



Human Trafficking, Forced Labour, and Modern Forms of Slavery: Commonwealth Caribbean Perspectives

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Introduction – Geography Matters



Fig 1: The Caribbean Archipelago.

Source: Geology.com

The Caribbean islands arc from the northern coast of Venezuela sweeping north first, then curving eastwards and then veering westwards to the southern tip of the United States of America. Comprising in total some 700 islands, islets, reefs, and cays – not all of which are inhabited by humans, these island arcs delineate the eastern and northern boundaries of the Caribbean Sea and simultaneously the western boundaries of the Atlantic Ocean. To their west across the Caribbean Sea are the countries of Central America. Like stepping-stones across a great expanse of water, the Caribbean islands are a natural pontoon-like bridge between South America and North America, and a seafaring link between North, South, and Central America.

Humans from the earliest times have traversed these islands moving between continents over and across these island-chains. The peoples, cultures, flora, and fauna in the Caribbean bear testament to these historical movements.



Fig 2: A natural bridge between South and North America. Source. Caribbean Atlas
 Source: <http://atlas-caraibe.certic.unicaen.fr/en>

Today these movements continue and include nefarious activities, from drug and arms smuggling to human trafficking and modern slavery.¹ This paper explores some key aspects of human trafficking, forced labour, and contemporary forms of slavery in this region. First, we will have a quick look at pre-Columbian and Columbian slavery in the Caribbean. Second, we describe a general overview of the magnitude of the contemporary problem – the global context. Third, we consider the modern-day definition of slavery and how it includes human trafficking and forced labour. Fourth, we will consider the international, domestic, and legislative frameworks in Anti-trafficking law. Lastly, we will explore the important roles of Judicial Officers as well as some practical considerations for the benefit of Judicial Officers and Court Systems.

¹ Dr Jason Haynes, *Caribbean Anti-Trafficking Law and Practice*, Hart Publishing, 2019 at 5

Pre-Columbian and Columbian Slavery, Forced Labour, and Human Trafficking

Slavery has existed in all regions worldwide from the earliest times. Hispanic and European control of the Caribbean islands began in 1492 with Christopher Columbus's first landing in the 'New World' and was followed by the partitioning of the region by Spanish, French, British, and Dutch colonizers during the 17th and 18th centuries. However, before the colonization of the Caribbean, pre-Columbian peoples inhabited these islands. Indeed, the Paleo-Indians first settled in the region from as early as 5000 BCE and evidence of their earliest presence has been found in Cuba, Hispaniola, and Trinidad. The Meso-Indians (1000–500 BCE) spread from South America to Trinidad and the Greater Antilles and eventually were concentrated in the western parts of what are now Cuba and Haiti. The Neo-Indians entered Trinidad from South America about 300 BCE and spread to the Lesser and Greater Antilles, and finally the Caribs, who migrated after 1000 CE from the Orinoco River delta region in what is now Venezuela, living mostly in northern Trinidad and the Lesser Antilles. The Carib presence in the Caribbean was expanding at the time of the arrival of the Spanish.

Like elsewhere, human slavery existed in the Americas. In Mesoamerica, the more common forms of slavery were those associated with prisoners of war and debtors. For example, the Mayan and Aztec civilizations both practiced slavery. People unable to pay their debts could be sentenced to work as slaves until the debts were worked off. Warfare and raids on surrounding areas provided the victims required for human sacrifices, as well as slaves for the construction of temples and other constructions that supported these civilizations. The Island Caribs were maritime peoples, expert navigators who made distant raids in large dugout canoes and practiced slavery, raids upon other people providing women who were kept as slave-wives - captive men were usually slain in religious sacrifice. Social stratification among these pre-Columbian peoples often demonstrated four classes; at the top semidivine chiefs who enjoyed considerable power and at the bottom slaves.



Fig 3: Columbus arriving in the Americas – An engraving by Theodor de Bry depicting Christopher Columbus landing on Hispaniola on Dec. 6, 1492.
Source: Theodor de Bry/Library of Congress

With the arrival of Columbus in the 15th century, slavery continued under the Spanish. Evidence exists that points to Columbus being responsible for forcing natives on the Caribbean islands into slave labour, as well as seizing, selling, distributing, and exporting many native women and children, with either foreknowledge of, or indifference to, their fate as sex slaves.²

In the year 1500, Columbus wrote to Doña Juana de la Torre:

A hundred castellanoes are easily obtained for a woman as for a farm, and it is very general and there are plenty of dealers who go about looking for girls, those from nine to ten are now in demand.³

² Dan Mac Gill, 'Did Christopher Columbus Seize, Sell, and Export Sex Slaves?' (*Save our Snopes*, 4 October 2021) <https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012quickreferenceguide.pdf> accessed 29 March 2022.

³ J. B. Thatcher and S.E. Morison, *Christopher Columbus: his life, his work, his remains: as revealed by original printed and manuscript records, together with an essay on Peter Martyr of Anghera and Bartolomé de las Casas* (New York; London; G.P. Putnam's Sons, New York: The Knickerbocker Press, 1903-1904) Letter to Doña Juana de la Torre."

In 1493 on his return to Europe from the first voyage, Columbus wrote a famous letter to King Ferdinand and Queen Isabella of Portugal who had supported his first expedition, recounting the timidity and naivité of Caribbean native peoples, and offering his Royal patrons “slaves as many as they shall order to be shipped,” in return for the resources required for a second voyage:

They have no iron or steel, nor any weapons; nor are they fit thereunto; not because they be not a well-formed people and of fair stature, but that they are most wondrously timorous... such they are, incurably timid... Their Highness may see that I shall give them as much gold as they may need... and aloe-wood as much as they shall order to be shipped; and slaves as many as they shall order to be shipped.⁴

What followed were the infamous slave raids of 1495, during Columbus’ second voyage. In an October 1495 letter, crew member Michele de Cuneo recounted:

When I was in the boat, I took a beautiful Cannibal girl and the admiral [Columbus] gave her to me. Having her in my room and she being naked as is their custom, I began to want to amuse myself with her. Since I wanted to have my way with her and she was not willing, ... I got a rope and tied her up so tightly that she made unheard of cries which you wouldn’t have believed. At the end, we got along so well that, let me tell you, it seemed she had studied at a school for whores.⁵

In recent times this era of slavery in the Americas has received new and revealing study and scrutiny. One of the leading researchers in this regard is Andrés Reséndez, Professor of history at the University of California, Davis. His most recent book, *The Other Slavery: The Uncovered Story of Indian Enslavement in America*⁶, is most enlightening. The following is taken from the introduction:

The beginnings of this other slavery are lost in the midst of time. Native peoples such as the Zapotecs, Mayas, and Aztecs took captives to use as sacrificial victims; the Iroquois waged campaigns called mourning wars on neighbouring groups to avenge and replace their dead; and Indians in the Pacific Northwest included male and female slaves as part of the goods sent by the groom to his bride’s family to finalize marriages among the elite. Native Americans had enslaved each other for millennia, but with the arrival of Europeans, practices of captivity originally embedded in specific cultural

⁴ Bartolomé de las Casas, *A Short Account of the Destruction of the Indies*, (Penguin UK, 2004).

⁵ Howard Zinn, *A People’s History of the United States* (Harper Collins, 2010)

⁶ Andrés Reséndez, *The Other Slavery: The Uncovered Story of Indian Enslavement in America* (Mariner Books 2017)

contexts became commodified, expanded in unexpected ways, and came to resemble the kinds of human trafficking that are recognizable to us today.

The earliest European explorers began this process by taking indigenous slaves. Columbus's very first business venture in the New World consisted of sending four caravels loaded to capacity with 550 Natives back to Europe, to be auctioned off in the markets of the Mediterranean. Others followed in the Admiral's lead. The English, French, Dutch, and Portuguese all became important participants in the Indian slave trade. Spain, however, by virtue of the large and densely populated colonies it ruled, became the dominant slaving power. Indeed, Spain was to Indian slavery what Portugal and later England were to African slavery.

Historians working on all regions of the New World have found traces of the traffic of Indian slaves in judicial proceedings, official inquiries, and casual mentions of raids and Indian captives in letters and assorted documents. Considered in isolation, a couple of hundred Indians here and there do not seem to amount to much. But once we contemplate the breath-taking geographic scope of this traffic and consider its full chronological sweep, the numbers are astounding. If we were to add up all the Indian slaves taken in the New World from the time of Columbus to the end of the nineteenth century, the figure would run somewhere between 2.5 and 5 million slaves.⁷

Historians have in the past presented a picture that usually attributes most of the deaths in native Americans to the spread of diseases for which these Caribbean peoples had no immunity, but Andrés Reséndez has pushed back against this, arguing that populations were lower than previously estimated, and “a nexus of slavery, overwork and famine killed more Indians in the Caribbean than smallpox, influenza and malaria.” Indeed, and as documented, by Spanish historian and Catholic priest Bartolome de las Casas⁸, Columbus' murder and wanton cruelty

⁷ Ibid. Andrés Reséndez, explains further the debacle that followed the arrival of Europeans into the Caribbean: “The first Europeans in the New World found a thriving archipelago: islands large and small covered by lush vegetation, teeming with insects and birds, and alive with humans. The Caribbean was ‘a beehive of people’, wrote Bartolomé de Las Casas, the most well-known of the region’s early chroniclers, who accompanied several expeditions of discovery. ‘As we saw with our own eyes’, he added, ‘all of these islands were densely populated with natives called Indians. ... By the 1550s, a mere sixty years, or two generations, after contact, the Natives so memorably described by Columbus as affectionate and without malice and having very straight legs and no bellies had ceased to exist as a people, and many Caribbean islands became eerie uninhabited paradises. ... Bartolomé de Las Casas, who arrived in the New World in 1502, averred that greed was the reason Christians ‘murdered on such a vast scale’, killing ‘anyone and everyone who has shown the slightest sign of resistance’, and subjecting ‘all males to the harshest and most iniquitous and brutal slavery that man has ever devised for oppressing his fellowmen, treating them, in fact, worse than animals’

⁸ Bartolomé de las Casas, *A Short Account of the Destruction of the Indies*, (Penguin UK, 2004).

accounted for the deaths of many native Americans. As he recounts the carnage, some of which he witnessed, explaining that Columbus, in order “to test the sharpness of their blades,” directed his men “to cut off the legs of children who ran from them.” His crew would “pour ... people full of boiling soap” and cause others to be “eaten (alive by) ... hunting dogs.” And if Columbus’ brigade ran out of meat for their vicious dogs, “Arawak babies were killed for dog food.” Finally, Reséndez makes a startling disclosure - “Indian slavery never went away, but rather coexisted with African slavery from the sixteenth all the way through the late nineteenth century.”⁹

