

‘The Nexus between Human Trafficking, Enslavement and Conflict-Related Sexual Violence is Obvious’: Views of the Editorial Board

JHEC Editorial Board

Abstract

The editorial board of JHEC consists of highly esteemed scholars and practitioners in the field of CRSV, THB and/or enslavement. What better way to introduce the Editorial Board and to off-set this new journal and discussions than by offering their reflections on a thought-provoking statement: ‘the nexus between human trafficking, enslavement and conflict-related sexual violence is obvious’.

- 1. ‘The nexus is found in the vulnerability of those affected: Address the vulnerabilities and promote the role of female peacekeepers to prevent and address atrocities.’**

Patrick Cammaert (Major General ret.)

The breeding ground for human trafficking, enslavement and conflict-related sexual violence is poverty. Women and girls but also men and boys in armed conflict related areas often live in extreme poverty and must endure extreme hardship. That makes them vulnerable for being lured away from their homes under the false pretext of a better future and a secure and safe environment but ending up being trafficked, many times enslaved and sexually violated. Some of these people try to escape the unsafe conflict area to what they hope a safe environment but end up in refugee or displaced people’s camps where they are still vulnerable and repeatedly violated by host government authorities. In areas such as Myanmar, Syria, Iraq, Libya, Mali, Democratic Republic of the Congo (DRC), Darfur, South Sudan and the Sahel region, this is very much the case. The international community is aware of this but shows little political interest to really do something about it. However, lifting people out of poverty is the first step to make them less vulnerable.

These criminal practices can only be stopped if impunity of the perpetrators will be addressed. As a former general officer commanding the Easter Division in MONUC in the DRC, I saw first-hand the nexus between human trafficking, enslavement and conflict-related sexual violence, whilst facing the results of the horrific practices of an armed group, the Lord’s Resistance Army (LRA) in the DRC. The UN tried to bring the perpetrators of these crimes to justice. Sometimes peacekeepers succeed, sometimes they fail. The UN troops deployed

in these conflict areas must show the will and the skill to protect the local population left vulnerable by their own governments.

An important factor in addressing human trafficking, enslavement and conflict-related sexual violence, is the role that women in civil society and female peacekeepers can play. I also saw first-hand the effect that the presence of women could have in building the trust of the community and the positive image and posture of the UN, both paramount to the success of an operation. As a UN female military officer deployed in the field once said: ‘What I have experienced is that when local women see you are a woman, their faces light up. It is like they get a connection, they relate’.

Evidence shows that increasing the number of female peacekeepers provides greater access to communities for protection and early warning information, increases the reporting of sexual and gender-based violence, and decreases incidences of sexual exploitation and abuse. It could make our peacekeepers more approachable to women, which increases situational awareness and leads to a more sophisticated and nuanced understanding of what is needed to protect civilians.

I have witnessed so many times in the field how important women are for the cohesion of communities, the growth of local economies, the social and political stability and sustainable peace, or the huge difference it makes to empower women to play a prominent role in peacebuilding programmes, disarmament, demobilisation, and reintegration (DDR), community violence reduction, small loan programmes or in particular cash-for-work programmes, as well as intra- and inter-community reconciliation.

For me the nexus between lifting people out of poverty, fighting impunity and empowering women is needed to stop human trafficking, enslavement and conflict-related sexual violence.

2. **‘While the nexus is obvious, its recognition, documentation and tackling is not.’**

Dr Chris Dolan (Refugee Law Project, Makerere University; and Ulster University)

The Rome Statute of the International Criminal Court recognises sexual violence as an element of war crimes, crimes against humanity and genocide, and sexual slavery as one form such violence can take. There thus seems little doubt about the enslavement – conflict-related sexual violence (CRSV) nexus. Allegations that ISIL funded some of its operations through trafficking of women seem to further exemplify a human trafficking – enslavement – CRSV nexus. The 2020 Trafficking in Persons Report notes that ‘the United States considers “trafficking in persons”, “human trafficking” and “modern slavery” to be interchangeable umbrella terms that, furthermore, refer

to both sex and labor trafficking'. It further highlights the role of peacekeepers (in conflict settings) in both sexual exploitation and abuse and, at times, trafficking. Again, the nexus seems obvious.

And yet, it is not necessarily the case that, even where there *may well be* a nexus, all aspects of it are obvious, recognised or documented, let alone tackled. To mention but a few: The ways in which CRSV can heighten vulnerability to trafficking need to be highlighted. Post-CRSV feelings of shame and worthlessness and desperation, coupled with livelihood challenges, may lead survivors to agree to sexual exploitation under trafficking conditions. Equally, the extent to which those fleeing conflict violence are exploited sexually in the course of flight, is under-explored. We must also recognise that conflict-related sexual violence impacts on those close to the immediate victim, particularly their children; where adult survivors are dysfunctional in the wake of violence, their children are at heightened risk of being trafficked and drawn into sexual abuse and exploitation, including slavery. High levels of disappearance of refugee children and young adults from refugee hosting areas go largely unreported, particularly in urban areas where some of the most vulnerable seek refuge, but where humanitarian protection policies and regimes have little traction.

