It has been noted that due to their focus on quantification and ‘scalable solutions’, these approaches have in some cases just yielded more data rather than a conclusively better understanding of the complexities involved.³³

A former regional director of the Rockefeller Foundation described this trend among foundations as a regressive return to the positivist-style of development that was typical during the 1950s and 1960s, a paradigm which was heavily criticised for its reductionism.³⁴ In particular, increased insistence on

³¹ S Garbarino and J Holland, *Quantitative and Qualitative Methods in Impact Evaluation and Measuring Results*, DFID, London, 2009, p. 1.

³² M Q Patton, ‘Enhancing the Quality and Credibility of Qualitative Analysis’, *Health Services Research*, vol. 34, 1999, pp. 1189–1208.

³³ S Berresford, ‘What’s the Problem with Strategic Philanthropy?’ in *The Chronicle of Philanthropy*, 3 October 2010; A Feinstein, ‘International Philanthropy in Southeast Asia: Case studies from Indonesia and the Philippines’ in *Understanding Confluences and Contestations, Continuities and Changes: Towards transforming society and empowering people*, Nippon Foundation, Bangkok, 2012, pp. 88–96.

³⁴ R Sciortino, “‘Learning Across Boundaries’: Grantmaking activism in the Greater Mekong Subregion’ in O Salemink (ed.), *Scholarship and Engagement in Mainland Southeast Asia*, Silkworm Books, Chiang Mai, 2016, pp. 154–155.

randomised controlled trials as the only form of impact assessment that can be accepted as methodologically valid has proven an expensive and constraining article of faith.

Application of qualitative approaches that are critical, participatory and gender-responsive in measuring the results of anti-trafficking activities is sorely needed, not only for purposes of triangulating with and refining quantitative findings but also as a substitute in some cases. The value of using cost-effective and nuanced qualitative methods as an alternative to large-scale surveys should be more broadly recognised by donors. A technique that has proven effective for some practitioners is the ‘Most Significant Change’ method, which involves the collection of change stories in the field and the systematic selection of the most significant of these stories through in-depth discussion by panels of stakeholders and staff.³⁵

5. *Veneer of Objectivity*

Anti-trafficking work takes place within the broader field of international development projects where the parties involved are incentivised to present a picture of success—or at least not to examine shortcomings in any serious or public manner. Rather than objective assessment, M&E systems are typically designed to generate evidence that progress has been achieved, in what can be described as participation in an economy of bad faith.³⁶

While performance indicators for anti-trafficking initiatives are phrased in non-directional terms, they tend to be formulated for measurement of improvements that are quite likely to occur and which are not necessarily indicative of fundamental changes. The staff responsible for collecting data and analysing indicator results may also be susceptible to confirmation bias because they want to believe that their interventions are making a positive difference. Adequately identifying negative changes, a particularly critical concern for anti-trafficking interventions, requires deliberately setting out to capture such results from the disadvantaged groups most likely to have experienced them.³⁷

³⁵ R Davies and J Dart, *The ‘Most Significant Change’ (MSC) Technique: A guide to its use*, Cambridge, 2005, p. 8.

³⁶ S Molland, *The Perfect Business? Anti-Trafficking and the sex trade along the Mekong*, University of Hawai’i Press, Honolulu, 2012, p. 225.

³⁷ M Dottridge, ‘Research Needs Concerning the Monitoring, Evaluation and Impact Assessment of both Research about Human Trafficking and Projects and Programmes to Address Human Trafficking’ in *Human Trafficking: New directions for research*, IOM, Geneva, 2008, pp. 62—65.

For the criminal justice response to trafficking, indicators such as victims identified, arrests, prosecutions and convictions are typically measured,³⁸ all of which may be subject to manipulation to show illusory progress. The NGO Empower has documented that before the US State Department's TIP Report is released each year, 'a few hundred migrants, mostly young women, are rounded up, detained and deported as victims of human trafficking to show that Thailand is doing its job to tackle trafficking in the sex industry'.³⁹ Although this demonstrates that law enforcement officials definitely know how to raid brothels and massage parlours, it does little to prove that anything meaningful has been achieved in countering human trafficking.

When external evaluations are conducted, what many organisations seek is the appearance of impartial assessment to present a stronger case that their work is going well. Very few are willing to support or disseminate a truly critical examination of the results of an action. This has created a whole industry for professional evaluators who understand very well that their ability to continue to find work depends upon producing reports that do not reveal any serious concerns. Partly because of the inherent compromises involved, seldom are such exercises taken seriously enough to use them for decision-making about continuing or discontinuing an intervention. Instead, they are largely a contractual requirement to be fulfilled that at most suggest some minor adjustments to strategy. The financial link between the organisations implementing projects and evaluators remains too close for genuinely independent evaluations to regularly occur within the sector.

6. Capacity Limitations

One way in which gaps in M&E capacity manifest themselves is a restricted focus on counting the direct outputs of activities rather than the outcomes that are intended to flow from them (i.e. accountancy instead of research). While this type of M&E does have value, it relies on the rather large assumption that the outputs produced will lead to the envisaged outcomes without actually obtaining verification.

Because of significant limitations in the ability of local organisations and institutions implementing counter-trafficking activities to collect, analyse and report data, it is frequently decided to work around rather than through them in

³⁸ A T Gallagher and R Surtees, 'Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?', *Anti-Trafficking Review*, issue 1, 2012, pp. 10—30, www.antitraffickingreview.org

³⁹ Empower, 'US, Thailand must end scapegoating', *Bangkok Post*, 2 March 2015.

measuring long-term results. The temptation to invest in an external evaluation by a well-known expert that will provide a turnkey solution to satisfy donor requirements is strong. However, it greatly underestimates the importance of building trust with beneficiaries to obtain accurate information on an issue as sensitive as human trafficking. Working through rather than in parallel to local M&E systems is essential to achieving sustainable improvements in the evidence-base for anti-trafficking interventions.

A key strategy for more effective measurement of results should be to provide coaching on M&E for implementing partners, especially on assessment of longer-term outcomes. This requires significant effort by project staff—in developing tools,⁴⁰ providing training and working with local organisations on an ongoing basis to strengthen reporting—but it is essential for getting credible primary data. In particular, providing training on simplified methodologies for beneficiary tracing that any organisation can apply has shown promise in countries where prevention activities have been carried out. Findings from over 1,500 tracing surveys collected by migrant worker resource centres in Cambodia, Laos, Myanmar and Vietnam suggest that beneficiaries were more likely to use regular channels for migration because of services provided and felt that their rights were better protected as a result.⁴¹

Internal capacity within international organisations is also frequently insufficient to rigorously monitor and evaluate results. Although it is generally assumed that programmatic staff have some understanding of these matters, it tends to be an under-emphasised skillset in the trafficking sector, particularly in comparison to knowledge of the thematic area. The opposite situation, where specialised M&E staff are brought in without any significant thematic expertise can be equally problematic, as it assumes that approaches from other fields can be applied without a detailed understanding of human trafficking. The indications are that experience both in the complexities of anti-trafficking work and M&E methodologies is necessary for high-quality systems to be established.

An associated risk is a functional disconnect between the results obtained through M&E processes and project management decision-making. In such cases, M&E becomes a black box which sits on the shelf unopened because results are measured but not applied. Limitations in the capacity of management staff to

⁴⁰ See for example: *Monitoring and Evaluation Guide for Migrant Worker Resource Centres*, ILO, Bangkok, 2014, available at http://www.ilo.org/asia/whatwedo/publications/WCMS_313603/lang—en/index.htm

⁴¹ ILO, *GMS TRIANGLE Project Update October 2015*, Bangkok, p. 6.

effectively make use of data can lead to M&E systems that are a siloed and superficial exercise. Without regular review and utilisation of data for results-based management by those responsible for directing the course of the project, little is gained from efforts to improve the measurement of results other than the appearance of concern for evidence.

7. *Reluctance to be rigorous*

Inadequate assessment of results is not always unintentional within the counter-trafficking sector. For some projects, there are concerns about measuring beyond the direct outputs of the project because it could reveal flaws in the underlying logic of the intervention. It requires a certain degree of confidence in approach to conduct a serious assessment of longer-term results.

A related habit is to vastly overstate what has actually occurred in the phrasing of indicators to cover the lack of sufficient evidence of long-term effect. Because a service has been provided to a beneficiary who is thought to be vulnerable to abuse, such as an irregular migrant worker, they may be counted as having been ‘removed from an exploitative situation’. The rhetoric has increased even further in recent years, with beneficiaries referred to as having been ‘liberated from slavery’ by some anti-trafficking organisations. Seldom are the veracity of such claims examined in any real depth as it is not in the interest of any of the organisations involved to find them lacking.

Exaggerated assessment of a project’s contribution to changes through an end-line survey or final evaluation is also a common occurrence for anti-trafficking initiatives. As a form of faulty logic, this can be referred to as a regression fallacy. Because a desirable outcome was determined to have occurred, it is assumed to be a result of the intervention. The change may in fact have had little to do with the activities implemented but associations can still be drawn based on close proximity or time of occurrence.

Perhaps the most questionable of such assertions relates to human trafficking legislation. Although decisions—by governments—to amend or enact legislation are inherently beyond the scope of anti-trafficking projects, providing support for policy-related research or dialogue is often enough to state that a major contribution was made. To obtain a better understanding of the reasons why legislative change occurred, in-depth process tracing studies should be carried out to assess the causal factors involved.

