



Global Alliance Against Traffic in Women

CRITICAL ANALYSIS OF CRIMINAL LAW APPROACHES TO TRAFFICKING IN PERSONS

A report of the
consultation



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1. Background

GAATW and our allies played a key role in lobbying for an internationally recognised definition of trafficking, yet from the outset we were wary of an exclusively crime control approach. Over the years, we have continued to note with frustration that although the criminal law framework is so invested in punishing the traffickers, the actual results of those efforts are not very encouraging.¹ Colleagues who closely engage with anti-trafficking legislation have argued that the criminal legal approach has led to an overemphasis on individual responsibility, at the expense of addressing the structural causes of trafficking.² Concerns have also been raised about the binary nature of criminal law systems, that recognises only “victims” and “perpetrators”, whereas in reality many of the people criminalised as traffickers share similar profiles with their victims, and have even been trafficked themselves.³

Now twenty-five years after the UN Trafficking Protocol,⁴ a predominately crime control instrument, entered into force, it is an appropriate time for us to reflect in depth on the criminal law approach to trafficking. Whilst GAATW has long pointed out the negative impacts of this approach, we have not looked outside the criminal law or questioned what alternatives might exist. Our conversations around decriminalisation have focused on sex work rather than the broader framework. Now we would like to explore what alternative justice approaches we could be advocating for in place of criminal law and what practical alternatives to criminalisation could realise the rights of a trafficked person when trafficking has taken place.

To start to examine these questions, we held a two-day consultation on 17-18 November 2025 with feminist academics and activists, anti-trafficking practitioners and advocates of restorative justice and alternative justice approaches.



2. Key Themes

a. Feminism and Criminalisation

It has often been strategic to describe rights violations as a form of violence in order to get states to take action and to recognise the gravity of them. Feminist activism has therefore historically contributed to some extent to a criminalisation approach in relation to gender-based violence. There was a desire to have gender-based violence recognised and the sense that the most strategic way to achieve this was by insisting that it is a crime. The approach that policing and imprisonment will bring an end to rights violations against women is often referred to as “carceral feminism”,⁵ and the belief that the state is an ally in advancing our feminist causes has been termed “governance feminism”.⁶

Carceral feminists have historically worked against the rights of sex workers, viewing sex workers only as helpless victims and advocating against the decriminalisation of sex work.⁷ In their crusade against sex work, carceral feminists have at times formed an “unholy alliance” with religious conservatives,⁸ particularly the Christian Right, who also tend to heavily promote criminalisation. The Christian Right has a strong home (and financial base) in the US, but it is also closely aligned with other religious nationalist movements.⁹

A current example of the unholy alliance between carceral feminists and religious conservatives is the work of the current UN Special Rapporteur on Violence against Women and Girls, Reem Alsalem. Alsalem regularly participates in meetings and events organised by conservative Christian lobby groups to discuss her opposition to sex work, surrogacy and transgender rights.¹⁰

b. Defining Justice

For thirty years, GAATW has sought to document the experiences and priorities of survivors of trafficking and of other rights violations carried out in the context of anti-trafficking initiatives. This wealth of research has enabled us to develop a picture of what justice means to these groups and what their priorities are.

In general, survivors prioritise healing, safety, recognition, and autonomy:

- ❖ Healing requires trauma-informed and culturally appropriate care and support, economic compensation and assistance and supporting a person to (re)integrate into their families, communities and societies, whether at home or abroad, and bringing an end to shame, stigma discrimination.
- ❖ Safety entails the ability to immediately leave a situation of abuse as well as long-term protection in the form of immigration relief and guarantees of non-repetition through the reform of laws, policies and structures. Many survivors also talk about desiring protection from the police.
- ❖ Recognition refers to a full accounting of the facts and circumstances, recognition of the full range of rights violations and a public accounting of all those who are responsible (not just individuals, but



also companies, state entities and systems). This accounting should be in a survivor's own words, shared with who they choose to share it with and in the forum and format of their choice.

- ❖ Autonomy includes the freedom to do the work a person wants to do, the freedom to migrate, to go home or to stay where they are, and the freedom to choose which justice processes they engage with.¹¹

The expectation of punishment of wrongdoers is also a feature of survivors' priorities, but they are rarely motivated by retribution, rather they call for proportionate punishments and prevention of future harms.

c. Who does the criminal law serve?

Not only does criminal law serve only a small part (if any) of what justice means to survivors, it often actively violates the rights of victims. Many human rights activists are finding themselves having to organise against, rather than in partnership with, the trafficking criminal legal framework. From the 1990s, a lot of the work of feminists in this area became about damage control in relation to crime control focused anti-trafficking policies. Many stopped identifying as anti-trafficking activists but as sex workers' rights activists or social justice activists instead.¹²

Whilst not a problem that is unique to trafficking, and we must be careful not to exceptionalise trafficking, criminal law often decentres the rights of victims of trafficking. Access to support is made conditional on a victim's support to the criminal process. For example, in Europe, despite the EU Trafficking Directive referring to the provision of "unconditional assistance" to victims of trafficking, the wording of the Directive reveals that, in practice, there are many conditions that the assistance is subject to.¹³ Around the world, criminal legal processes are also usually long and burdensome for victims. Victims are required to testify for days in front of their alleged abuser, subjected to traumatic examinations and little effort is made to explain and translate proceedings. In most cases, victims have no control over the criminal process, and progress depends wholly on bureaucratic government institutions and the will of individual judges, police and prosecutors.