A number of discursive tropes also mask probable nexi. CRSV is most frequently understood as a 'weapon of war', a strategic tool for pursuit of military objectives. The economic benefits from human trafficking, and how these may intertwine with military objectives, has received little attention in the literature, notwithstanding recent allegations against ISIL. Equally, mainstream 'gender' discourses, through silencing the sexual victimisation of men in conflict settings, have masked the enslavement/sexual violence nexus insofar as it involves adult men – though acknowledging that when it comes to male child soldiers, such enslavement is possible.

A further largely ignored potential nexus involves armed men. The majority of alleged perpetrators of conflict-related sexual violence are men in uniform. Little thought is given to the fact that very often such men in uniform have themselves been abducted or forcibly conscripted, and subsequently coerced into committing violent sexual acts. In such acts, even as such men appear to be perpetrators, they are themselves being victimised. This particular human trafficking – enslavement – CRSV nexus is just waiting to be drawn – but only by those who dare challenge dearly held scripts about militarisation, toxic masculinities and sexual violence.

3. **‘The nexus is obvious: We have to focus on commonalities rather than differences.’**

Rina Ghafoerkhan (Mental Health Practitioner and Researcher ARQ National Psychotrauma Centre; and Utrecht University)

As a mental health practitioner and researcher, I want to urge all of us to look beyond the individual narratives of sexual trauma. Instead, our focus should lie on the commonalities between these individuals and their adverse experiences. By putting up barriers between types of sexual violence, we lose sight of the bigger picture and as a result we fail to address the root causes of sexual violence.

I work with victims of conflict-related sexual violence and human trafficking at an outpatient mental health clinic based in the capital region of the Netherlands. When it comes to mental health complaints there are little to no differences between these groups. In many cases, those who are most vulnerable and part of systematically oppressed groups fall victim to human trafficking, enslavement, and conflict-related sexual violence. Often, these individuals have been part of marginalized group(s) from birth because of their ethnicity, religion, socio-economic status or gender at birth. Others have become part of a marginalized group throughout the course of their lives based on their sexual orientation, changes in gender identity, profession, losing their primary caretakers, or changes in political climate, making them an outcast. These marginalized groups are systematically oppressed, for instance by denial of citizenship, lack of healthcare, and limited access to education and resources for livelihood. These groups often exist at the intersection of poverty, discrimination, and stigmatization. Unsurprisingly, their social position makes these individuals vulnerable to (repeated) sexual victimization, and afterwards prevents them from seeking and receiving legal justice.

When armed conflict and war arise, the pre-existing discrepancy between marginalized groups and dominant groups are exacerbated. This, in combination with state collapse and a climate of impunity, offers an optimal setting that enables (further) sexual violence towards marginalized groups. Trauma survivors and oppression survivors are often one and the same.¹

Focusing on human trafficking, enslavement, and conflict-related sexual violence as distinct experiences does not benefit sexual violence prevention, mitigation, and response programming. For mental health professionals in particular, I would like to bring forward the discussion of how we could better address the psychological consequences of systematic oppression, marginaliz-

¹ R Ghafoerkhan, W Scholte, E de Volder and A de Brouwer, ‘The Nexus between Conflict-Related Sexual Violence and Trafficking for Sexual Exploitation in Times of Conflict (2019) 3 Journal of Trafficking and Human Exploitation 9.

ation, continuous traumatic stress, and sexual revictimization in our mental health services. There seems to be little attention in mental health programming for social and systemic causes of continuous traumatic stress.² The often-individualistic medical approach does not represent the scope of traumatic and oppressive experiences that sexual violence victims have often faced throughout their lives. Moreover, current practice unrightfully fails to hold members of dominant groups accountable for their role in upholding systems of oppression, giving rise to the idea that sexual violence should mainly be considered as a distinct individualistic experience.³ In conclusion, I agree with the given statement: the nexus between human trafficking, enslavement, and conflict-related sexual violence is obvious and needs to be addressed in mental health programming.

4. 'The nexus is obvious from a human rights based perspective.'

Dr Chiseche Salome Mibenge (Director of Gender Initiatives at Episcopal Relief & Development)

Human rights-based approaches to end trafficking, enslavement and Conflict-Related Sexual Violence (CRSV) invoke the inviolability of man and the inalienable nature of rights and dignity.⁴ Those who traffic, enslave and sexually assault others are aware of the moral and spiritual value of a human body, and this is apparent in their methodological demeaning of human dignity even as they carefully preserve the economic value of the human body. They develop a set of methodologies, seemingly intuitive but also unmistakably epistemological when one encounters them replicated across transnational planes.

