

Editorial

It is my great pleasure and honour to welcome readers to the first issue of the *Anti-Trafficking Review*. For those of us who have been working on the problem of human trafficking for many years, the emergence of a specialist journal is an important sign of progress - a welcome confirmation that our area of work and study has well and truly moved from the margins to the mainstream of international attention and concern.

The launching of the *Review* also marks an important step forward in terms of research and scholarship. Human trafficking has attracted a great deal of attention over the past decade, but many have rightly questioned the quality of much research and writing on this issue. Early researchers in particular, were criticised for failing to acknowledge the substantial gaps in knowledge and understanding that inevitably compromised the truth and value of their work. Even today, I would argue, the generally accepted standard appears lower than in other, comparative areas of study. Certainly much writing on trafficking continues to be insufficiently rigorous. For example: inconvenient complexities are frequently ignored; contrary views are rejected without adequate consideration; and data is shaped to fit pre-determined conclusions. In my own specialist area, law, much of the scholarship demonstrates an unsettling alignment between policy preference and legal analysis. In other words, those writing on the legal aspects of trafficking are all too frequently succumbing to the understandable, but dangerous, temptation to conflate the law *as it is* with the law as they would like it to be.

Of course, this very human tendency - to accept what fits with our beliefs, and to discard what does not - is nothing new. Writing in 1620, the philosopher Francis Bacon described it with almost painful accuracy:

The human understanding, when any preposition has been once laid down...forces everything else to add fresh support and confirmation; and although more cogent and abundant instances may exist to the contrary, yet it either does not observe them or it despises them, or it gets rid of and rejects them by some distinction, with violent and injurious prejudice, rather than sacrifice the authority of its first conclusions.¹

Many factors will contribute to better scholarship around human trafficking: for example, access to reliable, accurate and verifiable evidence about the nature of the problem and the impact of interventions, must be a priority. But it is a personal awareness of actual or potential biases - and an acknowledgement of the extent to which such biases operate to influence scholarship - that may, in the end, have the greatest effect. Our goal should not be to produce work that is value free. Indeed, the values of rights, freedom and dignity are fundamental. Without them, human trafficking, and related exploitation would never have been identified as problems in the first place. However, an awareness of how our own history, beliefs and values influence shape our ideas can help us to recognise weaknesses and deficiencies in knowledge and understanding. In relation to our research and scholarship, such awareness should operate to encourage us to be objective when possible, and to be truthful when objectivity is impossible or unwise.

As Guest Editor of the first issue of the *Review*, I actively sought contributions from different 'ends' of the trafficking spectrum (if such a classification can be said to exist). The editorial team also worked hard to bring in the voices of practitioners: those guardians of essential knowledge and insight who stand outside the academy and, for that reason alone, too often remain unheard. While the final selection of articles is indeed a diverse one, our efforts in this regard were only partly successful. I urge future editors of this Journal to champion different experiences and different viewpoints by encouraging all those with something important to share to make their contribution.

¹ F Bacon, *Novum Organum: True directions concerning the interpretation of nature*, Mobiclassics, 1620, p.11.

The above observations are not intended to reflect negatively on the quality of the articles included in this volume. Each of these has been subject to double blind peer review involving at least two, and in some cases three, different reviewers. At this point it is appropriate for me to thank the many persons who contributed their time and expertise to the review process. While you cannot be publicly acknowledged, your contribution has been, and will continue to be a critical one.

This Issue

In developing their vision for the *Anti-Trafficking Review*, the GAATW editorial team determined that each issue should have one overarching theme that would link all contributions. The theme chosen for the first issue was ‘accountability’. The call for papers invited submissions that addressed the lack of accountability that appears endemic in the ‘anti-trafficking industry’: a situation that has contributed to the continuing marginalisation of trafficked persons and their views as well as apparently only minimal progress in decreasing trafficking and strengthening the rights of trafficked persons. It was proposed that the first issue consider how the ‘accountability vacuum’ affects the ability of migrants to realise their rights and entitlements; what this means for rights-based approaches to human trafficking; and the role that anti-trafficking organisations could play in promoting greater accountability.