If trafficking is the exploitation of vulnerable people and communities then we must look at the criminal legal system in relation to these communities. Criminal law has been used as a tool of repression rather than a tool to realise the rights of victims. In the context of trafficking and gender-based violence, victims themselves are often criminalised. For example in Latin America, child victims of trafficking are increasingly being treated as offenders for their involvement with the organised crime groups who trafficked them and new laws are being introduced to lower the age of criminal responsibility specifically to criminalise adolescents who have been trafficked to these groups.¹⁴ In Queensland, Australia a significant proportion of the indigenous women who had been murdered by their partners in 2017, had also been identified as a perpetrator of domestic violence.¹⁵ In the United States some victims of human trafficking have been prosecuted alongside traffickers and put on sex offender registers.¹⁶ In the UK, statistics show that large numbers of survivors actively try to evade anti-trafficking systems, and do so for good reasons. The criminal



legal process may be the only way to access certain rights and entitlements but, for migrant people, it means they will also be met with violence and impoverishment.¹⁷

We have heard anecdotally from our member organisations that criminal processes also rarely target those with greatest responsibility for rights violations. In Nepal, many of the people criminalised as traffickers are merely the agents at the bottom of the chain, and the criminal law process fails to get at the structures of exploitation or the people at the top of the chain. In Europe the situation has been similar - the entities responsible for trafficking are often companies and governments, not individuals, yet the criminal law framework is concerned only with individuals. In India, the Immoral Traffic (Prevention) Act attacks sex workers first and foremost, mandating forcible rescue and indefinite detention in corrective homes.

It is clear therefore that talking about victims' rights in isolation from perpetrators does not make sense. It feels inconsistent to, on the one hand, be concerned by the human rights abuses carried out through policing and prisons, but at the same time advocating for more policing and prisons in response to gender-based violence and trafficking.¹⁸

d. What is the alternative?

For some, there is a real anxiety that in advocating against criminalisation, we will lose the limited protections victims have and be left with nothing. In many contexts, criminal laws are all we have as a tool to respond to trafficking. There is weak implementation of international human rights standards across the board, leaving domestic criminal laws as the only tool of "justice" for victims. There is concern that if we demolish the criminal legal system we will be left with nothing, and so perhaps a better strategy is to establish an alternative, additional, system.

Some alternative systems already exist. In several post-colonial societies, communities have preserved authentic and meaningful systems of justice that existed prior to colonisation. In Kenya, following the end of British colonial rule, the "Alternative Justice System" was recognised and given jurisdiction over all matters. The Alternative Justice System is composed of diverse processes and the majority of disputes in Kenya are resolved through informal, non-state means outside the courtroom.¹⁹ Similarly in India, where the criminal legal system is largely derived from a British colonial imposition, there are many varieties of community-based mechanisms. There are women's forums which focus on counselling and out of court settlements, People's Courts, and court-mandated alternative dispute resolution.²⁰

However, we recognise that the mere fact of being outside of criminal law does not necessarily make the process inherently more "just". For example, the outcome of the women's forums in India can be dubious from a feminist perspective.²¹ In Kenya too, feminist organisations are trying to make the Alternative Justice System more just from a gender perspective by protecting and promoting what is working, and transforming what is regressive and not working for women.²²



Alternative, and more specifically restorative, justice approaches have also been adopted in post-conflict situations. In Colombia, the sheer number of justice-seekers following the 2016 Peace Agreement,²³ with no person left unaffected by conflict-related harms, necessitated an alternative process to the criminal law that was more mediatory and restorative. In 2025, the first restorative sentences were issued for trafficking-related crimes (kidnapping) under the Special Jurisdiction for Peace. When seven former FARC leaders were sentenced in September 2025 for kidnapping, they were given eight-year restorative sanctions as opposed to lengthy prison sentences.²⁴ The alternative approach under the Special Jurisdiction for Peace has now inspired restorative justice pilots in relation to “ordinary” crimes. For example, in Bogota, pilot restorative justice projects have been set up with young offenders.

Whilst not often referred to as an alternative justice approach, survivor-centred approaches to trafficking are also providing justice to people outside of the criminal law. In Nepal, since the early 1990s, following intense discussions with survivors, several organisations deliberately rejected the criminal law approach to trafficking, approaching it from a public health perspective from the outset.²⁵ Practitioners quickly realised that if they did not force survivors to testify then they would feel more comfortable and the practitioners could assist them more effectively. They took the strategic approach to create a sense of belonging and a safe space. This enabled survivors to feel comfortable and start speaking out, something that could not be achieved through a criminal prosecution. From the outset these organisations faced criticism, being accused of running brothels not shelters because they were not cooperating with the police, yet it was clear that creating a safe space for survivors is a form of justice - giving them a space to be recognised, heard and to belong.