The violator administers torture and other inhuman or degrading treatment or punishment against the transacted body, until it is psychologically and/or physically 'broken', 'broken down', 'broken in'. This is an essential element of the crimes of human trafficking, enslavement and CRSV.⁵ Thus, we can resolve

² V Matthies-Boon, 'Towards a Critical Trauma Studies: A Response to Felix Lang' (2018) 11 Middle East – Topics and Arguments 159-162.

³ G Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Duke University Press 2016).

⁴ C Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (UPenn Press 2013).

⁵ According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted 10 December 1984, entered into force 26 June 1987), 1465 UNTS 86: 'the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.

the apparent paradoxes of the owners of a meat processing plant that brand the arms of underage and trafficked workers with a hot iron, but are careful not to hurt their fingers; or the enslaved person who will not escape even when the abuser leaves the door ajar, or else might jump to their death through an open window in order to elude a rescuer.

Trafficking, enslavement and CRSV depend on punishments and treatment that can rise to the level of torture, and *they are discriminatory*. And those bodies that represent an affiliation with ‘others’ and subaltern groups, are exceedingly vulnerable to exploitation. Human rights treaty bodies elaborate on the ways in which discrimination on grounds such as caste or descent, class and social status, sex, gender and sexual orientation, race and ethnic based discrimination are integral features of systemic and organized crimes, including war crimes. Those who target bodies for ownership apply a discriminatory lens as it reveals the indicators for vulnerabilities, disposability and exclusion from legal protections in hegemonic societies. The Boston Review highlights American poverty and disenfranchisement (in the context of the Atlanta child murders of the early 1980s) and the ways in which they made the disappearance of poor Black children invisible and the disappearance of a white middle-class child hypervisible, the latter eliciting the full response of law enforcement.⁶

Enslavement, trafficking and CRSV are extraordinary forms of abuse, adopting inhuman or degrading treatment or punishment for the alienation of individual rights and transfers of ownership. Rohingya refugees in Bangladesh; Yazidi children in Iraq; Korean women in Long Island, Queens; Filipino workers repatriated from the United Arab Emirates; queer and transgender ‘throw-away’ youth traversing rural borders for big cities across the US. These and other groups existing in liminal spaces beyond the reach of justice that is promised to citizens of humanity are easy pickings for abusers and their tools of coercion and intimidation.

5. ‘The nexus is obvious: Addressing underlying factors requires a multifaceted and global approach.’

Jean Bosco Mutangana (Tilburg University; former Prosecutor General of the Republic of Rwanda)

The inextricable link between human trafficking and enslavement as one of its components has continued to be central to Conflict-Related Sexual Violence (CRSV). The prosecutions and judgments by post conflict do-

⁶ J Levine, ‘Still Missing: Etan Patz—and Others’ (Boston Review 2020) <<http://bostonreview.net/blog/judith-levine-etan-patz-missing-children-race>> accessed 27 May 2016.

mestic criminal courts including but not limited to Rwanda, as well as the International Criminal Tribunals, greatly contributed in highlighting the widespread and extremely grave nature of CRSV with recognition of rape as an act of genocide, leaving behind jurisprudential legacy of sexual violence which amounted to international crimes.⁷ On the other hand, the evolution of legislating human trafficking for the last 20 years has contributed to an internationally accepted definition for “human trafficking” since the year 2000, when the United Nations published a definition of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the *Palermo Protocol*).⁸

Human rights violations in the midst of the nexus cannot be ignored. Human trafficking involves controlling, exploiting people and transporting them to a new location, often beyond the borders of their homeland,⁹ and continues to be a global issue affecting millions of people on an annual basis. ‘Human trafficking is a modern-day form of slavery involving the illegal trade of people for exploitation or commercial gain’,¹⁰ and continues to be one of the most lucrative forms of business in the world. It is generally considered an extreme form of exploitation where women, men, and children are recruited or obtained and then forced to labor against their will through force, fraud, or coercion.¹¹ Caused by gender inequalities that have greatly impacted on women in terms of status and opportunities worldwide, women have been particularly vulnerable to these inequalities ranging from poverty, gender discrimination, and regional conflicts that lead to sexual violence, and a lack of job opportunities that affects their socio-economic self-sustainability.

Under circumstances above, the acts of making a slave of someone, or being reduced to slavery especially to women, is more likely and has continued unabated during armed conflicts in different parts of the world which has been

⁷ *The Prosecutor v Jean-Paul Akayesu* (Appeals Chamber Judgement) ICTR-96-4-A (1 June 2001).

⁸ M Madden Dempsey, C Hoyle and M Bosworth, ‘Defining Sex Trafficking in International and Domestic Law: Mind the Gaps’ (2012) 26(1) *Emory International Law Review* 137.

⁹ F Laczko, ‘Human Trafficking: The Need for Better Data’ (Migration Policy Institute, November 2002) <<https://www.migrationpolicy.org/article/human-trafficking-need-better-data>> accessed 10 May 2016. For discussions on trafficking and human rights, see also: T Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Brill 2014) pp 32-33. D Worden, ‘Sex Trafficking: Towards a Human Rights Paradigm’ (2018) 22 *The International Journal of Human Rights* 709.