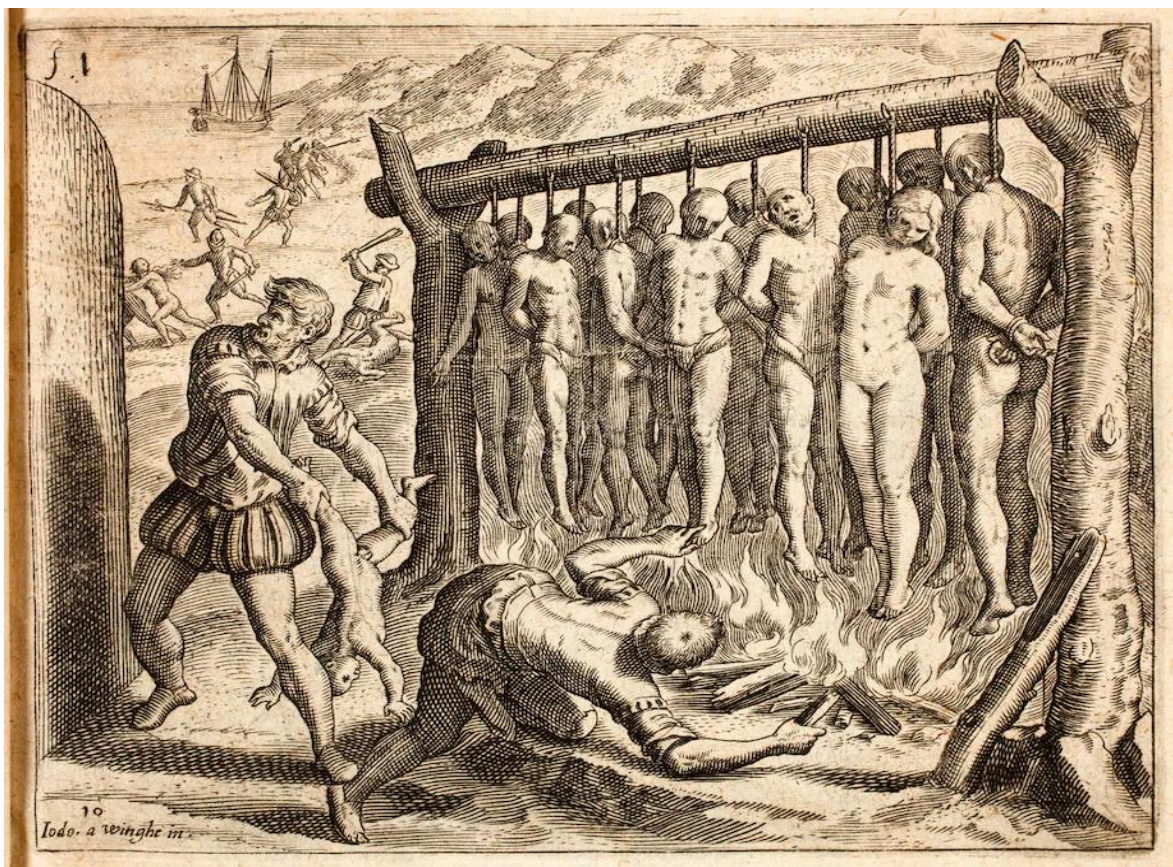


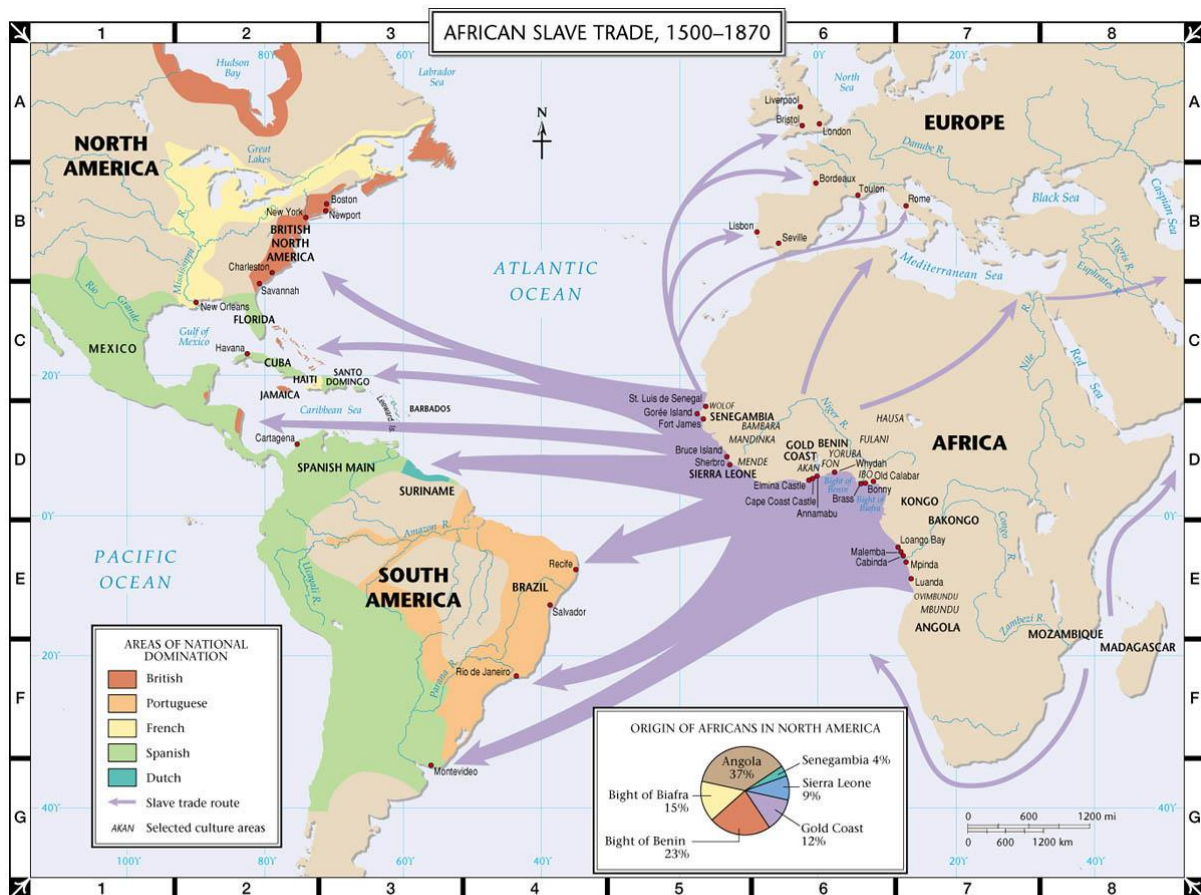
Fig 4: An engraving by Joos van Winghe and Theodor de Bry depicting the atrocities committed by Spanish explorers on the indigenous people of the Caribbean described by Bartolomé de las Casas.

Source: Peace Palace Library/Peace Palace Library, The Netherlands

⁹ Andrés Reséndez, *The Other Slavery: The Uncovered Story of Indian Enslavement in America* (Mariner Books 2017)

The Atlantic Slave Trade, East Indian Indentureship - Forced Labour and Human Trafficking

The Atlantic slave trade began in the mid-1660s. It involved the forced taking, transportation, and exploitation of human labour. In 1807 the British Government declared the African Trans-Atlantic slave trade illegal. Legal Emancipation of enslaved Africans in the British West Indian colonies occurred in 1834.¹⁰



Copyright © 2003 by Pearson Education, Inc.

Fig 5: Map of the Atlantic Slave Trade Routes
Source: Pearson Education, Inc.

As Andrés Reséndez notes:

At the height of the transatlantic slave trade, West Africa suffered a population decline of about twenty percent, as it went from about twenty-five million in 1700 to roughly twenty million by 1820. During this time, some six million Africans were shipped to the New World, and at least two million died in raids

¹⁰ Officially on the 1 August 1834.

and wars related to the traffic of slaves. In absolute numbers, this human loss was tremendous.¹¹

This is a real story of exploitation and oppression in the Americas which involved some twelve million Africans forcefully trafficked as slaves across the Atlantic from Africa to the so called ‘New World’.

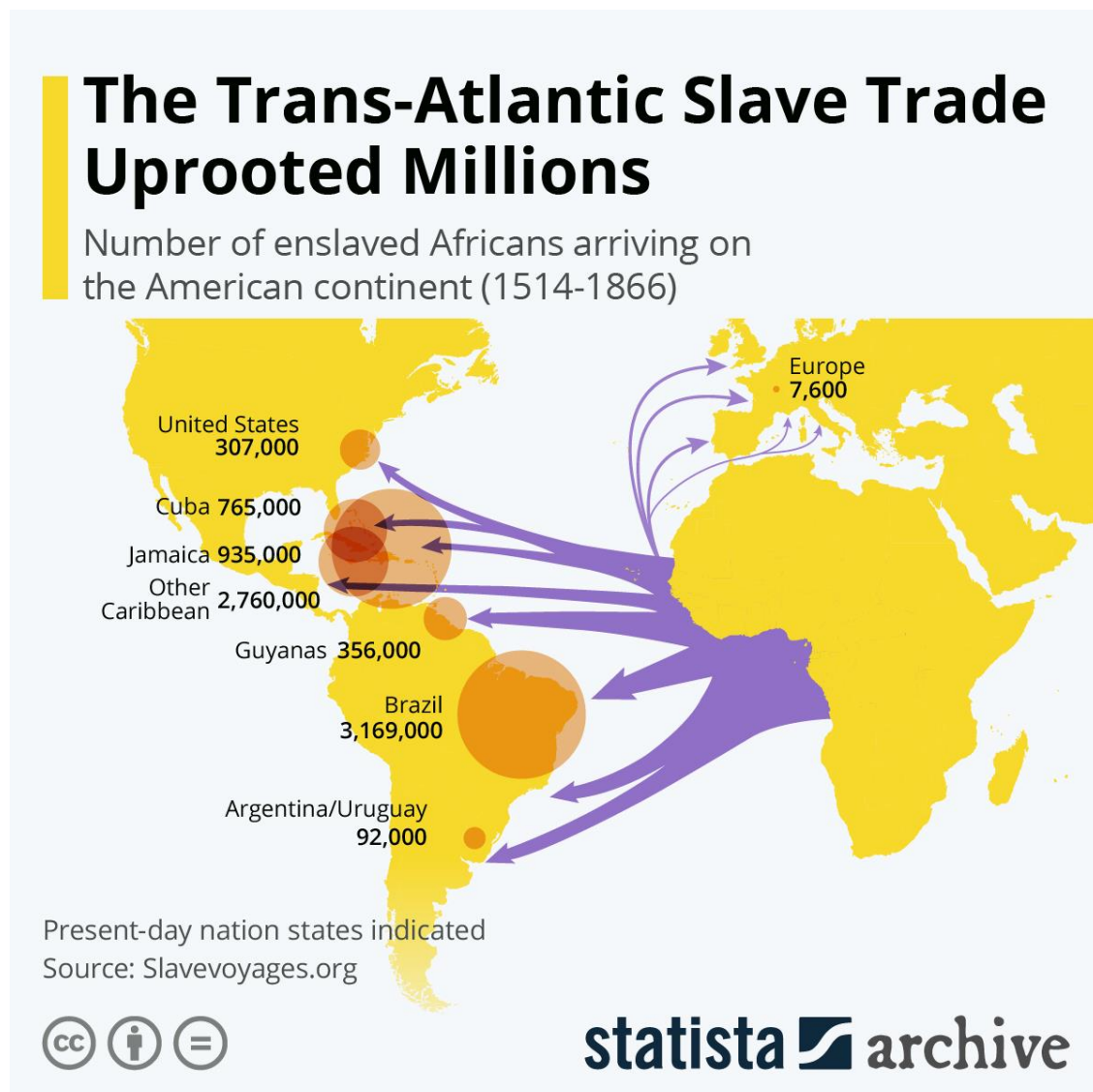


Fig 6: Showing the Number of enslaved Africans arriving on the American continent between 1514-1866
Source. Statista.com

¹¹Andrés Reséndez, *The Other Slavery: The Uncovered Story of Indian Enslavement in America* (Mariner Books 2017)



Fig 7: The number of African Slaves moving from Africa to the New World.
 Source: The CNN Freedom Project: Ending Modern-slavery – www.CNN.com

Due to consequential acute labour shortages on the plantations, legally emancipated Africans became sources of indentured labour (contract-bound labour, usually enforceable by criminal sanction), and from 1837 mainly Indian and to a lesser degree Chinese indentured persons also became the main source of cheap and forced human labour in Caribbean colonial territories. Indeed, British Indian Indentureship continued until the 1920s.¹²



Fig 8: Depicting the movement of East Indians to the Caribbean as Indentured Labourers.

Source: <https://eastindiacompany1600-1857.blogspot.com/2015/01/indian-slaves-indentured-labourers-for.html>

¹² It was abolished on the 1 January 1920.

The use of East Indian and Chinese indentured plantation labourers to fill the voids left following the abolition of British chattel slavery and the loss of a labour force to work on the Caribbean plantations, resulted in the creation of an indentureship system that brought East Indians and Chinese to the Caribbean. Work on the plantations followed much the same patterns as those that prevailed during slavery. Generally, a lot less is known about the plight of these indentured labourers, and the following gives some small insight.

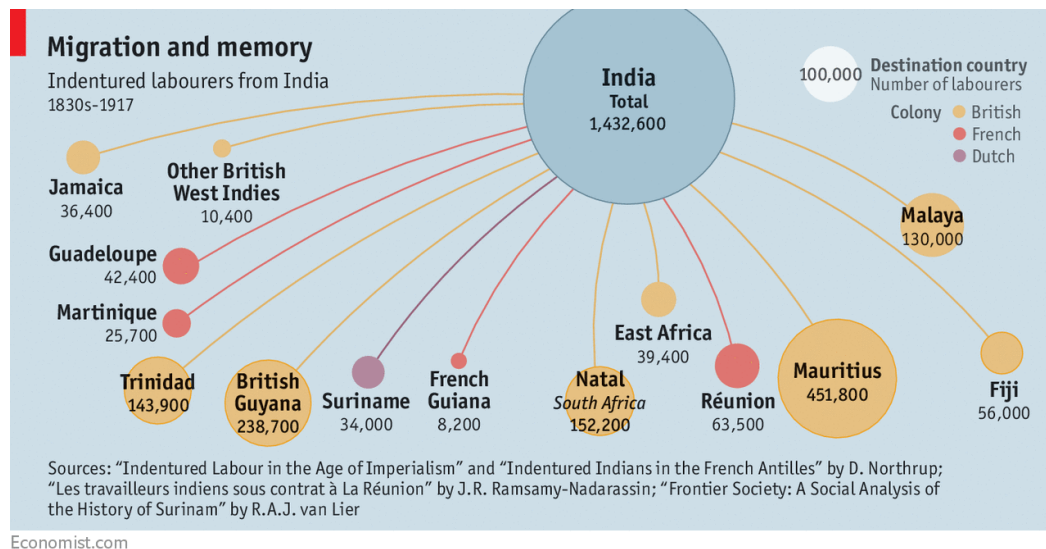


Fig 9 showing the Percentage to where the East Indian Emigrants were shipped to in the Caribbean

Source. The Economist.com

Using Trinidad as an example, as early as 1814 Governor Ralph Woodford of Trinidad wrote to the Secretary of State for the Colonies, Earl Bathurst, as follows:

The cultivators of Hindostan are known to be peaceable and industrious. An extensive introduction of that class of people accustomed to live on the produce of their own labour only and totally withdrawn from African connections or feelings, would probably be the best experiment for the population of this Island. The Planter would have the best means of satisfying himself of the advantages of free labourers over slaves. If sugar can be raised in the East Indies at so much less an expense than in the West, the best means would soon be in the power of the speculative planter.¹³

By 1845 the first boat, the *Fatel Rozack*, had sailed for Trinidad with East Indian indentured labourers – 187 males, 22 females, 16 boys, 6 girls, and 6 infants. Deaths on board these

¹³ Trinidad Duplicate Despatches, 1814, Woodford to Bathurst, 3 October 1814; Pub. No. 126 of the Trinidad Historical Society, 4.

voyages were always high. Estate workers were paid minimum wages and provided with barely basic 'barrack' accommodation.

