

Maria João Guia *Editor*

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*To my son João Pedro,
and my son Daniel Filipe,
May the light of Justice and the defense of
Human Rights always guide their lives*

Foreword

Human trafficking is one of the most grievous crimes in the world. It involves many different types of offences, all of which prevent the victim from exercising his freedom of will. Crimes are perpetrated on the body of the victims: exploiting them sexually, obliging them to work under abject conditions, or removing body organs, among other forms of exploitation. This illicit activity is worth billions of dollars and is one of the most lucrative criminal businesses as weapon and drug trafficking.

I am very grateful, and I want to state that without the excellent contributions of the authors herein listed, this volume could not reach those who have never heard about this scourge or those seeking more information on this topic. In fact, most citizens do not know specifically what human trafficking is—it is perceived as a cross-border crime involving smuggling immigrants and pimping or slavery and kidnapping. But its contours are unmistakable and easy to identify once one becomes familiar with the phenomena described in the book. Globalisation and entrepreneurship, when used for criminal purposes, can impact all aspects of human trafficking. We should never forget that this horrendous crime has the target of obliging individuals to submit their body and will to doing something with no regard for their wishes. That is why victims are often characterised as the new slaves of the twenty-first century.

Society must be made aware that this crime could be happening next door. This is not an invented movie version of reality. It is happening near us and, because of the ignorance on this topic, most victims suffer their entrapment in silence, unless and until someone realises they are being abused and need help. It may be one of us, a son or a daughter or a mother or a father. It is happening nearby, and it is all too easy to fall into the clutches of criminal networks.

This book is a compilation of the reflections of 13 authors, who have discussed their thoughts with me during the course of several national and international conferences and workshops I have organised and on other occasions.

I will make a brief summary of the chapters in this book, and I thank the authors once again for all the energy they have put into their papers to make this book possible.

Our first authors from Portugal, Joanna Daniel-Wrabetz and Rita Penedo, open this book by questioning what makes a person, whether man, woman, or child, (more) vulnerable to human trafficking. They also reflect on what makes some places more susceptible to the occurrence of certain criminal phenomena such as trafficking in human beings. This chapter, focusing mainly on social vulnerability and social invisibility, argues that these questions can be considered within a socioecological model of vulnerability where geographical information systems are used as relevant tools to put this crime and its actors in a temporal and spatial context.

Joana Ruivo also from Portugal follows, addressing the complexity of human trafficking, analysing the contexts that create the victims and the gaps within the recipient countries' systems that allow for the development of the phenomenon, including the lack of integrative policies. Focusing on the available statistics, the author identifies the main victims (women and children) and the markets that thrive from what is considered to be one of the most profitable crimes in the world. Attention is drawn to the Schengen zone, where the absence of border controls, the quality of road accesses, and the availability of good communication lines provide the necessary tools for the development of this activity.

On a final note, the author describes the development of victim support networks throughout the years, highlighting the importance of NGOs in medical care, psychological and social assistance, financial aid, legal advice/support for victims, and the development of awareness campaigns inside the communities and in direct contact with potential victims. Drawing the attention of the reader to the work that still needs to be developed in this field, the author calls for stronger protection of the victims and for the creation of specialised networks and partnerships between GOs, NGOs, and police forces, promoting the participation of the victims in the investigations.

The third contribution is by João Paulo Orsini Martinelli, who explains how the concept of human trafficking surpasses mere legal devices and the scope of criminal law. Analysing a number of elements involved in this criminal phenomenon, the author outlines the existing legal definitions to conclude that the concept of human trafficking is only partly addressed in the legal sphere and that the slavery that surrounds the victims is often neglected. The author reflects on the broadness of concepts like consent, vulnerability, and autonomy and the dilemmas that such concepts raise when criminalising human trafficking, especially in the absence of coercion and fraud and when the victim's consent is obtained.

Drawing on the Brazilian Criminal Law, the author alerts us to the dangers of a legal system that is based merely on moral arguments and to the potential unwanted intromission of a "paternalistic State" in the private life of individuals, highlighting the need to distinguish actual victims from fully capable adults.

