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A human rights-based approach for effective criminal justice response to human trafficking

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Abstract

Human trafficking is a complex, multifaceted, and deeply layered issue. Consequently, any mitigation strategy employed against it must also be layered and target the distinct aspects of the issue. For long, the obvious and perhaps the most visible practice to deal with cases of trafficking has been employing a criminal justice approach where the focus largely lies on the persecution of the criminal instead of the protection of the survivors. More nuanced approaches, such as anti-trafficking clauses that protect human rights and focus on removing root causes that directly or indirectly have an impact on trafficking patterns, including labor, migration, and sexual exploitation issues, have emerged to successfully tackle human trafficking as a global issue. The principles and guidelines for such a multi-sectoral, human rights-based approach are primarily aimed at trafficking prevention, protection, assistance to survivors of trafficking, criminalization, punishment, and redressal. This article aims to evaluate this approach and its intersections with the traditional criminal justice approach. It will further discuss the approach that is currently in practice and argue for further improvements and efforts. Finally, it will also discuss the impact of COVID-19 on trafficking in persons.

Keywords Human trafficking, A Human Rights-Based Approach (HRBA), United Nations (UN), Criminal justice approach, Criminal law

Introduction

Combating human trafficking can be addressed through various approaches. Alas, for a long time, it has only been addressed through a criminal justice approach that mainly focuses on prosecuting the criminal over protecting the trafficked survivors. Through time, alternative anti-trafficking perspectives that emphasize labor, migration, and sexual exploitation have emerged (Djukanovic 2012). For instance, the 'labor approach' recognizes the compelling factors for exploitative labor migration that make people vulnerable to forced labor in the private sector and their links to trafficking (International Trade Union Confederation 2011). In addition, it stresses the

integration of international labor standards to fight human trafficking. Similarly, the 'migration approach' promotes stricter border controls and migration flows to curb trafficking (UNHCR 2011).

A Human Rights-Based Approach (hereafter referred to as HRBA) is a conceptual and methodological framework that provides guidance on how to design, implement, and evaluate policies and interventions in order to ensure that they respect and enhance human rights development (United Nations Sustainable Development Group 2003). It was adopted by the United Nations Development Group (UNDG) in 2003, aiming at a common understanding across UN agencies, funds, and programmes at global, regional, and national levels (United Nations Sustainable Development Group 2003).

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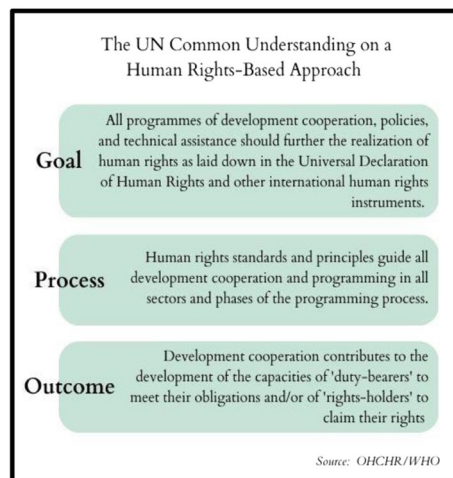
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Since its inception, this approach has become one of the key principles guiding UN common country programmes, and has been integrated into the Guidelines for UN Country Teams on preparing a Common Country Assessment (CCA) and UN Development Assistance Framework (UNDAF) (Office of the United Nations High Commissioner for Human Rights 2011). Overall, the approach has focused on developing a common understanding that highlights HRBA's two-fold objective as (1) empower people (rights-holders) to claim and exercise their rights; and (2) strengthen the capacity of actors (duty-bearers) who have a particular obligation to respect, protect, and fulfill the rights of the vulnerable (UNICEF Finland 2015).

This article aims to evaluate this approach and its intersections with the traditional criminal justice approach. It will further discuss the approach that is currently in practice and argue for further improvements and efforts. To do so, the article will begin by briefly looking at the Criminal Justice and Criminal Law approach. Hereafter, the article will analyze and highlight the significance of employing a human rights-based approach when dealing with cases of human trafficking. Next, it will delve into the practical application of a Human Rights-Based Approach, mostly through the various offices of the United Nations. Then, the article will discuss the implications of COVID-19 on trafficking in persons. Finally, the article will conclude by stressing the need to continue improving the international and national apparatus in order to effectively answer the issue of Human Trafficking.

