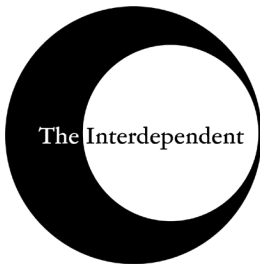


Re-Imagining the Offender: Exploring the Victim-Offender Overlap in the Context of Women Perpetrators of Sex Trafficking



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Abstract

This article examines the involvement of female perpetrators in sex trafficking networks. Field studies, testimonies, and court cases from around the world are analyzed to demonstrate that most female perpetrators were once victims of sex trafficking; and that they turn to the "offender" side of trafficking because of coercion, manipulation, and psychological and socioeconomic vulnerabilities. In this regard, victimization and perpetration are inextricably linked, a fact that is captured by the victim-offender overlap framework. This framework has not yet been incorporated into international legal norms, which causes the past or current victimization experienced by female perpetrators to be dismissed in courts and used for harsher punishments. This article calls for international law to make increasing efforts to acknowledge the circumstances of female perpetrators' offenses and to broaden the scope of the non-punishment principle to break the cycle of violence.

Keywords

Sex Trafficking; Female Perpetrators; Victim-Offender Overlap; International Law; Non-Punishment Principle

Deconstructing Sex Trafficking

Evolution of the International Definition of Trafficking

Since the beginning of the 20th century, several international agreements and conventions have been formulated to define and lay out the framework to combat human trafficking. The first such effort was the International Agreement for the Suppression of the "White Slave Traffic," signed in Paris on 18 May 1904.¹ This agreement recognizes the transboundary nature of trafficking. For example, Article 3 underlines the responsibility of the Contracting Governments to "have the declarations taken of the women or girls of foreign nationality who are prostitutes," and delineates how Governments should "undertake, within legal limits, and as far as possible, to send back to their country of origin those women and girls who desire it."²

The 1910 International Convention for the Suppression of the White Slave Traffic was the first international document which attempted to define who was a perpetrator of human trafficking. Article 1 describes perpetrators the following way:

Any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted, or enticed a woman or a girl of full age for immoral purposes, even when the various acts which together constitute the offense were committed in different countries, shall also be punished.³

The definition of a perpetrator in human trafficking networks was further developed in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. It was decided by the parties present that any person who "keeps or manages, or knowingly finances or takes part in the financing of a brothel," as well as any person who

¹ United Nations Treaty Collection, "7. International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, amended by the Protocol signed at Lake Success, New York, 4 May 1949," https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-7&chapter=7&clang=_en.

² Jean Allain, "White Slave Traffic in International Law," *Journal of Trafficking and Human Exploitation* 1, no. 1 (February 14, 2017): 7, <https://doi.org/10.7590/24522775111>.

³ United Nations, "International Agreement for the Suppression of the White Slave Traffic."

"knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others"⁴ also deserved to be punished. Therefore, those who were accomplices and facilitated crimes of trafficking started being regarded as offenders of trafficking, increasing the scope of who is considered a perpetrator of such crimes.

Another common theme observed in both the 1949 Convention and the 1910 International Convention for the Suppression of the White Slave Traffic was the idea of consent. Article 1 of the 1949 Convention states that any person who "procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person," and who "exploits the prostitution of another person, even with the consent of that person,"⁵ should be punished. The concept of consent is a determining factor in deciding whether women who are actively engaged in sex trafficking networks should be regarded as "victims" or "offenders."

These different approaches culminated into the definition of human trafficking provided by the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. Notably, this Protocol was the first global legally binding instrument with an agreed definition on trafficking in persons, used to guide national laws and international cooperation in the investigation and prosecution of cases of human trafficking.⁶ The definition is as follows:

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

⁴ United Nations Treaty Collection, "11. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others," https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VII-11-a&chapter=7&clang=_en.

⁵ United Nations, "Convention for the Suppression of the Traffic in Persons."

⁶ United Nations, "Convention for the Suppression of the Traffic in Persons."

Organs.⁷

Furthermore, this Protocol elaborates on the notion of consent, explaining that it is "irrelevant where any of the [coercive, deceptive or abusive] means ... have been used."⁸ By making a distinction between "forced consent" and "non-forced consent," the Palermo Protocol seems to suggest that voluntary prostitution is possible; thus, those who partake in it should not be regarded as victims of trafficking.⁹ However, no clear definition was provided for the term "exploitation," making it challenging for international law to establish what is and what is not considered an exploitative practice.¹⁰

As for measures to combat trafficking, the Palermo Protocol calls for the criminalization of trafficking. Paragraph 1 of Article 5 states that each State Party "shall adopt such legislative and other measures as may be necessary to establish as criminal offenses the conduct [of trafficking], when committed intentionally."¹¹ On the other hand, this Protocol merely recommends nation states to protect victims and implement protection strategies. Hence, it is clear that this Protocol prioritizes the identification and prosecution of offenders rather than victim protection.¹²

Consent in the Context of Sex Work

Central to the field of sex work is the debate surrounding prostitution. The notion of consent and its role in the determination of whether a person is a victim or consensual participant is highly

⁷ OHCHR, "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime," accessed September 19, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

⁸ OHCHR, "Protocol to Prevent, Suppress and Punish Trafficking in Persons."

⁹ Elżbieta M. Goździak, and Kathleen M. Vogel, "Palermo at 20: A Retrospective and Prospective," *Journal of Human Trafficking* 6, no. 2 (March 14, 2020): 109–18, <https://doi.org/10.1080/23322705.2020.1690117>.

¹⁰ Goździak and Vogel, "Palermo at 20."

¹¹ OHCHR, "Protocol to Prevent."

¹² Goździak and Vogel, "Palermo at 20."

influenced by how one views prostitution and sex work as a whole. On the one hand, the neo-abolitionist view—which is also known as the "radical feminist perspective"—calls for the eradication of the entire sex industry.¹³ As Ronald Weitzer describes, this ideology is guided by the idea that prostitution is "inherently an institution of male domination and exploitation of women."¹⁴ Additionally, "violence is omnipresent in prostitution and sex trafficking."¹⁵ Proponents of this ideology often conflate prostitution and sex trafficking, and therefore argue that sex workers lack agency. In this context, the notion of consent is deemed irrelevant.