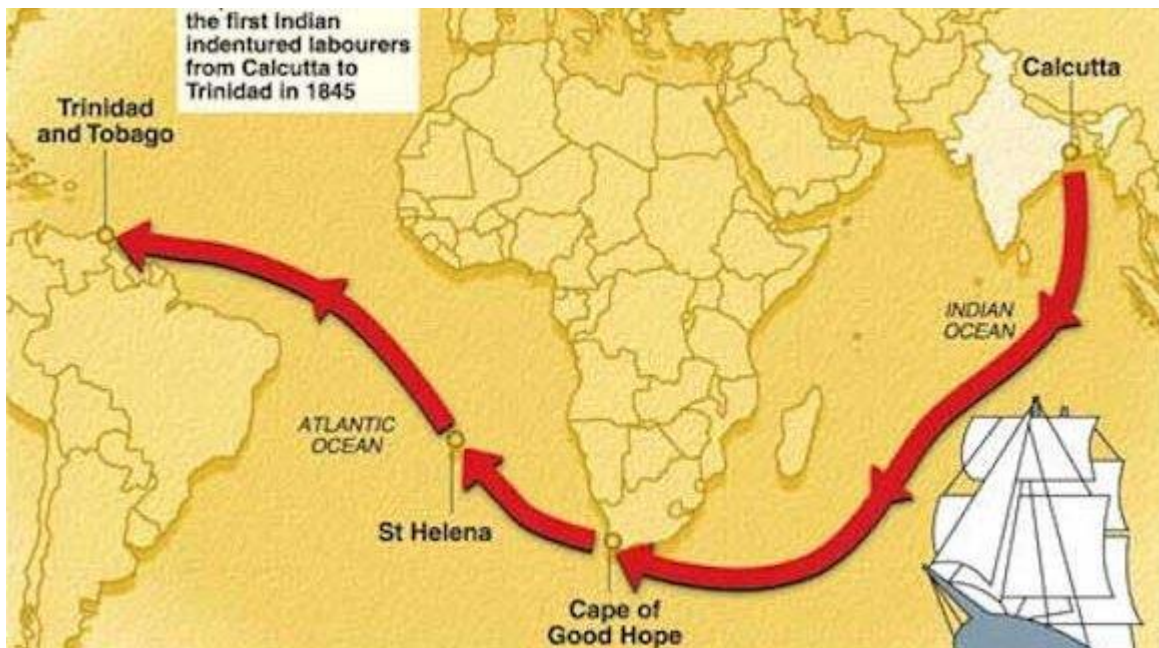


Fig 10: showing the route taken to transport East Indian Labourers from Calcutta to Trinidad in 1845.

Source. www.theeconomist.com

In 1888 Lechmere Guppy, an Englishman who had resided in Trinidad for many years, and who was serving as Mayor of San Fernando, submitted a memorandum to the Royal Franchise Commission, as follows:

The barrack is a long wooden building eleven or twelve feet wide, containing perhaps eight or ten small rooms divided from each other by wooden partitions not reaching to the roof. The roof is of galvanised iron, without any ceiling; and the heat of the sun by day and the cold by night take full effect upon the occupants. By standing on a box the occupant of one room can look over the partition into the adjoining one and can easily climb over. A family has a single room in which to bring up their boys and girls if they have children. All noises and talking and smells pass through the open space from one end of the barrack to the other. There are no places for cooking, no latrines. The men and women, boys, and girls, go together into the canes or bush when nature requires. Comfort, privacy, and decency are impossible under such conditions. A number of these barracks are grouped together close to the dwelling house of the overseers, in order that they may with the least trouble put them out to work

before daylight in crop time, which they do by entering their room and, if necessary, pulling them off their beds where they are lying with their wives.¹⁴

Conditions were generally inhumane, work hours were long and arduous, and cruelty was often associated with harnessing this work force.

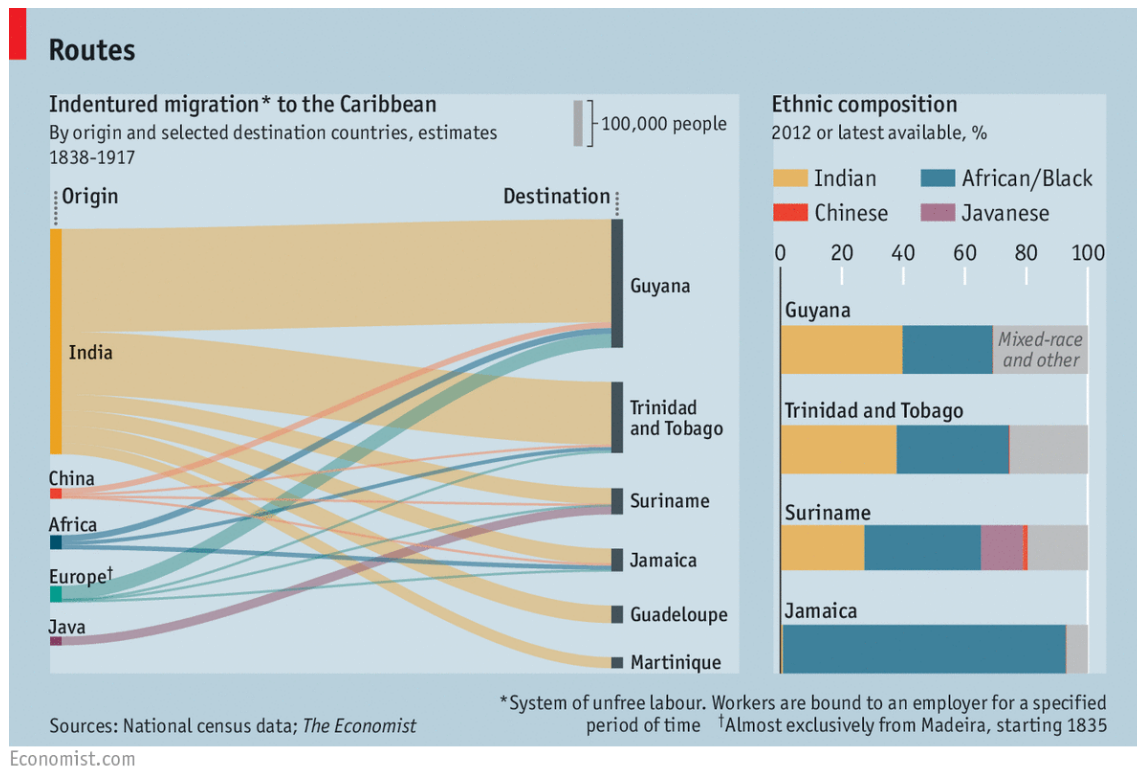


Fig 11: showing the Indentured Migration by origin and selected destination countries between 1838-1917.

Source. National census data. The Economist.com

These Caribbean events were neither limited to British colonies, nor to the Caribbean. The perverse ideologies that supported these inhumane practices, included a) legal systems operating under capitalist driven rule by law, b) immoral and systemic (institutionalised) patriarchal, racist, and classist cultures, and c) systemic othering, objectification, and commodification of human beings. Unsurprisingly, exploitation, misuse, abuse, and disregard were considered both rationally justifiable and ‘morally’ acceptable – permissible and permitted under the law.

¹⁴ John Allen Perry, *A History of the East Indian Indentured Plantation Worker in Trinidad, 1845-1917*, (LSU Historical Dissertations and Theses, 1969).

We have covered this terrain because we consider it important to set a historical context for what is occurring in contemporary times. In Caribbean spaces, these historical practices of slavery, overt ‘chattel’ slavery, Indian indentureship, human trafficking, and forced labour are woven into the fabric, cultures, and psyches of regional peoples. The trauma, injustice, and inhumanity of these experiences – and their consequences, persist.¹⁵ Indeed, today these very practices have morphed to suit modern perversions. These practices are globally rampant, and increasingly so.¹⁶

¹⁵ Forced sexual exploitation, commercial sexual exploitation of children, and the exploitation of migrant and undocumented workers remain major concerns in the American region, including for Commonwealth countries. The Caribbean, with open unsecured borders and economies heavily reliant on tourism, represents opportunities for undocumented migrants seeking employment as well as a destination for sex tourism, including the commercial sexual exploitation of children. Child sex tourism in the Caribbean results in the exploitation of numerous children each year. Data taken from, Commonwealth Human Rights Initiative and Walk Free, *Eradicating Modern Slavery. An assessment of Commonwealth governments’ progress on achieving SDG Target 8.7, 2020*

¹⁶ Did you know... 1 in 150 persons in the Commonwealth is living in contemporary forms of slavery, such as forced labour, trafficking, or other exploitative conditions. Did you know... Only 24 Commonwealth countries have laws which recognise that victims of human trafficking or exploitation should not be prosecuted or punished for crimes they may have committed under coercion. Did you know ... An estimated 40% of the 40.3 million people living in modern slavery reside in Commonwealth countries. This represents about 15.7 million men, women, and children in forced labour, forced marriage, and human trafficking. Did you know ... Only 31 Commonwealth countries have criminalised commercial child sexual exploitation. Did you know ... 1 in every 130 women and girls globally is currently trapped in modern slavery. An estimated 29 million women and girls are victims of modern slavery. Data taken from, Commonwealth Human Rights Initiative and Walk Free, *Eradicating Modern Slavery. An assessment of Commonwealth governments’ progress on achieving SDG Target 8.7, 2020*

Contemporary Slavery, a General Overview – Global Context - The Magnitude of The Issue

To transition into contemporary times, it is essential that certain baseline facts are established. This evidence describes a global phenomenon of enormity, tragedy, and criminality. It is unavoidably an issue for judicial systems, and all interested in human rights and justice. And for all committed to the inviolable entitlement of human dignity and to human flourishing, the exposure and eradication of human exploitation and cruelty that is manifesting in our times as modern-day slavery must be made a high priority – as it is both urgent and imperative.

An estimated 40.3 million victims are trapped in modern-day slavery.¹⁷

An estimated 40% of the 40.3 million people living in modern slavery reside in Commonwealth countries. This represents about 15.7 million men, women, and children in forced labour, forced marriage, and human trafficking.

1 in 150 persons in the Commonwealth is living in contemporary forms of trafficking, or other exploitative conditions.

1 in every 130 women and girls globally is currently trapped in modern slavery.
9 million women and girls.

Human trafficking and modern-day slavery affect persons of all ages, genders, and races. However, statistics show that women and girls are the most vulnerable. According to the most recent (2020) UNODC Global Report on Human Trafficking¹⁸:

In 2018 for every 10 victims detected globally, about five were adult women and two were girls. About one third of the overall detected victims were children, both girls (19 per cent) and boys (15 per cent), while 20 per cent were adult men. Traffickers target victims who are marginalized or in difficult

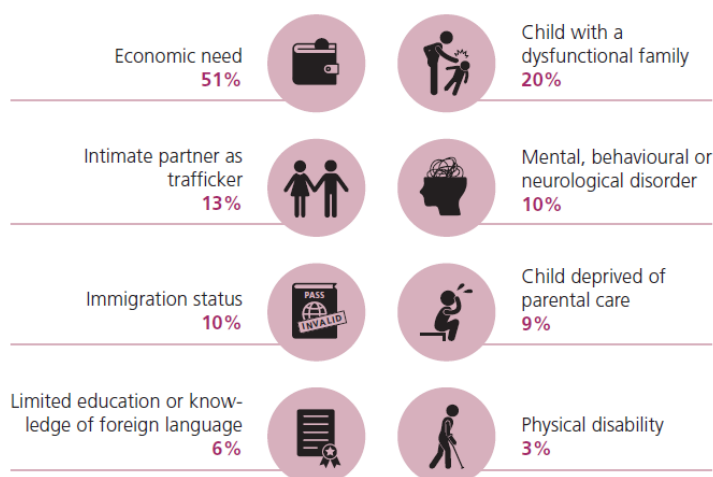
¹⁷ International Labour Organization, “The Scale of Human Trafficking” (*STOP THE TRAFFIK*) <<https://www.stopthetraffik.org/about-human-trafficking/the-scale-of-human-trafficking/>> accessed March 10, 2022

¹⁸ UNODC, *Global Report on Trafficking in Persons*, 2020

circumstances. Undocumented migrants and people who are in desperate need of employment are also vulnerable, particularly to trafficking for forced labour.

The Report further explains:

Although found in every country and every region, trafficking in persons remains a hidden crime, with perpetrators operating in the dark corners of the internet and the underbelly of the global economy to entrap victims for sexual exploitation, forced labour, domestic servitude, and other forms of exploitation. ... Migrants account for a significant share of the detected victims in most regions. Traffickers prey upon the marginalized and impoverished. Cases examined by UNODC found that at least half of the victims were targeted because of economic need¹⁹.



Source: GLOTIP collection of court case summaries, based on 233 court cases out of a total of 489 collected by UNODC for the purpose of this Report.

*Note: The same case may report multiple factors, therefore percentages may add up to more than 100.

Fig 12: Showing the Percentage of Cases by Pre-existing Factors that Traffickers have taken advantage of

Children living in extremely poor households are especially vulnerable. Countries in West Africa, South Asia, Central America, and the Caribbean report much higher shares of detected child victims. Globally, one in every three victims detected is a child, but in low-income countries, children account for half of the victims detected, most of them trafficked for forced labour.