Criminal justice or law enforcement approach

Human trafficking is often seen as a criminal justice issue approached from a criminal law perspective with the aim of punishing perpetrators by utilizing the established criminal justice processes (Rijken and Koster 2008). Traditionally, trafficking activities have been categorized as crimes and tackled with law enforcement strategies that focus on deterrence and punishment (Amiel 2006). According to the criminal law approach, identifying and prosecuting traffickers has primary significance in stifling the existence of trafficking with the overall goal being to persuade countries to criminalize trafficking in their domestic laws, as well as to prosecute the perpetrators (Amiel 2006). According to (Bruch 2004) a criminal justice approach to human trafficking has a great advantage as it offers the potential for prosecuting traffickers directly. Burch has further highlighted that the approach also has a symbolic value to prosecuting traffickers draws increased public attention to the problem and sends a message about the value of the survivors and the fact that consequences will follow for those who engage in trafficking. However criminal justice approach to human trafficking has been criticized mainly for its disregard for the primacy of cardinal human rights in general and the protection of survivors in particular. In the law enforcement proceedings trafficked survivors are, generally, only seen as an important tool for the conviction of the traffickers, since, in most cases, their testimony is the determining factor in the trial. In other words, attention towards the needs and protection of survivors is practically limited (Rijken and Koster 2008). Thus, contemporary criticism of the existing anti-trafficking framework is mainly directed towards its interpretation that justice for survivors is equivalent to the criminalization of the offenders (Djukanovic 2012). Moreover, even the witnesses' protection programmes in these criminal proceedings are ill-equipped and fail to provide adequate protection (Rijken and Koster 2008). Evidently, within this approach, survivors of trafficking are left vulnerable. Consequently, this neglect of the human rights of the survivors is also reflected in the current international legal framework (UNODC 2011a, 2011b). As opposed to the *human rights-based approach (HRBA)* to *human trafficking* traditional law enforcement and immigration *control* perspective fall short in providing justice to survivors (Suzanna Phillips et al. 2014) In addition to prioritizing prosecution over survivors' rights all too often, trafficking survivors are arrested, detained, prosecuted, and, in some cases, deported, without ever having been identified as a survivor (Suzanna Phillips et al. 2014) As observed by an Argentinian court in the *Dulcinea case*, subjecting survivor-defendants to detention,

prosecution, and conviction subjects them to re-traumatization (UNODC 2020). Moreover, *Luz's* experience with criminalization demonstrate where a 33-year-old *Luz* trafficked into the U.S. from Latin America had multiple encounters with the New York Criminal Justice System that left her feeling scared, confused, and disempowered (Phillips et al. 2014). With regard to the protection of the identity and privacy of survivors, the *Fatima Rustemović Zivinicie*, case can be cited as a showcase for criminal justice proceedings failure to protect survivors' privacy and the Judge's miss behavior that contravenes a survivor-centered approach to combating human trafficking (OSCE 2021). Secondary victimization during criminal proceedings is a serious risk for survivors of trafficking who participate in these proceedings (Rijken et al. 2021). In this regard, the case of the Federal Court of Criminal Appeal of *Argentina*, on *Bar California v. Argentina* reveals the survivor's first experience of re-victimisation due to the criminal system's charging process including inappropriate comments, language interview techniques, and approaches from police (Tomkins 2022).

Human right-based approach for criminal justice response—the rationale

An HRBA helps to ensure that anti-trafficking responses do not create or exacerbate existing situations that contribute to trafficking through policies or practices that further undermine the rights of persons vulnerable to trafficking (UNHCR 2011). In a criminal justice response to human trafficking cases, applying a human rights-based approach is found significant for various reasons including the following explained hereunder.

Supremacy of human rights—a founding principle

A HRBA implies considering, at each and every stage, the impact that a law, policy, practice, or measure may have on the human rights of trafficked persons and other groups who may be affected by trafficking or anti-trafficking policies (UNHCR 2011). As will be expounded in section 4, in a human right-based—response to human trafficking, the incorporated principles and guidelines are drawn from various internationally accepted human rights norms and values that, at all times, advocate the “supremacy of human rights”. It favors the protection of trafficked survivors along with the rights of the suspect, accused, or convicted of human trafficking crime. Hence, employing the approach enables the criminal justice system to strike a balance between the protection of survivors' interests (crime control) and the rights of the arrested, accused, or convicted person (due process).