¹⁰ E Proctor, ‘Human Trafficking continues to be a Global Issue’ (Michigan State University, 2015) <https://www.canr.msu.edu/news/human_trafficking_continues_to_be_a_global_issue> accessed 10 May 2020.

¹¹ Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol).

widely covered in some international media.¹² Such conditions pressure women to migrate and make them particularly trafficking victims to unscrupulous recruiters or employers who, through force, fraud, or coercion, or taking advantage of their vulnerabilities. Human trafficking within and into conflict areas takes several forms.¹³ Over the last two decades, there has been increasing recognition of one in particular: trafficking for sexual exploitation by a range of armed groups, including non-state armed groups, state forces and, tragically, international peacekeepers.¹⁴ International criminal tribunals have identified instances of enslavement, sexual slavery and forced marriage in the Balkans, Sierra Leone and Uganda.¹⁵ Between 1987 and 2006, the Lord's Resistance Army, a Ugandan rebel outfit is thought to have kidnapped over 20,000 children in Uganda, many of them for sexual enslavement and domestic servitude.¹⁶

In conclusion, it could therefore arguably be debated, that the inextricable link between the trio is real and obvious and requires a multifaceted and global approach to address underlying factors that cause conflict, poverty and gender inequalities.

6. 'The nexus is obvious to those who apply a gender lens to conflict and mass atrocities.'

*Professor Valerie Oosterveld (University of Western Ontario
Faculty of Law)*

The nexus between human trafficking, enslavement and conflict-related sexual violence is obvious to those who apply a gender lens to situations of conflict and mass atrocity. The context of war is gendered in many ways, including in its effects on civilians. Sexual violence is used by combatants

¹² C Otten, 'Slaves of ISIS: The long walk of the Yazidi women' (the long read) *The Guardian* (London, 15 July 2017) <<https://www.theguardian.com/world/2017/jul/25/slaves-of-isis-the-long-walk-of-the-yazidi-women>> accessed 10 May 2020.

¹³ See especially Human Rights Council, 'Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children' (3 May 2016) UN Doc. A/HRC/32/41.

¹⁴ Fighting human trafficking in conflict, 10 Ideas for Action by the United Nations Security Council, Workshop Report | September 2016 accessible at <https://reliefweb.int/sites/reliefweb.int/files/resources/UNUReport_Pages.pdf>

¹⁵ H van der Wilt, 'Slavery Prosecutions in International Criminal Jurisdictions' (2016) 14 *Journal of International Criminal Justice* 269; and KL Corrie, 'Could the International Criminal Court Strategically Prosecute Modern Day Slavery' (2016) 14 *Journal of International Criminal Justice* 285.

¹⁶ Human Rights Watch, 'Q&A on Joseph Kony and the Lord's Resistance Army' (News, 21 March 2012) <<https://www.hrw.org/news/2012/03/21/qa-joseph-kony-and-lords-resistance-army#4>> accessed 10 May 2020; E Batha, "'Rape was on a daily basis", former child sex slave tells Angelina Jolie' (Thomson Reuters Foundation, 11 June 2014) <<http://news.trust.org/item/2014061153723-rdo21/>> accessed 10 May 2020.

for gendered reasons or to achieve gendered ends. For example, Syrian government officials use sexual violence to torture and humiliate male detainees in prisons, and non-state militia in the Democratic Republic of the Congo use sexual violence to target women and girls for forced ‘marriage’ or sexual slavery. Conflict-related sexual violence is also used by perpetrators as an unfortunately effective method of terrorizing and tearing apart communities.

Conflict-related sexual violence can – and often does – take place in situations of enslavement, including forced domestic work, forced food provision and other forms of forced caregiving. This combination of conflict-related sexual violence and enslavement exists within a power scenario in which enslavers dominate the sexual and physical autonomy of the enslaved. Enslavers prey upon the vulnerability of the enslaved by trafficking them for financial profit or other gain, including for the purposes of further sexual violence. The enslavers may be combatants, or they may be connected to organized crime rings which work alongside combatants, taking advantage of the absence of the rule of law.

Study of the interconnections between human trafficking, enslavement and conflict-related sexual violence is important. For too long, the field of international law has treated these issues as existing in separate silos and therefore addressed through different legal frameworks. Conflict-related sexual violence was considered within international criminal law circles, human trafficking within transnational criminal law discussions, and enslavement within the international humanitarian and human rights law disciplines. We know, from decades of experience, that the interactions between these three forms of violation can deepen the harms done to individuals and societies. We also know that one can beget the other: wartime enslavement can create the setting that allows repeated sexual violence to occur, and human traffickers prey upon the most vulnerable individuals in armed conflicts, including victims of sexual violence.

The relationship between human trafficking, enslavement and conflict-related sexual violence deserves greater scrutiny and understanding. The *Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence* provides the perfect venue for this deeper exploration.