8. *Insufficient Investment*

Despite the emerging consensus on the need to improve the quality of M&E for anti-trafficking projects and programmes, the funding provided for this purpose continues to be decidedly inadequate. The small amounts allocated in budgets make it clear that the push for results-based management within the sector is still more rhetoric than reality. Research suggests this to be a false economy as the savings on M&E costs are likely to be lost through reduced impact.⁴²

Acknowledging the reluctance to invest in M&E systems, some donors and implementing agencies have established minimum budgetary requirements—generally 2—5% of project costs. Though it is a positive step for ensuring that more resources are directed towards measuring results, the budget allocated is still generally not sufficient to retain a qualified staff member to be dedicated full-time to developing and implementing M&E strategies. Perhaps even more detrimentally, the small amounts devoted to this purpose means that the task often becomes the responsibility of short-term consultants, who are retained to develop the strategies on paper but not to see them through to realisation. As a result, operationalising the M&E system sinks to the bottom of a long list of project priorities, with spending on implementation of more activities usually privileged over obtaining a clear understanding of what actually works.

Another particularly notable gap in funding is the amount allocated for assessment of impact. Few anti-trafficking projects make significant efforts to measure impact during implementation or after project closure due to the perceived complexity and high expense. This is justified in some cases as impact assessment is not appropriate for every project. Nevertheless, it is almost universally included as a criterion during evaluations. The lack of data upon which to base conclusions creates a methodologically unsound task for evaluators, essentially treating their personal opinion as evidence of impact.

When more rigorous studies of the prevalence of trafficking and forced labour have been conducted by projects,⁴³ they are typically purposed to generate a figure which shows that exploitation is common in a particular location or sector for use in advocacy or strategy formation. Sufficient funding for follow-up research to assess changes and their causality is rarely available at the end of project cycles.

⁴² KPMG International, *Monitoring and Evaluation in the Development Sector*, Zug, 2014, p. 7.

⁴³ ILO, *Employment Practices and Working Conditions in Thailand's Fishing Sector*, Bangkok, 2013; United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Human Trafficking Sentinel Surveillance: Poipet, Cambodia*, Bangkok, 2010; UNIAP, *Estimating Labor Trafficking: A study of Burmese migrant workers in Samut Sakhon, Thailand*, Bangkok, 2011.

Though more resources are a clearly indicated need for strengthening M&E systems within the anti-trafficking field, the solution to doing M&E better is not simply to throw money at the issue. Lengthy and elaborate approaches to measuring results can become inward facing conversations among experts that have little practical value. Particularly due to the *ex post* timing and long feedback loop of many project evaluations, the findings produced may no longer have much value for organisational decision-making by the time they are received. Greater emphasis on regular monitoring of results is often a more strategic investment in improving M&E, allowing for actionable data to be obtained and applied to improve the results of both current and future interventions.⁴⁴

For example, through investing in training to improve data collection methods across 26 government, trade union and NGO partners, the International Labour Organization (ILO) has acquired detailed data on the outcomes of 1,014 labour rights grievances lodged by migrant workers in the Greater Mekong Subregion—including over USD 2 million in compensation awarded. Combined with qualitative case studies documented by these organisations, a very rich understanding of the progress made and challenges remaining in facilitating access to justice for migrants has been obtained. This has not only enabled the ILO's partners to better manage their cases but also helped to shape interventions to strengthen the relevant policy and institutional frameworks.⁴⁵

9. Gender-blind Indicators

Improving the gender sensitivity of programming has been identified as a key concern by many of the leading organisations working on human trafficking. Because of the enduring misconception of the issue as predominantly affecting women who are trafficked for sexual exploitation, responses have frequently resulted in restricted mobility and independence in order to 'protect' them from abuse, and/or neglected the exploitation of men entirely.⁴⁶

Reflecting this legacy, very few anti-trafficking projects include indicators that adequately measure gender differences in their results. At best, data is disaggregated by sex to determine success in reaching women and men beneficiaries. With the exception of projects that are designed specifically to address so-called 'sex trafficking,' indicators which show signs of change that are more specific to women or men are very limited. When they are included, they often

⁴⁴ KPMG International, 2014, p. 20.

⁴⁵ ILO, *Access to Justice for Migrant Workers in South-East Asia*, Bangkok, 2017.

⁴⁶ GAATW, *Beyond Borders: Exploring links between trafficking and gender*, Bangkok, 2010.

measure results which are highly questionable, such as the number of women ‘rescued’ from sex work with little or no consideration of whether they wanted to be.

A case in point is provided by the *Handbook on Performance Indicators for Counter-Trafficking Projects*, the core of which provides a matrix of common indicators drawn from the experience of implementing 212 trafficking projects across 84 countries.⁴⁷ Among the list of 156 indicators catalogued, it can be argued that none are significantly gendered, with the closest reference being to indicators for reduced discrimination against ‘vulnerable groups’. As about half of these are meant to be measured as simple yes/no or true/false dichotomies, they afford little opportunity to determine more complex gender differences within project results (though disaggregation of data between women and men is at least recommended in a later section).

Through conducting rigorous baseline research, performance indicators which are better suited to address the different ways in which women and men are exploited can be developed, including their intersections with contextual specificities. For example, a recent study of *Employment Practices and Working Conditions in Thailand’s Fishing Sector* found that the majority of the cases of forced labour identified among male migrant workers on fishing vessels involved withholding of wages to limit their mobility.⁴⁸ As societal definitions of male success heavily emphasise the ability to provide for their families, many migrant men have reported feeling unable to leave exploitative situations if it means returning home empty-handed.⁴⁹ Therefore, regularity of pay may be an important indicator of reduced vulnerability to forced labour among men in some cases.

Conclusion

A common thread running through these explanations for the lack of clear results in the anti-trafficking field is that limitations in the practice of M&E pose the greatest constraint rather than the clandestine nature of trafficking in persons. There are currently few incentives for practitioners to be rigorous in pursuing better data, especially on the contribution made to long-term reductions in human trafficking among target groups. Interventions continue to be designed and funded largely based upon donor foreign policy agendas—and the outsized supply of

⁴⁷ IOM, *Handbook on Performance Indicators for Counter-Trafficking Projects*, Geneva, 2008.

⁴⁸ ILO, *Employment Practices and Working Conditions in Thailand’s Fishing Sector*, Bangkok, 2013.

⁴⁹ R Surtees, *Trafficking of Men—A trend less considered: The case of Belarus and Ukraine*, IOM, Geneva, 2008, pp. 79—80.

anti-trafficking organisations that are available to implement them—rather than results-based decision-making on what works.

Because evidence has not been prioritised within the anti-trafficking sector, claims without a strong empirical basis have remained unchallenged for years—particularly notable in some of the untested assumptions about the central importance of an effective criminal justice response. There is a need to reassess some of the gospel of counter-trafficking approaches in light of complementary emerging strategies such as addressing exploitation through strengthened protection of labour rights for migrant workers and other vulnerable groups. A closely related question to be considered is whether conviction of traffickers should remain the chief goal in pursuing justice for trafficked persons rather than other remedies, such as financial compensation, which may be more responsive to their needs.

Even when done in a committed and effective manner, M&E for anti-trafficking work is an inexact science. As a complex and contextual social phenomenon, it is not likely to ever achieve the level of causal assurance that public health interventions can provide in preventing or curing diseases. Moreover, there are significant concerns with presuming that the normative course of development for the field should adopt a similar positivist bent. It is important that practitioners carefully consider the limitations of data collected on trafficking issues and remain critical of statistical data that is presented with unqualified certainty (and sometimes deliberate mystification) within the field.

However, there is little doubt that more rigorous measurement of results and active utilisation of these findings in programming decisions would greatly benefit the anti-trafficking sector. To move beyond basic accountability for delivery of outputs and start leveraging learning, increased commitment by donors and practitioners to raise the standards of evidence for anti-trafficking projects is necessary, including a greater willingness to determine in vivid detail where interventions have failed to produce their intended outcomes.

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Monitoring and Evaluation of Human Trafficking Partnerships in England and Wales

Ruth Van Dyke

Abstract

In the United Kingdom, human trafficking and, more recently, modern slavery has been pushed up the political and policy agenda. At the same time, partnership working has been promoted at international and national levels in order to encourage a more holistic response to trafficking. This article examines the nature of the evidence collected to monitor and evaluate the activities and outcomes of organisations involved in a number of human trafficking partnerships in England and Wales. Underpinning this analysis is the ‘4 Ps’ approach to tackling human trafficking: Prevention, Protection, Prosecution and Partnership. Based on interviews with a variety of actors working in different partner bodies, limitations of evidence in relation to both monitoring activities as well as evaluating outcomes emerged. These relate to inadequate data collection, lack of robust methods of data collection, untested assumptions, the complexity of gathering evidence which reflect human welfare oriented goals, and the sharing of evidence between partner organisations. A key finding is that current data and methods of data collection are inadequate for the purpose of measuring the effectiveness of anti-trafficking initiatives and partnerships. Another key finding is the way in which partnerships challenged received outcomes and expanded their focus beyond victims of trafficking or criminal justice goals. Finally, I explore whether criminal justice outcomes can be leveraged to foster deterrence, by interrogating what evidence might be needed.

Keywords: human trafficking, monitoring, evaluation, evidence, partnerships

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Introduction

Human trafficking has been pushed up the political agenda in the United Kingdom (UK) as a result of new legislation, including the Modern Slavery Act of March 2015, and the appointment of an Independent Anti-Slavery Commissioner with a remit ‘to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims’.¹ Moreover, the designation of modern slavery as a threat by the National Crime Agency (NCA) has demonstrated the importance attached to tackling human trafficking and other forms of enslavement as serious organised crimes.²

The Modern Slavery Act which covers England and Wales has had a number of profound consequences. Firstly, it has simplified the legislative landscape by bringing a number of different offences under one act. Thus, the Act has reflected the findings of the Modern Slavery Bill Evidence Review, which sought to focus attention on the act of enslavement and ensure all related offences—slavery, servitude, forced labour and human trafficking—were encompassed under the umbrella term ‘modern slavery’.³ Secondly, the Act has guaranteed the same level of protection to victims of all forms of enslavement. Thirdly, it has established the same level of scrutiny and penalty for all the offences. Finally, police, non-governmental organisations (NGOs), local authorities, and other professional bodies have widened their remit to encompass modern slavery, where hitherto they had focused on human trafficking.