However, this perspective does not accurately reflect the experiences and feelings of women who have engaged in prostitution. Sex workers "do not necessarily see themselves as victims lacking agency;" in fact, "some prostitutes make conscious decisions to enter the trade and do not feel that their work is degrading or oppressive."¹⁶ Laura Agustín, an anthropologist who studies trafficking and the sex industry, collected data and testimonies from migrants in Latin American and European countries, including women migrants engaged in sexual services. One of the women she interviewed—a Nigerian woman in Italy who worked in prostitution—expressed a more positive outlook of sex work, stating:

It makes me laugh when they think that I am not an honest woman because I do this job. Of course, as a job it's ugly, and I don't understand why in Italy they don't let us do it in organized places; I don't understand what is bad about selling love for money . . . With this job I have made it possible for all my brothers to study and I have supported my mother, so I am proud of being a prostitute.¹⁷

¹³ Annie George, U Vindhya, and Sawmya Ray, "Sex Trafficking and Sex Work: Definitions, Debates and Dynamics—A Review of Literature," *Economic and Political Weekly* 45, no. 17 (2010): 66, <https://www.jstor.org/stable/25664387>

¹⁴ Ronald Weitzer, "The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade," *Politics & Society* 35, no. 3 (September 1, 2007): 451, <https://doi.org/10.1177/0032329207304319>.

¹⁵ Weitzer, "The Social Construction of Sex Trafficking," 451-452.

¹⁶ Weitzer, "The Social Construction of Sex Trafficking," 453.

¹⁷ L. Agustín, "Migrants in the Mistress's House: Other Voices in the 'Trafficking' Debate," *Social Politics: International Studies in Gender, State & Society* 12, no. 1 (March 1, 2005): 106, <https://doi.org/10.1093/sp/jxi003106>.

Others argue that prostitution can even be empowering for women. This paradigm holds that "there is nothing inherent in sex work that would prevent it from being organized for mutual gain to all parties—just as in other economic transactions."¹⁸ For example, an Ecuadorian woman working as a prostitute in Spain described her experience this way:

I came to Spain and began working in a [private] house; it was a very hard job because in my country I worked as a secretary in City Hall. I earned little . . . Then I began to meet people who worked in this [sex] . . . No one mistreats you, except if you leave to go outside and something could happen to you, but inside nothing can happen . . . you end up feeling protected.¹⁹

This perspective, which makes a clear distinction between sex trafficking and sex work—where sex trafficking is viewed as "forced prostitution involving coercion, deceit, and exploitation" and sex work is regarded as "legitimate labor based on women's use of their bodies as sources of income involving their own decision and consent"—is called the neo-regulationist view.²⁰

There is no consensus in international and national legislation on how to regard prostitution. The language used in the Palermo Protocol, for example, suggests a distinction between "forced consent" and "non-forced consent," implying that voluntary sex work is possible and acknowledged in international agreements.²¹ Similarly, the Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly on 20 December 1993, states in Article 2 that violence against women encompasses the following:

Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in education institutions and elsewhere, trafficking in women and forced prostitution.²²

¹⁸ Ronald Weitzer, *Sex for Sale: Prostitution, Pornography, and the Sex Industry* (London: Taylor & Francis, 2009), 5-6, <http://ebookcentral.proquest.com/lib/nyulibrary-ebooks/detail.action?docID=446955>.

¹⁹ Agustin, "Migrants in the Mistress's House," 105.

²⁰ George, Vindhya, and Ray, "Sex Trafficking and Sex Work," 67.

²¹ Goździak and Vogel, "Palermo at 20."

²² OHCHR, "Declaration on the Elimination of Violence against Women," accessed December 18, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

Thus, by explicitly mentioning "forced prostitution", the Declaration insinuates that non-forced, voluntary prostitution is possible.

Even though these recent international agreements acknowledge the neo-regulationist perspective, national legislations vary widely on their approach to prostitution. Some countries also recognize the difference between sex work and sex trafficking, and have legalized sex work to reflect this. Germany is an example of this: not only has sex work been legalized, but the German Parliament also passed the Law Regulating the Legal Situation of Prostitutes in 2001, which recognizes contracts between sex workers and clients, provides sex workers access to employment benefits, among other legal rights.²³ Other countries, such as Sweden and Norway, have sought to end sex work as a whole by adopting an approach that is now known as the "Nordic Model." This approach, which is supported and favored by the neo-abolitionists, criminalizes buyers of commercial sex while "decriminalizing individuals in prostitution and providing them with support services."²⁴

These different approaches serve to highlight how difficult it is to make a clear distinction between sex work and sex trafficking in practice, especially because it is hard to classify what is "consented" and what is not. The Palermo Protocol of 2000 considers consent to be irrelevant when coercion, deception or violence is involved; however, when "abuse of a position of vulnerability" occurs, consent should be invalidated as well.²⁵ The *travaux préparatoires*—which are the official explanatory notes for this document—indicate that "the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and

²³ Rachel Marshall, "Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work," *William & Mary Journal of Race, Gender, and Social Justice* 23, no. 1 (2016): 57, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1440&context=wmjowl>.

²⁴ Marshall, "Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work."

²⁵ OHCHR, "Protocol to Prevent, Suppress and Punish Trafficking in Persons."

acceptable alternative but to submit to the abuse involved."²⁶ In these situations, there may be no use of force involved.²⁷ This poses the question: If the women who "consent" to prostitution are motivated by socioeconomic and/or psychological factors outside of their control, does this mean they are victims of trafficking? Some argue that few women will voluntarily engage in prostitution "unless compelled by poverty, past trauma, or substance addictions."²⁸ Does this make them victims of sex trafficking, and thus, their consent irrelevant and/or disregarded in this situation? Or is their consent considered "valid" and they are acknowledged as voluntary sex workers?

The issue of consent becomes even more complicated in the context of transnational trafficking. Oftentimes, migrants consent to being smuggled into a country illegally—rather than trafficked—under the hope and expectation of finding a job abroad.²⁹ The key difference between smuggling and trafficking is when the relationship between the migrants and offenders ends.³⁰ In the case of smuggling, this relationship ends on arrival in the destination country, and the criminals' profits derive only from the process of smuggling the migrant. On the other hand, in cases of trafficking, "some subsequent exploitation for profit, such as coerced labor or sexual exploitation, is also involved."³¹ It is not uncommon to hear about migrants being smuggled into a country illegally (with their consent) under the premise of a false job offer, and then being forced into prostitution—in other words, falling victim to sex trafficking. Even when migrants know and consent to entering a country illegally to work in prostitution, they are often subjected to large

²⁶ "The Annotated Guide to the Complete UN Trafficking Protocol | La Strada Documentation Center about Human Trafficking," 7, <https://documentation.lastradainternational.org/doc-center/1916/the-annotated-guide-to-the-complete-un-trafficking-protocol>.

²⁷ "The Annotated Guide to the Complete UN Trafficking Protocol," 8.

²⁸ Agustin, "Migrants in the Mistress's House," 108.

²⁹ Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley: University of California Press, 2005), 131, <http://ebookcentral.proquest.com/lib/nyulibrary-ebooks/detail.action?docID=236967>.