¹⁹ UNODC, *Global Report on Trafficking in Persons*, 2020

Three broad categories of the predominant victims of human trafficking and forced labour emerge from this data – impoverished persons, women, and children, who are also among the most vulnerable groups globally.

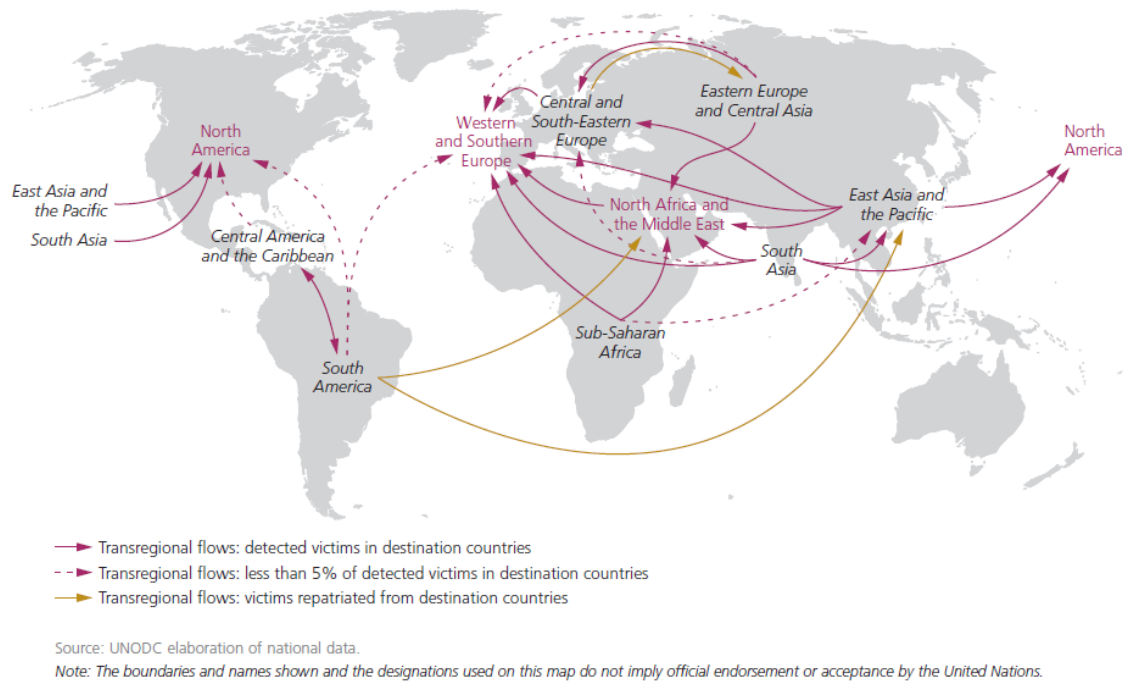


Fig 13: Main detected transregional flows 2018 (or most recent)

Figure 13 shows the main transregional flows of victims. What is noteworthy for our purposes, focussing on the Caribbean, is that the flows through this region show that less than 5% of detected victims are in destination countries. And that the passage through the Caribbean is largely onward to North America. In a most unfortunate sense, the more things change, the more they remain the same!



Source: UNODC elaboration of national data.

Fig 14: Share of detected trafficking victims, by form of exploitation, 2018 (or most recent)

Figure 14 shows the percentages of detected trafficking victims, classified according to the categories of exploitation. What is striking is that 50% of victims are trafficked for the purpose of sexual exploitation, and 38% are trafficked for the purpose of forced labour. The research data also shows that where forced labour revolves around domestic servitude, women and girls predominate. Trafficking for the purpose of domestic servitude is a global phenomenon as it is detected in all regions of the world. The report explains that victims of trafficking for domestic servitude are commonly exposed to multiple forms of exploitation and violence, including sexual, physical, and psychological abuse that is rarely seen in other forms of trafficking. And this is exacerbated because the nature of the work often segregates them from wider society and they often work and live with the perpetrators of exploitation, making them particularly vulnerable.

Human Trafficking and modern-day slavery represent one of the major threats to humanity with devastating impacts not just on victims. They have international, regional, and local ramifications. Human trafficking threatens the governance, peace, security, and development of states globally.²⁰ It thrives in a sea of corruption and where present creates perceptions of same. This is especially an issue in the relatively newly formed Caribbean states that are already susceptible or perceived to be susceptible to corruption. These perceptions can therefore undermine already fragile public confidence in the state and can have a negative impact on the rule of law, governance, and erode the fabric of society, thereby undermining democracy. According to Shaw²¹, organized crime like human trafficking significantly impedes economic development, politics, governance, social and human security. It robs governments of revenue to provide services; destroys social structure and communities; threatens the security of the state and the individual; and severely undermines a democracy.

In 2001, the proceeds of human trafficking were estimated by Interpol to be US\$19 billion a year²². This figure can be a conservative one as the industry occurs behind closed doors and is largely concealed. These figures are much higher today given globalization and the

²⁰ Kedibone Juda-Chembe, 'The Scourge of Human Trafficking in the SADC Region as Hindrance to Development: A Legal Analysis' (2019) 52 *Comp & Int'l LJ S Afr* 234 at 237

²¹ Mark Shaw and Gail Wannenburg, 'Organized Crime in Africa' in Philip Reichel (ed), *Handbook of Transnational Crime and Justice* (SAGE Publications 2005). See also Schultze-Kraft (n 21) 10.

²² Roza Pati, 'Human Trafficking: An Issue of Human and National Security' (2013) 4 *Nat'l Sec & Armed Conflict L Rev* 29

unprecedented impact of COVID 19. COVID 19 created economic and social distress which created a greater pool of persons who may fall prey to human trafficking.²³ The revenue gained from human trafficking is not taxed, and very often traffickers then resort to the drug trade, black market, and terrorist financing as forms of money laundering²⁴. Human trafficking has been described as “the crime that breeds more crime and is the second largest criminal industry in the world”²⁵. To locate this overarching aspect of human trafficking in the Caribbean in a more direct way, Alana Wheeler, of Trinidad and Tobago Counter Trafficking Unit has very recently stated,²⁶ that despite the difficulties in quantifying the industry as the nature of the industry is a hidden one, traffickers who traffic ten persons can make up to \$18,000 TTD per day (about US\$2700 per day). In the Caribbean, that is an enormous amount of money, making human trafficking an economically tempting activity.

Dr Jason Haynes²⁷ explains in cold, blunt terms, how economic theorists describe the economic implications of relevant demand and supply matrices:

... once victims are in high demand, consumers will pay any price to use their services, while increased availability of victims at lower prices results in more customers entering the market. In so far as supply is concerned ... traffickers generally have a regular supply of potential victims, since a number of vulnerable individuals, particularly those migrating from developing countries, are willing to exercise their agency in search of better opportunities abroad.

The picture that emerges is now one, not just of local, or regional, or even hemispheric human exploitation, tragedy, and criminality, but also one in which social and economic forces are driving a criminal industry that is global in structure, reach, and impact.

²³ United States of America, Department of State. A Trafficking in Person Report, 2021

²⁴ Roza Pati, 'Human Trafficking: An Issue of Human and National Security' (2013) 4 Nat'l Sec & Armed Conflict L Rev 29

²⁵ Roza Pati, 'Human Trafficking: An Issue of Human and National Security' (2013) 4 Nat'l Sec & Armed Conflict L Rev 29 at 40

²⁶ Julien, Joel. 'Human Trafficking Prospering in T&T' Guardian Newspaper Port of Spain, 17 February 2022, BG5

²⁷ Ibid at 29

The Contemporary Caribbean – Causes for Great Concern

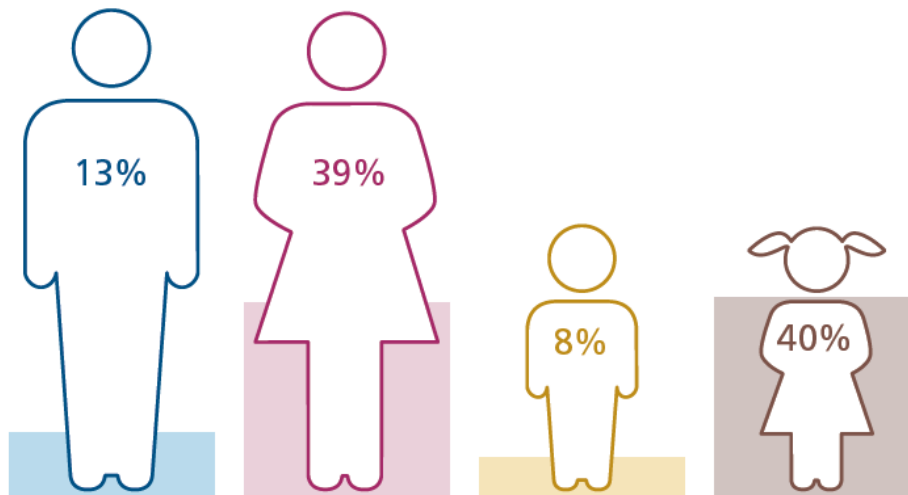
The UNODC 2020 Report highlights the key features of human trafficking in the Caribbean and the Americas²⁸ as follows:

- a. Countries in North America detect more adult women than any other victim profile, while Central America and the **Caribbean is characterized by a substantial detection of underage girls and adult women.**
- b. The majority of detected victims in North America, Central America and the **Caribbean are trafficked for the purpose of sexual exploitation.**
- c. North American countries are characterized by an increasing share of victims trafficked within their own countries; mainly female victims trafficked for sexual exploitation.
- d. Countries in Central America and the **Caribbean detect their own nationals and victims from some countries in South America.** At the same time, **victims from these countries are detected in the richer countries of North and South America.**

The following research data is particularly revealing and pinpoints the targets of human trafficking in the Caribbean.

- a. In the Caribbean, most of the detected victims in 2018 are girls and women, equalling 79 per cent of the total detected trafficking victims in this region. The percentage of girls as a proportion of the total detected victims, was 40 per cent in 2018, and is among the largest percentage of girl victims of trafficking recorded worldwide.

²⁸ NOTE. In the UNODC Report, these subregions comprise 3 countries in North America and 9 countries in Central America and the Caribbean. North America consists of Canada, Mexico, and the United States of America. Central America and the Caribbean includes the Bahamas, Costa Rica, Dominican Republic, El Salvador, Honduras, Guatemala, Nicaragua, Panama, Trinidad and Tobago.

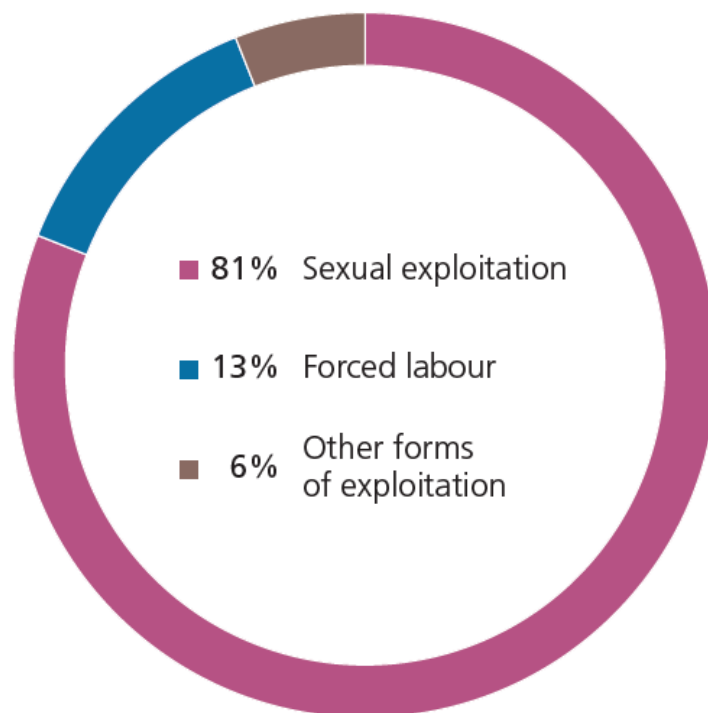


Source: UNODC elaboration of national data.