For the purpose of this article, I will use the term human trafficking with reference to victims and to activities and partnerships aimed at tackling human trafficking, as well as the wider forms of enslavement referred to in the UK as ‘modern slavery’.

¹ Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, London, 2016, p. 8, retrieved 21 March 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559571/IASC_Annual_Report_WebReadyFinal.pdf

² NCA, *National Strategic Assessment of Serious and Organised Crime 2016*, retrieved 21 March 2017, <http://www.nationalcrimeagency.gov.uk/publications/731-national-strategic-assessment-of-serious-and-organised-crime-2016/file>

³ B Butler-Sloss, F Field and J Randall, *Establishing Britain as a World Leader in the Fight against Modern Slavery: Report of the modern slavery bill evidence review*, 2013, retrieved 1 October 2016, <http://www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf>

There has been considerable development in national human trafficking policy in England and Wales over the last ten years. Moreover, at the local level, NGOs and statutory bodies like the police, local authorities and the National Health Service (NHS)⁴ have been engaged in a wide range of activities to prevent human trafficking, raise awareness, identify possible victims, provide support and care to victims, and investigate and prosecute those responsible for trafficking. In order to provide a more effective response to human trafficking, an increasing number of these organisations have come to work in partnership.⁵

This policy and practice has been subject to critical review, whereby good practice has been described, breaches of the Council of Europe Convention against Trafficking in Human Beings (hereafter ‘European Convention against Trafficking’) have been discussed, and areas requiring improvements have been identified.⁶ In addition, the All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery has recommended significant changes in data capture and sharing in order to enhance the response to human trafficking.⁷

This article provides further insight into the issue of data capture and use. It explores the nature of evidence collected, its constraints and limitations, and its effectiveness, in relation to monitoring and evaluating anti-trafficking initiatives and partnerships. It is underpinned by primary research undertaken between 2013

⁴ The NHS is the UK’s publicly funded national health care system.

⁵ For example, The Human Trafficking Foundation supports a network for human trafficking partnerships in England and Wales.

⁶ The Anti-Trafficking Monitoring Group of nine NGOs has undertaken a wide range of reviews about how the UK government and relevant organisations have responded to the requirements of the Council of Europe Convention on Action against Trafficking in Human Beings. Their reports are: *Wrong Kind of Victim? One year on: An analysis of UK measures to protect trafficked persons*, 2010; *All Change: Preventing trafficking in the UK*, 2012; *Hidden in Plain Sight. Three years on: Updated analysis of UK measures to protect trafficked persons*, 2013; *In the Dock: Examining the UK’s criminal justice response to trafficking*, 2013; *Class Acts? Examining modern slavery legislation across the UK*, 2016, Anti-Slavery International, London. See also: C Robinson, *Preventing Trafficking for Labour Exploitation*, Focus on Labour Exploitation, London, 2015; Slavery Working Group, *It Happens Here: Equipping the United Kingdom to fight modern slavery*, Centre for Social Justice, London, 2013; and GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second evaluation round*, 2016, retrieved 19 October 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abcd>

⁷ All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery, *Inquiry into the Collection, Exchange and Use of Data about Human Trafficking and Modern Slavery*, London, 2014.

and 2016 to explore partnership working on human trafficking. The research entailed interviews with people involved in anti-trafficking activities including fifteen police officers, staff working in a wide range of NGOs, immigration enforcement officers, local government officials, and those who fostered partnerships between these different organisations. Interviews were undertaken in four parts of England and Wales that reflected both Metropolitan and rural communities. It also draws on research undertaken for a local authority-sponsored human trafficking operational group⁸ that asked for help to collect and collate data in order to improve their response to trafficking.

Monitoring and evaluation should be fundamental aspects of organisational activity, both for accountability purposes and to judge whether aims have been achieved. This may present organisational challenges in terms of capacity to engage in data collection and analysis, adequate systems to record data, and understanding what data needs to be collected for different purposes. Measuring inputs (activities undertaken in relation to prevention, victim protection or investigations) may be the easiest information to collect and record, but it is insufficient to measure outcomes or impact, i.e. the change brought about by interventions.⁹ Gallagher and Surtees note that measuring the success of anti-trafficking initiatives depends on which stakeholders are asked to comment on success; hence, evaluations of outcomes may only be partial.¹⁰ A question this paper seeks to address is what evidence is collected and used by organisations involved in anti-trafficking work in England and Wales. However, it is not just what organisations do on their own that matters. Monitoring activities undertaken on behalf of a partnership, an evaluation in relation to outcomes achieved, and the value added through collaboration are also necessary.¹¹

The sections that follow discuss the kinds of evidence used to monitor or evaluate awareness-raising and training, victim identification, victim support, and criminal justice responses. Some of the limitations of the evidence collected, as well as

⁸ This local authority-sponsored human trafficking operational group includes staff from local authority departments, a wide range of local NGOs who work with human trafficking victims or vulnerable adults, national and international organisations that include human trafficking in their remit, local and specialist police officers, staff from the National Health Service, organisations working with the homeless.

⁹ D Parkinson and A Wadia, *Assessing Change: Developing and using outcomes monitoring tools*, Charities Evaluation Services, London, 2010.

¹⁰ A Gallagher and R Surtees, 'Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?', *Anti-Trafficking Review*, issue 1, 2012, pp. 10—30.

¹¹ P Williams, *Making a Difference Together? Planning, monitoring and evaluating voluntary and community sector collaborative working*, Charities Evaluation Service, London, 2010.

constraints to data collection and analysis, will also be highlighted. Finally, I will briefly explore whether evidence collected from criminal justice responses can be used as a proxy measure of deterrence.

Evidence about Awareness-raising and Training of Front-line Professionals

Awareness-raising amongst the public and training of staff, in particular front-line professionals, has been promoted by international and national policy.¹² It appears to be NGOs in the UK who have developed the expertise to offer awareness-raising or training packages.¹³ Thus an awareness-raising NGO may be a critical organisation in an anti-trafficking partnership as it can provide the capability to enhance understanding of human trafficking, of indicators of trafficking and, where appropriate, points of referral. This leads to the question about what evidence is collected to determine what activities took place (monitoring data), and the outcomes achieved (evaluation data). The European Communities Against Trafficking Project (ECAT) based in Westminster and the Royal Borough of Kensington and Chelsea, and Just Enough UK¹⁴ can be used to illustrate issues related to evidence.

As part of the partnership model developed by ECAT, Stop the Traffik was charged with developing and delivering a wide range of awareness-raising events including the Gift Box exhibition, film nights, and other public meetings in 2013 and 2014. In addition, it provided training for thousands of front-line staff working for local authorities, the NHS, police and Home Office¹⁵ immigration enforcement teams. Data was collected in relation to the number and type of events, and the number of participants. This allowed them to

¹² For example, by the European Convention against Trafficking, HM Government's Human Trafficking Strategies and, more recently, the 2014 Modern Slavery Strategy.

¹³ For example, Stop The Traffik, Unchosen, Just Enough UK, Unseen and ECPAT UK are some of the NGOs that provide awareness-raising to the public or undertake training of staff working in different settings.

¹⁴ The ECAT Project was a West London partnership between two local authorities, the Human Trafficking Unit of the Metropolitan Police Service, Rahab, an NGO that cares for women associated with prostitution or who are victims of trafficking, Stop the Traffik, which operates to prevent trafficking and raise awareness, and the Mayor's Office for Policing and Crime. Just Enough UK is an NGO that raises awareness of modern slavery amongst primary school children and is sponsored by a wide range of donors. It has partnered with the MPS specialist trafficking unit to train the staff that work in schools.

¹⁵ The Home Office is the UK government department for home affairs, including national security, police, emergency services and immigration.

demonstrate they had fulfilled their brief to provide awareness-raising and training as part of the ECAT project.

Just Enough UK offers an interactive drama programme, which has been taken up by an increasing number of primary schools located in various parts of the UK. It aims to raise children's awareness of human trafficking, and to help children learn five signs of slavery which they may be able to use to discern victims in a situation they witness. Just Enough UK collects data on the number of schools, children and teachers participating in the awareness-raising events.

The monitoring data collected by ECAT and Just Enough UK may serve a very important function for partners and for funders as they document the scale of work undertaken. This can be used to judge if the promised activities were carried out. However, this data is not adequate if organisations or funders seek information about outcomes or impact.

Awareness-raising and training of professional staff assumes that by providing information about human trafficking, the public and front-line staff will be aware of what constitutes trafficking, acquire knowledge about indicators of human trafficking, and, where appropriate, know what they should do if they come across possible cases. Monitoring data however does not provide an indication of learning. Moreover, while 'evaluation forms' might provide legitimate feedback on what participants thought about an event, these forms cannot be used to evidence 'learning'. Just Enough UK does seek to obtain such information as it asks pupils to record what they learnt from their session. However, a more robust form of evaluation of awareness-raising events would entail pre- and post-event questionnaires or interviews to determine the change in the level of understanding of human trafficking. Hester and Westmarland included pre- and post-questionnaires and interviews in order to evaluate awareness-raising activities in schools in relation to domestic violence, and this could well be a model for awareness-raising related to human trafficking.¹⁶ However, this is a time consuming and costly method of collecting evidence. Local authorities and NGOs would require capacity, in terms of time and a budget, to undertake such research. These practical constraints to evaluation have been noted elsewhere.¹⁷ Therefore, it is

¹⁶ M Hester and N Westmarland, *Tackling Domestic Violence: Effective interventions and approaches*, Home Office Research Study 290, Home Office, London, 2005.