Elucidate “rights of the right holder” and “obligations of the right bearer”

An HRBA also implies the view that every human being is a rights-holder and that every human right has a corresponding duty-bearer (KirkemannBoesen and Martin 2007). Therefore, this approach presumes that it is possible to invoke the right against a sufficiently well-functioning state, while still requiring that the rights-holder is capable of enforcing his/her right against the duty-bearer. For this reason, the rights-holder must have access to duty bearers (public authorities) such as courts, police, and political representatives at the local or national levels (Broberg and Sano 2018). In the criminal justice response to human trafficking, such an approach helps to properly identify entitlements and obligations throughout the criminal justice process, together with assessing to what extent those rights are claimed, and obligations are enforced in practice.

Endorsement of cooperation and partnership

A response to human trafficking requires cooperation and partnerships among government agencies as a common aspect of both the transnational organized crime convention and the supplementing Palermo protocol. In this regard, a human rights-based approach is found essential as it aids partner governments to deliver on their own obligations; thus, creating incentives for cooperation. By matching development assistance to a partner government's treaty obligations and domestic laws, this approach creates an opening to provide technical assistance that enables governments to fulfill their commitments (Pact and USAID's Center of Excellence on Democracy, Human Rights, and Governance 2018).

Rights imply duty and duty demands accountability

The concept of accountability is said to be the “sine qua non”, or key element, of a rights-based approach (Alston et al. 2005). The mere recognition of human rights entails an imposition of a duty on the state and holds it accountable to protect its citizens from human rights violations. From a legal perspective, this relationship between the right bearer and duty holder is reflected in the operative provisions of international human rights treaties that impose a legal obligation on states to realize the rights under the relevant treaty (Invernizzi and Williams 2016).

As rights imply duties, duties demand accountability from not only the policymakers but also from others whose actions have an impact on the rights of people (Office of the United Nations High Commissioner for Human Rights 2005a, 2005b). However, addressing the human rights aspects of the phenomenon has proven to be difficult in practice, since a criminal justice response

characterized by crime and immigration control dominates, and promotion of a human rights approach, remains a secondary concern at the national level (Obokata 2006). Yet, trafficking is, above all, a human rights issue because it denies almost all protected human rights of survivors. By failing to protect trafficking survivors and provide them with effective remedies, states are violating their international obligations to prosecute human rights violations (Amiel 2006).

HRBA in current practice

Still, many UN protocols and guidelines have begun to adopt a more balanced approach that focuses on both persecution of traffickers as well as the protection of survivors. The Trafficking Protocol within the UN Convention on Transnational and Organized Crime's framework primarily takes a criminal justice approach, advocating for the criminalization, investigation, and prosecution of traffickers, calling for trafficked persons to be protected and assisted as survivors of serious crime at the same time (Bauloz and McAdam 2022). This approach is often referred to as the "3P approach", entailing prosecution, protection, and prevention. An additional fourth "P" of partnership has come to be emphasized to reflect the need to strengthen criminal justice cooperation between States. In this regard, the United Nations Office on Drugs and Crime (UNODC) plays a key role by providing an effective criminal justice response to these crimes (UNODC 2012).

One of the most significant outputs of the Office of the United Nations High Commissioner for Human Rights (UN OHCHR) is the Recommended Principles and Guidelines on Human Rights and Human Trafficking (United Nations Economic and Social Council 2002). The recommended principles and guidelines began to be developed in 2000, in response to the clear need for practical, rights-based policy guidance on the trafficking issue (United Nations Economic and Social Council 2002). While the trafficking Principles and Guidelines are not binding and cannot be recognized as a source of obligation for States (OECD 2013), they, in parts, embody existing rules of international law (United Nations Economic and Social Council 2002), and, more importantly, establish a framework for state practices that may themselves provide the basis for the emergence of customary international law (United Nations Economic and Social Council 2002). These principles and guidelines are intended to "promote and facilitate the integration of a human rights perspective into anti-trafficking laws, policies, and interventions", to serve as a framework and reference point for the work of the Office of the High Commissioner on this issue (United Nations Economic and Social Council 2002). These principles and guidelines are mainly based

on the primacy of human rights, trafficking prevention, protection and assistance to survivors of trafficking, and criminalization, punishment, and redress. (United Nations Economic and Social Council 2002).

Similarly, the Special Rapporteur report affirmed that the administration of the justice system must be geared towards guaranteeing access to justice to survivors, providing an effective remedy, promoting respect for the fundamental human rights of survivors, including offenders, and ensuring adequate protection and assistance to survivors of trafficking in order to prevent re-victimisation and avoid the danger of being re-trafficked (United Nations General Assembly 2009). Hence, this approach centers itself on the survivors of trafficking and promotes efforts that are intended to ensure their human rights (Rijken and Koster 2008).