³⁰ Bales, *Understanding Global Slavery*, 132

³¹ Bales, *Understanding Global Slavery*, 132

debts and abuse, to which they did not consent. In these cases, debates emerge regarding whether or not the initial consent to smuggling should be considered "valid" or not in court. If consent of the victims is considered to be completely irrelevant, then that cannot be used by traffickers as a defense to charges for their crimes; however, recognizing some element of consent may be important to distinguish trafficking from legitimate activities.³²

Female Perpetrators in Sex Trafficking Networks

Definition of Agency

Many theories and debates have emerged in attempts to define "agency," which is key to understanding human behavior. In philosophy, the standard conception of agency claims that "a being has the capacity to exercise agency just in case it has the capacity to act intentionally, and the exercise of agency consists in the performance of intentional actions."³³ Intention, in this context, involves having the desire to perform a certain action, believing that they will go through with the action, and knowing why they are doing it. In other words, to be considered an agent, an individual has to initiate an action driven by intention, beliefs and desire.

In psychology, agency can be defined through the lens of social cognitive theory. This theory argues that there are four properties of human agency: intentionality, forethought, self-reactiveness and self-reflectiveness.³⁴ This means that, for someone to be considered an agent, they need to have the ability to form intentions in regards to actions they want to take; they need to set goals and anticipate likely outcomes of intended actions; have the motivation and the

³² Bales, *Understanding Global Slavery*, 130

³³ Markus Schlosser, "Agency," *The Stanford Encyclopedia of Philosophy* (Winter 2019 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/win2019/entries/agency/>.

³⁴ Albert Bandura, "Toward a Psychology of Human Agency," *Perspectives on Psychological Science: A Journal of the Association for Psychological Science* 1, no. 2 (2006): 164-65, doi:10.1111/j.1745-6916.2006.00011.x.

proactiveness to execute said actions; and, finally, be able to reflect on their personal efficacy and make any adjustments if necessary.³⁵

Personal agency exists in a broader framework of "sociostructural influences."³⁶ For that reason, there are numerous external factors which pose constraints on one's agency, either directly or indirectly. In particular, "economic conditions, socioeconomic status and family structure affect behavior through their impact on people's aspirations, sense of efficacy and other self-regulatory factors."³⁷ In other words, there is an indirect impact on agency. Internal factors, such as one's psychological environment (i.e. emotional state and mental health), can also affect one's sense of efficacy and ability to control their life. For example, people suffering from a mental disorder, such as depression, tend to have a lower sense of efficacy, which affects the type of decisions and actions they are able to execute.

Additionally, social cognitive theory differentiates the different forms of agency that exist, which include: individual, proxy, and collective agency.³⁸ In proxy agency, people influence others "who have the resources, knowledge, and means to act on their behalf to secure the outcomes they desire."³⁹ In collective agency, everyone in the group pools their knowledge, skills and resources to act collectively on a shared belief.⁴⁰

The legal definition of agency acknowledges some of the elements that philosophers and psychologists identified as being fundamental in forming the idea of human agency. For instance, the Rome Statute of the International Criminal Court (ICC)—which has

³⁵ Bandura, "Toward a Psychology of Human Agency," 164-165.

³⁶ Albert Bandura, "Social Cognitive Theory: An Agentive Perspective," *Asian Journal of Social Psychology* 2, no. 1 (1999): 24, doi:10.1111/1467-839X.00024.

³⁷ Bandura, "Social Cognitive Theory," 24.

³⁸ Bandura, "Social Cognitive Theory," 33.

³⁹ Bandura, "Toward a Psychology of Human Agency," 165.

⁴⁰ Bandura, "Social Cognitive Theory," 34.

jurisdiction to prosecute cases of human trafficking as a "crime against humanity" under Article 7—recognizes the idea that a person still has individual agency even when acting on behalf of a group. The Rome Statute also lists some conditions by which individuals who helped to commit a crime—in this case, human trafficking—can be excluded from criminal responsibility. According to Article 31, these conditions include:

- (a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law; . . .
- (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
 - (i) Made by other persons; or
 - (ii) Constituted by other circumstances beyond that person's control.⁴¹

It is noteworthy that factors such as family structure, socioeconomic status or economic conditions do not provide sufficient grounds to exclude someone from criminal responsibility, only the threat of imminent danger or mental health conditions. Thus, under the legal definition, unless they are suffering from a mental health condition that impairs their ability to behave according to the law, female perpetrators are generally seen as having sufficient agency to be held criminally responsible. This is a limited assumption when considering the circumstances surrounding their perpetration.

Women in Lower-Level, Subordinate Roles

In most cases, female perpetrators are found in lower-level, subordinate roles in sex trafficking networks. These roles usually entail more direct contact with victims of sex trafficking.

⁴¹ ICC, "Rome Statute of the International Criminal Court," 16, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

One particular role that female perpetrators are frequently involved in occurs in the recruitment phase. Female perpetrators are often sent back to their countries of origin, sometimes after being provided financial incentives, to recruit their friends and other women.⁴² When at home, female recruiters take "wealthy clothes and jewels"⁴³ with them or pretend to have had "a wonderful experience in a legitimate job abroad" to attract new victims—a method which the United Nations has named "happy trafficking" due to the deception involved.⁴⁴ Since women are stereotypically seen as innocent, as caregivers, and portrayed as being more sensitive, they can more easily obtain the trust of new potential victims—making them very successful in this role.⁴⁵ In their work *To Plead Our Own Cause: Personal Stories by Today's Slaves*, Kevin Bales and Zoe Trodd share numerous testimonies of people who were victims of human trafficking. Included in this book was the story of Maria, a girl from Albania who was sex trafficked to Western Europe after having fallen victim to the deception of female recruiters:

Some days passed and a woman entered the shop... Her jewels and expensive clothes made me embarrassed of my own. She spoke to my parents and showed them a contract. I will earn a certain amount of money, so much to me for living and the rest to my parents. When my father asked about safety, Vanja said that young models live together and always with chaperones. I begged them to allow me, and finally my father signed.⁴⁶

Apart from being recruiters, women offenders may be assigned roles that involve direct contact with and supervision of victims of trafficking. These roles include training victims in prostitution; monitoring the activities of the victims and imposing punishments, including fines and forms of physical violence, if they try to revolt; posting ads to attract new clients; getting the

⁴² Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Lanham: Rowman & Littlefield, 2013), 53.

⁴³ Julia Kienast, Márton Lakner, Agathe Neulet, Kristiina Kangaspunta, and Anikó Szalai, "The Role of Female Offenders in Sex Trafficking Organizations," *Vienna: Regional Academy on the United Nations (2014): 8-9*.

⁴⁴ Aronowitz, *Human Trafficking, Human Misery*, 53.