7. **‘There is no such thing as *the* nexus and therefore this Journal is so needed.’**

Dr Christophe Paulussen (T.M.C. Asser Institute; and International Centre for Counter-Terrorism, The Hague)

No, the nexus between human trafficking, enslavement and conflict-related sexual violence is not obvious. This is because conflict-related sexual violence, for example, may be committed as a stand-alone crime, without any connection to the other two forms of criminality. Moreover, there is no such thing as *the* nexus: if connections exist between human trafficking, enslave-

ment and conflict-related sexual violence – and that is of course very well possible, as also recognised by, for example, UNSC Resolution 2331 of 20 December 2016 – these connections will vary, depending on the exact (local) circumstances.¹⁷

In a similar vein, we cannot talk about *the* crime-terror nexus, to mention another nexus that has been increasingly put on the agenda of both scholars and practitioners in the past few years. Indeed, *a* crime-terror nexus can for instance be identified in prisons in Western Europe, but that nexus is obviously very distinct from the crime-terror nexus in Colombia, where guerrillas and drug traffickers cooperate in joint criminal activities.

However, the fact that the nexus between human trafficking, enslavement and conflict-related sexual violence is not obvious is *exactly* the reason why this Journal is so much needed. Only detailed analyses of the complexities and dynamics involved in the various manifestations of the different connections between human trafficking, enslavement and conflict-related sexual violence can lead to meaningful, context-specific assessments. And only these, in turn, can engender tailored responses that can have an impact on the ground, for the victims of these crimes.

8. ‘The nexus is obvious, but we must be careful not to make easy assumptions.’

Professor Ryszard Pitrowicz FLSW (Professor of Law at the Department of Law and Criminology, Aberystwyth University; Adjunct Professor at the University of South Australia; and the First Vice-President of GRETA, Council of Europe Group of Experts on Action against Trafficking in Human Beings)

There is indeed a clear, even obvious, connection between human trafficking and enslavement, and between those crimes and sexual violence in armed conflict. But not all sexual violence in armed conflict arises out of trafficking or enslavement. And not all trafficking is enslavement.

We must be careful not to make easy assumptions. Trafficking in human beings (THB) is often referred to as ‘modern day slavery’. It’s a very catchy slogan, and it gets attention, but it does not always help trafficked people if the general public associates all trafficking as meaning the victims being held in chains and treated in the most egregious manner possible. Of course, this can happen, but THB can involve exploitation that is simultaneously less invidious

¹⁷ UNSC Res 2331 (20 December 2016) UN Doc/S/RES/2331.

and more mundane, yet still a major crime against the victim. Let us not forget those begging outside churches or working on fruit farms.

Nor should we think only about sexual violence when we think about the exploitation arising out of trafficking. So many women, men and children are trafficked for different forms of labour exploitation, for forced criminality and forced begging, even sometimes for their body parts.

In times of armed conflict, civilians can be very vulnerable, and women and girls particularly so. It is right that we seek to expose this, when so much else competes for the world's attention. While in 2019 Europe spoke about Brexit and in 2020 the whole world (some populist politicians notwithstanding) fears the impact of Covid-19, the mass rapes carry on in the Democratic Republic of Congo. We never hear about it these days, while we worry about when we can get a haircut, or where we can go on holiday. And in warfare, the weak and the vulnerable are even less able to defend themselves, which means that women and children are trafficked: by the Russians in Germany in 1945; by Nazi Germany and Japan throughout the Second World War, by members of ISIS much more recently.

It never seems to stop. That is why we should expose these connections, while not allowing ourselves to forget that THB happens outside armed conflict too; that people are exploited for their labour as well as for sex; and that these awful crimes give rise to human rights obligations of States to protect, support and assist not only those who are victims, but also those who are at risk of becoming victims.

9. 'The nexus is particularly obvious in times of conflict.'

Dr Julia Planitzer (Ludwig Boltzmann Institute of Human Rights; member of GRETA; and Council of Europe Group of Experts on Action against Trafficking in Human Beings)

The central term in my point of view in this statement is 'conflict', which forms to a certain extent the nexus between for instance human trafficking or enslavement. Conflict-related trafficking concerns women, men and children and includes for instance forced military recruitment of children or kidnapping of adults. Conflict is one of the drivers of displacement. As shown in CEDAW's general recommendation No. 35 (2017) on gender-based violence against women, gender-based violence against women and girls including trafficking is often exacerbated by for instance armed conflict, displacement

and migration.¹⁸ In the current Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration of CEDAW, rights of women and girls in the context of forced displacement are also addressed. Strengthening rights of displaced persons, in particular ensuring access to asylum procedures, is essential and should be at the centre of measures against conflict-related trafficking.¹⁹ As stated by the UN Special Rapporteur on trafficking in persons, especially women and children (A/71/303), ‘conflict-related trafficking is rarely detected (...) and even less addressed’.²⁰ I am glad to see that the Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence will address this gap and contribute to an enhanced awareness of these matters.

10. ‘The nexus is both obvious and not: These are similar yet distinct crimes.’