**Based on data on sex and age of 506 victims detected in 9 countries in Central America and the Caribbean.*

Fig 15: Shares of detected victims of trafficking in Central America and the Caribbean by age group and sex, 2018 (or most recent)

- b. In North America, Central America and the **Caribbean, sexual exploitation is the most commonly detected form of trafficking (over 70 per cent), which is among the highest recorded globally.** As far as victims of trafficking for sexual exploitation are concerned, most victims in North America are adult women, while **a higher share of girls is reported in Central America and the Caribbean.**
- c. The share of detected victims trafficked for **forced labour ranges between 13 and 22 per cent** in the two subregions. In North America, detected victims who are trafficked for forced labour are mainly adults, with men and women detected in similar shares. **The victims detected in Central America and the Caribbean who are exploited in forced labour are girls and boys.**



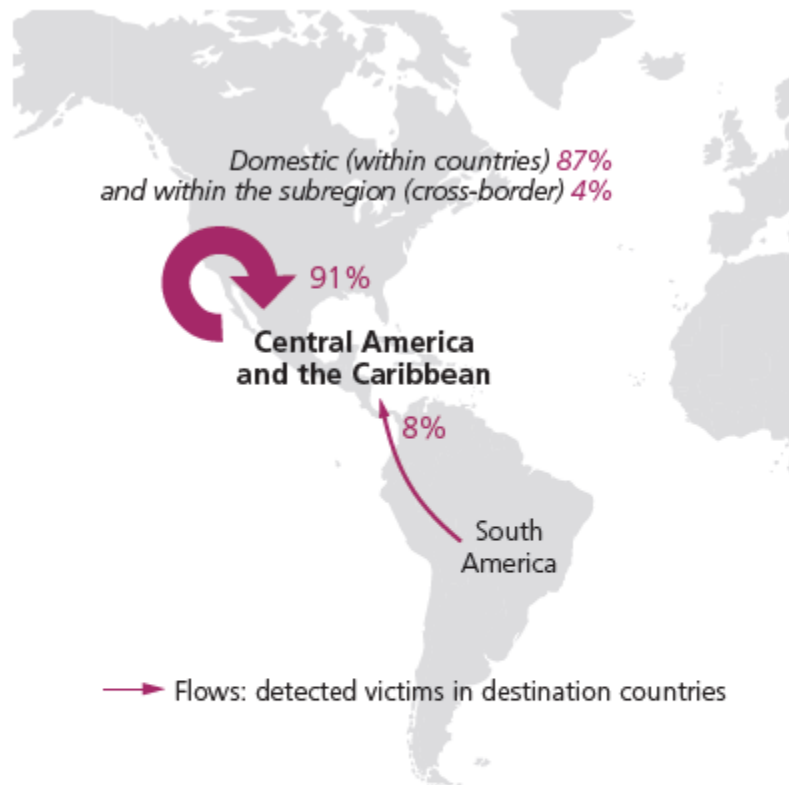
Source: UNODC elaboration of national data.

**Based on data on form of exploitation for 645 victims detected in seven countries in Central America and the Caribbean.*

Fig 16 Shares of detected victims of trafficking in Central America and the Caribbean * by form of exploitation, 2018 (or most recent)

- d. In Central America and the **Caribbean, children are also trafficked for the purpose of exploitative begging, for forced criminal activity** and for some forms of illegal adoption.

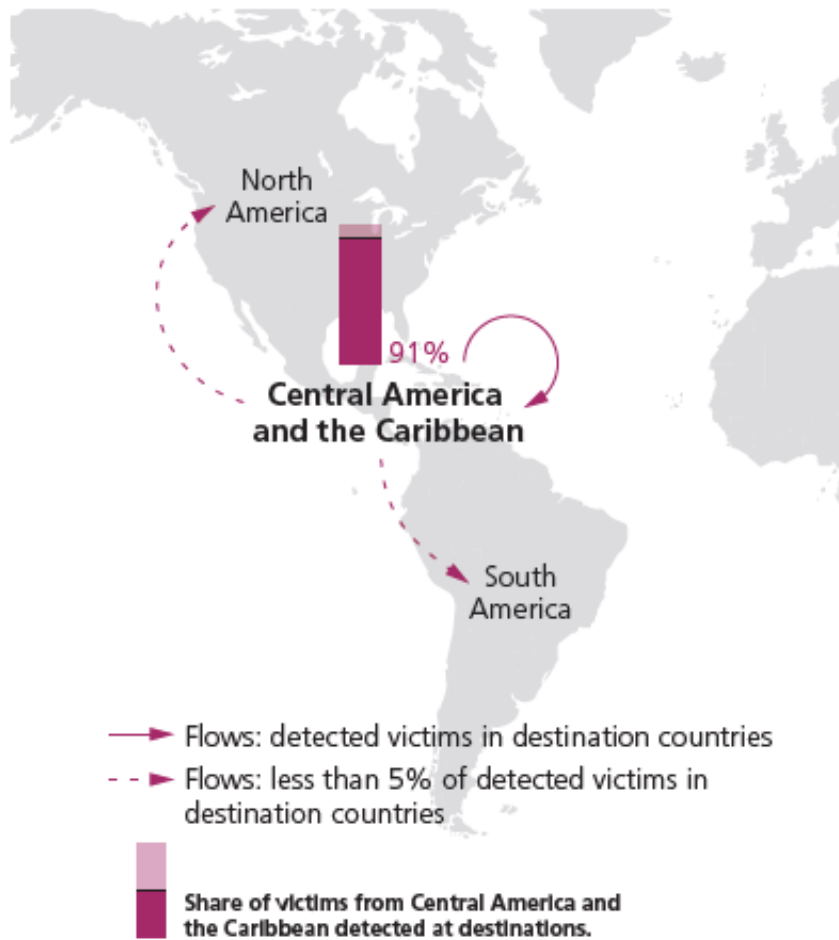
In terms of trafficking flows, the Report research data shows that Victims detected in Central America and the Caribbean are primarily citizens of the country of detection. The other significant flows are from South America and other countries in the subregion. These flows mainly move from south to north, from relatively poorer countries towards relatively richer countries across borders. Overall, the trafficking flows affecting Central America and the Caribbean continue to be confined to the Americas, both in terms of their origin and destination.



Source: UNODC elaboration of national data.

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Fig 17 Origins of trafficking victims detected in Central America and the Caribbean by subregion, 2018 (or most recent)

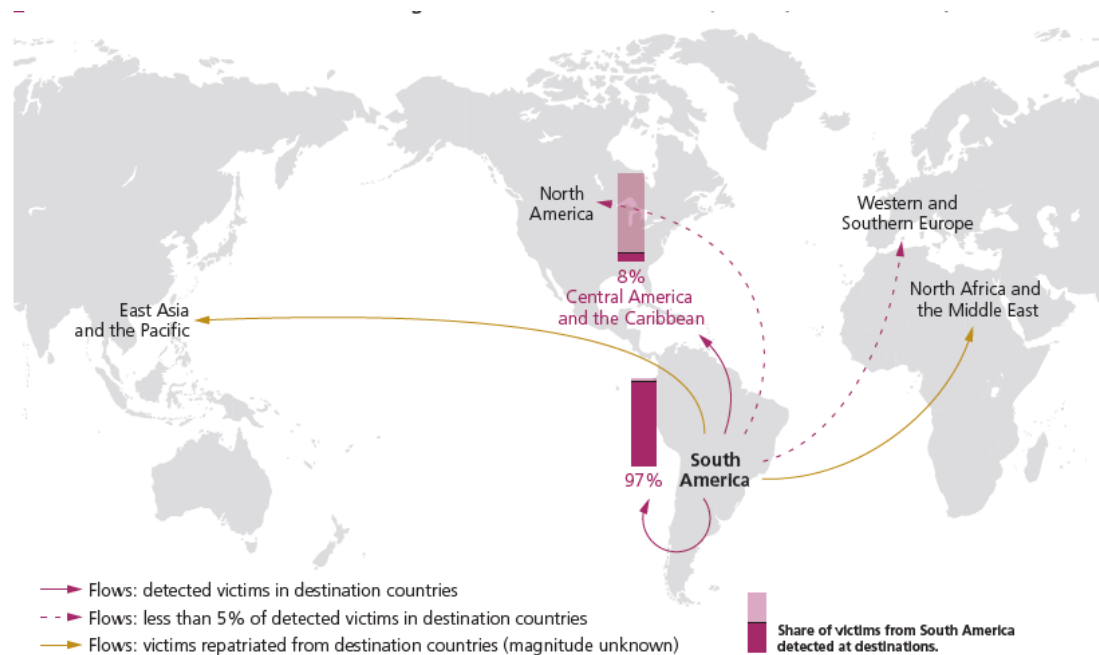


Source: UNODC elaboration of national data.

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Fig 18 Destinations for trafficking flows from Central America and the Caribbean, 2018 (or more recent)

The Report also notes that there are trafficking flows from the Caribbean directed to countries in South America, and that flows from out of South America are mainly directed to Central America and the Caribbean. Victims from the northern parts of South America are generally detected in the more affluent countries in both Central America and the Caribbean.



Source: UNODC elaboration of national data.

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Fig 19 Destination for trafficking flows from South America, 2018 (or most recent)

From this research data, the picture that emerges is of hemispheric trafficking generally flowing from south to north but with significant internal local trafficking, and all influenced by both wealth differentials and economic factors. In the Caribbean subregion, poverty is a significant factor, and women and girls are the most highly trafficked victims, with sexual exploitation, forced labour and domestic servitude being the most prevalent drivers.²⁹ Writing in 2018, Dr Haynes states about the Caribbean: ‘Although domestic or internal trafficking does occur in some territories and islands – and in particular in Belize, Guyana, Jamaica, and Trinidad and Tobago – by far the greatest proportion of victims have been subject to transnational trafficking.’ In this latter regard he explains: ‘... anecdotal data strongly suggests that persons from the Dominican Republic, Haiti, Venezuela, India, and China are at the greatest risk of being trafficked across the Commonwealth Caribbean.’³⁰

Indeed, Dr Haynes in his 2019 text, *Caribbean Anti-Trafficking Law and Practice*, in a section that he describes as a ‘Situational Overview’,³¹ undertakes a sort of non-exhaustive overview

²⁹ See also, Dr Jason Haynes, *Caribbean Anti-Trafficking Law and Practice*, Hart Publishing, 2019 at 6

³⁰ *Ibid* at 6

³¹ *Ibid* at 5 - 21

of incidences and occurrence rates of human trafficking in Caribbean states – one that is much broader in scope Caribbean wide than the 2020 UNODC Report. The following highlights a few of his observations to give a sense of what obtains in the Caribbean subregion.

Barbados

In Barbados the first case of human trafficking was formally investigated in 2004 – it involved two adult Guyanese women being trafficked for sexual exploitation. Subsequently, several Indian nationals were found to have been trafficked for forced labour – having found to be working for a Barbados construction company for wages of about US\$ 1 per week. Then in 2013, five Guyanese girls had been forced into prostitution by their traffickers, who coerced them to provide sexual services for BBD\$ 10, which was immediately taken from them by their handler (a 76-year-old woman). Dr Haynes reports that in Barbados ‘traffickers in that country have a particular preference for young, vulnerable Guyanese girls.’ Girls who come from impoverished conditions and have low levels of education.

Bahamas

The Bahamas is described as ‘a transit and destination country for trafficked persons in the Caribbean region and from Central and South America.’³² Reportedly most victims are women and girls trafficked for the purpose of sexual exploitation. Typically, they are lured there by advertisements promising job opportunities, their passports are confiscated on arrival, and debt bondage is used as a means of coercion and control (for costs of travel and alleged immigration fees).

Belize

Belize, located where it is in Central America, has proven to be particularly conducive to human trafficking.³³ Vulnerable women and girls are trafficked and forced to engage in prostitution. The UN Special Rapporteur on Trafficking in Persons Mission to Belize, 2014 Report³⁴, documents a typically tragic case – in which a 13-year-old Guatemalan girl was transported to Belize with a promise of a babysitting job. On her arrival, she was taken to a small village in Belize where she was made to provide sexual services. She was never paid,

³² United Nations Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons especially women and children, Joy Ngozi Ezeilo, Bahamas Report, 2014.

³³ Justice Ann-Marie Smith, ‘Human Trafficking – The Belizean Experience’, Caribbean Association of Judicial Officers 3rd Biennial Conference, 2014.

³⁴ United Nations Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons especially women and children, Joy Ngozi Ezeilo, Belize Report, 2014.

and was deprived of her freedom for one year, and threatened that she would be detained by the police for her illegal entry into the country if she tried to escape. She was also sexually molested by a police officer who was complicit in her exploitation. Dr Haynes notes that ‘young and impressionable (Belizeans) with poor education and job prospects, are widely acknowledged to be at the highest risk of being trafficked.’³⁵ He also recounts a report by the UN Special Rapporteur on Trafficking in Persons which documents a case in which 60 Nepali nationals were subjected to forced labour exploitation.

Guyana

Guyana is described as consistently having ‘the highest rates of human trafficking’ of all English-speaking Caribbean states. Research shows that in the five-year period from 2013-18 over 200 victims of human trafficking have been recorded. Of whom 89 percent were women and girls, the majority being Guyanese nationals. In 2016 alone, 103 children were reportedly trafficked. Of the Guyanese women and girls trafficked the vast majority are used for sexual exploitation, and to a lesser degree domestic servitude. Dr Haynes describes the situation as follows:

The stories are harrowing as they are endless. Most of these women are reportedly recruited through the promise of jobs or better living conditions overseas only to find themselves, once in the country, in physical and psychological bondage, often being forced to provide their sexual services to traffickers, their associates and clients, and threatened with the prospect of being detained and immediately sent back home when they to escape.³⁶

Jamaica

In Jamaica human trafficking cases have reached the courts with the infamous case of *Ebanks and Reeves v R*³⁷ reaching the Court of Appeal³⁸ – the first human trafficking case to do so in Jamaica. The facts are disturbing and heart-breaking. The victim, a 14-year-old girl, was taken from her home in Haiti in 2010 with promises made to her mother, older sister, and brother by Mr Ebanks, that she would receive schooling and employment in Jamaica; be in constant contact with her family; and also, be able to assist them financially – promises of opportunity and of a better life for her and her family. She was given \$1,000.00 in Haitian currency as an inducement. In December 2010, not long before Christmas, the victim departed Haiti at about

³⁵ Ibid at 10

³⁶ Ibid at 11

³⁷ HCC 112/2013

³⁸ [2020] JMCA Crim 37 (SC Crim App No 60/2016)

9:00 am on a fishing boat for Jamaica together with Mr Ebanks and two other men. They arrived in Jamaica at about 1:00 am the following morning. There at the home of Mr Ebanks she was forced to work from 6:00 am to 9:00 pm every day and was never paid any money and not allowed to communicate with her family. Her treatment became worse over time and included beatings and rape, with threats that if she made any complaints the police, ‘Babylon’ would put her in prison as she had entered Jamaica ‘without papers’ – she had left Haiti without a passport or birth certificate. The victim also became pregnant and was forced at knife point to drink a concoction and to abort the pregnancy. This treatment continued until April 2013 when following reports, the Anti-Trafficking in Persons Unit intervened.