⁴⁵ Kienast et al., "The Role of Female Offenders in Sex Trafficking Organizations," 9.

⁴⁶ Kevin Bales, Zoe Trodd, *To Plead Our Own Cause: Personal Stories by Today's Slaves* (Ithaca: Cornell University Press, 2010), 50, <http://ebookcentral.proquest.com/lib/nyulibrary-ebooks/detail.action?docID=3137974>.

victims ready for their "dates" and taking them to meet with clients; and collecting the proceeds from the prostitution.⁴⁷ Bales and Trodd's work shares the experience of Odeta, who was a minor when she was trafficked to Italy, and who was trained and supervised by a female perpetrator:

We stayed there [in another city in Italy] in another house where there was a woman who used to teach us how to work in the streets. At the beginning I refused to do this type of work, but I was beaten all day and night. They threatened to kill me as well. So I was obliged to work as a prostitute.⁴⁸

Female perpetrators who take on these roles tend to be under the supervision of the male traffickers. A study conducted in the Netherlands and published in 2019 found that 94.7% of the 85 women convicted of sexual exploitation committed the offense with others, with the majority (75.3%) of the co-offenders being males.⁴⁹ The reason for the women's transition to the perpetrator side of trafficking varies widely. Some women are forced by their male traffickers to commit offenses by being threatened with high levels of abuse and violence, especially if they try to find a way out of perpetration.⁵⁰ One woman named Cashmere, who was interviewed for a study on "bottom girls"—a term to describe women who are under the supervision of a principal trafficker—in the United States, discussed how she did not want to become a "bottom," but she was compelled to after witnessing what happened to another woman who refused to do so:

So, I'm like, okay well, he did, you know, split her head open, whatever. But um, it was a little scary thinking like, okay well, if I leave or if I try to leave, [he'll] really, you know, really hurt me more than [if I wasn't] the bottom. So, I felt like I always had to be like on it, like no questions asked...⁵¹

⁴⁷ United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants," 50, accessed October 30, 2022, https://sherloc.unodc.org/cld/en/bibliography/2020/female_victims_of_trafficking_for_sexual_exploitation_as_defendants.html.

⁴⁸ Bales and Trodd, *To Plead Our Own Cause*, 63-64.

⁴⁹ Miriam Wijkman, Edward Kleemans, "Female Offenders of Human Trafficking and Sexual Exploitation," *Crime, Law and Social Change* 72, no. 1 (August 1, 2019): 53-72, <https://doi.org/10.1007/s10611-019-09840-x>.

⁵⁰ Angie C. Henderson, Shea M. Rhodes, "'Got Sold a Dream and It Turned into a Nightmare': The Victim-Offender Overlap in Commercial Sexual Exploitation," *Journal of Human Trafficking* 8, no. 1 (January 2, 2022): 33-48, <https://doi.org/10.1080/23322705.2021.2019530>.

⁵¹ Henderson and Rhodes, "'Got Sold a Dream and It Turned into a Nightmare.'"

On the other hand, some women see themselves as making a choice, they chose to become perpetrators because of the privileges that their male traffickers provided. Alicia, who was interviewed for the same study as Cashmere, described how becoming a "bottom" allowed her to have some freedoms that she would not have had if she never got involved in the organizing side of trafficking:

I mean, like I, I was the one that was with him every night. Like I was the one, like we stayed in a room together. Right. And like I, I got the shopping whenever I wanted shoes. I got whatever I wanted, whenever I wanted, um, I wasn't the one that got hollered at or anything like that.⁵²

In other cases, women become perpetrators because they get romantically involved with their male traffickers, and they commit offenses out of love.⁵³ For example, the 2019 study of Dutch court cases of convicted traffickers details the experience of Ivonne, who was a Russian student in her early 20s:

She came into contact with Dragan through a website. He told her that he had fallen in love with her and sent her text messages several times an hour telling her how much he loved her ... [after having a relationship for a few months] he suggested her to work as an escort, so they would have more money ... He also told her that with all that money they could later raise many children ... When Ivonne indicated that she no longer wanted to work in prostitution, Dragan proposed that she should approach her friends in order to have them work in prostitution.⁵⁴

The relationships that develop between female victims and their male traffickers in these abusive contexts are referred to as trauma-coerced attachments (TCA). This type of attachment is characterized by two layers. Firstly, there is a strong dependency on an abuser "whose behavior hurts, rather than nurtures, the integrity of the victim."⁵⁵ Due to this dependency, the victim tends to have "positive feelings such as love, gratitude, respect, or loyalty toward the abuser, despite

⁵² Henderson and Rhodes, "Got Sold a Dream and It Turned into a Nightmare."

⁵³ United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants," 29.

⁵⁴ Wijkman and Kleemans, "Female Offenders of Human Trafficking and Sexual Exploitation."

⁵⁵ Wijkman and Kleemans, "Female Offenders of Human Trafficking and Sexual Exploitation."

violent or abusive relationship dynamics."⁵⁶ Secondly, due to the abuse they are subjected to, the victim tends to experience a loss of self-esteem/sense of self, which causes them to "adopt the abuser's worldview when it pertains to any aspect of their relationship."⁵⁷ As a result, the victim does not perceive the abuser as a harmful figure; rather, the victim "defend[s] or protect[s] the abuser, tr[ies] to please the abuser . . . and blam[es] the self or tak[es] responsibility for the abuse."⁵⁸

Court cases of trafficking have demonstrated the extent to which female victims-turned-perpetrators have gone because of their trauma-coerced attachments to their male traffickers, with whom they often get romantically involved with. In the *R. v. Robitaille* case, Ms. Robitaille was charged in Canada for sex trafficking of two minors along with Mr. Finestone.⁵⁹ The court case described their relationship as the following: "Ms. Robitaille was a sex trade worker herself and Mr. Finestone was her pimp. She was also dating Mr. Finestone and believed herself to be in love with him."⁶⁰ According to the court files, she testified that "she wanted Mr. Finestone's approval and attention [so] [s]he was prepared to do what he asked in order to get his love and affection."⁶¹ This led her to recruit, train and exploit the prostitution of one 14-year-old girl and one 16-year-old. At the same time, Ms. Robitaille had also described him as "her most abusive and worst pimp," and evidence suggests that she was still being exploited by him even while she was committing offenses associated with sex trafficking. Regardless, her attachment to her male trafficker, and her need to be loved by him caused her to be "unable to empathize with her victims, [s]he was only able to see them as her competition [for his attention]."⁶²

⁵⁶ Wijkman and Kleemans, "Female Offenders of Human Trafficking and Sexual Exploitation."

⁵⁷ Wijkman and Kleemans, "Female Offenders of Human Trafficking and Sexual Exploitation."