General Articles Section

The articles in this section are loosely organised according to the scope of their focus: from international, to regional, to national. In the first article, Gallagher and Surtees consider accountability for anti-trafficking interventions in the criminal justice sector, a fast emerging area of activity for international organisations, bilateral donors and national governments. There is growing pressure for such interventions to demonstrate accountability, results and beneficial impact, but Gallagher and Surtees question how this can actually happen in practice: determinations of success vary considerably depending on who is consulted; the criteria established to measure success; and the assumptions built into those criteria. The authors draw on examples of recent practice to explore each of these aspects, concluding that, among other things, a lack of a common vision of ‘success’ is significantly hampering progress - by allowing mediocre or even harmful interventions to flourish and good work to go unrecognised and unrewarded.

The international legal framework around human trafficking has been considerably strengthened in recent years, and the monitoring and oversight mechanisms attached to that framework are potentially important vehicles for increasing the accountability of States for violations of their obligations under the relevant treaties. Planitzer’s article considers the monitoring framework established by the Council of Europe Trafficking Convention. Her specific focus is the work of the Group of Experts (GRETA), during its first year of operation. Through an analysis of the documentation produced by both GRETA and the States Parties subject to its reporting procedure during this period, Planitzer is able to identify a number of strengths and weaknesses. Looking to the future, she proposes several ways in which the procedure can be made more effective; including an increased commitment to transparency on the part of States Parties and greater, more structured involvement of civil society in reporting and follow-up.

Child trafficking in southern Benin is the subject of the next article, by Howard. The author’s field research in that country has led him to believe that the discourse that has emerged around child trafficking significantly misrepresents the actual situation; that ‘a disjunct existed between the way institutions *represented* and responded to “trafficking” and the “trafficked”, and the way the trafficked understood and represented themselves’. He contends that by failing to accurately capture the reality of youth migration in Benin, the discourse, and the policies that have emerged from it, also fails those it intends to protect. In seeking to explore why better information has not led to a change in understanding and perception, Howard concludes that this is not a matter of deliberate ill will. Rather, he argues, these ideas have been shaped and retained through inertia

and the desire for harmony, as well as through larger forces that include change-resistant institutions and political structures. Howard's conclusions, in terms of accountability are sobering: at present, the policy-maker is not accountable, or indeed particularly influenced by, the so-called policy beneficiary.

There is growing acknowledgement that the long-standing dichotomy between trafficking for sexual exploitation and for exploitative labour is, in many respects, (although perhaps not all), a false one. However, the separation is still very much a feature of the national legal and policy environments in many countries. In Australia, for example, Simmons and David show that critically important labour laws and associated protection systems are not being made available to workers in the (largely legalised) sex industry. As a result, workers in that industry are missing out on a range of potentially effective prevention interventions as well as access to civil remedies. The solutions are not straightforward, and the authors call for practical and financial support to enable the national industrial regulator to work directly with affected groups in identifying opportunities and barriers to accessing the labour law system, particularly for migrant sex workers.

In their article *Using Human Rights to Hold the US Accountable for its Anti-Sex Trafficking Agenda*, Lerum and colleagues consider a relatively new international accountability mechanism: the Universal Reporting Procedure (UPR) established under the United Nations Human Rights Council. The authors trace the recent social histories of two competing ideologies that, in the US, have clashed sharply around the issue of human trafficking: the influential 'new prohibitionist' movement, and the less dominant 'sex worker rights' movement. They then relate the highly strategic process, underpinned by broad-based coalitions and a commitment to evidence, by which 'a human rights agenda for US-based sex workers' was introduced and approved at the United Nations Human Rights Council through the UPR. The result of that effort was official US government acceptance of a recommendation that: '[n]o one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution'. The authors conclude by analysing the potential of an international process such as UPR to improve accountability by bringing a diversity of new and often marginalised voices to the attention of national policy makers.

The final article in this section confronts an issue of increasing concern: the overlap between trafficking and asylum. In *A Lie More Disastrous than the Truth*, Stepnitz explores the identification of victims of trafficking in the UK. Her research uncovers a worrying link between the identification experience and a woman's citizenship, residency and documentation. The fact that most non-EU nationals presenting as victims of trafficking are also asylum seekers is highly relevant. In short, women who have been trafficked and are claiming asylum in the UK are experiencing significant difficulty being identified correctly and therefore accessing their rights and entitlements. The author notes that a key problem is the procedure itself: in the UK, asylum claims and trafficking identification processes are dealt with, often simultaneously, by the same case officer, despite the existence of very different determination criteria. Many of the concerns that have been raised in relation to asylum determinations are, unsurprisingly, also relevant for trafficking determinations. The author concludes that immigration control and crime reduction are the key drivers of anti-trafficking policy and practice in the UK and that these imperatives are reflected in the highly discriminatory outcomes of identification procedures.