Arraigned in May 2016, Mr Ebanks was charged (jointly with Ms Reeves) on three counts – first, trafficking in persons, second, facilitating trafficking in persons, and third, with rape. The charge of rape was not pursued against Ms Reeves, who also pleaded guilty to the second count. In June 2016, Ebanks was found guilty on all three counts and was sentenced to 14 years imprisonment with hard labour on the first count, 10 years imprisonment with hard labour on the second count, and 16 years imprisonment with hard labour on the third count. The judge also ordered that Ebanks was not eligible for parole until he had served 10 years imprisonment. The sentences were to run concurrently. Ebanks was also ordered to pay restitution to the victim in the sum of JMD \$1M, and compensation for pain and suffering also in the sum of JMD \$1M. In July 2016, Ebanks appealed and in 2018 the Court of Appeal affirmed the trial judge’s conviction and sentences, varying only the 14-year sentence on the first count to 10 years, because the statutory maximum for that offence at the time was in fact 10 years.³⁹

Trinidad and Tobago

In Trinidad and Tobago, Dr Haynes explains that the majority of human trafficking victims are ‘... women trafficked for the purpose of sexual exploitation, though there is an increasing number of persons who have been trafficked for the purpose of forced labour and domestic servitude.’⁴⁰ He also explains that the ‘vast majority of victims originate from Venezuela, Guyana, Columbia, the Dominican Republic, Bolivia, and St Vincent and the Grenadines.’⁴¹

³⁹ The reasons of the Court of Appeal were provided on the 25 September 2020. At the time of the offence in 2010 the relevant legislation had not yet been amended (which amendment in 2013 increased the maximum sentence from 10 years to 20 years). The Court of Appeal explained that the judge had erred in imposing a sentence of 14 years as it was ‘outside of the range that he was empowered to give.’ See, [193], [196] - [198]

⁴⁰ Ibid at 16

⁴¹ Ibid at 16. Citing the Trinidad and Tobago Counter Trafficking Unit’s Director in a 2016 Guardian newspaper article.

In fact, in a 17 February 2022 Guardian newspaper interview with the Trinidad and Tobago Counter Trafficking Unit’s current Director – Alana Wheeler, the following was revealed that in 2021 there were 60 confirmed case of human trafficking in Trinidad and Tobago, a 600 percent increase over 2020 and the highest number the CTU has ever recorded since its establishment in 2013. The previous highest year was 2019 when 41 victims were confirmed.⁴²

YEAR	2013	2014	2015	2016	2017	2018	2019	2020
Reports received	20	35	120	89	72	70	78	79
Confirmed victims	13	5	10	13	14	21	41	9
Investigations initiated	20	35	53	46	38	39	23	9
Persons charged for human trafficking and related offences	12	0	10	5	6	11	7	7

Source: Joel Julien, ‘Human Trafficking Prospering in T&T’ Guardian Newspaper Port of Spain, 17 February 2022, BG5

Fig 20 Statistics from Trinidad and Tobago

In 1944, Dr Eric Williams published his doctoral thesis – *Capitalism and Slavery*, and opined those economic forces created, sustained, and strongly influenced the abolition of African trans-Atlantic chattel slavery in the Americas and the Caribbean. At the time it was controversial, and his thesis that it was the declining economies of the British plantation systems in the Caribbean and elsewhere that led to the abolition of the trans-Atlantic and African slave trade and of slavery, sparked great debate and still does.⁴³ Whatever may be our views on Williams’ decline theory, it is clear that once again in 2022 economic factors are dominant in creating and sustaining modern forms of slavery. Now the criminal elements are no longer European Colonial Nation-states using the coercive machinery of the state and state supported enterprises, but multinational global and hemispheric cartels and corporations, acting through local and regional agencies and individuals – funded in the final analysis by

⁴² Joel Julien. ‘Human Trafficking Prospering in T&T’ Guardian Newspaper Port of Spain, 17 February 2022, BG5

⁴³ Eric Williams, *Capitalism and Slavery*, (Chapel Hill: University of North Carolina Press, 1944); Lowell Ragatz, *The Fall of the Planter Class in the British Caribbean, 1763-1833: A Study in Social and Economic History*, (New York: Octagon Books, 1963); Hilary Beckles, *Capitalism and Slavery: The Debate over Eric Williams*, (1984) 33(4) *Social and Economic Studies* 171; William Darity Jr. ‘*The Williams Abolition Thesis before Williams.*’ (1988) 9(1) *Slavery and Abolition* 29; and compare, Seymour Drescher, *Econocide: British Slavery in the Era of Abolition* (University of Pittsburgh Press, 1977)

consolidated wealth and power and exploiting the poor and powerless. Which is not to say that there are not also numerous small-enterprise and individual slave traders and traffickers.

Human trafficking is an issue of great importance to the Caribbean as it can undermine already fragile perceptions of public confidence in governance, national security, crime detection and stretch already overburdened state resources. Many Caribbean islands depend on tourism as their major form of revenue and Caribbean economies cannot afford to be internationally blacklisted or sanctioned for their failure to address this issue.

These facts and figures are particularly disturbing when one considers that all human beings are born free and equal in dignity and rights⁴⁴. And that this dignity is a foundation of freedom, justice, and modern liberal democratic systems. Human trafficking is widely accepted as a form of modern-day slavery. In this 21st century and after the abolition of the slave trade, slavery is still a thriving industry in Caribbean spaces.

⁴⁴ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 1

Defining Modern-Day Slavery

Slavery is defined in contemporary terms as the status or condition of a person over whom any or all the powers attaching to the right of ownership or control are exercised⁴⁵. Modern day slavery therefore encapsulates human trafficking, forced labour, debt bondage, descent-based slavery, slavery of children, forced marriage and child marriage.

Professor Christopher McCrudden (*Professor of Human Rights and Equality Law, Queen's University Belfast*), makes this important observation:⁴⁶

The modern (legal) view of slavery takes the idea of legal ownership and views it as wrong because of the deeper meaning that it has: that it reduces humans to mere objects and is thus fundamentally inconsistent with their humanity. History plays an important role in persuading the courts to come to that conclusion. But recent human rights courts (and the Court of Appeal) get it right, I think, in focusing on the essential wrong, rather than on the legal form in which that wrongness was encapsulated, however much that may have been the focus of attention of the abolitionists.

The International Criminal Tribunal for former Yugoslavia Appeals Chambers in the case of *Prosecutor v Kunarac*⁴⁷ sheds further light on modern slavery. In that case the ICTY Appeals Chambers upheld the Trial Chamber's opinion that the traditional concept of 'slavery' has 'evolved to include various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership.'⁴⁸The court made it clear that slavery is not limited to the 'right of ownership over a person', but to where the 'powers attaching' to such a right are exercised. The court also identified a non-exhaustive list of factors

⁴⁵ League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414, available at: <https://www.refworld.org/docid/3ae6b36fb.html> [accessed 10 March 2022] art 1

⁴⁶ McCrudden C, "Slavery and the Constitutional Role of Judges" (November 2, 2011) <<https://ukconstitutionallaw.org/2011/11/02/christopher-mccrudden-slavery-and-the-constitutional-role-of-judges/>> accessed March 10, 2022

⁴⁷ International Criminal Tribunal for the former Yugoslavia, IT-96-23&-IT-96-23/1-A, Judgment, 12th June 2002

⁴⁸ *Prosecutor v Kunarac*, Trial Chamber II, Case No IT-96 & 23/1 at [117]; see also, the *Convention to Suppress the Slave Trade and Slavery*, 1926; Article 1 'For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person **over whom any or all of the powers attaching to the right of ownership are exercised**. (2) The slave trade includes all acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.'

which may be indicators of slavery – such as, 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.'⁴⁹

In addition, and importantly so, the Appeals Chamber explained: (i) lack of consent of a victim, (ii) duration of enslavement, and (iii) the nature of the relationship to a victim are relevant considerations. These are not necessary elements, though they may be evidential considerations.⁵⁰ The intention required is simply 'an intentional exercise of power attaching to the right of ownership'.⁵¹

Finally, the Appeals Chambers in *Kunarac* cited the following passage from *Pohl's case* in 1947⁵²:

Slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery – compulsory uncompensated labour – would still remain. There is no such thing as benevolent slavery. **Involuntary servitude, even if tempered by humane treatment, is still slavery.**⁵³

For our purposes, and as we will develop further below, the essence of modern-day slavery – that includes forced labour, sexual exploitation, and domestic servitude which are so prevalent in the Caribbean, is forced or involuntary servitude.

21st Century Cases of Modern-Day Slavery

We have already considered the Jamaican case of *Ebanks*⁵⁴ as a current Caribbean example that reached the courts. On the facts in *Ebanks* the courts (judge and jury) had no hesitation in finding that human trafficking had taken place. Some other notable cases as discussed below.

⁴⁹Ibid, at [117] – [119]

⁵⁰Ibid, at [120] – [121]

⁵¹ Ibid at [122]

⁵² US v Oswald Pohl, Case No. 4 International Military Tribunal No. II, November 3, 1947

⁵³ Prosecutor v Kunarac, Appeals Chamber, at [123]

⁵⁴ Ibid

In October 2006, a young woman (MM) was brought into the UK from an African country and entered a contract of employment. Between 2006 and 2010 she was made to work long hours (almost 24 hours a day), under-fed, hardly paid, not allowed to leave her hosts premises on her own, had little contact with her family in Africa, and any conversations she had were listened to and even recorded. Sounds fanciful?

The matter reached the courts. The UK Court of Appeal⁵⁵ had to interpret section 4 (1) of the UK Asylum and Immigration Act 2004, which made it an offence, among other things, to arrange or facilitate the entry into the United Kingdom of an individual with the intention to exploit that individual in the United Kingdom.

The Court of Appeal had this to say at [39]:

The essence of the concept of ‘slavery’ is treating someone as belonging to oneself, by exercising some power over that person as one might over an animal or an object...

In 2008, in *Koraou v Niger*⁵⁶ the ECOWAS Community Court of Justice (of the Economic Community of West African States), held that Hadijatou Koraou was a victim of slavery for the nine years she was held by her master, and that the state of Niger was liable for its failure to deal adequately with this form of slavery, awarding her about US\$ 20,000. Niger had denied that Ms Koraou was a slave, asserting that she had ‘lived in a more or less happy marital relationship’ with her ‘master’.

What were the core facts? In 1996, aged 12, Ms Koraou was sold for a sum of money in the context of wahiya,⁵⁷ a practice obtaining in the Republic of Niger, which consists of acquiring a young girl, generally under the conditions of servitude, for her to serve both as domestic servant and concubine. The person to whom she was sold, an older male, was known as her ‘master’.

⁵⁵ R. v SK [2012] 1 All E.R. 1090 The conviction was quashed as the trial judge focused too much on the economics of the relationship and failed to apply the proper test that set out the core elements of section 4.1 (slavery, servitude of forced or compulsory labour).

⁵⁶ (2008) AHRLR 182 (ECOWAS, 2008); ECW/CCJ/APP/0808.

⁵⁷ Zangaou Abrelkader, ‘Wahaya: Domestic and Sexual Slavery in Niger’ Timidria, Anti-Slavery International <https://www.antislavery.org/wp-content/uploads/2018/10/Wahaya-report>. Pdf accessed 10 March 2022

For about nine years, Ms Koraou served in the house of her ‘master’, carrying out all sorts of domestic duties and serving as a concubine for him. She had to endure forced sex and was a victim of repeated acts of violence. In 2005 Ms Koraou was issued a certificate of emancipation, but her ‘master’ refused to allow her to leave. In 2006 Ms Koraou commenced court proceedings seeking her freedom.

In rejecting the State’s argument, the ECOWAS Community Court explained:

Even with the provision of square meals, adequate clothing and comfortable shelter, a slave still remains a slave if he is illegally deprived of his freedom through force or constraint. All evidence of ill treatment may be erased, hunger may be forgotten, as well as beatings and other acts of cruelty, but the acknowledged fact about slavery remains, that is to say, forced labour without compensation. There is nothing like goodwill slavery. Even when tempered with humane treatment, involuntary servitude is still slavery.⁵⁸

And further:

... the moral element in reducing a person to slavery resides ... in the intention ... to exercise the attributes of the right of ownership over the applicant, even so, after the document of emancipation had been made. Consequently, there is no doubt that (Ms Koraou) was held in slavery ...⁵⁹

Notice the tensions between the 1926 colonial concept of ‘rights of ownership’ and the more open and modern ideas of a) ‘forced labour’ and b) ‘involuntary servitude’ as definitive of contemporary forms of slavery. As well, notice the greater focus on intent, and less on form – ‘the moral element in reducing a person to slavery resides ... in the intention ...’ of the person exercising the power and control over another. And finally, notice the unequivocal disownment of ‘humane treatment’ as mitigatory or exculpatory in this area.