¹⁷ A Gallagher and R Surtees, *Assessing the Impact and Effectiveness of Counter-Trafficking Interventions in the Criminal Justice Sector: A discussion paper on issues, obstacles and opportunities*, Asia Regional Trafficking in Persons Project, 2012, retrieved 27 June 2016, <https://nexushumantrafficking.files.wordpress.com/2015/03/assessing-impact-and-effectiveness-of-at-interventions-in-cj-sector-gallagher-surtees-2011.pdf>

possible that evidence on awareness-raising will continue to focus on monitoring inputs (events) and outputs (number of people trained) rather than outcomes or impact.

From Marshall's standpoint, organisations engaged in awareness-raising initiatives should seek to measure and evaluate changes not only in understanding and attitudes but also in behaviour.¹⁸ In the UK context, the desired impact of awareness-raising is that people will now report possible victims of human trafficking they encounter, and this information will be recorded and, where necessary, passed to the relevant institutions. As discussed in the next section, record keeping may be a problem. Just Enough UK illustrates how impact can be measured. Faced with an unforeseen outcome, which entailed children reporting possible cases of human trafficking following a drama presentation, the organisation created a mechanism to record and to transmit this information to appropriate people (e.g. head teacher or police) who could take action. These reports, while small in number,¹⁹ can be used as a measure of short-term impact. Therefore, Just Enough UK has collected evidence that can be used for evaluative purposes. It has data from children related to a learning outcome, and on impact, i.e. a report about something children had witnessed and felt might constitute human trafficking.

While training of front-line professionals has been a key policy goal, this is not just because gaining understanding is important in its own right, but because it is assumed that training professionals on human trafficking and indicators will lead to the identification of victims, and thereby facilitate their protection and criminal investigation of their cases. The question is, is this the case? Is there evidence in the short term that training facilitates victim identification or might this be a long-term outcome which makes it more difficult to evidence a relationship between training and victim identification?

¹⁸ P Marshall, *Re-Thinking Trafficking Prevention: A guide to applying behaviour theory*, United Nations Inter-Agency Project on Human Trafficking, Bangkok, 2011.

¹⁹ Interview, Just Enough UK, July 2015.

Evidence about Victim Identification

The UK National Referral Mechanism (NRM) provides the available evidence about the number of people officially recognised as ‘potential victims of trafficking’.²⁰ As people have to consent to referral, there is an acknowledged gap between those identified as presumed victims by a wide range of organisations and those reported to the NRM.²¹ Nevertheless the number of potential victims referred to the NRM has grown significantly in the last two years—by 34% in 2014 and by another 40% in 2015.²²

Data from the NRM for 2015 indicates that 17.2% of potential victims were referred by NGOs, 23.2% by the police, just over 50% by government agencies (e.g. Home Office, NCA, UK Border Force), and the smallest, 9.4% by local authorities.²³ Training of front-line professionals across the UK as a whole might be one of the factors leading to a significant increase in the number of potential victims referred to the NRM since 2013: from 1,745 in 2013 to 3,266 in 2015.

²⁰ Those referred to the NRM are considered ‘potential victims’ of human trafficking until a Competent Authority decides they meet the criteria to be determined a victim. There are acknowledged gaps between someone believing an individual shows some indicators of human trafficking and is deemed a possible or presumed victim, and those individuals entered into the NRM who seek official recognition of their experience. Elsewhere in the article, I have used the term possible or presumed victims which reflects the fact that someone has decided these individuals show some indicators of human trafficking.

²¹ The National Crime Agency estimated that about 1,600 potential victims of human trafficking were not referred to the NRM for a variety of reasons. See: Home Office, *Review of the National Referral Mechanism for Victims of Human Trafficking*, London, 2014. The Anti-Trafficking Monitoring Group (ATMG) also stated that the NRM under-records the number of victims of human trafficking because a number of people do not consent to referral and because of poor decision making by the Competent Authorities about who is deemed a victim within the criteria of the European Convention. See: ATMG, *Wrong Kind of Victim*, 2010.

²² UKHTC, *National Referral Mechanism Statistics—End of Year Summary 2014*, National Crime Agency, 2015, retrieved 27 June 2016, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file>; UKHTC, *National Referral Mechanism Statistics—End of Year Summary 2015*, National Crime Agency, 2016, retrieved 27 June 2016, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>

²³ UKHTC, 2016.

On a more local level, is there evidence that training does lead to improved victim identification? In the case of a local authority-sponsored human trafficking operational group, data was available on the number of training events and participants. However, almost no data was provided with respect to victim identification within local authority departments. On the other hand, partner bodies, like an NGO working with homeless people and NGOs working with women selling sexual services, did provide data. They specified the number of potential victims of human trafficking encountered in specific time frames.²⁴ Digging deeper, two explanations emerged. The first was that front-line staff might not be encountering possible victims in the context of their local authority work, and thus there were no victims to identify in the time period after training. The second was that there was no means of recording this data within official information systems. As a result, there was no means of capturing and communicating front-line staff's encounters with victims. The one exception was Adult Social Care. It seemed a victim of trafficking could be identified because of local authority interpretation of the Adult Social Care Act of 2014. The Act led to changes in the kinds of records the local authority kept, and now included human trafficking in the assessment of risk of abuse or neglect. Staff could tick a box or include a more detailed account of human trafficking in a qualitative description of an individual's risks. Thus, there was official data that could be analysed to identify victims of trafficking known to a specific local authority department.²⁵

Without data it was not possible to establish a baseline of possible or officially confirmed victims of trafficking known to the local authority and, as a result, to assess the impact of training of front-line staff over time. Thus, training programmes as part of a partnership relationship may continue to be offered because their value is assumed.

Partnerships that incorporate an organisation that offers training is one possible means of enhancing victim identification in partner bodies. A different method is to make it easier for partners to report possible victims. The one-page on-line referral system developed by the Human Trafficking Unit of the Metropolitan Police Service (MPS) provides such an example. It can be accessed by sixty different organisations in London, and officers stated it enhanced victim identification.²⁶

²⁴ Some of the potential victims had been referred to the NRM, but others were presumed victims based on indicators of trafficking.

²⁵ It was unclear if the victim of human trafficking had been recognised through the NRM process or was accorded this status by Adult Social Care or by a partner agency that referred her to the local authority.

²⁶ R Van Dyke, *Enhancing the Effectiveness of Policing Human Trafficking: Report 1*, produced for the Human Trafficking Unit of the MPS, London, 2014. The report was based on interviews with one-third of the Unit's staff.

They pointed to an increasing number of victims referred and recorded in their victim referral database.²⁷ From a police perspective, partnership working was deemed effective based on the evidence of more victims being recorded by the police which led to more investigations of human trafficking.

The lack of records on possible or officially recognised victims of human trafficking, referred to above, has significant implications in terms of understanding the experiences of this group, gathering evidence about what services they use, and the outcomes arising from service use.

Evidence about Victim Support and Protection

The European Convention against Trafficking established the principle that countries had a duty to provide support to victims to meet their individual needs. Available evidence points to a variety of statutory and civil society organisations offering support to victims of human trafficking. While these have gone some way to meeting the UK's Convention obligations, it has been recognised that this provision is inadequate and a standard has been devised to improve care to survivors.²⁸

Some NGOs have focused on working with victims of human trafficking, while others have expanded their remit to cover working with vulnerable groups. In the UK, the Salvation Army has been awarded the government contract to provide support to victims who are referred to the National Referral Mechanism.²⁹ It

²⁷ Officers referred to victims based on indicators of vulnerability, not based on official recognition via the NRM process.

²⁸ C Beddoe, L Bundock, and T Jardan, *Life Beyond the Safe House for Survivors of Modern Slavery in London*, Human Trafficking Foundation, London, 2015; M Malloch, T Warden and Niall Hamilton-Smith, *Care and Support for Adult Victims of Trafficking in Human Beings: A review*, Scottish Centre for Crime and Justice Research, Stirling, 2012; C Andreatta, R Witkin and K Robjant, *Trafficking Survivor Care Standards 2nd Edition*, Human Trafficking Foundation, London, 2015; PRO-ACT, *Pro-Active Identification and Support in the Netherlands, the UK and Romania*, Focus on Labour Exploitation (FLEX), FairWork and ADPARE, 2015, retrieved 10 October 2016, <http://www.labourexploitation.org/sites/default/files/publications/Pro-Act%20Research%20Report.pdf>

²⁹ The UK government has fulfilled its obligations under the European Convention against Trafficking by providing a mechanism for the referral of potential victims (the NRM) which ensures they are able to access government-funded support. The Salvation Army facilitates provision in England and Wales while decisions are reached on the status of referred persons.

sub-contracts to a number of NGOs including Hestia, BAWSO, The Medaille Trust, Migrant Help, and the Palm Cove Society. While these NGOs provide significant support to survivors of human trafficking, they need to call on the expertise and resources of statutory bodies to improve survivors' physical and psychological well-being or to help them access new employment opportunities.

There is anecdotal evidence from NGOs encountered in my research that they help survivors access a variety of statutory services, in particular NHS services, and Job Centres. What appears to be missing is concrete evidence which can be used to build up a picture of what services are accessed or what bottlenecks or barriers hamper entry to services needed by survivors. Anecdotal evidence obtained from NGOs was that access to housing was a key barrier to 'moving on' for survivors of human trafficking. From a monitoring perspective those providing protection and support to survivors of human trafficking should be able to provide a comprehensive account of service use—the inputs which are intended to aid the recovery and re-integration of victims.