A fourth chapter (from Brazil) is written by Danilo Fontenele Sampaio Cunha, who focuses on the sexual exploitation of women by a male market to analyse the trafficking of Brazilian women, internationally and within an internal sex tourism

market. There, women with no name and no origin are reduced to a subspecies without rights, opportunities, or voice inside criminal organisations that bear a striking resemblance to organisations dealing in homicidal crimes for hire, displaying the same distorted definitions of loyalty and protection and similar asymmetric and hierarchical definitions of relationships that thrive on the notion of protection against justice. Adopting a very critical stance towards academic definitions and the concept of “free choice”, the author reflects on causes and legal definitions and explores the new Brazilian legislation.

The author calls for a change in the social perception of prostitutes, shaped by a sexist society, and stronger political measures, highlighting the importance of social prevention (greater access to education and health, stronger border controls, and awareness campaigns). On a final note, the author reflects about the possible legalisation or decriminalisation of prostitution and its consequences, wondering if the dignification of the sex industry will extend to the prostituted women or if “freedom of choice” vs. choice for survival will be analysed in greater detail.

This volume follows with Brazilian authors Márcio Anselmo and Guilherme Fernandes, who write a chapter presenting an overview of Brazilian Law and Brazilian policies designed to combat human trafficking, both internationally and internally, comparing them with international norms. Besides the existence of articles pertaining directly to human trafficking, the authors also stress the existence of other articles that contemplate relevant actions, as well as the implementation of action plans whose purpose is to formulate policies to prevent and combat trafficking in persons, such as the Brazilian National Policy for Combating Trafficking in Persons (2006) and the National Plan to Combat Trafficking in Persons (2008).

As noted by the authors, Brazil is identified as one of the major suppliers in the market of human trafficking for sexual exploitation, and certain limitations in the Brazilian Law call for a reformulation that meets with the international law on human trafficking and that effectively deals with the prevention and repression of human trafficking and connected crimes, in its multiple dimensions, not only for sexual exploitation but also for labour exploitation.

The next contribution is the chapter from Agustina Iglesias Skulj and Luz María Puente Aba, from Spain, who analyse the design and the implementation of policies against human trafficking in Spain, explaining how the *Plan to combat trafficking in women for sexual exploitation* sets forth measures to fight only certain elements of the phenomenon and revealing a number of problems in Spanish policies. From the ambiguity involving certain concepts to the lack of distinction between sex trafficking and prostitution (in a *genderisation* of the issue) and between trafficking and smuggling (resulting in a purely security-based approach and criminal prosecution) and even the complete neglect of other types of trafficking (male, child, labour), the creation of ideological frameworks based on moral views regarding gender, sex work, migration, and other issues, embedded with fears of foreigners, immigrants, criminals, terrorists, and so forth limits the creation of effective policies to combat human trafficking.

The authors identify an approach that is solely focused on sex trafficking, where police forces act without adequate identification procedures or protocols, where the

collaboration of the victims with justice is a weak point, and where victims are instrumentalised for prosecution purposes, and call for counter-trafficking policies that recognise the insufficiency of the current Plan and a wider economic, social, and political context where the residency and employment regulations in destination States assume their fair share of responsibility.

As the “war against human trafficking” gains momentum in the North American media, Edith Kinney analyses how pop culture is contributing to a social and legal construction of the phenomenon based on stereotypes about the victims and the perpetrators. This oversimplification of the dynamics behind trafficking and global movements into sensationalistic narratives of captivity, sexual violence, and criminality mischaracterises the complex political, social, and economic factors that shape exploitative migration and servitude. Using three case studies, the author explains how the popular media helps construct popular and political understandings of the phenomenon, shaping not only beliefs about what trafficking is but also the policies and practices of those who enforce anti-trafficking laws and promoting a law and order response to the issue while blurring the line between fact and fiction.