Hereon, the article will attempt to highlight the various components of HRBA in practice.

Criminalization of human trafficking and related acts

Given that the criminalization of trafficking is an important step towards ending impunity for traffickers, states that fully fail to criminalize trafficking are failing in their obligation to protect survivors of trafficking and prevent future trafficking (Haddadin and Klimova-Alexander 2013). Notably, the obligation to criminalize intentionally committed trafficking is mentioned under Article 5 of the Palermo Protocol (Gallagher 2010). Similarly, the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, (hereinafter Recommended Principles and Guidelines) unequivocally declared that "states shall adopt appropriate legislative and other measures necessary to establish trafficking as criminal offences, its component acts and related conduct." (United Nations Economic and Social Council 2002). Various UN Resolutions reaffirmed states' duty to implement all relevant legal instruments that criminalize human trafficking and related acts, including participating as an accomplice and organizing or directing other persons to commit an offence, as set out in the Trafficking Protocol. (United Nations General Assembly 2010a, 2010b, 2010c).

Non-criminalization of trafficked survivors

When survivors of trafficking do come to official attention, they may be misidentified as illegal or smuggled migrants (Office of the United Nations High Commissioner for Human Rights 2014). In cases when they are identified correctly, they may sometimes be placed in detention to ensure their cooperation with criminal justice agencies (Gallagher and Karlebach 2011). Moreover, the obligation of non-punishment can be breached directly, where the State authorities dealing

with an offence committed by the trafficked person are, or ought to be, aware of her/his status as a survivor of trafficking but fail to attach appropriate significance to this fact. Thus, indirect violation often results from a failure to identify a person as a survivor of trafficking (Piotrowicz and Sorrentino 2016).

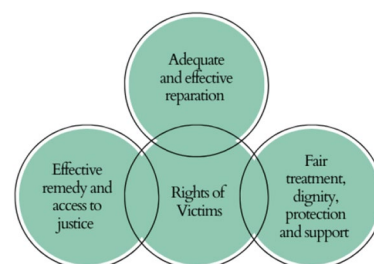
Indeed, criminalization, prosecution, imposition of penalties, and/or detention are incompatible with a rights-based approach to trafficking, denying trafficked persons protection rights (UNHCR 2011). The 2021 report of the Special Rapporteur also emphasized that the punishment of a survivor marks a rupture with the State's commitments made to recognize the priority of survivors' rights to assistance, protection, and effective remedies (United Nations General Assembly 2021). Most importantly, the Recommended Principles and Guidelines outline that States should consider "ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons" (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b). On this subject, various international policy bodies have confirmed the non-prosecution of trafficked persons as the standard. For instance, the EU directive clearly places an emphasis on States' obligation to take the necessary measures not to prosecute survivors of trafficking (Official Journal of the European Union 2011). The rationale for the non-criminalization is based on the recognition of their human rights, as well as an appreciation that trafficked people do not have free will, being rather compelled to commit unlawful acts by those who control and exploit them (Piotrowicz and Sorrentino 2016).

In her article, "Criminalizing the Survivor", Jessica Aycock notes how criminalizing survivors of trafficking is inconsistent with the deterrence, rehabilitation, restorative, retribution, and incapacitation theories of punishments in the criminal justice system (Aycock 2019). It is worthwhile to note that the Palermo Protocol does not expressly provide for the non-punishment of survivors of trafficking. Nonetheless, the key purpose of that instrument is to protect and assist the survivors of trafficking with full respect for their human rights (United Nations General Assembly 2001). Hence, States should develop clear policies, legislations, and practices to support the effective implementation of the non-punishment principle at all stages of the criminal justice system (ICAT 2020).

Survivor-assistance, compensation, and witnesses protection

As far as criminal justice response to human trafficking is concerned, assistance, protection, and compensation to trafficked survivors are crucial aspects of a human rights-based approach. The International Criminal Court Statute recognizes three fundamental rights of all survivors: firstly, the right to an effective remedy and access to justice, including the ability to have access to, and participate in proceedings where their personal interests are affected; secondly, the right to fair treatment, dignity and respect throughout the process, including the right to be informed, protection from reprisals and re-dramatization, access to support and respect for privacy; thirdly, the right to adequate and effective reparation, including access to appropriate forms of reparation (International Criminal Court 2019; International Bar Association 2008).