Analysis of data for a local authority-sponsored human trafficking operational group suggests the problem with the evidence base is inadequate systems of record keeping. As discussed, if local authority departments do not capture information indicating that a person seeking or accessing services is a possible or officially recognised victim of human trafficking, then the authority will not be able to assess what services are being used or what services appear less accessible. As a result, it will not be able to evaluate the extent of provision it makes for victims of human trafficking who live in their community, or judge if it is sufficient in relation to their desired outcomes for survivors.

From the standpoint of partnership working to tackle human trafficking, inadequate record systems in local authorities undermine its ability to evaluate how it operates in a victim-centred way by partnering with NGOs or other agencies to support a survivor.

Research showed that two new forms of evidence need to be collected. The first relates to a wider group of people who are identified in the course of partnership activities. This group may be deemed as vulnerable, or as experiencing abuse or exploitation but may not meet the criteria to be recognised as victims of human trafficking. However, they are recognised as a group who require advice and support to reduce their vulnerability. In other words, some partnerships have recognised that there is a continuum of vulnerability which requires a response. Victims of trafficking are just one element of this continuum.

The second form of evidence relates to outcomes. Respondents made a case for well-being or human rights oriented rather than criminal justice focussed

outcomes. Reference was made to improving survivors' or vulnerable people's situation by requiring landlords to make housing improvements, or by enabling people to access local authority or NHS services. In addition, respondents proudly talked about enhancing survivors' employment opportunities by helping them enrol in English classes, register for a national insurance number, or seek advice from a Job Centre.

Record keeping in terms of engagement with landlords leading to improved housing, or with the NHS or Job Centres may be used as proxy measures for enhanced choice, well-being or fulfilment of human rights obligations. The question here is, can these outcomes be evidenced without asking the survivors themselves, which might require the collection of more in-depth data, as well as looking at what happens to survivors after they have received a range of services?

For example, Rahab, a partner organisation in the ECAT project, has a long-standing commitment to 'care for women affected by prostitution and human trafficking for sexual exploitation'.³⁰ It is committed to providing support to women in crisis through a range of services, and over time seeks to create choices for the women and then enable them to make choices about their future lives. It operates on the basis of a person-centred approach. During the ECAT project, Rahab collected data both on activities it undertook on its own, and with partner bodies including the Human Trafficking Unit of the MPS thus developing its monitoring capabilities.

However, for Rahab to evaluate its outcomes a different evidentiary approach would be required. This might entail personal testimony from the women it cared for, which might chronicle their movement out of crisis situations, the choices they considered and the decisions they made. Finally, it might reflect their current feelings about their lives. The question to be asked here is: are personal reflections enough to judge success or should there be more concrete indicators of reduced vulnerability, abuse or exploitation, or enhanced physical and psychological well-being? What is clear is that the collection of such evidence is valuable but would be time consuming. Moreover, NGOs working on the front-line may not have the extra capacity to collect or analyse detailed evidence to evaluate outcomes fully if funding is available only for service delivery inputs and outputs. Thus

³⁰ See <http://www.rahabuk.com/about>. For detailed information about the work developed and undertaken by the partner bodies, see *The European Communities Against Trafficking (ECAT) Project Toolkit: Learning from delivery of anti-trafficking activities in London, Italy and Lithuania 2013-2015*, 2016, retrieved 27 March 2017, <https://www.whatdotheyknow.com/request/380555/response/931025/attach/4/C8.1%20ECAT%20Project%20Toolkit.pdf>

organisations, like The Salvation Army, might use this information to illustrate a victim's journey, but it is insufficient for evaluation of outcomes.³¹

Evidence of Criminal Justice Outcomes

Human trafficking partnerships also aim to improve criminal justice outcomes. During my research I was told by both police officers and NGOs working with victims, that a good partnership between the two facilitated a more effective criminal justice response. It enabled police to obtain information that allowed them to engage in operations which resulted in charging people for human trafficking offences and enabled the Crown Prosecution Service to prosecute them. Police officers could point to data on the number of operations, arrests, charges, and convictions and they were able to describe changes in these outcomes over time.³² An increase in these figures was viewed as evidence of an improved police response but also, by implication, a validation of partnership working which helped to facilitate criminal justice outcomes. It could also be argued that continued police, NGO and victim engagement is evidence of an effective partnership relationship. However, as I did not speak with victims as stakeholders in this partnership, their views about the impact of working with the police, while supported by an NGO, were not captured. As Gallagher and Surtees have noted, different stakeholders might have different measures of success.³³

It is equally important to collect evidence of what does not work and why. I was given 'evidence' of NGO and police cooperation that could not be sustained because of poor police practice. NGOs reported that they would facilitate victim contact if police operated in the interest of the victim. I was told stories by different NGO staff of police who: did not seem to believe victims; did not communicate with victims or the NGO about how they were progressing with the investigation; or operated from a police-centred rather than victim-centred approach and thus might be exploiting victims for police purposes. This 'evidence' might be used to engage in dialogue with senior police officers in order to improve police response, but if it is not collected and collated, it may not provide robust evidence of poor policing in relation to human trafficking.

³¹ The Salvation Army, *Fourth Year Report on The Salvation Army's Adult Human Trafficking and Modern Slavery Victim Care & Coordination Contract*, 2015, retrieved 10 October 2015, <http://www.salvationarmy.org.uk/files/aht-year4reportpdf-0/download?token=Hv405psG>

³² Data shown to me by the officers in the Human Trafficking Unit and subsequently by its replacement, the Trafficking & Kidnap Unit of the Metropolitan Police Service.

³³ Gallagher and Surtees, 2012.

Where police forces are able to evidence increased operations, arrests, charges and prosecutions, the data may be used to suggest an improved police response rather than an increased prevalence of human trafficking. However, data on police referrals to the National Referral Mechanism cannot be used on its own to suggest that in some parts of the UK human trafficking is either a low police priority or arises from a low incidence or is a composite of both.³⁴ Given the political priority attached to tackling human trafficking, evidence on police referrals alongside evidence on prosecutions and convictions might be used to make judgements about police engagement in relation to this crime. In fact, the UK's Independent Anti-Slavery Commissioner indicated in his 2015–17 strategic plan that a sustained increase in criminal justice outcomes would be evidence of an improved law enforcement response.³⁵

Another important criminal justice outcome is compensation paid to victims for various harms done to them. It too is measurable but this data was not cited during my research. It may be that the police or partner bodies were not collecting and publicising it, or that few compensation claims had been made.

The criminal justice outcomes discussed can also be seen in terms of a larger aim, which is to deter people convicted of trafficking from carrying on with this crime or to deter others from engaging in trafficking. Kara notes that the principle of deterrence rests on punishment, reducing the benefits that can arise from trafficking, like high profit and the freedom to enjoy these profits, and on an increased risk of being caught.³⁶ Thus the kinds and level of punishment (sentencing, seizure of assets and compensation orders) has to be 'high', and those involved in trafficking networks have to be identified, charged, prosecuted and convicted. The UK Government's 2014 Modern Slavery Strategy sought to increase risk by increasing the penalties from 14 years to the possibility of a life sentence, and by promoting criminal investigations and prosecutions. They also sought to reduce the profit by making human trafficking a lifestyle crime which meant that perpetrators could be subject to the strictest asset confiscation scheme available.³⁷ Recently, the Independent Anti-Slavery Commissioner tasked the National Crime Agency with the responsibility to ensure NRM referrals are translated into crime records, which can be used as intelligence and as the basis of an investigation by local

³⁴ UKHTC, 2016.

³⁵ Independent Anti-Slavery Commissioner, *Independent Anti-Slavery Commissioner Strategic Plan 2015-2017*, London, 2015.

³⁶ S Kara, 'Designing More Effective Laws Against Human Trafficking', *Northwestern Journal of International Human Rights*, vol. 9, no. 1, 2011, pp. 123–147.

³⁷ HM Government, *Modern Slavery Strategy*, 2014.

police.³⁸ His aim is to increase the number of prosecutions and convictions which would also increase risk and thus aid deterrence.

What is apparent is that lack of accurate data about the extent of human trafficking means it will be difficult to judge if anti-trafficking initiatives act as a deterrent. Nevertheless, local police forces could use records about convictions for trafficking offences, length of sentences, amount of criminal assets seized and compensation paid, to devise proxy measures of deterrence, with higher figures presumed to have a greater deterrent effect.

Thus, police and partnerships involving police should be more proactive in producing compilations of criminal justice evidence which illustrates the work they have done to achieve justice for victims not only in terms of a conviction but also in terms of compensation for the human rights abuses they suffered. In addition, local partnerships could publicise these outcomes more widely in an attempt to deter people from engaging in human trafficking.

Conclusion

In this article I have identified serious obstacles that undermine the collection of appropriate and robust evidence that can be used to monitor and evaluate anti-trafficking initiatives and partnerships in England and Wales. Partnerships are based on the assumption that collaboration brings different outcomes than can be achieved by organisations on their own. I have suggested that measuring activities or participants are useful monitoring tools for funding purposes or to demonstrate resource commitments to a partnership but they are inadequate for evaluative purposes. Human trafficking partners seek to raise awareness but only have blunt instruments to measure learning. They seek to train staff in order to increase victim referral and protection. But this relationship, particularly in the statutory sector, may be assumed rather than evidenced. More evidence about victim identification and care may be available from NGOs than from local authorities in part due to inadequate systems of record keeping. This is problematic as local authorities will be unable to evaluate if their responses to human trafficking are sufficient in terms of their obligations.³⁹ In addition, it

³⁸ Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, 2016.

³⁹ M Sun-Suon, *Human Trafficking and the Role of Local Governments—Good practices, challenges and ways forward*, United Nations Institute for Training and Research, n.d., retrieved 27 June 2016, https://www.unitar.org/dcp/sites/unitar.org/dcp/files/uploads/newcoverhuman_trafficking_final.compressed.compressed.pdf

clear that outcomes related to enhanced well-being or empowerment were valued by partnerships. However, it was also evident that the data for this might not be available or there were constraints in collecting it.