The author from USA further explains how these media portrayals of human trafficking reflect the “crimmigration” phenomenon, raising important questions about the effect of the media on legal consciousness and public discourses on sexuality that, ultimately, legitimate the exclusion, condemnation, or acceptance of certain groups of migrants. The author draws the reader’s attention to the fact that this promotion of tough enforcement actions on prostitution networks fails to address the “demand” that drives the phenomenon and the role of the American consumers in creating a market for cheap and exploited labour while justifying the expansion of the prison-industrial complex and the legitimisation and normalisation of crimmigration.

The eighth chapter, by Jessica Elliott (UK), starts by focusing on the drafting of the Council of Europe Convention on Action Against Trafficking in Human Beings in 2005, which suggests a more victim-focused, victim-centric approach towards the individuals who fall foul of this transnational phenomenon than has previously been the case. The more encompassing provisions of this Convention, when compared to the somewhat weaker provisions enshrined in the United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000, provide for various bespoke rights such as rest and recovery periods and temporary residence permits for those subject to its provisions. Of particular note, according to this paper, is Article 26 of the Convention, which provides for the “non-punishment” of victims when their involvement in unlawful activities can be attributed to the fact that they have been trafficked, namely that they were compelled to commit the relevant offence in the course of/as a result of having been trafficked. This provision of the Convention is drafted in nonbinding terms, and therefore ratifying States can decide exactly how they wish to proceed on this particular matter. Non-punishment can only be actively considered if the individual in question has at least been identified as a putative victim of trafficking—identification being dealt with by Article 10 of the Convention.

The author refers to the anti-trafficking framework in the United Kingdom as the National Referral Mechanism for the identification of victims and to two Crown Prosecution Service Protocols, which provide for prosecutorial discretion where victims of human trafficking have committed criminal offences as a result of having been trafficked. This chapter analyses, through the lens of the UK's implementation of the provisions in Articles 10 and 26 and a series of recent case law decisions by domestic courts, the applicability of both the Convention and these Protocols to victims of human trafficking, in order to determine whether such individuals are in fact being properly treated as victims or as criminals.

The ninth and final chapter, authored by Jorge Malheiros and Maria João Guia, focuses on the association of prostitution with human trafficking and questions the idea of “involuntary” vs. “voluntary” risk with regard to human trafficking. The contribution also presents real cases of Eastern European and Brazilian women who entered prostitution, as well as cases of these women as victims of human trafficking. After separating the elements that distinguish the two situations, the authors problematise the question of opportunity and decision when entering a life of prostitution, after reviewing the statements of a number of foreign women involved in prostitution in Portugal.

Law 60/2013, of 23 August,¹ recently amended² the Portuguese Criminal Code following the recommendations of Directive 2011/36/EU concerning the

¹ Amending the *Criminal Code*, Law 5/2012, of 11 January, Law 101/2011, of 25 August, Law 45/2011, of 24 June: introducing amendments relating to recommendations in Directive 2011/36/UE concerning the prevention of and fight against the crime of human trafficking and the protection of its victims.

² In relation to the transposition of Directive 2011/36/UE, the amendment to the Portuguese Criminal Code has been recently published, under Law 60/2013, of 23 August, also amending three other legal provisions.

- a) To the Criminal Code, alterations have included making legal persons and similar entities (except the State) or other public legal persons and international organisations responsible for the crime of human trafficking, as well as single persons. In Article 160 of the Criminal Code, the text of the crime of human trafficking has also been improved, including new terms covering recruiting and new forms of exploitation, such as labour exploitation, forced begging, slavery, illegal adoption, and the exploitation of victims for other criminal activities. Penalties have also been raised with the inclusion of a new paragraph in the text of the crime of human trafficking (Article 160) when the life of the victim has been put in danger or specific violence has been used towards the victim or in cases where harm has been caused to the victim or caused by a professional or by a criminal association or network or where a victim's suicide ensues. The consent of the victim has also been reviewed, and in no case should it exclude the unlawfulness of the action.
- b) Amendments included in Law 5/2002, of 11 January, on measures to combat organised and economic crime, now list human trafficking as one of the crimes justifying such measures when it is carried out in an organised manner.
- c) Law 101/2001, of 25 August, is also amended to extend the legal regime of covert actions for the purpose of preventing and detecting crimes, to now include those involving human trafficking,
- d) Amendments to Law 45/2011, of 24 June, now provide that revenue accruing from crimes of trafficking in persons shall revert to the coordinating entity of the National Plan against