Professor Conny Rijken (Tilburg Law School, Tilburg University)

The trafficking protocol not only created an awfully complicated definition of human trafficking but set aside two important historical distinctions: first, between the process (back then referred to as trafficking) and exploitation and second, between sexual exploitation and labour exploitation (including forced labour and slavery). The former, in my view, is regrettable whilst the latter is an advantage. Distinguishing between the process and the act of exploitation, comparable to the distinction in the slavery convention between slave trade and slavery, reflects the different nature of these two criminal acts and enables the prosecution of a broader range of perpetrators, albeit for different criminal acts. It furthermore puts emphasis on the most objectionable element of trafficking, namely, the exploitation of the person with slavery as the most severe form of exploitation. Nowadays, slavery or modern slavery is often used to invigorate the severity of human trafficking because it is often associated with the practices of the black slave trade. But it actually narrows the concept of exploitation. Indeed, some forms of human trafficking can be qualified as (modern) slavery because some traffickers act as the owners of their victims, but this is not necessarily the case. It would be a shame if these cases

¹⁸ CEDAW, ‘General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19’ (14 July 2017) CEDAW/C/GC/35.

¹⁹ CEDAW, ‘Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration’ (2019).

²⁰ HRC, ‘Report of the Special Rapporteur of the Human Rights Council on Trafficking in Persons, especially Women and Children (5 August 2016) A/71/303.

were not identified as cases of human trafficking. Another important reason to hold on to the use of human trafficking is the victim protection accompanying to the identification of trafficking victims. Unless this protection is granted to victims of all forms of exploitation thus including slavery, modern slavery, forced labour, servitude, we should cherish what has been achieved in terms of victim protection. The use of the term ‘enslavement’ instead of ‘slavery’ is interesting. Those who want a further deepening of this terminology should read Nicole Siller’s dissertation in which she concludes that ‘... the law has incorporated trafficking in persons within the material elements of this international offense [of enslavement]’.²¹ Enslavement is primarily used in the context of international crimes, namely, war crimes and crimes against humanity, and according to Siller, includes the crime of trafficking as how it is defined in international law. Interestingly, in national contexts ‘enslavement’ is often incorrectly translated as slavery, disregarding that ‘enslavement’ encompasses both crimes of slavery and ‘the bringing into slavery’. Given the use of ‘enslavement’ in the field of international humanitarian law the link in the Journal’s title with armed conflict is an obvious one. The limitation to conflict-related sexual violence is bringing back a limitation which we had done away with in the trafficking protocol, albeit in this context a well-chosen focus for the journal and a topic that deserves wider scrutiny. As a specialised and interdisciplinary journal, it will importantly contribute to our knowledge and understanding of the three topics separately and to further unravel the nexus between these. Looking forward to reading it!

II. ‘The nexus is obvious: The Entanglement comes down to the issue of power.’

Dr Pim Scholte (Laguna Collective; and Amsterdam University Medical Centers)

To me, the nexus between human trafficking, enslavement and conflict-related sexual violence is obvious indeed. By definition, during large scale conflicts the power of one group over the other is fought over. Sexual violence is an extremely effective weapon, as it destroys its victims’ integrity, sense of dignity and agency, psychological and physical wellbeing, and full reproductive capacity. When committed against many, sexual violence affects the social fabric and potential of a whole community, resulting in large scale disempowerment. Once a community has been defeated it falls prey to any

²¹ N Siller, *Trafficking in Persons under International Law and its Incorporation within Enslavement as a Crime against Humanity* (PhD University of Groningen 2017) 273.

conqueror's actions, which may be particularly degrading as the defeated were probably considered an inferior group even before the conflict. Thus, sexual violence coloured the recent past, and enslavement and further sexual violence may lay ahead. These may easily take the form of exploitation and trafficking, as the money involved warrants the exploiters' survival and wealth, and possibly the purchase of new arms.

In all aspects, the entanglement of human trafficking, enslavement and conflict-related sexual violence comes down to the power issue. Violence, enslavement and exploitation are an extension of any person's power – that is just how we are. No human being should ever have absolute power over another individual, for the very reason of being human.

12. 'Despite some distinctions, the nexus is obvious because of the many commonalities.'

Dr Kim Thuy Seelinger JD (Washington University in St. Louis)

Despite some distinction between legal frameworks and traditionally implicated actors, these harms are all serious human rights violations, they are all crimes under international law, and they all too frequently have gendered roots, manifestations, and impacts. Vulnerability to one can be related to vulnerability to the others. Most importantly, these overlapping forms of harm all demand a survivor-centred, evidence-based, and multi-disciplinary approach to prevention and response.

13. 'Colloquially the nexus is obvious but in reality, further distillation, clarification and implementation are needed.'