Criminal justice actions and outcomes are a core aspect of anti-trafficking work. I found evidence was collected in relation to a variety of outcomes like number of victims rescued, operations undertaken, charges brought against individuals, and convictions. In some cases, an increase in criminal justice outcomes was used to validate partnership working. In addition, comments from practitioners were also cited as evidence of an effective or ineffective police and NGO partnership.

As prevention is a core aim of much human trafficking policy, I looked at what action might be needed to deter people from engaging in trafficking, and how evidence detailing outcomes like sentences, seizure of assets or compensation would have to be collected and more widely publicised to aid deterrence.

In conclusion, it is apparent that those making strategic decisions, offering front-line provision or working in human trafficking partnerships require better evidence, more robust and purposeful data collection, more analysis and wider sharing between partners.

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**ATR Debate Proposition: ‘Global
Trafficking Prevalence Data Advances
the Fight against Trafficking in
Persons’**

Building the Infrastructure of Anti-Trafficking, Part II: Why measurement matters¹

Fiona David

Response to the ATR Debate Proposition: ‘Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons’

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Having worked on human trafficking issues since the late 1990s, I have been fortunate to observe the rapid development of the infrastructure necessary to respond to these crimes. In 1999, a time of much concern about ‘mail order brides’ and debates about the differences between human trafficking and smuggling, I published a report noting that:

In Australia, as in other countries of the world, limited evidence is available about the nature and incidence of trafficking in persons. There is some anecdotal evidence of trafficking activity occurring in various industries, including hospitality, manufacturing, and agriculture. The sector that has received the most media attention, however, is the sex industry.²

At that time, there was no agreed international definition of ‘trafficking in persons’ as the UN Trafficking Protocol was still being negotiated. Few countries, including Australia, had laws that addressed this issue, let alone a dedicated anti-trafficking response or a community of NGOs working actively on them. Systematic research on human trafficking was almost non-existent.

¹ This title builds on analysis undertaken in an earlier article: F David, ‘Building the Infrastructure of Anti-Trafficking: Information, funding, responses’, *Criminology & Public Policy*, vol. 9, issue 2, 2010, pp. 235–243.

² F David, *Human Smuggling and Trafficking: An overview of the response at the federal level*, Australian Institute of Criminology, Canberra, 1999, pp. v-vi.

Since that time, we have seen rapid progress. National responses have developed markedly since 1999. In 2016, UNODC reports that the percentage of countries who have legislated against trafficking in persons has increased, in thirteen years, from 18% to 88% in 2016.³ *The Global Slavery Index* notes that out of the 161 countries assessed, 124 have criminalised human trafficking in line with the UN Trafficking Protocol and 96 have national action plans to coordinate the government's response. A total of 150 governments provide some form of services for victims: this ranges from provision of general services for all victims of violence (including trafficking), to fully specialised services for men, women and children who have experienced various forms of modern slavery.⁴ The data that sits behind these assessments is available free and online for verification and validation.⁵

Research and data collection on human trafficking and related issues has both expanded and deepened. This has included a shift from research based entirely on *reported* instances of human trafficking, to research based on estimated *prevalence in the overall population*. Over the course of the last 15 years, organisations including the International Labour Organization (ILO) have trialled the use of surveys, often alongside qualitative methods, to better understand the scale of forced or bonded labour in specific populations, such as sharecroppers in Pakistan and returned migrants in Moldova.⁶ This process of learning by doing, testing and refinement culminated in the ILO's 2011 guidance on how to undertake quantitative surveys on forced labour at the national level, in *Hard to See Harder to Count*.⁷ If the Guidelines were followed, surveys would produce data that looks beyond the limited reach of recorded crime, and provides insight into the 'dark figure' of crime. While a major step forward, the list of indicators recommended was lengthy and complex, resulting in long survey instruments, and recommended

³ UNODC, *Global Report on Trafficking in Persons 2016*, United Nations, New York, 2016, p. 12, available at http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

⁴ Walk Free Foundation, *Global Slavery Index*, Walk Free Foundation, 2016, p. 40.

⁵ See further Walk Free Foundation, *Global Slavery Index: Government response data*, for the full database of government responses, country by country, retrieved 30 March 2017, <http://www.globalslaveryindex.org/data/>

⁶ See for example, A Ercelawn and M Nauman, *Bonded Labour in Pakistan*, ILO Working Paper 01, 2001; and E Mihailov, M van der Linden and S Scanlan, *Forced Labour Outcomes of Migration from Moldova: Rapid assessment*, ILO Working Paper 38, 2004.

⁷ ILO, *Hard to See Harder to Count*, ILO, 2011, available at http://www.ilo.org/global/docs/WCMS_182084/lang—en/index.htm. See also M De Cock, *Directions for National and International Data Collection on Forced Labour*, ILO Working Paper 30, 2007.

sample sizes were very large, with corresponding implications for cost. In 2014–2016, the Walk Free Foundation piloted and developed a survey programme, that sought to use far shorter survey instruments as part of omnibus surveys, with smaller sample sizes that were nonetheless nationally representative. This enabled us for the first time to bring in comparable, nationally representative data on estimated prevalence of both forced labour and forced marriage across 26 countries. In 2016, the Walk Free Foundation joined forces with the ILO to repeat the survey process—adding in some new questions on duration and children—in a further 27 countries. As at March 2017, we have collectively undertaken random sample, nationally representative, face to face surveys in 54 countries, and a further three surveys are in the field. This provides a key part of the dataset for preparation of the Global Estimate of Modern Slavery, to be released in September 2017.

Why is measurement of prevalence important? As a researcher who has studied various forms of crime for many years, I think measurement of prevalence (and its related dynamics) is crucial. I have seen the very real difference that crime statistics—carefully collected and continually improved over a long period of time—can make, through informing and driving debate on the need for reforms of laws, policies and operating procedures.

For example, in my own country, Australia, a national monitoring programme that has collected data on every death in custody since 1992 provides critical data on the circumstances, number and patterns and trends observed in these deaths. While providing data on many important issues, the database has been a critical source of primary data on the specific issue of Indigenous Australian deaths in custody. For example, analysis of the database has helped to confirm that it was not the case that Indigenous Australians were more likely than non-Indigenous Australians to die in custody—rather, the fundamental issue was that Indigenous Australians were significantly over-represented in all forms of custody. It followed that efforts to reduce Indigenous deaths in custody could not stop at simply efforts to make custody settings safer—they had to focus on the larger issue of reducing the incarceration rate of Indigenous Australians.⁸

As another example, Australia’s national monitoring programme on homicide—again, recording detailed information about the number and characteristics of every homicide in Australia—helped achieve a better understanding of the incredibly gendered dynamics of intimate partner homicide. Data on the gender and relationship between victims of homicide (typically female, seeking to leave a

⁸ Australian Institute of Criminology, ‘20 Years of Monitoring Deaths in Custody’, Media Release, 15 April 2011, retrieved 20 October 2016, <http://www.aic.gov.au/media/2011/april/20110415.html>

relationship) and offenders (typically her male partner) for example, has helped to explain one of the most troubling questions of our society, why do women remain in violent relationships? The data shows clearly, in some situations, leaving a violent partner literally involves risking your life.⁹ Telling women to simply leave—without adequate safety planning and services—is literally life threatening.

Is the case for the need for data on prevalence of modern slavery—forced labour, human trafficking, slavery—any different? I don't see why this would be so. We are talking about serious crimes that involve a victim, an offender, and a context that can be studied and understood just as surely as we can study and seek to find solutions to other complex crimes, whether this is domestic violence, homicide or child abuse. Equally, as with other crimes, case studies and other qualitative research provide vital insights but findings necessarily cannot be generalised. Without data on how often this crime occurs and to whom (both victims and offenders), it is very difficult to know if the observations being made are unique or part of a broader trend.

Perhaps the real question is why in 2017, are we still debating the value and need for prevalence estimates of modern slavery? Certainly, there are concerns about fabrication, distortion or exaggeration of statistics. There are also concerns about misuse or misrepresentation of data to pursue political agendas, whether this is a desire to criminalise the sex industry or ban women from migrating. These are all serious, legitimate concerns—but concerns that I think speak to the need to carefully examine the quality and validity of data, more than they make a case to not seek the data at all.

Human trafficking, forced labour and slavery are serious crimes that demand an equally serious, evidence-based response. Responses—whether it is the implementation of laws, national action plans, victim support services, or police responses—require funding and funding requires accountability. As the demand for responses grows and funding increases, it follows that the demand for data will grow. It is both predictable and reasonable to expect that funders will require data on prevalence, as part of understanding the scale of the problem and impact of responses on overall efforts to prevent and reduce the harm of these crimes. While not the only measure of progress, data on prevalence is a critical part of the infrastructure required to respond to human trafficking and related crimes.

⁹ See for example, J Mouzos, *Femicide: The killing of women in Australia 1989–1998*, Australian Institute of Criminology Research and Public Policy Series No. 18, 1999, pp. 11–12, available at http://www.aic.gov.au/media_library/publications/rpp/18/rpp018.pdf

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Playing the Numbers: The spurious promise of global trafficking statistics

David A. Feingold

Response to the ATR Debate Proposition: ‘Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons’

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‘Playing the numbers,’ ‘the numbers game,’ ‘the policy racket’: for those unfamiliar with American illegal lotteries and some of the legendary gangsters like Bumpy Johnson and Dutch Schultz that turned them into a major revenue stream for organised crime that still flourishes today, the concept was simple. The odds were disproportionately long, but poor people could bet very small amounts. It was, as they used to say, ‘a mugs game’; the organisers did well, while the poor lived on hope.