Recently in 2022, the UK Guardian⁶⁰ reported that a man, Peter Swailes, admitted to conspiring with his father to exploit a victim of modern-day slavery for a period over forty years. The victim was made to do dangerous jobs for less than minimum wage. The victim was found in a small, filthy, dilapidated shed, and with leaks in the roof and vomit in the corner of the shed. His only possessions were an improvised bed, a wash bag, three used coats, some stained

⁵⁸ Ibid At para [79]

⁵⁹ Ibid At para [80]

⁶⁰ Jessica Murray, ‘UK man given suspended prison sentence for exploiting victim of slaver’ The Guardian Newspaper, United Kingdom, 4 February 2022, <https://www.theguardian.com/world/2022/feb/04/uk-man-given-suspended-prison-sentence-for-exploiting-victim-of-slavery>

duvets, and CDs. Despite working very hard and undertaking dangerous jobs for his 40 years this is all that he had. At the sentencing hearing, Judge Richard Archer told Swailes Jr: “You may not have known the true extent of (the victim’s) living conditions, or his precise IQ, but it must have been obvious to you that he did not have any real appreciation for the potential consequences of some of the work that you required him to perform at an undervalue and with little or no regard for his personal safety.” The Defendant was sentenced to a nine-month jail term, suspended for 18 months, at Carlisle crown court. This sentence is now being reviewed by the Solicitor General.

International Legal Frameworks

Due to the importance of this issue and the cross-border nature of human trafficking, the international community has agreed to several important treaties:

- a. ***The Palermo Protocol, supplement to the UN Convention against Transnational Organized Crime (2000)*** is the most significant international instrument to combat and prevent human trafficking. This protocol requires states to criminalize human trafficking, attempted trafficking, and related offences. The related offences include corruption on the part of public officials and money laundering. The Convention encourages states to cooperate by encouraging extradition, mutual legal assistance, and cross border investigations.
- b. ***The UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (2000)*** creates the internationally accepted definition of human trafficking. According to Haynes, “This is an overly important contribution since an intricate understanding of the offence aids in the effective criminalization of the prohibited conduct, the prompt identification of trafficked victims, and forms the basis of interstate cooperation. Human Trafficking was defined as:

Trafficking in persons shall mean 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs⁶¹

This protocol also encourages states to criminalize and penalize human trafficking. It also recognizes the effect of socio-economic and political challenges on

⁶¹ The UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (2000) (art 3 (a)).

increasing persons' vulnerability to human trafficking. This protocol includes important provisions obliging states to prevent the revictimization of victims.

- c. ***The Rome Statute of the International Criminal Court (1998)*** the jurisdiction of this Court is based on serious crimes to humanity. The statute criminalizes slavery and by extension human trafficking.
- d. ***The ILO Abolition of Forced Labour Convention (Convention No.105 of 1957)*** which requires States to take effective measures to abolish forced or compulsory labour.
- e. ***The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*** requires States to punish any person who "procures, entices, or leads away, for purposes of prostitution, another person, even with the consent of that person", "exploits the prostitution of another person, even with the consent of that person" (Article 1), or runs a brothel or rents accommodations for prostitution purposes (Article 2). It also prescribes procedures for combating international traffic for the purpose of prostitution, including extradition of offenders.
- f. ***The International Covenant on Civil and Political Rights (1966)*** prohibits practices directly related to trafficking.
- g. ***The Convention of the Elimination of All Forms of Discrimination against Women (1979)*** requires States to suppress all forms of trafficking in women.
- h. ***The Convention on the Rights of the Child (1989)*** prohibits the trafficking of children.
- i. ***The Optional Protocol to the Convention on the Sale of Children, Child Prostitution, and Child Pornography (2002)*** provides States with detailed requirements to end sexual exploitation and abuse of children.
- j. ***ILO, Worst Forms of Child Labour Convention (Convention No. 182 of 1999)*** which commits States to taking immediate measures to prohibit and eliminate the worst forms of Child Labour.
- k. ***Convention to Suppress the Slave Trade and Slavery, 25 September 1926*** gives one of the earliest definitions of slavery.

Caribbean Approaches to the Incorporation of International Law Treaties and Principles

These treaties are becoming more important as Caribbean courts when interpreting and applying the law strive as far as is reasonable to ensure that their approaches are aligned with State international treaty obligations. A hallmark decision that emphasizes this is the decision of the Caribbean Court of Justice (CCJ) in *The Attorney General and Others v Joseph and Boyce*⁶². In this case two men convicted of murder and sentenced to death filed a constitutional motion. The main issue in the appeal was whether the constitutional rights of the respondents, had been infringed by the failure of the Barbados Privy Council to wait and consider the report of the InterAmerican Commission on Human Rights, as the Barbadian government had ratified the InterAmerican Convention of Human Rights. The court therefore had to consider the effect of an unincorporated human rights treaty on the carrying out of a lawful imposed death sentence. The CCJ held that in some instances the ratification of a treaty could create a legitimate expectation that the provisions in the treaty would be abided by. In this case, the ratifying of the American Convention on Human Rights together with the positive statements made by representatives of the executive arm of Government created a legitimate expectation.

Judicial officers are therefore required to be aware of these treaties and how the content of their state's obligations may impact proceedings before them.⁶³ It is an area often neglected, especially in jurisdictions where dualist positions to international law prevail (if treaties are not incorporated into domestic law, they are ineffective and non-justiciable). Modern

⁶² [2006] CCJ 3 (AJ);

⁶³ Article 5 of the Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000) requires States to criminalize human trafficking, attempted trafficking, and any other international participation or organization in a trafficking scheme. The International Labour Organization (ILO) Forced Labour Convention (Convention No. 29 of 1930) defines forced or compulsory labour.

The ILO Abolition of Forced Labour Convention (Convention No.105 of 1957) requires States to take effective measures to abolish forced or compulsory labour. The Slavery Convention (1926) defines slavery. The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) requires States to punish any person who "procures, entices, or leads away, for purposes of prostitution, another person, even with the consent of that person", "exploits the prostitution of another person, even with the consent of that person" (Article 1), or runs a brothel or rents accommodations for prostitution purposes (Article 2). It also prescribes procedures for combating international traffic for the purpose of prostitution, including extradition of offenders. The International Covenant on Civil and Political Rights (1966) prohibits practices directly related to trafficking. The Convention of the Elimination of All Forms of Discrimination against Women (1979) requires States to suppress all forms of trafficking in women. The Convention on the Rights of the Child (1989) prohibits the trafficking of children. The Optional Protocol to the Convention on the Sale of Children, Child Prostitution, and Child Pornography (2002) provides States with detailed requirements to end sexual exploitation and abuse of children. ILO, Worst Forms of Child Labour Convention (Convention No. 182 of 1999) which commits States to taking immediate measure to prohibit and eliminate the worst forms of Child Labour.

jurisprudential trends are towards alignment. This approach is even more pressing in cases of contemporary forms of slavery, because of the multi-faceted and inter-territorial, even inter-continental, nature of the phenomenon.

Caribbean Contexts – International Assessments - Where are We?

The Caribbean is a region of strategic importance to human trafficking, the proximity of the region to the United States of America, tenuous border security, developing economies, and a continuous influx of economy supporting tourists make Caribbean countries a prime source, destination, and transit for the trafficking of persons. Dr. Jason Haynes, notes that there has been an increase in recent years of criminal activity and human trafficking caused by “fluctuating revenues from tourism and agriculture and a corresponding increase in inflation, unemployment, and in some countries, poverty”.⁶⁴ Whilst noting the difficulties in estimating the extent of human trafficking in the region, Haynes notes that sex trafficking followed by forced labour and domestic servitude are the predominant form of human trafficking in the Commonwealth Caribbean. Girls make up 46 per cent of identified victims in Central America and the Caribbean, and the region has the second highest level of child trafficking, after sub-Saharan Africa. Of the victims of trafficking in human beings assisted by International Organization for Migration in the Caribbean and Central America, almost 89 percent were children.⁶⁵

The countries of the world have been analysed and divided into three tiers according to their compliance with human trafficking minimum standards.

Tier 1 consists of countries whose governments fully meet the Trafficking Victims Protection Act, 2000 (USA) (TVPA) minimum standards. The TVPA is a federal act of the United States of America that is designed to establish methods of prosecuting traffickers, preventing human trafficking, and protecting the victims. The second tier consists of two subgroups “Tier 2” and “Tier 2 Watch List”. Tier 2 consists of countries whose governments do not fully meet the TVPA but are making significant efforts. Tier 2 Watch List consists of countries whose governments do not fully meet the TVPA minimum standards but are making significant efforts to meet those standards and:

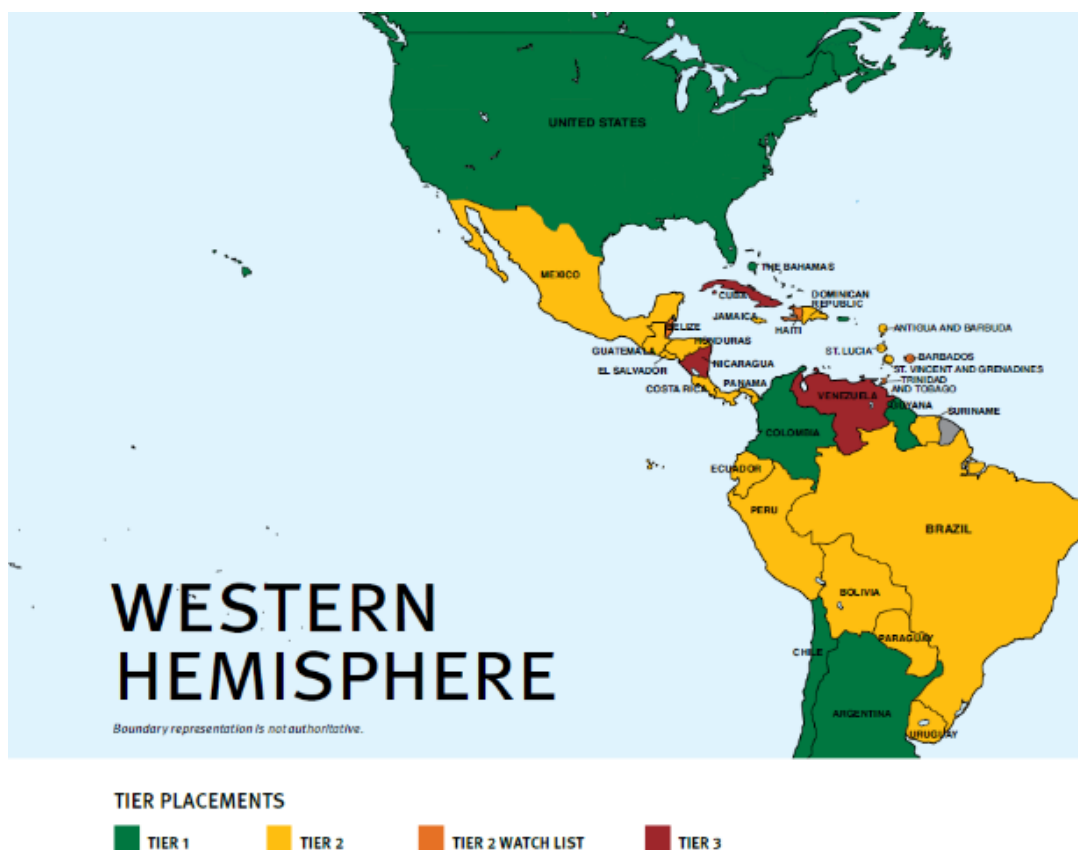
- a. the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

⁶⁴ Ibid at pg. 5

⁶⁵ UNODC, *Global Report on Trafficking in Persons 2016*, pg 90

- b. there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or
- c. the determination that a country is making significant efforts to meet the minimum standards was based on commitments by the country to take additional future steps over the next year.

Countries in Tier 3 are countries whose governments do not fully meet the minimum standards and are not making significant efforts to do so. According to the Trafficking in Persons Report published by the Department of State, United States of America,⁶⁶ the majority of Caribbean countries fall within Tier 2. There is only one country that is considered Tier 3 and that is Cuba.



Source: United States of America, Department of State. A Trafficking in Person Report, 2021
Figure 21 Tier Placements in the Western Hemisphere

⁶⁶ United States of America, Department of State. A Trafficking in Person Report, 2021

Legislative Frameworks in the Commonwealth Caribbean

The majority of the Commonwealth Caribbean are signatories to the Palermo Protocol which at the time of writing has been ratified or acceded.⁶⁷ Many Commonwealth Caribbean territories have either amended/ modified their existing law⁶⁸ or enacted new laws⁶⁹ to address this issue of human trafficking by seeking either to combat and prevent human trafficking or to assist the victim. However according to Dr Jason Haynes, despite the enactment or amendment of legislation that is consistent with international law, there are a number of theoretical and operational challenges.

