

20 years of expressed international commitment against trafficking in persons: A critical stock-taking

In December 1998, the United Nations General Assembly (in its Resolution 53/111) established an open-ended and *ad-hoc* intergovernmental committee to develop a comprehensive international convention against transnational organised crime. Two years later, following eleven sessions and the participation of more than 120 states, the committee concluded its work with a solemn document that came to be known as the [‘United Nations Convention against Transnational Organized Crime.’](#) Adopted by the UN General Assembly Resolution 55/25 of 15 November 2000, it was subsequently open for signature at a High-Level Intergovernmental Meeting convened in the city of Palermo, Italy, in December 2000.

A central preoccupation in the elaboration of the Convention was that it should address a number of specific areas and manifestations of organized crime, namely Trafficking in Persons, Especially Women and Children; the Smuggling of Migrants by Land, Sea and Air; and the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. To address these, three supplementary protocols were developed, the first of which, [‘The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children’](#)¹, is our focus now, twenty years later. Commonly known as ‘The Palermo Protocol’, this supplementary instrument, which came into force three years after adoption of the overall convention, clearly defines trafficking in persons (Article 3) and apportions responsibilities (Article 9) concerning this organised criminal activity the world over.

A great deal of ground in the fight against trafficking in persons has undoubtedly been covered since state parties began the ratification process. As of November 2020, the Protocol registers 178 Parties and 117 countries as signatories.² But has it been an unqualified success? Behind the worldwide celebrations marking the anniversary of the adoption of the Palermo Protocol there are also doses of frustration. Much of the transnational organised criminality the Convention and supplementary Protocols were established to eliminate has evaded authorities by going shrewdly online – and/or still further underground.³

20 years after the quasi-universal domestication of this Protocol we are thus obliged to turn a critical gaze on whether or not ‘Palermo’ has lived up to its promise. Three commitments particularly demand scrutiny: *Primo*, the rigid focus on prosecutorial justice as *the* route through which to combat the crime of trafficking in persons. This looms large from the title of the Protocol (an international protocol meant ‘to prevent, suppress and punish’ the crime of trafficking in persons) to its implementation guidelines. Differently put, it is assumed that the prevention and suppression of trafficking in persons in the post-2000 world can be won by *punishing* human traffickers. That trafficking in persons would die its natural death once those invested in it (whether

¹ See

https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.pdf

² See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&clang=en

³ See feature articles in the Forced Migration Review Issue 65 on Human Trafficking and Smuggling: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/issue64/issue64.pdf>

directly as active traffickers or indirectly as syndicate members) are punished is increasingly becoming an untenable proposition. Two decades down the road, we are in fact witnessing—going by the evidence marshalled by the International Labour Organisation—that trafficking in persons remains one of the fastest-growing transnational criminal activities of the 21st century.⁴ The importance of prosecutorial justice in combating impunity notwithstanding, what germinates the crime of trafficking in persons and how it flourishes may be too complex matters to be left in the hands of criminal investigators and prosecutors, sentencing judges, and prison wardens alone.

Secundo, the insistence on women and children in this fight against trafficking in persons has inadvertently ushered in, on the one hand, the feminisation of the prevention and suppression of trafficking in persons, and the masculinisation of punishing it on the other. The framing of human trafficking shaped by the Palermo Protocol—the language of gender inclusivity notwithstanding—eclipses rather than illuminates the other half of a gender binary picture, viz. men and boys. Yet, the little evidence there is (particularly in many settings of the already vulnerable and fragilized global South) presents a complex picture of trafficking in persons (the traffickers and the trafficked) in which demarcations of gender, sexual orientation, age, class, religion, ethnicity, race, etc. are frequently blurred.