These rights are also inculcated in the UN Resolution, as safeguards for survivors of both gross violations of international human rights law and serious violations of international humanitarian law (Office of the United Nations High Commissioner for Human Rights 2005a, 2005b). However, survivors of trafficking are too often treated as instruments of criminal investigations, rather than as rights holders with a legal entitlement to protection, support, and remedies (United Nations General Assembly 2012). Article 6 of the Palermo Protocol encompassed the protection and assistance to trafficked persons but had a broad understanding that prompted several intergovernmental organizations to issue guidelines clarifying the rights of anyone suspected of having been trafficked under existing international law, in particular, their rights to protection and assistance (Galagher 2010).



Note: The diagram is developed by the author based on the facts provided on 'Balancing rights: The International Criminal Court at Procedural Crossroads 2008, ICCPR, Palermo Protocol'

In this regard, an HRBA puts the human rights of trafficked persons at the center of all efforts to prevent and combat trafficking and to protect, assist, and provide redress to survivors (Office of the United Nations High

Commissioner for Human Rights 2010a, 2010b). As the recommended principles and guidelines stressed, states shall ensure that trafficked persons are protected from further exploitation and have access to adequate legal and other assistance for the duration of any criminal, civil, or other actions against the suspected trafficker (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b; Council of Europe 2005). It further explicitly stated that the provision of protection shall not be made conditional upon the capacity and willingness of the trafficked person to cooperate in legal proceedings (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b; United Nations General Assembly 2014). Notably, trafficked persons have an important role to play and a legitimate interest in legal proceedings against their exploiters. A HRBA to trafficking requires that all efforts should be made to ensure survivors are able to participate in legal proceedings freely, safely, and on the basis of full information (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b; Gallagher and Karlebach 2011).

Nonetheless, survivors can be reluctant to work with law enforcement for several reasons, including that fear of their involvement may compromise their well-being (U.S. Department of Homeland Security 2020). Though there is an acknowledged importance of survivors' testimony for the conviction of traffickers, the compelled survivor is unlikely to make a strong witness (Gallagher and Karlebach 2011). Thus, they should be given a genuine opportunity to consider their legal options, at a minimum, the provision of information that will allow them to make an informed choice (Gallagher and Karlebach 2011).

Furthermore, states shall provide protection before, beyond, and outside the criminal justice process, including disclosure of the witness's identity and the introduction of evidentiary rules to permit testimony that ensures the witness's safety, temporary residence permits to survivors and witnesses during legal proceedings (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b; UNODC 1985). Similar provision of protection obligations of the states is included in the UN Convention against Transnational Organized Crime (United Nations General Assembly 2001). With regard to child survivors, though it is often a challenge to identify their special interests, vulnerabilities, and rights shall be always considered paramount, and the grant of swift protection and appropriate assistance must be a prior task (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b; UNICEF 2006; International Organization for Migration 2018). In such cases, some regional conventions provided that, when the age of the survivor is doubtful and there are reasons

to believe that the survivor is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age (Council of Europe 2005). As part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative, legislative, or other appropriate means, that, when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy (Office of the United Nations High Commissioner for Human Rights 2011).

Investigations and prosecutions—due diligence

The primary goal in every criminal proceeding is a just outcome (Basham Jr and Sibilla 1979) and failure to prosecute leads to widespread impunity (Council of Europe 2011). A human rights-based approach to trafficking requires acknowledgement of a widespread culture of impunity for those involved in trafficking and similar acts. Unless states take appropriate steps to investigate, punish, and redress business-related human rights abuses when they do occur, the state duty to protect can be rendered weak or even meaningless (Office of the United Nations High Commissioner for Human Rights 2011). States/criminal justice agencies are required to exercise investigation, prosecution, and adjudication of trafficking crimes, including its component acts and related conduct in due diligence (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b). As per a human rights-based approach, trafficked persons should first and foremost be seen as rights holders and not as merely instrumental to investigations or prosecutions, and, during the processes, active identification of trafficked survivors is imperative (United Nations General Assembly 2012).

Access to remedy

The right to an effective remedy for survivors of human rights violations is recognized under several major international human rights instruments (United Nations General Assembly 2014). To provide effective remedies to survivors of human trafficking, there are key aspects that need to be ensured, such as the examination of basic elements or phases of the judicial process: Access to Justice, Fair Court Proceedings, Compensation, and Enforcement (United Nations General Assembly 2011).