⁵⁸ Wijkman and Kleemans, "Female Offenders of Human Trafficking and Sexual Exploitation."

⁵⁹ United Nations Office on Drugs and Crime, *R. v. Robitaille*, No. 2423, Ontario, November 16, 2017, <https://canlii.ca/t/hns2s>.

⁶⁰ United Nations Office on Drugs and Crime, *R. v. Robitaille*.

⁶¹ United Nations Office on Drugs and Crime, *R. v. Robitaille*.

⁶² United Nations Office on Drugs and Crime, *R. v. Robitaille*.

Women in Higher-Level, Leading Roles

Female perpetrators have also been found to take on leading roles within sex trafficking networks, although this happens less frequently.⁶³ Past court cases have shown that women have been criminally charged for being "the sole or principal trafficker in smaller trafficking enterprises," being the "key intermediary between transnational human trafficking organizations," and "run[ning] the brothels and/or plac[ing] victims on specific streets or posts that they control."⁶⁴

From the research that exists regarding female offenders in high-level positions within trafficking networks, most have focused on women who run the brothels. In the literature, they are referred to by different terms, including *female pimps*, *madams* or *mama*, all of which are used interchangeably in this article. In addition to monitoring and managing the brothel's prostitutes, these women perpetrators also impose and keep track of the victims' debts, as a way to exploit them, and make decisions regarding which trafficked individuals to keep and which ones to sell. Pot, who fell victim to sex trafficking in the 1990s, shared her story in *To Plead Our Own Cause*, shedding light on the abuse and exploitation she experienced in a brothel run by a mama in Japan:

Then, on the fifth day, a Thai woman bought me and took me to another woman named Chan in Ibaraki Prefecture who paid 380 bai for me ... but I didn't realize until I got to the snack bar that this 380 bai that I was bought for was to be my debt ... I worked for eight months to pay back my debt, and I had calculated that I must have paid it back long ago, but the mama kept lying to me and said she didn't have the same records as I did ... I tried to keep track of my own records quietly, but I didn't know all the additional expenses that the mama was adding to my debt.⁶⁵

⁶³ United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants," 30.

⁶⁴ United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants."

⁶⁵ Bales and Trodd, *To Plead Our Own Cause*, 87-88.

It is well-documented that there is a high number of *madams* in Nigerian human trafficking networks. This is partly due to the structure of these networks: victims can buy themselves out of their situation by moving up the leadership hierarchy in trafficking networks, and, gradually, get the possibility to "make a career and ultimately become madams themselves."⁶⁶ This seems to suggest that the madams come from a place of significant vulnerability,⁶⁷ especially of a socioeconomic nature. Testimonies from women who chose to become madams support this theory. For example, Debby, a Nigerian woman who was interviewed for Isoke Aikpitanyi's book *500 Storie Vere sulla Tratta delle Ragazze Africane in Italia* [*500 True Stories: On the Trafficking of African Girls in Italy*],⁶⁸ explains why she became a madam:

I had paid off my debts and gave a party ... The following day, everything went back to normal: the food, the clothes, the family in Africa. I needed money, and I had no identity documents nor a job. I only had my clients, and I started prostituting myself again. Then, the mamas suggested I use my income to finance the journey of a girl to Italy, who would then work for me ... I became a mama.⁶⁹

Becoming a madam not only allows women to earn "fast money"⁷⁰ to fulfill their basic needs, but it gives them an opportunity to gain success and wealth in a career that is feasible to them. In a telephone conversation, Madam Aminat recounted her experiences to a young girl who had asked about moving to Italy:

When you finish paying the agreed amount, after 1 or 2 years, you can start to earn for yourself, and in a few years, you will be rich, and if you want to invest your money by bringing some people here to work, you could request from them an amount of money, and you will be richer.⁷¹

⁶⁶ United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants," 30.

⁶⁷ United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants," 31.

⁶⁸ Sofia Riva, "Listening to the Girls of Benin City: Human Rights, Trafficking and Victimhood in the Italian Sex Industry" (BA thesis, Columbia University, 2019).

⁶⁹ Eva Lo Iacono, "Victims, Sex Workers and Perpetrators: Gray Areas in the Trafficking of Nigerian Women," *Trends in Organized Crime* 17, no. 1 (June 1, 2014): 110–28, <https://doi.org/10.1007/s12117-014-9212-1>.

⁷⁰ N. Gonzalez, C. Spencer, and S. Stith, "Moving to Restoration: The Experiences of Women Exiting Sex Trafficking," *Journal of Human Trafficking* (2017): 1-14.

⁷¹ Lo Iacono, "Victims, Sex Workers and Perpetrators."

These two testimonies also illustrate the important role that madams play in getting female victims to turn into perpetrators. Similar to their male counterparts, the madams manipulate and control their victims by establishing trauma-coerced attachments (TCA) with them; although, in this case, these relationships tend to be platonic. The victims who have developed TCA feel as though they can relate to the *madams* because they, too, have been victims of sex trafficking; so, even if they are being subjected to abusive behaviors by their female trafficker, they do not feel like they are being exploited. This sentiment is evidenced by the following quote from a victim of sex trafficking:

If a woman tells you to go on the street you accept because she is like you, she has already done so. But if it is a man you would say "make a cut on the stomach and you go!" You respect them [the madams] because they at least know what they are talking about.⁷²

Additionally, it is common for the madams to pick favorites among the victims of sex trafficking. Women who are chosen as the madams' favorites are granted special benefits, such as being able to keep tips from customers and being given higher payments and lavish gifts.⁷³ Female traffickers may also display extra care and sensitivity, especially to younger victims. Thus, the victims who receive this kind of treatment from the madams feel taken care of and start regarding the female traffickers as friends, mentors, or even motherly figures to whom they want to stay loyal. For example, one sex trafficking survivor who was interviewed for a study on trafficked women's experiences in brothels in Delhi, India, described how she developed a motherly bond with her madam, to the point of even calling her "mummy": "Mummy loved me a lot, and she never hit me, but she did not turn up to meet me here [at the rescue center]."⁷⁴ Due to the attachment

⁷² Lo Iacono, "Victims, Sex Workers and Perpetrators."

⁷³ Sonal Pandey, Michelle R Kaufman, Hare Ram Tewari, and Pradip Kumar Bhowmick, "Life in the Red Light: A Qualitative Investigation of the Daily Life of Trafficking Victims in Indian Brothels," *Journal of Trafficking, Organized Crime and Security* 1, no. 1 (2015): 41-42.

⁷⁴ Pandey, "Life in the Red Light."

she felt for her trafficker, she decided not file a police report or a case against her after being rescued from the brothel.