Uganda, for instance, spearheaded efforts to curb trafficking in persons within the east African region. A Regional Anti-Human Trafficking Conference held in Kampala in June 2007 gathered together police chiefs, immigration officials and humanitarian aid workers from 11 countries (Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, the Seychelles, Somalia, and the Sudan). Reflecting on the UN-led Global Initiative to Fight Trafficking in Persons (which, inter alia, emphasises 4Ps namely Prevention, Protection, Prosecution, and Partnership), the conference proceedings underscored complex gender and age dynamics in relation to human trafficking from and within the region. In the case of Uganda children were reportedly trafficked within the country, as well as to Egypt, the United Arab Emirates, Saudi Arabia, and Canada for forced labour and commercial sexual exploitation; women were reportedly being sold into situations of domestic servitude; and security companies were reported to be fraudulently recruiting many male Ugandans (young adolescents and adults alike) to serve as security guards in the Middle East where they experienced appalling labour exploitation.⁵ When investigative police officers in Mbarara successfully arrested two non-Ugandans suspected of involvement in child trafficking to Australia, Canada and the United States of America - and then dragged them to court in February 2008 - one of the co-accused was a Ugandan woman.⁶ Gender disaggregated data from the UN Office on Drug and Crime (UNODC, 2012) suggests that between 2007 and 2010, 79% of persons convicted of human trafficking in Africa and the Middle East were male, and 21% female.

⁴ This point was captured in a recent Keynote Address delivered by Prof. Siobhan Mullally, the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children at the 4th Regional Conference on Forced Migration organised by Refugee Law Project held simultaneously for in-person audience at Protea Hotel, Kampala and on-line for digital audiences via Zoom and YouTube channels, 09 – 11 November 2020.

⁵ Sebhat Ayele, MCCJ “Human Trafficking and Organ Removal: A disgrace to our society” *Leadership Magazine*, No. 528, July 2013, pp. 14-17.

⁶ See <https://www.refworld.org/category,COI,USDOS,,UGA,484f9a44c,0.html>

Tertio, the emphasis on victimhood in this criminal saga has had the demerit of erasing the agency of survivors of human trafficking. In the Palermo Protocol, victims of human trafficking are simply presented as *de-agentified* beings, robbed of volition and resistance, and only amenable to actions from the outside. The emptying of agency on the part of victims of trafficking in persons—whether extant or potential—is reminiscent of the universalist definition of a child (as everyone below the age of 18) that disregards variations across time, space, history, and political economy despite the fact that not all persons under the age of 18 (as again emphasised in the Protocol) are everywhere and at all times considered children – or indeed consider themselves to be children. Good intentions here notwithstanding, this erasure of (or little regard to) agency especially for survivors of human trafficking from the global South undergirds an imperial vision of the formerly colonised world as bereft of its virility and awaiting the restorative attentions of the heroic souls from the global North. The stripping away of victims’ agency in the fight against trafficking in persons ironically may add not only to their objectification (which made their trafficking thinkable in the first place), but also to the de-personalisation of those who survive the crime. Rather than victors of ordeals, they risk being turned into mere objects of pity and externalised care. And yet, can even extreme duress, fraud or deception utterly suppress the possibilities (however modest) of human agency? That not all survivors of human trafficking dutifully accept the label of *victim* in criminal proceedings initiated in their favour is an important reminder that human agency, even in the gravest of circumstances, may be circumscribed, asphyxiated but never totally evaporated!

A fourth area of concern related to the Palermo Protocols emerges from Refugee Law Project’s recently concluded 4th Regional Conference on Forced Migration. This benefited considerably from a panel that considered the nexus between human trafficking and forced migration, [a discussion led by the UN Special Rapporteur on Trafficking in Persons, Professor Siobhán Mullally](#).⁷ While it highlighted that the probability of a close nexus between trafficking and forced migration was high, it is also apparent that (20 years after the Palermo Protocol) the evidence base has yet to be populated. This weakness is itself in part a reflection of the political economy and structuring of the aid, rights and international criminal law industries; some practitioners work on trafficking, others on refugee matters – rarely do the two meet.

As we take the opportunity afforded by the 20th anniversary of the Palermo Protocol to congratulate all stakeholders invested directly or indirectly in the anti-human trafficking struggle, we cannot afford to remain indifferent to, let alone be complacent about, these four lingering challenges. The success of the next 20 years of the fight against trafficking in persons will depend, at least in part, upon the extent to which we acknowledge them and tackle them in the design of our frameworks and interventions.

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⁷ <https://www.refugeelawproject.org/component/yendivideoshare/video/142-prof-siobh%C3%A1n-mullally-un-sr-on-trafficking-in-persons-esp-women-and-children.html>