The right to effective remedy focuses on redress and access to justice that will ensure that the wrongs suffered by the survivor are remedied, irrespective of his or her immigration status (United Nations General Assembly 2009). In addition, Articles 2, 7, and 9 6(6) of the Palermo Protocol obliges each State party to ensure that its legal system contains measures that offer survivors the right

to obtain compensation for damage suffered, as well as safeguarding that survivors are treated with full respect for their human rights. In this regard, the recommended principles and guidelines stress that “trafficked person, as survivors of human rights violations have an international legal right to adequate and appropriate remedies and remedies may be criminal, civil or an administrative in nature.” (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b). Moreover, similar regional human rights’ instruments include protections for the right to remedy. For example, the Principles and Guidelines on the right to a fair trial and legal assistance in Africa recognized everyone’s right to an effective remedy by competent national tribunals for acts violating the rights granted (AU, African Commission on Human and Peoples’ Rights 2003). Remedies for gross violations include the survivor’s right to the following provisions as stated under international law: Equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and Access to relevant information concerning violations and reparation (Office of the United Nations High Commissioner for Human Rights 2005a, 2005b).

Furthermore, survivors shall receive all necessary legal, material, medical, psychological, and social assistance, and shall be informed of their availability (Office of the United Nations High Commissioner for Human Rights 2004). On this subject, a focus on access to remedies can be an illustrator of this aspect. This access must be viewed from the perspectives of both survivors’ access to the appropriate authorities to have their claim fairly heard and decided, together with the reparation that he or she can be awarded (United Nations General Assembly 2010a, 2010b, 2010c). However, the Special Rapporteur indicated that trafficked persons frequently lack information on the processes for obtaining remedies (United Nations General Assembly 2010a, 2010b, 2010c). In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies. It is necessary to ensure that survivors of trafficking have an enforceable right to fair criminal, civil, or administrative remedies.

In this regard, court-ordered compensation could include the costs of medical, physical, and psychological treatment, as well as legal fees and other expenses incurred, such as costs related to the participation of the survivor in the criminal investigation and prosecution process (UNODC 2009). Failing to provide remedies in cases in which non-State organs interfere with these rights is a breach of the standard of due diligence (Office of the United Nations High Commissioner for Human Rights 2005a, 2005b). As far as remedy is

concerned, ‘proportionality’ must not be left untouched. In view of this, stressed compensation should generally be “appropriate and proportional” to the gravity of the violation and the circumstances of each case (Gallagher 2010). Moreover, compensation has to be equivalent to the loss sustained and must not be a source of unlawful enrichment.

Rights of suspect, accused, and convicted persons

Anti-trafficking measures shall not adversely affect human rights and dignity (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b). This protection includes suspected, accused convicted persons of trafficking offences (Office of the United Nations High Commissioner for Human Rights 2005a, 2005b). Hence, every person has the right to a fair trial both in civil and criminal cases, but the effective protection of all human rights depends on the availability of access to competent and impartial courts which can and will administer fair justice (Office of the United Nations High Commissioner for Human Rights 2003). The right to a fair trial consists of a complex set of rules that are wide and refer to, *inter alia*, a fair and public hearing, presumption of innocence, and impartiality of the tribunal (African Union 2003a, 2003b; AIRE Centre 2021; Meheretu and Alemayehu 2018). These protections are enshrined under various international human rights pacts, and national legislations and elaborated in practical court cases including but not limited to: ICCPR, Articles 9, 10, 14; European Convention on Human Rights, Article 5, 6; American Convention on Human Rights, Articles 7, 8; African Charter, Articles 6, 7. In this regard, the European Court of Human Rights, in the case of Findlay v. the United Kingdom (European Court of Human Rights 1997), explained that the right to a fair trial requires that a case be heard by an “independent and impartial tribunal” established by law (European Court of Human Rights 2022).

Proportionality in punishment

Punishment and the justification for punishing crimes have been a subject of debate among philosophers, political leaders, and lawyers for centuries (European Court of Human Rights 2022; Goh 2013). The proportionality principle has long been an intrinsic aspect of criminal justice and is a fundamental aspect of most modern legal systems (Goh 2013). The place of punishment within the criminal justice system has been theorized by moral philosophers, social theorists, and criminologists (Maculan and Gil 2020). Where the criminal justice system imposes punishments, it should do so only in proportion to the crimes to which it seeks to respond (Goh 2013). The principle of proportionality advocates that penalties must

be proportionate in their severity to the gravity of the defendant's criminal conduct, which seems to be a basic requirement of fairness (Von Hirsch 1992; Mekonen 2016; Balmer 2008).

A human rights-based approach to trafficking demands that the purposes of trafficking are also criminalized and subject to sanctions, the latter being an essential component of a comprehensive response to human trafficking cases (Gallagher and Karlebach 2011). Principle 15 of the Trafficking Principles and Guidelines noted that "Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences. "Components or related offences may include sexual exploitation, forced labor or services, slavery or practices similar to slavery and servitude, debt bondage, the worst forms of child labor and forced marriage (Gallagher and Karlebach 2011).