The quest for global trafficking prevalence numbers strikes me as a similar triumph of hope over experience. It is all too easy to succumb to what Merry has recently called the ‘seductions of quantification’.¹ Previously, I have analysed how ‘information’ on human trafficking comes to be constructed as ‘data’, and how those data do—or, more often, do not—inform policy.² I said at the time that ‘the trafficking field is best characterised as one of numerical certainty and statistical doubt. Trafficking numbers provide the false precision of quantification, while lacking any of the supports of statistical rigor.’³ In fact, little has changed. While ambitious (and, some might say, pretentious) projects like the *Global Slavery Index*

¹ S Merry, *The Seductions of Quantification: Measuring human rights, gender violence, and sex trafficking*, University of Chicago Press, Chicago and London, 2016.

² D Feingold, ‘Trafficking in Numbers: The social construction of trafficking data’ in P Andreas and K M Greenhill (eds.), *Sex, Drugs, and Body Counts*, Cornell University Press, Ithaca, 2010, pp. 46-74.

³ *Ibid.*, p. 47.

(GSI) have appeared, claiming to produce a methodologically rigorous estimate of the total number of ‘slaves’ in the world, much of the rigour proves illusory on closer examination.⁴ Anne Gallagher, for example, has provided a detailed critique of the shortcomings of the GSI 2016, both conceptually and methodologically.⁵ She has also highlighted the reluctance of many of our colleagues to express in public the pointed critiques of the GSI that they make in private, questioning whether this might not be related to a reluctance to alienate a potential donor.

There is insufficient room here to address all of my own reservations regarding the anomalous approach to data extrapolation used by the GSI, or to analyse the incongruities in country rankings that result from their approach. I would note, however, that while the conflation of ‘trafficking’ with ‘slavery’ may be rhetorically appealing, it diminishes conceptual clarity, exacerbating one of the key problems in the field.⁶ The term ‘slave’ is certainly emotive, but devalues or elides the experience of numerous victims.⁷ It is part of a flight from complexity that hampers the field through a one-size-fits-all diagnosis. While undoubtedly useful for fundraising, reducing—or inflating—every form of exploitation to ‘slavery’ makes any sort of useful measurement fundamentally unfeasible and useless as a basis for policy.

Frederick Douglass, who knew more about slavery than most, said, ‘No term is more abused, or misapplied, than that of *Slavery*.’⁸ He also noted, ‘It is common in this country to distinguish every bad thing by the name of slavery.’⁹ I believe that he would recognise the situation today.

⁴ Walk Free Foundation, *Global Slavery Index*, Walk Free Foundation, 2016.

⁵ A Gallagher, ‘Unravelling the 2016 Global Slavery Index’ (Parts one and two), *openDemocracy*, 28 June 2016, retrieved 10 December 2016, <https://www.opendemocracy.net/anne-gallagher/unravelling-2016-global-slavery-index>

⁶ For a discussion of the problem of lack of conceptual clarity, see: D Feingold, ‘Trafficking, Trade and Migration: Mapping human trafficking in the Mekong Region’ in P A Chouvy (ed.), *An Atlas of Trafficking in Southeast Asia: The illegal trade in arms, drugs, people, counterfeit goods and resources*, I.B. Taurus, Paris, 2013, pp. 53–88.

⁷ See, for example, J O’Connell Davidson, ‘Will the Real Sex Slave Please Stand up?’ *Feminist Review*, vol. 83, 2006, pp. 4–22. For an excellent study of the multifaceted diversity of slavery in Africa alone, see: S Stilwell, *Slavery and Slaving in African History*, Cambridge University Press, *New Approaches to African History*, New York and Cambridge, 2014.

⁸ N Buccola, *The Political Thought of Frederick Douglass: In pursuit of American liberty*, NYU Press, New York, 2012, p. 17.

⁹ A Delbanco, ‘Mysterious, Brilliant Frederick Douglass’, *New York Review of Books*, 7 April 2016, p. 47.

I have long advocated for an epidemiological approach to trafficking.¹⁰ This could involve ‘incidence’ studies (e.g., number of new people trafficked over a given time period) or ‘prevalence’ studies (e.g., number of people ever trafficked, or over a specified period). These sorts of studies can be highly useful in specified contexts (sectoral, geographic, etc.), where the object of study is clearly defined and the universe of inquiry clear. They are even more reliable and useful when they can be tracked through time using a sentinel surveillance system (similar to the approach used for tracking HIV and AIDS).

However, the desire for a *global* prevalence estimate raises three issues: First, is it presently well done? As noted above, the answer to date is clearly negative. Second, if not, is it possible to do well—or at least better? While it may be possible to improve on current efforts, it is unlikely that it will ever be possible to arrive at estimates that are at all consistent, accurate, or useful; especially, given limitations of time, resources, and basic data quality. Finally, even if it were possible to do better, is it worth doing? What do we know if we have a number—35.8 million slaves in 2015 vs. 45.8 million in 2016, 20 million before that? Does this change our policy in any way? Does it alter consumer behaviour? Does it alter the behaviour of victims or exploiters?

Over a decade ago, Kangaspunta correctly assessed the situation:

The question of whether global estimates of the scale of trafficking in humans serve any serious policy purposes should be posed. For other serious crimes, such as homicide, assault, or rape, global estimates are usually not given even though there are considerable problems with the data in some regions of the world. The global estimates on the numbers of persons involved in trafficking are always vague and cannot serve as a reliable knowledge base for policy planning. Thus it remains questionable whether this type of information is needed at all.¹¹

The same can be said today. The global numbers game may be slicker than the more traditional variety, but I bet Bumpy Johnson would have recognised it.

¹⁰ D Feingold, 2010, p. 71.

¹¹ K Kangaspunta, ‘Mapping the Inhuman Trade: Preliminary findings of the database on trafficking in human beings’, *Forum on Crime and Society*, vol. 3, issue 1 & 2, December 2003, p. 84.

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Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons¹

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Response to the ATR Debate Proposition: ‘Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons’

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We defend the proposition that global trafficking prevalence data—*when gathered using validated methods and presented with sufficient detail on study design and data analysis*—can advance the fight against trafficking in persons. Space does not allow us to engage in a full review and critique of existing data and methodologies, but we subscribe to the view that the field in general suffers from “‘epidemiological anaemia’”—lack of primary data collection based on sound sampling procedures.² We would add another condition: demographic disorder—unsystematic use and interpretation of population data. Until that situation improves, and it can best do so through systematic application of qualitative and quantitative ‘microlevel research’,³ we recommend that existing global prevalence data be presented with clearer caveats and used with due caution.

¹ Some of these ideas were advanced, though in a different context and with a country-specific focus, in a report presenting results of a stakeholder analysis of anti-trafficking activities in Thailand. See C Robinson, C Branchini and C Thame, *Anti-trafficking in Thailand: A stakeholder analysis of Thai Government efforts, the U.S. TIP Report and rankings, and recommendations for action*, Johns Hopkins Bloomberg School of Public Health, Baltimore, Maryland, 2016, retrieved 30 June 2016, <http://www.jhsph.edu/research/centers-and-institutes/center-for-refugee-and-disaster-response/index.html>

² S Zhang and L Cai, ‘Counting Labour Trafficking Activities: An empirical attempt at standardized measurement’, *Forum on Crime and Society*, vol. 8, 2015, pp. 37—61 at p. 39.

³ R Weitzer, ‘New Directions in Research on Human Trafficking’, *The ANNALS of the American Academy of Political and Social Science*, vol. 653, issue 1, 2014, pp. 6—24 at p. 15.

Estimates of the global prevalence of human trafficking have varied widely, as has the credibility accorded them. The 2012 International Labour Organization (ILO) global estimate of 20.9 million⁴ people in situations of forced labour (including human trafficking) is commonly cited and among the most respected estimates (though by no means universally so).⁵ On the other end of the spectrum is the *Global Slavery Index*, published by the Walk Free Foundation, which estimates 45.8 million people in situations of ‘modern slavery’ (including human trafficking) worldwide.⁶ Gallagher describes the GSI estimate as based on ‘a mysterious, inconsistently applied methodology, a raft of unverified assumptions, and multiple, critical errors of fact and logic’.⁷

Despite the challenges of measuring human trafficking, and the rather unreliable global estimates available at present, we agree with Sheldon Zhang that ‘we should not abandon macro-level estimation just because it is full of problems’.⁸ Global figures are helpful for advocacy purposes, for allocating resources, and for tracking global, regional, and national trends. We offer several recommendations for improving prevalence estimates of human trafficking:

⁴ International Labour Organization, *ILO Global Estimate of Forced Labour: Results and methodology*, ILO Special Action Programme to Combat Forced Labour, Geneva, 2012, retrieved 30 June 2016, http://www.ilo.org/wcmsp5/groups/public/@ednorm/@declaration/documents/publication/wcms_182004.pdf

⁵ A Gould, ‘From Pseudoscience to Protoscience: Estimating human trafficking and modern forms of slavery’, *Second Annual Interdisciplinary Conference on Human Trafficking, 2010*, Paper 6, p. 36.

⁶ Walk Free Foundation, *Global Slavery Index Report 2016*, Perth, 2016, retrieved 29 June 2016, <http://www.globalslaveryindex.org/>

⁷ A Gallagher, ‘The Global Slavery Index: Seduction and obfuscation’, *openDemocracy*, 4 December 2014, retrieved 30 June 2016, <https://www.opendemocracy.net/5050/anne-gallagher/global-slavery-index-seduction-and-obfuscation>. See also A Guth, R Anderson, K Kinnard and H Tran, ‘Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An examination of the Global Slavery Index’, *Social Inclusion*, vol. 2, issue 4, 2014, pp. 14–22.