prevention of and fight against human trafficking and the protection of the victim (which in turn is currently and until 2015 being implemented on a wider front under Directive 2012/29/EU) of the European Parliament and of the council of 25 October 2012. These amendments focus especially on the improvement of the text of the crime itself, introducing the recruitment of victims and also previewing the exploitation of forced begging, the practice of other crimes (where new and emergent phenomena related to itinerant crimes can be included). It also includes the irrelevance of the victims' consent to the commission of the offence of human trafficking and takes forms of vulnerability into account. More measures have been taken recently in Portugal, such as the publication of the third National Plan Against Trafficking in Human Beings (PNCTSH), where a number of objective and effective measures are to be taken between now and 2017, but currently we are witnessing the construction and reinforcement of a large-scale networking of professionals and academics in the prevention of and fight against the crime of human trafficking.

My intention with this book is to raise international concern about the phenomena that are destroying the lives of many people, including children. If we wish for a better world, we should all be aware and act accordingly, contributing to its construction. I should remind the readers that this book includes articles from academics, professionals, and researchers. All of them have united their efforts to contribute to this cause. My deepest gratitude to them for their chapters; to those who invited me, for the opportunity; and to those who are reading this book, for the action you will take after knowing more about the subject.

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Trafficking in Human Beings and shall be applied to supporting actions, measures, and programs to prevent trafficking of persons and to assistance and protection of victims.

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Abbreviations

ACPO	Association of Chief Police Officers of England
AIDS	Acquired Immunodeficiency Syndrome
APAV	Portuguese Association for Victim Support (Associação Portuguesa de Apoio à Vítima)
CCAA	Autonomous Communities of Spain
CECRIA	Brazilian Reference Center for Studies and Actions in Favour of Children and Adolescents (Centro de Referência, Estudos e Ações Sobre Crianças e Adolescentes)
CEIJUSCRIM	Brazilian Center for Interdisciplinary Studies in Criminal Justice (Centro de Estudos Interdisciplinares em Justiça Criminal)
CICO	Spanish Organized Crime Intelligence Center (Centro de Inteligencia contra el Crimen Organizado)
CINETS	Crimmigration Control International Net of Studies
CIS	Commonwealth of Independent States
CPMI	Mixed Parliamentary Commission of Inquiry (Comissão Parlamentar Mista de Inquérito)
CPS	Crown Prosecution Service
CSE	Children Sexual Exploitation
DHS	Department of Homeland Security
ECA	Brazilian Child and Adolescent Statute (Estatuto da Criança e do Adolescente)
ECHR	European Court of Human Rights
ECPAT	End Child Prostitution, Child Pornography and Trafficking Children for Sexual Purposes
EUROPOL	European Police Office
GIS	Geographic Information System
GRETA	Group of Experts on Action against Trafficking in Human Beings
HIV	Human Immunodeficiency Virus
ICE	U.S. Immigrant Customs Enforcement
ILO	International Labour Organization

IOM	International Organization for Migration
JCHR	Joint Committee on Human Rights
NGO	Nongovernmental Organisation
NRM	National Referral Mechanism
OSCE	Organization for Security and Co-operation in Europe
PREVIE	Program for the Voluntary Return of Immigrants from Spain (Programa de Retorno Voluntario de inmigrantes desde España)
SEF	Serviço de Estrangeiros e Fronteiras (Portuguese Foreign Nationals and Borders Service)
STD	Sexually Transmitted Disease
SWAT	Special Weapons and Tactics
THB	Trafficking in Human Beings
UKBA	United Kingdom Border Agency
UKTHC	United Kingdom Human Trafficking Centre
UNODC	United Nations Office on Drugs and Crime

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