The madams' favorites don't only get special rewards for being trustworthy; they are also assigned more tasks that can easily turn them from merely a victim to an offender. These tasks initially start small: for instance, it may involve collecting the money that other trafficked women earn from their prostitution. Gradually, the responsibilities start to expand, until the victim-offender starts being in control of the other trafficked women, or starts recruiting more people into the sex trafficking networks.⁷⁵

Female perpetrators have also reported that, by becoming madams, they are able to claim back some of the power and agency that was stripped from them after being victimized in sex trafficking networks. Traffickers often destroy a victim's sense of autonomy by exerting control over their bodies and bodily functions,⁷⁶ going so far as to controlling victims' access to basic needs such as food and sleep. They are therefore treated as "commodities" which are easily "disposable" once they are no longer needed, and this causes significant damage to the way the victims perceive themselves and their "personhood."⁷⁷ This is why it is so important for female victims to reclaim some agency. As Rosa, a female victim-turned-perpetrator, described, becoming an offender "meant, or at least it seemed like it meant less abuse and even more control over [her] own life, even if it meant control over others,"⁷⁸ which was important to her because she was in a place "where [she] had so little control that the idea of being able to have any position of power

⁷⁵ Lo Iacono, "Victims, Sex Workers and Perpetrators."

⁷⁶ Elizabeth Hopper, Jose Hidalgo, "Invisible Chains: Psychological Coercion of Human Trafficking Victims," *Intercultural Human Rights Law Review* 1 (2006): 197.

⁷⁷ Hopper and Hidalgo, "Invisible Chains," 199-200.

⁷⁸ Angie C. Henderson, Shea M. Rhodes, "'Got Sold a Dream and It Turned into a Nightmare': The Victim-Offender Overlap in Commercial Sexual Exploitation," *Journal of Human Trafficking* 8, no. 1 (January 2, 2022): 33-48, <https://doi.org/10.1080/23322705.2021.2019530>.

felt good."⁷⁹ In addition, moving to the organizational side of the trafficking business is, according to an interview with a Public Prosecutor at the District Anti-Mafia Prosecutor's Office, an opportunity for women victims to "finally reap the rewards" after being exploited for a long time.⁸⁰

This brings up an interesting dichotomy regarding the madams. On one hand, these women have undisputed power and influence within sex trafficking networks. In fact, they are known for "manag[ing] the entire sex trafficking process by participating actively in all decision-making processes,"⁸¹ and they even have male assistants working for them, referred to as "madam's black boys."⁸² On the other hand, since most of the madams have been trafficked and worked as prostitutes themselves—which is what led them to becoming madams in the first place—they are not completely free from victimization either, making them both the victim and the offender at the same time.⁸³

Legal System and Female Perpetrators

Victim-Offender Overlap

The victim-offender overlap is the "link between victimization and the perpetration of crime and delinquency."⁸⁴ In other words, victimization strongly increases the likelihood of offending; however, offending also increases the risk of victimization.⁸⁵ Research also indicates

⁷⁹ Henderson and Rhodes, "'Got Sold a Dream and It Turned into a Nightmare.'"

⁸⁰ Lo Iacono, "Victims, Sex Workers and Perpetrators."

⁸¹ Paola Campana, "The Structure of Human Trafficking: Lifting the Bonnet on a Nigerian Transnational Network," *The British Journal of Criminology* 56, no. 1 (January 2016): 68–86, <https://doi.org/10.1093/bjc/azv027>.

⁸² Dina Siegel, Sylvia de Blank, "Women Who Traffic Women: The Role of Women in Human Trafficking Networks – Dutch Cases," *Global Crime* 11, no. 4 (November 19, 2010): 436–47, <https://doi.org/10.1080/17440572.2010.519528>.

⁸³ Lo Iacono, "Victims, Sex Workers and Perpetrators."

⁸⁴ Cynthia Godsoe, "The Victim/Offender Overlap and Criminal System Reform," *Brooklyn Law Review* 87, no. 4 (Summer 2022): 1319-1350.

⁸⁵ Mark T. Berg, Carrie F Mulford, "Reappraising and Redirecting Research on the Victim-Offender Overlap," *Trauma, Violence & Abuse* 21, no. 1 (2020): 16, doi:10.1177/1524838017735925.

that victims and offenders are not necessarily distinct groups; rather, it is the same population of people that tend to rotate between these two roles with regularity. So, as criminologists have observed, "any theory that assumes no overlap exists between populations of victims and offenders or that they are distinct types of persons distorts the empirical research."⁸⁶

The causes for this overlap are still not very well understood, but a number of explanatory theories have been formulated to explain it. The most common theoretical framework to explain the victim-offender overlap is the routine activities/lifestyle perspective. This theory posits that risky lifestyles and routine behaviors bring potential victims into contact with offenders, thus exposing them to situations of victimization. An alternative perspective is the subculture theory, which argues that violence occurs predominantly among groups that hold norms that support or encourage the use of force to resolve conflicts. In this perspective, individuals constantly shift between being a victim and an offender.⁸⁷

Studies have also been conducted to explain this overlap based on individual differences. Typically, these differences are conceived as "person-level biological characteristics, psychological processes, and cognitive abilities" that make people more susceptible to victimization, offending, or both. A core difference that has been identified is that of self-regulation. Research has shown that individuals with low self-control tend to disregard the long-term consequences of their behavior, which puts them at risk of committing a crime. Low self-control also creates vulnerability to crime because it prevents people from taking precautions against victimization.⁸⁸ Another variable which has been identified as important yet under-

⁸⁶ Berg and Mulford, "Reappraising and Redirecting Research on the Victim–Offender Overlap."

⁸⁷ Jean-Louis Gelder, M. Averdijk, M. Eisner, D. Ribaud, "Unpacking the Victim-Offender Overlap: On Role Differentiation and Socio-psychological Characteristics," *Journal of Quantitative Criminology* 31, no. 4 (2015):653-675, doi:10.1007/s10940-014-9244-3655.

⁸⁸ Gelder et al., "Unpacking the Victim-Offender Overlap," 658.

researched is social skills and social bonds. It has been theorized that individuals who are more "antisocial" (i.e. have poorer social skills and are more socially isolated) tend to be more prone to violent victimization and offending.⁸⁹

Despite the extensive research regarding the existence of the victim-offender overlap, policy-makers and criminal law practitioners continue to treat violence as a binary—in other words, one is considered either a "pure" victim or a "pure" offender, never both. In the rare instances where trauma is incorporated into the criminal justice system, this usually takes the form of trainings, guidelines or optional resources developed by non-governmental organizations, rather than meaningful change to policing, prosecution and sentencing practices.⁹⁰ Additionally, in the context of sex trafficking, stereotypes of trafficked women as "powerless victims" continue to dominate the public and policy arenas. So, whenever a trafficked woman does not fit into this image—as is the case of the victims who become perpetrators—they are considered to be "undeserving of the 'victim' label."⁹¹ This, therefore, continues to perpetuate the cycle of violence.