⁸ G Kessler, ‘Why you should be wary of statistics on “Modern Slavery” and “Trafficking”’, *The Washington Post*, 4 April 2015, retrieved 30 June 2016, <https://www.washingtonpost.com/news/fact-checker/wp/2015/04/24/why-you-should-be-wary-of-statistics-on-modern-slavery-and-trafficking/>

1. Start small. Weitzer articulates several advantages of ‘microlevel research’: estimates may be more reliable (‘because of the limited parameters’); they provide ‘richer insights regarding actors’ lived experiences’, whether these be migrant workers, brokers, employers, or local authorities; and they may provide useful data for identifying risk factors and for targeting interventions, including prevention, protection, and/or prosecution activities.⁹
2. Clarify terms, objectives, and contexts. Any measure of human trafficking needs to identify the terms and definitions used and how they are operationalised for estimation purposes. If there is a local law defining trafficking, that should either be incorporated, or an explanation provided as to why it is not deemed appropriate. As the UN Trafficking Protocol is the prevailing international instrument and definition, we recommend its use in measurement so that data can be compared across sites. Finally, study objectives and contexts need to be clarified in order to set out organisational priorities (and possible biases) and local factors that may affect measurement.
3. Triangulate and validate methods. A range of both qualitative, quantitative, and mixed methods are available to estimate prevalence, including household surveys, surveillance, and institutional registries. Similarly, probability and non-probability sampling options abound, though not all are equally suited to measure prevalence among a given population in a given locale, or equally valid for purposes of statistical inference and extrapolation. A direct measure of either point prevalence (cases in a population at one point in time) or period prevalence (cases identified during an interval, often one year) is most commonly done by taking a sample of a population. Because human trafficking is a crime, trafficked persons may be hidden or hard-to-reach, thus necessitating the use of adaptive sampling methods, like capture-recapture¹⁰ or respondent driven sampling.¹¹ These methods, along with various approaches to model population estimates using single or multiple sources of data, need to be triangulated and validated in diverse field settings to learn which yield the more accurate results.

⁹ R Weitzer, p. 15.

¹⁰ E Hook and R R Regal, ‘Capture-recapture Methods in Epidemiology: Methods and limitations’, *Epidemiology Review*, vol. 17, 1995, pp. 243—264.

¹¹ D Heckathorn, ‘Respondent-driven Sampling: A new approach to the study of hidden populations’, *Social Problems*, vol. 44, no. 2, 1997, pp. 174—199.

4. Share data and results, critique, and collaborate. As human trafficking measurement proliferates (and, we can hope, improves), it is critical to share data and results and to critique (through the peer review process, workshops, and conferences) methods and findings. Disagreements abound in the field of anti-trafficking but that makes it all the more imperative to collaborate in field work and discovery.

5. Iterate. No one should pretend that the process of improving the measurement of human trafficking will be straightforward or simple. Donors need to ensure that research is well-supported and researchers need to ensure that studies are both rigorous and helpful for programme and policy decision making. Everyone needs to ensure that each new study learns from what has been done before and informs what comes next.

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Global Trafficking Prevalence Data Distorts Efforts to Stop Patterns of Human Trafficking

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Response to the ATR Debate Proposition: ‘Global Trafficking Prevalence Data Advances the Fight against Trafficking in Persons’

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For everyone engaged in efforts to stop the exploitation and harm associated with human trafficking, it always sounds helpful to know how many people are being exploited in particular places and where they come from. Finding out should help us assess whether efforts to cut down these numbers are effective or not.

However, too many of the attempts to measure prevalence over the past two decades have generated data that is meaningless or misleading. A preoccupation with estimating the total number of victims in a whole country or region (or the world as a whole), rather than in a specific sector of the economy or affecting a specific social group, has meant that the predicament of groups of people who are known to have endured near-slavery for decades is being drowned out. This happens when the prevalence of all forms of exploitation (or all cases of ‘modern slavery’) is estimated at once. Huge inaccuracies creep in when cases of forced marriage are included as well (rather than trafficking for forced marriage), or everyone involved in sex work is counted, rather than focusing on those who are tricked or forced into prostitution to make money for others. The result has been that some patterns of long-term exploitation which it should be a priority to denounce are instead being neglected.

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Paraguay is an example that is not known to the world as a hotbed of human trafficking or slavery (albeit a byword for every kind of abuse under the Stroessner dictatorship). Perhaps it should be. The indigenous Enxet in Paraguay's Chaco region, where the economy is dominated by cattle ranches owned by non-indigenous people of European descent, have been exploited in near-slavery for decades. The Enxet number approximately 16,000, several thousand of whom live on ranches and have been in servitude for many years and still are today.¹ However, readers of the US State Department's annual Trafficking in Persons (TIP) report and the *Global Slavery Index* (GSI)² in 2016 could be excused for not being aware of this pattern, amidst estimates that 26,800 Paraguayans are in modern slavery. This GSI estimate was based on an assumption that Paraguay had similar characteristics to other countries where 0.404 per cent of the population were reckoned to be in 'modern slavery'. It made no attempt to differentiate between people exploited for years on end and those exploited for shorter periods. The TIP report noted in 2014 and 2015 that children involved in ranching are 'vulnerable to trafficking', but without noting that they were part of entire families in debt bondage. Its 2016 edition contains no reference to this long-term pattern of near-slavery. My concern is that the focus on national prevalence of human trafficking means that an entrenched pattern of exploitation is ignored.

Perhaps the very fact of trying to count everyone who experiences anything called 'modern slavery' leads to numbers being inflated inappropriately. A case in point is of Cambodia, a byword for the commercial sexual exploitation of children in the 1980s. In 2001, NGOs in Cambodia estimated that there were '10,000—15,000' children being exploited in this way in Cambodia's capital.³ However, detailed research during the subsequent decade suggested the estimate was greatly exaggerated. This resulted in an estimate in 2003 that a total of about 2,000 women and children had been trafficked into Cambodia's sex industry, which was reduced in 2008 to 1,000 (including 127 children).⁴ Nevertheless, in 2016 the GSI ranked

¹ See S W Kidd, 'Paraguay: The working conditions of the Enxet indigenous people of the Chaco' in Anti-Slavery International and International Work Group for Indigenous Affairs (eds.), *Enslaved Peoples in the 1990s*, Copenhagen, 1997.

² Walk Free Foundation, *Global Slavery Index 2016*.

³ ADHOC, Cambodia Human Rights and Development Association, *NGO Statement to the 2001 Consultative Group Meeting on Cambodia*, 2001, quoted in Steinfatt *et al.*, *Measuring the Number of Trafficked Women in Cambodia: 2002*, paper for University of Hawaii-Manoa Conference on the human rights challenge of globalization in Asia-Pacific-US: Trafficking in persons, especially women and children, 13-15 November 2002.

⁴ T M Steinfatt and S Baker, *Measuring the Extent of Sex Trafficking in Cambodia—2008*, United Nations Interagency Project on Human Trafficking (UNIAP), 2011.

Cambodia in the top 10 worst countries for modern slavery in the world, estimating that ‘1.6 percent of Cambodians [more than a quarter of a million people] are in some form of modern slavery’⁵ on the basis of a GSI-commissioned survey in 2015. It did not identify anyone as trafficked into the sex industry, but reckoned that almost a quarter of the total victims (55,800) were in a forced marriage, without specifying if they were in Cambodia or abroad. By 2016, approximately 7,000 Cambodian women were reported to have married men in China, some of whom had been trafficked or forced into marriage.⁶ The GSI estimate suggested 48,000 Cambodians were also in forced marriages, raising questions about the criteria used by a survey of 1,000 people for assessing which marriages should be categorised as ‘forced’. Either way, estimating the prevalence of all forms of modern slavery together hides the evidence of improvements in certain sectors.

Compared to Paraguay or Cambodia, Russia is at the opposite end of the spectrum as far as the scale of the territory involved, but estimates of national prevalence have been just as unhelpful—failing to pinpoint who is trafficked or exploited and where they are situated. In 2014, the GSI reportedly commissioned Gallup to survey 2,000 families throughout Russia (though excluding seven regions). On this basis the GSI estimated that more than one million people were in modern slavery in Russia in 2016, out of a total of some 143 million. This compares with an estimate by the International Labour Organization (ILO) in 2012 that a total of 1.6 million people were in forced labour in all the countries of the Commonwealth of Independent States and Eastern Europe put together. These compilations are of little use. They confirm that Russia has a problem (which its authorities do not recognise), but this has been widely known for many years and was documented by the ILO in 2005.⁷ Subsequent reports have focused on Russia’s construction industry⁸ and on the predicament of migrants from Central Asian republics in Greater

⁵ Walk Free Foundation, 2016.

⁶ Estimates to the author by specialist NGOs in Phnom Penh in 2016. A UN report noted that the Cambodian authorities had assisted the repatriation of 21 women from China in 2013, 58 in 2014 and 85 in 2015 (United Nations—Action for Cooperation against Trafficking in Persons, *Human Trafficking Vulnerabilities in Asia: A study on forced marriage between Cambodia and China*, Bangkok, UN-ACT/UNDP, 2016).

⁷ E Tyuryukanova, *Forced Labour in the Russian Federation Today. Irregular migration and trafficking in human beings*, International Labour Office, Geneva, 2005.

⁸ Human Rights Watch reported in 2013 on the exploitation of migrant workers ahead of Russia’s 2014 Sochi Winter Olympic Games.

Moscow (notably public hearings in Moscow in November 2012 on ‘21st Century Slavery’ that were available to watch on the internet for several years: Рабство XXI век – Москва-прямой эфир из ОППФ). These specific reports help understand where cases of slave labour occur and where remedial action is needed. They are consequently much more useful, I contend, than continuing speculation about prevalence at national or regional level.

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