Patricia Viseur Sellers (Special Advisor to the Prosecutor of the International Criminal Court; Oxford University; and London School of Economics)

Since antiquity, enslaving a defeated enemy was a commonplace, intentional outcome of waging war. Sociologist Orlando Paterson observed that, circa 700 BC, the Greek city-states would capture enemy females in order to replenish the slave population that was overwhelmingly female. Thus, wartime female slavery is an arcane form of enslavement. The nexus between conflict-related sexual violence and enslavement relentlessly persistent. Modern examples abound from sexualized enslavement of the Comfort Women of World War II, the females of the town of Foça in the former-Yugoslavia, the child soldiers of

Sierra Leone, Uganda or the Democratic Republic of Congo to the Yazidi females and children enslaved under the IS Caliphate.

To unveil the nexus between conflict-related sexual slavery and human trafficking, first, the following must be understood: how does reduction to enslavement happen? When are powers attaching to rights of ownership exercised over a person? To transit from being 'un-enslave' to being enslaved could entail acts of capture, transport, exchange, sale, barter, transfer, recruitment, abduction, deception, inheritance, gifting or birth. Such pre-cursory conduct to slavery might constitute human trafficking or, under humanitarian and international criminal law, the prohibition of the slave trade. Curiously, human trafficking and the slave trade have escaped concerted legal examination in conflict-related enslavement and sexual violence cases.

In *Ntaganda*, a recent ICC case, the Trial Chamber observed that after a 'mop-up' operation in Kobu, Commander Simba committed sexual slavery against an eleven-year-old girl because he 'exercised powers attached to the right of ownership over the girl', starting with her capture and deprivation of liberty.²² The Trial Chamber did not refer to her capture and reduction to slavery as a form of human trafficking or an act of the slave trade. In a subsequent finding, the *Ntaganda* Trial Chamber held that the capture of another girl who was then raped was not a deprivation of liberty tantamount to exercising powers attaching to the rights of ownership, although, it found 'her capture and having been made to carry items were not lawful, this conduct is not separately charged'.²³ The Trial Chamber, in essence signalled an impunity gap but refrained from assigning a specific criminal character to the conduct.

When conduct that reduces a person to slavery comprises the exercise of powers attaching to the rights of ownership, then, the entirety of those acts constitute enslavement. Such conduct is not human trafficking, except in the lay sense of the term: it does not constitute the transnational crime or the human rights violation of trafficking. Although human trafficking might find berth in national penal codes, it is rarely subsumed under provisions that govern armed conflict. Precursory conduct to in *Ntaganda* might have been charged as the slave trade as a war crime or a crime against humanity under customary international law, however the Rome Statue is silent in regard to the slave trade.

Colloquially speaking, human trafficking has an obvious close nexus to enslavement and conflict-related sexual violence. In reality, and amid the differing legal regimes, such a nexus is not so obvious. It requires further distillation, clarification and implementation.

²² *The Prosecutor v Bosco Ntaganda* (Judgment Trial Chamber VI) ICC-01/04-02/06 (8 July 2019) para 961.

²³ *ibid* para 957.

14. **'The nexus is visible in the disintegration of legal boundaries between the crimes.'**

Dr Nicole Siller (Deakin University)

From its inception in the last years of the nineteenth century and throughout the twentieth century, international law addressing human trafficking has evolved resulting in the production of a series of instruments. Whether the inundation of international law on the subject can be considered as *progress* is a matter of perspective and opinion; but objectivity requires one to admit that each of these instruments sheds light on the legal construct of human trafficking as an international legal concept, culminating with the current definition of 'trafficking in persons', found in Article 3 of the Palermo Protocol.

It is the handling of these instruments by domestic, regional, international, hybrid and symbolic judicial institutions, as well as by practitioners and scholars which confirms, at a minimum, the existence of a nexus between human trafficking, enslavement and conflict-related sexual violence – if not the disintegration of legal boundaries between the crimes of enslavement, sexual slavery and trafficking.

For example, a review of the judicial methodology used to make a finding of enslavement or sexual slavery reveals each international or hybrid court or tribunal to-date has largely strayed from explicitly identifying 'powers attaching to the right of ownership', the central components of the international legal definition of slavery. Instead, these institutions have favored utilizing a judicially constructed test ('indicia of enslavement').

Among others, this test espouses the key relevant legal considerations one would make when determining the perpetration of trafficking (as defined in the Palermo Protocol). Specifically, the most apparent indicia include: (1) the importance in methods and manners of victim acquisition; and (2) considerations of consent. Each and every International Criminal Law (ICL) institution has held that the circumstances by which a person was acquired for their enslavement/sexual slavery are relevant and aids in determining whether the elements of the crime were committed. These factors are also the first two elements of human trafficking. Moreover, in each enslavement/sexual slavery case, victim acquisition was performed for the purpose of subjecting those persons acquired into forced or compulsory labor and/or sexual exploitation (eg rape, sexual slavery and/or forced 'marriage') thereby satisfying the third and final element of trafficking in persons.