Human trafficking-related—corruption

Human trafficking and corruption are closely related criminal activities that have received a great deal of international attention in recent years (UNODC 2011a, 2011b; Moses 2022). Corruption undermines the investigation, prosecution, and trial's criminal justice process, as well as democracy and the rule of law. Moreover, it leads to violations of human rights, compromises ethical conduct, and allows organized crime and other threats to human security to flourish (UNODC 2004a, 2004b; Bacio-Terracino 2008; UNODC 2021; International Bar Association 2016).

Holmes demonstrated the correlation of trafficking-related—corruption with double or even triple victimization. States usually turn a blind eye to their own officers' corrupt involvement in trafficking and/or treat trafficked persons as criminals rather than survivors (Holmes 2009). These issues have led to numerous efforts to control transnational corruption, including the UN Convention against Corruption (UNODC 2004a, 2004b), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD 1997), and the Inter-American Convention against Corruption and African Union Convention on Preventing and Combating Corruption are designed (African Union 2003a, 2003b). All of these conventions appeal to state parties to criminalize corrupt activity and urge cooperation between nations to investigate and prosecute transnational corruption (Chanda 2004).

Gallagher and Karlebach have asserted that the high level of impunity enjoyed by traffickers and their accomplices appears, in large part, due to the public sector's corruption involving enforcement officials, prosecutors, and the judiciary (Gallagher and Karlebach 2011; Fouladv

and et al. 2018). Corrupt officials facilitate impunity by obstructing the detection, investigation, prosecution, and punishment of traffickers through frequent facilitation methods, including protecting traffickers or even refusing to register trafficking complaints (International Bar Association 2016). In this regard, having a principled judiciary is crucial for the implementation of human rights. Corruption in the judiciary puts human rights clearly in danger (Kregar and Dzimbeg 2008).

Asset recovery (freeze and confiscate)

Nowadays, states have called for the development of an HRBA for asset recovery, and further development of good practices in the recovery of assets (United Nations General Assembly 2019). UN Transnational Organized Crime Convention provided international cooperation and some general procedures for the purpose of confiscation of proceeds of crime, property, equipment, or other instrumentalities (UNODC 2004a, 2004b).

In cases of human trafficking, as the recommended principle 16 noted, "states shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking" (UNODC 2004a, 2004b). As far as asset recovery is concerned, international cooperation is essential, including gathering evidence, implementation of provisional measures, and successful recovery of assets that have been transferred to or hidden in foreign jurisdictions (Brun et al. 2020). Repatriation of funds of illicit origin requires the close and transparent coordination and cooperation of requesting and requested States, including between competent authorities, in particular the judicial authorities, within the shared responsibility to facilitate efficient international cooperation for the prompt recovery of assets of illicit origin (United Nations General Assembly 2019). Modes of international cooperation include "informal assistance," mutual legal assistance, and extradition (Brun et al. 2020).

Cooperation

Combating human trafficking requires the cooperation of states and concerned bodies. The UN General Assembly resolution No.A/RES/58/137 places an emphasis on the need to "Strengthening international cooperation in preventing and combating trafficking in persons and protecting survivors of such traffic" and further notes the promotion of cooperation among law enforcement authorities (United Nations General Assembly 2004). "The cooperation purpose includes preventing and combating trafficking in human beings; protecting and providing assistance to survivors; investigations or proceedings concerning criminal offences..." (Council of Europe 2005).

Since extradition is one area of cooperation, states shall ensure that trafficking, its component acts, and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law (UNODC 2004a, 2004b). It is important to ensure that requests for extradition in relation to trafficking are dealt with by the authorities of the requested State without undue delay (Office of the United Nations High Commissioner for Human Rights 2010a, 2010b).

Impact of COVID-19 on trafficking in persons

Hitherto, the article has detailed employing an HRBA to address the global issue of trafficking. In doing so, it has highlighted the necessity to tackle the issue from multiple angles, since ensuring justice for the survivors is not enough: the system must be sensitive towards the specific needs of the survivors and witnesses, while parallelly addressing the deeper root causes of trafficking. In the other articles of this special collection, we have noted that COVID-19 had an amplified impact on vulnerable populations, including children (see Schaller's contribution), women (see Bode's and Felten's contribution), and people under dictatorial rule (see Ha's contribution). Congruously, it is not surprising the pandemic has also exacerbated the risks of exploitation in human trafficking (Todres and Diaz 2021). Just in Indonesia, "the number of crimes against humanity increased from 213 cases in 2019 to 400 cases in 2020" (Khuluq et al. 2022).