The debate section

In furtherance of its commitment to genuinely open dialogue, the editorial team has included a 'debate section'. It is my hope that this will become a standing feature of the *Anti-Trafficking Review*: a place for scholars and practitioners with very different points of view to address one issue of current significance or controversy. As John Stuart Mill argued in *On Liberty*, the opportunity for us to profess contrary opinions, and to listen to those who express them, is important for two reasons. First, because what is otherwise kept from us could indeed be true, or may contain some truth. And second, because if our opinions go uncontested, then truth risks being separated from its rational roots, and eventually becoming hidden in sources of prejudice and

dogma. In his words: ‘if the opinion is right, [we] are deprived of the opportunity of exchanging error for truth: if wrong, [we] lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error’.²

The editors of the *Anti-Trafficking Review* have selected, for the first debate, the controversial practice of rescuing victims (or presumed victims) of trafficking. These rescues are invariably aimed at victims of sexual exploitation and conducted through brothel raids. They typically involve local law enforcement agencies but are often encouraged or facilitated by external bodies including international non-governmental organisations. In her vigorous defense of properly prepared and executed raids and rescues, veteran human rights campaigner Holly Burkhalter, now with the International Justice Mission (IJM), challenges critics to consider the human costs of opposing rescues, particularly of child victims of sexual exploitation. She argues that sustainable child protection must involve law enforcement; and that attention should be on reforming local police to ensure that legitimate and professional interventions can and do occur. Burkhalter concludes that, in the meantime, ‘children and trafficked adults being raped for profit should not have to wait until police everywhere in the world have been pronounced good enough to protect them’.

The following two articles in the debate section take a very different position. In *Accountability and the Use of Raids to Fight Trafficking*, Ditmore and Thukral argue that raids are ‘one of the clearest examples of misguided anti-trafficking efforts’: that they should not be an accepted tool in the anti-trafficking armory and, instead, should only ever be considered a measure of last resort. Using data from a US study, the authors contend that, in addition to causing harm to those involved, raids do not serve their stated purposes of locating and identifying victims of trafficking, or indeed, of securing evidence to prosecute exploiters. They conclude that it is necessary to identify new approaches to locating, identifying and assisting victims; approaches that are based on meeting the needs, protecting the rights and supporting the self-determination of trafficked persons.

In ‘*We have the right not to be “rescued”...*’, Ahmed and Seshu, focusing on raids and rescues in Sangli, Maharashtra State, India, echo many of the concerns expressed in the previous paper. Their particular charge is that these interventions have highly negative impact on HIV programmes that are being run by sex workers themselves and, thereby, on the health and well-being of Indian sex workers. The authors trace the origins of the ‘raids, recues and rehabilitation industry’ to the neo-abolitionist movement in the United States that has encouraged and supported the activities of IJM and its national equivalents. They argue that the very concept is flawed because reliance on the State inevitably results in violence against sex workers, and in continuing violation of their rights, including through arbitrary detention in shelters.

It is not the job of the Guest Editor to draw conclusions, or even to offer her views on the various points raised by the three papers in the debate section. However, it is perhaps justifiable to ask some questions that were not directly addressed or answered. For example: is trafficking for sexual exploitation qualitatively different to other serious, violent crimes in a way that justifies a different criminal justice approach including in relation to victim rescue? What considerations, if any, are sufficient to outweigh risks of harm to victims? Why are raids and rescues (and the debate around this issue) invariably connected to the sex industry? Do different or additional considerations apply to identifying and rescuing individuals trapped in exploitation on farms or boats, or in factories or private homes?

In concluding this editorial, I would like to thank the many persons who have been involved in finalising the first issue of the *Anti-Trafficking Review*. The amount of thought and work that must go into launching a new journal took us all by surprise. Many time-consuming and difficult tasks fell to the editorial team, and I thank them most sincerely for their hard work and patience with a demanding Guest Editor. A special thanks is also due to the GAATW leadership: Bandana Pattanaik was fully behind my efforts to encourage the inclusion of new and dissident voices. In doing so, she showed great understanding of Mill’s warning that ‘we can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we *were* sure, stifling it would be an evil still’.³ It is

² J S Mill, Chapter II, ‘Of the Liberty of Thought and Discussion’, *On Liberty*, 1869.

my sincere hope that those who are involved in the future of the *Review* continue these modest first efforts to bring rigour, criticism and a genuine spirit of enquiry into our important field of work.

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