International Law

The primary method by which international law combats trafficking is by criminalizing perpetrators of human trafficking. This is evidenced by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which is the leading international instrument to define human trafficking and how to address it. Article 5 of the Protocol specifically concerns criminalization and demands that each State Party "shall adopt such legislative and other

⁸⁹ Berg and Mulford, "Reappraising and Redirecting Research on the Victim–Offender Overlap," 22

⁹⁰ Godsoe, "The Victim/Offender Overlap and Criminal System Reform Symposium," 1333.

⁹¹ Alexandra Louise Anderson Baxter, "When the Line between Victimization and Criminalization Blurs: The Victim-Offender Overlap Observed in Female Offenders in Cases of Trafficking in Persons for Sexual Exploitation in Australia," *Journal of Human Trafficking* 6, no. 3 (May 26, 2020): 327–38, <https://doi.org/10.1080/23322705.2019.1578579>.

measures as may be necessary to establish as criminal offenses the conduct set forth in Article 3 of this Protocol, when committed intentionally."⁹² The conduct set forth in Article 3 involves "recruiting, transporting, transferring, harboring or receiving another person" by using means "of threat or use of force or other forms of coercion" for the purpose of exploitation.⁹³ The language used in Article 5, particularly "shall adopt," indicates that this provision is mandatory,⁹⁴ highlighting the international community's will to combat human trafficking through legal means. By adding in the concept of intention, this article seems to recognize the complexities that surround perpetration of human trafficking; however, the Protocol provides no clarification on what constitutes an offense "committed intentionally" versus one that was committed unintentionally. There are also no distinct provisions on handling perpetrators who were previously victimized in comparison to perpetrators who do not have such history; under international law, all perpetrators are regarded the same. At the same time, the Protocol emphasizes the need to provide protection and assistance to victims of trafficking. For instance, Article 6 Paragraph 3 states that each State Party "shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons."⁹⁵ In fact, State Parties should, "in appropriate cases, [work] in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society"⁹⁶ to offer services to victims such as:

- (a) Appropriate housing;
- (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.⁹⁷

⁹² OHCHR, "Protocol to Prevent, Suppress and Punish Trafficking in Persons."

⁹³ OHCHR, "Protocol to Prevent, Suppress and Punish Trafficking in Persons."

⁹⁴ "The Annotated Guide to the Complete UN Trafficking Protocol," 14.

⁹⁵ Goździak and Vogel, "Palermo at 20," 41.

⁹⁶ Goździak and Vogel, "Palermo at 20."

⁹⁷ Goździak and Vogel, "Palermo at 20," 44.

However, compared to Article 5, the language of this provision is weak, particularly evidenced by "shall consider" and "in appropriate cases."⁹⁸ Thus, unlike the criminalization of perpetrators of trafficking, international law does not make it mandatory for nation-states to provide assistance and protection of victims; it merely recommends states to do so. This reflects the international community's approach towards human trafficking as an organized crime rather than a human rights issue.⁹⁹

Nevertheless, since the inception of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, efforts have been made to address the needs of the victims of trafficking. In particular, international anti-trafficking instruments have been drafted to explicitly include a non-punishment provision for victims. The non-punishment provision, which was discussed for the first time in the 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR), recognized that victims of trafficking "might incidentally commit unlawful acts in the context of their status as trafficking victims."¹⁰⁰ In these circumstances, victims should be protected, rather than punished, for such unlawful acts. The full provision is detailed in Recommended Principle 7 of the Recommended Principles and Guidelines:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.¹⁰¹

⁹⁸ "The Annotated Guide to the Complete UN Trafficking Protocol," 20.

⁹⁹ Goździak and Vogel, "Palermo at 20."

¹⁰⁰ Maria Grazia Giammarinaro, "The Importance of Implementing the Non-Punishment Provision: The Obligation to Protect Victims," United Nations Human Rights Office of the High Commissioner (30 July 2020): 2, <https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf>.

¹⁰¹ OHCHR, "Recommended Principles and Guidelines on Human Rights and Human Trafficking," 1, <https://www.ohchr.org/sites/default/files/Documents/Publications/Traffickingen.pdf>.

The document further reinforces the non-punishment principle in Recommended Guideline 5.5 where it is emphasized that "traffickers are and will remain the focus of anti-trafficking strategies" and that law enforcement efforts are guaranteed to "not place trafficked persons at risk of being punished for offenses committed as a consequence of their situation."¹⁰²

According to Article 10 of the non-punishment principle, a victim of human trafficking should not be incarcerated, fined, or otherwise penalized for possession of fraudulent travel or identity documents, illegal entry or residence in the country to which they were trafficked, working illegally, and working in or violating regulations on prostitution. Notably, there is also the indication that the "provisions of this article shall not apply where the crime is of a particularly serious nature as defined under national law."¹⁰³ It can be inferred, therefore, that the non-punishment principle does not apply for people who have become perpetrators of trafficking after being victimized, even if this transition occurred as a direct consequence of their trafficking.

Prosecution of Female Traffickers in Sex Trafficking Cases

In some human trafficking court cases at the United Nations Office on Drugs and Crimes' (UNODC) Case Law Database, there is evidence of the victim-offender overlap being acknowledged and taken into account in verdicts. For example, in Argentina case no. 91017032, eight people, three women and five men, were prosecuted for charges related to sex trafficking. The eight perpetrators were involved in the trafficking of seven women from the Dominican Republic to Argentina. One of the female defendants, who in this court file is referred to as R.A.A.C, was charged for "human trafficking for the purpose of sexual exploitation."¹⁰⁴ There

¹⁰² OHCHR, "Recommended Principles and Guidelines on Human Rights and Human Trafficking," 8.

¹⁰³ OHCHR, "Recommended Principles and Guidelines on Human Rights and Human Trafficking."

¹⁰⁴ United Nations Office on Drugs and Crime, "Case No. 91017032," https://sherloc.unodc.org/cld/en/case-law-doc/corruptioncrimetype/arg/2015/case_no._91017032.html.

was ample evidence that the defendant had recruited one of the victims, referred to as D.D.M, through deception and by taking advantage of her position of vulnerability; had assisted D.D.M in obtaining her passport; traveled with her to Argentina; and, finally, delivered the victim in Mar del Plata for her sexual exploitation at a nightclub known as "D." However, the Court found that R.A.A.C was herself "another victim of the sinister machinery of the crime of human trafficking."¹⁰⁵ The defendant had also been deceived to migrate to Argentina to work as a prostitute. In Argentina, she was sexually exploited by several brothel owners for profit, and ended up living in a precarious environment with "appalling sanitary conditions, in a room in which the women also performed sexual acts."¹⁰⁶ In the psychological assessment conducted by the Forensic Medical Unit of the Supreme Court, it was found that she presented "a history of psychological, family and social trauma ... her personality being vulnerable and with a tendency to put herself ... in risky situations ... she has suffered different types of violence such as sexual, physical and psychological [violence] ... She presents anxiety and depression and is in need of psychotherapy and drug treatment."¹⁰⁷ Due to all these factors, the Court concluded that her situation was no different from that of other victims. The Court also held that sentencing R.A.A.C would just revictimize her; so, in the final verdict, she ended up being acquitted.