This consistency in legal application evidences a common understanding in the interpretation of the crimes of enslavement and sexual slavery and the obvious nexus that exists with those offences and human trafficking. Because the relied upon indicia of enslavement essentially comprises the elements of trafficking in persons as codified in the Palermo Protocol, it may even be con-

cluded that ICL institutions already consider the incorporation of trafficking within the international crimes of enslavement and sexual slavery.

15. ‘The nexus is particularly obvious, but largely overlooked, during refugees’ flight.’

Dr Marian Tankink (Medical anthropologist and Consultant Anthropological Research & Training on Gender, Violence and Mental Health)

Human trafficking, enslavement and sexual violence are elements that exist in all conflict situations, as also the contributions in our first issue showed. Conflicts force people to flee their homes and seek refuge elsewhere, which destroys the social and economic safety networks of families and communities and makes individuals vulnerable to being trafficked or enslaved.²⁴ In this piece I would like to focus on the situation of refugees that are under protection of UNHCR, the European Union (EU) and/or specific countries such as Greece.

Refugees who have fled to other countries in order to avoid conflict-related gender-based violence (GBV), may nonetheless continue to face other forms of GBV including: domestic violence, sexual violence, early marriage, harassment and isolation, exploitation, and survival sex.²⁵ Conflict-related sexual violence, enslavement and trafficking travel with the refugees through counties and to refugee camps or asylum settlements. In my opinion, there is insufficient attention paid to refugees’ specific vulnerabilities and need for psychosocial support and protection. In what follows, I will only mention a few examples.²⁶

Last year, I was assessing the mental health and psychosocial support situation in the refugee camps on the Greek islands and in Athens. Many refugees told me that, while crossing through Turkey, they had become victims of human trafficking and enslavement before they managed to reach Greece. Upon their arrival in Greece, an EU country, and telling their stories to aid and health workers, they were met with reactions ranging from ignorance, helplessness, as well as outright disbelief.

²⁴ RKQ Akee and others, ‘Ethnic Fragmentation, Conflict, Displaced Persons and Human Trafficking: An Empirical Analysis’ (IZA Discussion Papers no 5142, 2010) <<http://nbn-resolving.org/urn:nbn:de:1011-201010133345>> accessed 14 May 2020.

²⁵ G Hassan and others, ‘Mental Health and Psychosocial Wellbeing of Syrians affected by Armed Conflict’ (2016) 25 *Epidemiology and Psychiatric Sciences* 129.

²⁶ M Tankink, ‘“We are trying to create a hole in the water.” An integrated assessment of refugees and forcibly displaced persons’ mental health, psychosocial support services and experiences with gender-based violence in Athens, Lesvos and Samos, Greece’ (HIAS, *forthcoming*).

One woman I spoke with was taken out the camp by traffickers and forced into prostitution. When she managed to escape, the police officers she turned to for help did not take her case seriously, assuming that she was making up this story in an attempt to receive a residence permit. They also could not believe that this could happen on their island.

Refugees mentioned the existence of an illegal brothel in their camp in which women and girls were forced to work at night. As far as they could tell, camp authorities took no action against these practices.

In another camp several boys were picked up by a man driving a car in order to take them to have sex with men in exchange for a packet of cigarettes. This story is known to the police, there even exists an accurate description of the car, but no action was taken.

In Athens, about 3,500 unregistered refugee children or children from 'safe countries' are homeless, with no support and forced to have survival sex. Teenage boys, in particular, are sexually abused by older men in exchange for money.²⁷

The refugees in these examples are scarcely the focus of policy discussions and are consistently left out of violence-prevention and response efforts.²⁸ This happens in camps in Europe, under protection of Greece and the European Union and our international law. Policy makers look away and organisations supporting refugees are severely understaffed and frustrated. What should be our role as social scientists and practitioners?

16. 'The nexus is obvious since victims face similar conditions.'

*Linda Verhaak (Clinical Psychologist at Arq Centrum 45
(The Netherlands) and ARQ International)*

In our work with victims of human trafficking there is an obvious connection between working in forced prostitution or the sex industry and enslavement. Most of the victims have been literally bereft of their freedom of movement or choice, either by physical violence and threat, drugs and alcohol or by psychological mechanisms of threat or dependency, or in the case of many African victims, by voodoo rituals in which a curse that affects the psychological wellbeing of the victim and that of their family. The psychological aspect of

²⁷ OS Kotsiou and others, 'Impact of the Refugee Crisis on the Greek Healthcare System: A Long Road to Ithaca' (2018) 15 *International Journal of Environmental Research and Public Health* 1790.

²⁸ J Freccero and others, 'Sexual Exploitation of Unaccompanied Migrant and Refugee Boys in Greece: Approaches to Prevention' (2017) 14 *PLOS Medicine* e1002438.

enslavement in love relationships is yet a more subtle way of dependency that we see more often in (Eastern) European victims. Conflict related violence has a big effect on the need for people to flee from their original home area, making them vulnerable to human traffickers who promise work and a better living abroad, and by that means making the victim vulnerable and totally dependent on the trafficker, which in turn will facilitate enslavement mechanisms.