The pandemic has created circumstances that contribute to the aggravation of trafficking activities on multiple levels. Perhaps, the most direct or visible consequence of the pandemic is that it incapacitated governmental as well as non-governmental organizations who were actively providing essential services and protection to the survivors, as well as working towards prosecuting traffickers. Consequently, we find that, on one hand, the survivors of trafficking often were more exposed to the virus with little to no healthcare. On the other hand, their identification and possibility of rescue and protection are inhibited as NGOs and IOs are forced to move their operations online. While hotlines and internet services have been made available, they are not always accessible to the survivors. Moreover, many were left at an increased risk of exploitation and trafficking due to the pandemic-induced "job insecurity and unemployment, informal and unskilled labor, food and housing insecurity, poverty, and healthcare unaffordability" (Armitage and Nellums 2020). Indeed, homelessness has been identified as a significant risk factor for the trafficking of young people (Todres and Diaz 2021). Children also found themselves at a magnified risk of exploitation as

schools shut down (see Schaller's article in this collection). To make matters worse, any sort of international cooperation and coordination to elevate the situation was also hindered during this period (see Hosli's article in this collection). Finally, and more significantly for this article, the pandemic led to limited services by the justice system. This meant that, for many survivors, justice was delayed. In this regard, delays in cases where the survivors were to be compensated may have been halted or put on hold which, in turn, could have led to increased financial difficulties for the survivors. Legal assistance providers would also have been affected as their "access to information or translation and interpretation services for survivors of trafficking" was "reduced to a minimum" (UNODC (n.d.); Armitage and Nellums 2020; Todres and Diaz 2021).

In order to mitigate such a complex situation, it is essential that the use of technology and other available resources are maximized to ensure access to judicial processes. Furthermore, the justice systems need to be more vigilant in identifying and addressing new patterns of trafficking that have emerged in the 'new normal'. Similarly, essential workers must adapt themselves to identify and be sensitive towards the specific needs of survivors and survivors of trafficking. Finally, greater international cooperation is required. Herein, UNODC's response could serve as a model. This organization has developed rapid assessment tools for countries, has provided grants to NGOs through the UN Trust Fund for Survivors of Human Trafficking, has facilitated cross-border cooperation at the request of countries, has conducted relevant research, and has offered e-courses against trafficking in persons.

Conclusion

Effective response to a complex and multidisciplinary crime needs a coordinated and multi-sectoral approach. Nevertheless, for a long time, that response was addressed through a criminal justice approach mainly focused on the prosecution of the alleged crime rather than on the protection of trafficked survivors. Through time, various alternative approaches, including labor approach, immigration approach, and social approach, have emerged.

In 2003, the UN 'Common Understanding on the human rights-based approach to development cooperation' was adopted by UN agencies. Hereon, the general structure of the implementation of a human rights-based approach in practice was observed and used as a basis for a version sensitive towards human trafficking. Perhaps the essence of the approach is not about having human rights at solely a legal or policy level, but about the practical outcomes of this approach on the people it impacts. Some of the aspects

of the trafficking principles and guidelines are important to outline: (1) they are based on established customary rules of public international law to which all States are bound, including those relating to State responsibility and fundamental human rights; and/or (2) make specific to the context of trafficking, norms contained in existing international agreements.

The foregoing discussions have demonstrated that a human rights-based approach ought to be centered on the supremacy of human rights of all humans involved (both the survivor and the arrested, accused, and convicted persons), as well as being based on empowering the capacity of rights holders (in this case mainly trafficking - survivors) and the efficiency of duty bearers to deliver. This aspect of the HRBA is considered appropriate to shape the traditional criminal justice approach from prosecuting the crime into both protection of survivors, and prosecution of criminals with due process of law. Ultimately, the significance of adopting HRBA is that this approach equips the criminal justice system to accomplish its core obligation, that is, striking a balance between the rights of the survivor (public interest) and the protection of the rights of the accused person.

Abbreviations

CCA	Common Country Assessment
HRBA	Human Rights-Based Approach
OECD	Organization of Economic Cooperation and Development
SDGs	Sustainable Development Goals
UNGD	United Nations Development Group
UNDAF	United Nations Development Assistance Framework
UNICEF	United Nations International Children's Emergency Fund
UNHCR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime

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