However, most times, criminal justice systems create barriers so that the victimhood of female perpetrators is not properly acknowledged. In another court case in Argentina, three people, one man and two women, were charged for perpetrating trafficking.¹⁰⁸ The female defendant named L.C.A, was, at the time of the trial, a manager at the "The Sheik" brothel, but she

¹⁰⁵ United Nations Office on Drugs and Crime, "Case No. 91017032."

¹⁰⁶ United Nations Office on Drugs and Crime, "Case No. 91017032."

¹⁰⁷ United Nations Office on Drugs and Crime, "Case No. 91017032."

¹⁰⁸ United Nations Office on Drugs and Crime, "Montoya, Pedro Eduardo y Otros," accessed March 21, 2023, https://sherloc.unodc.org/cld/en/case-law-doc/traffickingpersonscrimetype/arg/2016/montoya_pedro_eduardo_y_otros_.html.

was obliged to follow orders and render accounts to Montoya, who was the principal (male) trafficker in this case. Prior to that, she had also been a victim of sex trafficking and was sexually exploited in a brothel called "Black and White." The defense for L.C.A. requested the application of the non-punishment principle provision on the grounds of her victimhood; however, the Court did not believe the provision applied because she had not been sexually exploited in "The Sheik." Thus, her situation of victimhood was completely dismissed because of the location where it took place, and she was found guilty for her charge of "aggravating human trafficking."¹⁰⁹

To what extent can one's previous victimization be used to explain the perpetration of crime? Is there a "line" that can be crossed by female perpetrators, after which the criminal justice system cannot deal with their behavior as a response to victimization anymore?¹¹⁰

There needs to be more consideration for female perpetrators' circumstances in international criminal law. Broadening the scope of the non-punishment principle is key because it ensures that: (1) the true circumstances in which an offense is committed is identified; (2) victims are directed to protection and assistance features, that they are entitled to receive; and (3) more investigations take place, resulting in decreasing prosecutions of women who committed offenses because they were subjected to the control or exploitation of other principal traffickers.¹¹¹ The latter is particularly important in breaking the cycle of victimization. Criminalizing and punishing female perpetrators—especially those who were coerced into taking on subordinate roles—leaves them with criminal records, which can have long-term consequences, such as limiting future employment or volunteer opportunities, making immigration/travel to another country difficult or

¹⁰⁹ United Nations Office on Drugs and Crime, "Montoya, Pedro Eduardo y Otros."

¹¹⁰ Rose Broad, "'A Vile and Violent Thing': Female Traffickers and the Criminal Justice Response," *The British Journal of Criminology* 55, no. 6 (2015): 1066, <https://www.jstor.org/stable/43819343>.

¹¹¹ Giammarinaro, "The Importance of Implementing the Non-Punishment Provision," 11.

impossible, negatively impacting child custody orders, and possibly making access to housing or certain benefits impossible to those with criminal records.¹¹²

In fact, a study conducted by the United States' National Survivor Network in 2016 reports that people who were victims of trafficking and got criminally charged for the perpetration of trafficking-related crimes—even if it was a direct result of their victimization—were unable to find employment, resulting in other problems such as homelessness and declining mental health conditions.¹¹³ So, by preventing full reintegration into society, criminalization causes "a victim of exploitation to return to [their] condition of vulnerability."¹¹⁴ When this happens, the likelihood of re-entering trafficking networks, either as a victim or as a perpetrator, increases.¹¹⁵ Thus, people who re-enter such systems become prone to violence and abuse again.

Other than expanding the application of the non-punishment principle, countries also need to make efforts to steer away from the pervasive stereotypes and misconceptions that permeate their respective legal systems. Analysis of the ways in which victims and perpetrators of trafficking are represented in the media, and the reasons for such representations, are outside the scope of this article, but one thing is for certain: these depictions have a strong influence on public perceptions, and, consequently, the legal responses to sex trafficking-related crimes.¹¹⁶ In particular, victimization and offending continue to be seen as "mutually exclusive, separate and distinct

¹¹² United Nations Office on Drugs and Crime, "Female Victims of Trafficking for Sexual Exploitation as Defendants," 94.

¹¹³ Kaelyn Tomkins, "Stop Revictimization in the Justice System: Human Trafficking Survivors are Victims Too," *Seattle Journal for Social Justice* 20 (2022): 800, <https://digitalcommons.law.seattleu.edu/sjsj/vol20/iss3/12>.

¹¹⁴ United Nations Office on Drugs and Crime, "C.M.S. y Guillemet Gastón," https://sherloc.unodc.org/cld/en/case-law-doc/traffickingpersonscrimetype/arg/2018/c.m.s._y_guillemet_gaston_.html.

¹¹⁵ Tomkins, "Stop Revictimization in the Justice System," 798.

¹¹⁶ Silvia Rodríguez-López, "(De)Constructing Stereotypes: Media Representations, Social Perceptions, and Legal Responses to Human Trafficking," *Journal of Human Trafficking* 4, no. 1 (January 2, 2018): 61–72, <https://doi.org/10.1080/23322705.2018.1423447>.

phenomena,"¹¹⁷ with victims portrayed as "young, innocent, and vulnerable women" who are "passive entities [that] constantly need protection."¹¹⁸ Women who transition from victims to perpetrators fall outside the "legislated construction of the ideal trafficked victim."¹¹⁹ As this article aimed to illustrate, any woman exposed to such violent and abusive environments could also become a perpetrator—it is not limited to women with particular personality traits or characteristics, rather, it is mostly about the environment and circumstances they find themselves in. In addition, this article helped to show that the labels of "victim" and "perpetrator" are not static; rather, it is more of a spectrum, and people in trafficking networks are constantly moving and shifting positions in its gray areas. It is therefore imperative that efforts are made to re-shape the public perceptions on trafficking in order to highlight these complex contexts—only then will understanding and protection be achieved for women in these complicated positions.

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¹¹⁷ Baxter, "When the Line between Victimization and Criminalization Blurs."

¹¹⁸ Rodríguez-López, "(De)Constructing Stereotypes."

¹¹⁹ Baxter, "When the Line between Victimization and Criminalization Blurs."