Sex workers have also long been pioneering alternative justice systems, having often been excluded from mainstream legal processes. In West Bengal, Durbar Mahila Samanwaya Committee has established self-regulatory boards composed of sex workers and community supporters. These boards monitor brothels in co-operation with brothel owners in order to identify women and children who have been trafficked and to arrange for care, and act as a principal arbitrator in cases of violations of sex workers’ rights. Potential victims of trafficking are asked by the board what they would like to do and assisted to reintegrate with their families and communities (if they want this). The boards do not share information with the police and help people to explain their absence to their family and community.²⁶ In Kenya also, sex workers have established their own practitioners within the industry who can mediate disputes.²⁷ In New Zealand, despite being able to engage with the criminal legal process since the decriminalisation of sex work in 2003, many choose to use human rights review tribunals and mediation processes - alternative justice processes that have led to settlements for workers and just outcomes.²⁸

In the context of trafficking specifically, recently one local government in the US (the County of Los Angeles) has adopted a formal alternative justice approach to trafficking, by adopting a “public health approach”.²⁹ The county’s governing body pronounced that *“the time is ripe to support a paradigm shift from a sole focus on solving the problem with law enforcement to a parallel public health approach that centers on services for survivors and on community engagement.”* A county-wide human trafficking coordinating unit was established, led not by the police, but by community-based organisations and county agencies. These organisations include those concerned with racial justice, economic equity, and the rights of sex workers,



undocumented migrants and unhoused people. This means that survivors can access housing, healthcare, street medicine and legal support without going through criminal legal processes that will put them at risk.³⁰

3. Unanswered Questions

If we want to build resistance to criminalisation in a positive manner, focusing on new ways to realise freedom and accountability, rather than looking to disrupt or destroy existing criminal legal systems, we should be exploring what alternative justice processes could be put in place. However it is clear that there may not be one common understanding of justice that we could all be working towards. **Globally, what different alternative justice systems are already operating and resisting criminal law approaches to trafficking? How 'just' are these processes?**

We would also like to better understand who criminal laws are targeting. Many human rights advocates accept that the majority of situations deemed to be trafficking can be better addressed through a labour rights or public health approach, rather than through criminalisation. However some maintain that a small proportion of trafficking does "*actually involve traffickers – identifiable criminals who profit from organised human exploitation*" and that these "criminals" should therefore be punished.³¹ We would like to explore this further. **Who are the traffickers? Are there really individuals for whom criminalisation is the most appropriate response in order to achieve justice for survivors?**

Alternative justice processes alone will not end harmful practices as many alternative justice approaches maintain existing inequalities. Instead, we must form coalitions with those who are working on social justice more broadly, and address trafficking as one issue amongst a more complex spectrum. It is important for feminists within the anti-trafficking sector to be in conversation with economic and social justice organisations, looking at who is working to reduce the power of prosecutors and the police. We must include those who may not know the language of trafficking but who are doing work that would strengthen the rights of trafficked persons. **What can we learn from other feminist social justice organisations who have been challenging criminalisation?**

Some have suggested that we must bring this conversation to UN institutions, emphasising the coercive collusion with harmful criminal legal practices that NGOs have been brought into, in part due to the language used by UN instruments and bodies. A big challenge for those wishing to resist criminalisation lies in the framing of the UN Trafficking Protocol, which is firmly rooted in a criminalisation approach and has become the standard for all states to be measured against. **Will challenging criminal law approaches entail re-examining the UN Trafficking Protocol as being the standard that states should be meeting? Do the existing international frameworks provide for justice and accountability or do we need something new?**

Finding resources to promote justice for survivors outside the criminal legal system is tricky. Funding has always come with conditions that promote criminal legal systems over the rights of the victims making it hard for organisations to create an environment for people to feel empowered and be able to heal their trauma. The majority of NGOs and service providers must tie themselves to the government for funding,



and governments around the world universally are committed to criminalisation. In order to be eligible for funding, many organisations must agree to work together with law enforcement. In some countries, organisations who do not encourage victims to report to the police are accused of being complicit in trafficking, or even held criminally liable themselves. **Should we be calling for budgets to be divested from the criminal legal system and if so, where should these funds be redirected?**

Of the examples of alternative justice systems discussed in this consultation, the ones that do seem to be working better for survivors are firmly rooted in, and owned by, the community they are seeking to serve. It is clear that there is going to be a strong role for autonomous, community-based processes in a strategy to resist criminalisation. **How can we meaningfully bring the perspectives of those harmed by the criminal law approach into these conversations?**



4. Participants

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Endnotes

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11. These findings are drawn from research publications by the Global Alliance Against Traffic in Women (GAATW). For the full collection of GAATW publications, see: <https://gaatw.org/resources/publications>
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