⁶⁷ Trinidad and Tobago, St Vincent and The Grenadines, St Lucia, St Kitts and Nevis, Jamaica, Haiti, Guyana, Grenada, Dominica, Dominican Republic, Cuba, Belize, Barbados, Bahamas, Antigua and Barbuda

⁶⁸ Anguilla Criminal Code (Act 14/2009); British Virgin Islands Criminal Code (Amendment) Act 2007(Act 3/2007); US Virgins Islands Code Annotated Chapter 134 (and Chapter 81)

⁶⁹ Antigua and Barbuda Trafficking in Persons (Prevention) Act 2010 (Act 12/2010); Bahamas Trafficking in Person (Prevention and Suppression) Act 2008; Barbados Trafficking in Persons Prevention Act, 2016, Belize Trafficking in Persons (Prohibition) Act 2013; Bermuda Transnational Organized Crime Act, 2013; Cayman Islands Trafficking in Persons (Prevention and Suppression) Law 2007; Dominica Transnational Organized Crime (Prevention and Control) Act, 2013; Grenada Prevention of Trafficking in Persons Act 2014; Guyana Combatting of Trafficking in Persons Act 2005 (Act 2/2005) ; Jamaica Trafficking in Persons (Prevention, Suppression and Punishment) Act 2007, St Kitts and Nevis Trafficking in Persons (Prevention) Act 2008 (Act 32/2008); St Lucia Counter-Trafficking Act 2010 (Act 7/2010); St Vincent and the Grenadines Prevention of Trafficking in Persons Act 2011; Trinidad and Tobago Trafficking in Persons Act 2011 (Act14/2011); Turks and Caicos Islands Trafficking in Persons (Prevention) Ordinance 2016 (Acts now referred to as TIP Acts)

Judicial Interventions: A Matter of Necessity

In 2021, 214 years from the cessation of the Trans-Atlantic slave trade, contemporary forms of modern-day slavery are prevalent and thriving, both in former colonies and globally.

We all need to be concerned!

Judicial officers are not excepted. Indeed, they have pivotal roles to play in the mitigation, amelioration, and eradication of these modern forms of slavery, forced labour, and human trafficking. They are after all, one of the primary powers when it comes to trial procedures, determinations of guilt, and sentencing; all of which are deeply intertwined in good practices for protecting victims of contemporary forms of slavery.

Article 1 of the 1926 Slavery Convention, defined slavery as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ Its terms were shaped by context, and thus by prevailing historical circumstances.⁷⁰ The language is contractual - ‘right of ownership’, informed by the dominant form of chattel slavery, and shaped by existing ideologies.

Viewed through modern constitutional lenses and in post-colonial contexts, a critical interrogation of this almost 100-year-old colonial era treaty may reveal the true potential of the roles and capacities of judicial officers in relation to contemporary forms of slavery. A potential un-shackled by both history and ‘tabulated legalisms.’⁷¹

⁷⁰ Its long title describes it as the: Convention to Suppress the Slave Trade and Slavery. It was an international treaty created under the auspices of the League of Nations. It was first signed on the 25th of September 1926 and came into effect on the 9 March 1927.

⁷¹ *Marin v The Queen* [2021] CCJ 6 (AJ) [31- 33]; *McEwan and others v The Attorney General of Guyana* [2018] CCJ 30 (AJ)

Caribbean Constitutionalism: A Rights Centric Approach

In Caribbean jurisdictions, written constitutions are normative in the post-colonial era. This is true for most, if not all, independent Commonwealth States. Typically, these Caribbean constitutions contain three seminal provisions: sovereignty, supremacy, and human rights clauses. Significantly, these constitutions create a regime of constitutional supremacy (compared to parliamentary sovereignty, which prevails in the UK). As well, and often in preambular constitutive intent-creating clauses, these constitutions declare that certain core values and principles govern the interpretation and application of all laws and executive actions; that is to say, they are supreme (the supremacy principle).⁷²

The preambles of Commonwealth Constitutions equally recognize the inherent dignity of the human person and the equal and inalienable rights which all human beings have. Interpretation of Caribbean Constitutionalism adopts a rights-based approach to interpreting the Constitution.

These values-principles include the inherent dignity and freedom of all persons, fundamental equality, and the rule of law. The first two have their roots in Article 1 of the 1948 Universal Declaration of Human Rights. They are of indisputable centrality to democratic life and governance, and as well to international cooperation and comity. The third, as a feature of liberal democratic ideology, recognises the distinction between ‘rule by law’ and rule of law; and the inclusion of human rights as integral to the rule of law.⁷³ In a democracy where the constitution is supreme, the Judiciary, as an arm of the State, is also obliged to align its functions and evaluative decision making with these principles.⁷⁴

⁷² Section 1 Constitution of Barbados; Section 2 Constitution of Trinidad and Tobago; Section 8 Constitution of the Co-operative Republic of Guyana; Section 2 Constitution of Belize.

⁷³ Lord Bingham, 'The Rule of Law' [(2007)] 66(1) Cambridge LJ 67-85 [77] “The rule of law must, surely, require legal protection of such human rights as, within that society, are seen as fundamental”; *Marin v The Queen* [2021] CCJ 6 (AJ) Constitutions are rights centric and therefore to uphold the rule of law human rights must be accounted for. At paragraph [98] the Court stated “*Further, such an analysis reveals constitutionally how section 6 (2) (protection of law provisions) is nestled in section 3 (a) (bill of rights provisions), and both within the rule of law, and within the basic deep structure values of the Constitution, like interlocking holons.*”

⁷⁴ *Belize International Services Ltd v The Attorney General of Belize* [2020] CCJ 9 (AJ) [301]. The Court stated: “*To this extent they, (features, principles and values that underpin the Constitution) together, form the essential foundation, framework, and superstructure of Belizean constitutionalism. They are discoverable. And, until changed legitimately, they are non-negotiable. Moreover, they form and inform the standards and lenses through which, generally, all governmental, legislative, executive, and public administrative actions are to be judged and held accountable.*” See also, Jamadar JCCJ, *Explorations into the Rule of Law, Crossing the Rubicon: The Development of the Rule of Law as a Ground of Review of Legislative and Executive Action*, CAJO News, Issue 12, p 69, at www.thecajo.org

The combined effect of the supremacy principle, taken in a rule of law context, is that all laws and governmental actions must be rule of law compliant. As well, that the approaches of courts to adjudication should prioritize this approach (the paramountcy principle). For our purposes, this means that the inherent dignity and worth, the freedom, and the unequivocal equality of all persons are constitutionally presumed inviolable (subject of course to lawful exceptions). These values must be protected as well as secured. They are therefore always, constitutionally, relevant considerations in adjudication.

Jamadar JCCJ at [37] lucidly explained in his judgment in *Marin v The Queen*⁷⁵.

A Constitution must be read as a whole. ... If one part of the Constitution appears to run up against an individual human right, then, in interpreting the Constitution as a whole, courts should place a premium on affording the citizen his/her enjoyment of the fundamental right, unless there is some overriding public interest.

In *Maya Leaders Alliance and others v The Attorney General of Belize*⁷⁶ the Court affirmed the customary land rights of the Maya peoples in respect of land in Southern Belize and emphasised that the constitutional right of protection of the law ought not be viewed only through the lens of access to courts or quasi-judicial bodies. The right was, “a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law.”⁷⁷ It could be engaged upon a State’s failure to secure and ensure the enjoyment of constitutional rights.

The jurisprudential implications for contemporary forms of slavery may already be evident. Courts and judicial officers are obliged to orient themselves around these values – both procedurally and substantively. This is what a rights-centric, rule of law approach to our work requires of us. It is an approach whose primary focus is on the rights and interests of victims. Governmentally, this necessitates at minimum: (i) taking legislative, systemic, and practical steps to ensure that all forms of modern slavery, human trafficking, and forced labour are prohibited, and (ii) addressing root causes that create the environments to generate and sustain these practices, such as poverty, unemployment, lack of access to educational and skills based training opportunities, and cultural and systemic discrimination (especially in relation to vulnerable groups including women and children).

⁷⁵ *Marin v The Queen* [2021] CCJ 6 (AJ) BZ [37]

⁷⁶ *Maya Leaders Alliance and others v The Attorney General of Belize* [2015] CCJ 15 (AJ)

⁷⁷ *Ibid* at [47]

The UN Declaration of Human Rights goes further in explaining that states are the duty bearers of this right. They have the primary responsibility of creating national and international conditions favourable to the realisation of the right to development (RTD) through national and international cooperation.⁷⁸

Dr Haynes itemizes some of these state obligations, as follows⁷⁹:

- a. Criminalize slavery, trafficking, and forced labour in all of its forms, and address official complicity.
- b. Impose commensurate penalties.
- c. Confiscate/forfeit criminal property and proceeds
- d. Provide compensation/restitution to victims.
- e. Conduct effective investigations.

Judges and judicial officers are the guardians of constitutional values. This is a fourth seminal principle of Caribbean and Commonwealth constitutionalism. It arises in part out of the universal principle of the independence of the Judiciary, but more fundamentally from the basic deep structure and principles of constitutive constitutional underpinnings. The effect is that, in broad and general terms, judges and judicial officers have a duty and responsibility to ensure that constitutional values are upheld, and that judicial, legislative, and executive actions are aligned with these values.

Judges are therefore under a constitutional imperative to act. Sitting on our hands, or turning a blind eye, or even getting too bogged down in 'legalisms', may simply not be options in the context of contemporary forms of slavery when viewed through the principles of constitutional supremacy and human rights paramountcy.

To be clear, some Caribbean constitutions expressly disavow slavery and forced labour, and others do so indirectly through the prohibition of cruel and unusual treatment and discrimination, and by positively affirming liberty, freedom of movement, dignity, and the

⁷⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 30 March 2022] (Arts 3(3), 8 and 10),

⁷⁹ *Ibid* at 106

protection of the law. In dualist constitutional systems, where fundamental rights are seen as ‘vertical’ and binding on the state and state actions only, what needs to be unshackled are the distinctions between core constitutional values and strict legal enforceability. Constitutions seen as constitutive value laden documents, clearly indicate that all forms of modern-day slavery, forced labour, and human trafficking are contrary to the basic core values of Caribbean peoples and what any Caribbean state can permit – and in fact, condemns. The constitution being supreme, it is incumbent on courts to conduct all their affairs in alignment with these constitutional core values.

Some examples are as follows:

Prohibitions against modern day slavery and human trafficking is expressly prohibited by some Commonwealth constitutions⁸⁰, escalating the obligation on the state to a constitutional imperative. For instance, the Constitution of Barbados⁸¹ and Belize⁸² expressly prohibits slavery, servitude and forced labour.

Caribbean constitutions that do not expressly prohibit slavery also do so by implication. By way of example, the Constitution of Barbados like many Caribbean constitutions recognize that every person is entitled to fundamental rights and freedoms despite whatever his race, place of origin, political opinion, colour, creed or sex including the right to life, liberty and security of the person.⁸³ Besides declaring these rights, the Constitution of Barbados goes on to specifically prohibit torture, inhuman or degrading punishment or other treatment⁸⁴; it expressly provides that persons shall not be deprived of their personal liberty⁸⁵.

Likewise, the Constitution of Belize also impliedly prohibits human trafficking as it recognizes the persons’ fundamental rights to life, liberty, security of the person, and the protection of the law; as well as the protection for his family life, personal privacy, privacy of his home and

⁸⁰ S 4 Constitution of St Lucia; S6 Constitution of St. Kitts and Nevis; S 4 Constitution of St Vincent and the Grenadines; S6 Constitution of Antigua and Barbuda; S18 Constitution of Bahamas; S4(1) Constitution of Grenada; S 140 Constitution of Guyana; S 4 Constitution of Dominica;

⁸¹ S 14 Constitution of Barbados

⁸² S 8 Constitution of Barbados

⁸³ S 11 Constitution of Barbados.

⁸⁴ S 15 Constitution of Barbados

⁸⁵ S 13 Constitution of Barbados

other property.⁸⁶ The Constitution of Belize also prohibits inhuman or degrading punishment or other treatment⁸⁷; and protects the right to freedom of movement⁸⁸.

Caribbean constitutions typically contain clauses protecting the right to freedom of movement⁸⁹, the right to liberty⁹⁰, and prohibiting cruel and inhuman treatment⁹¹ and thus impliedly prohibit human trafficking and modern-day slavery.

Indeed, a salient and unavoidable question that arises for judicial officers, is how does one achieve the constitutional imperative of substantive equality – equity (as compared to formal equality) throughout court proceedings and in outcomes, for victims/survivors of human trafficking, forced slavery, and contemporary forms of slavery?⁹²

In a very practical sense, the following are some general approaches that should be embraced by all court systems and judicial officers. In this context, it is worth remembering that human trafficking, forced labour, and all modern forms of slavery are events of violence perpetrated against unwilling and most often vulnerable victims. Some important matters that courts and judicial officers should therefore always be concerned about and addressing from the earliest opportunities, are: (i) the safety and security of victims, (ii) the physical, mental, emotional, and psychological wellbeing of victims, including access to services that can aid recovery and healing, (iii) the active and meaningful participation of victims throughout court proceedings,

⁸⁶ S3 (a) and (c) Constitution of Belize

⁸⁷ S 7 Constitution of Belize

⁸⁸ S 10 Constitution of Belize

⁸⁹ S 8 Constitution of Antigua and Barbuda; s 25 Constitution of Bahamas; s 12 Constitution of Grenada; S13 (3)(f) Constitution of Jamaica; S 12 Constitution of St Lucia; S14 Constitution of St Kitts and Nevis; S 12 Constitution of St Vincent and the Grenadines; S 4(g) Constitution of Trinidad and Tobago; S 148 Constitution of Guyana; S 12 Constitution of Dominica;

⁹⁰ S5 Constitution of Antigua and Barbuda; S15 and 19 Constitution of Bahamas; S 1 and 3 Constitution of Grenada; S13 (3)(a) and 14 Constitution of Jamaica; S 3 Constitution of St Lucia; S5 Constitution of St Kitts and Nevis; S3 Constitution of St Vincent and the Grenadines; S4(a) Constitution of Trinidad and Tobago; S 139 Constitution of Guyana; S 3 Constitution of Dominica

⁹¹ S7 Constitution of Antigua and Barbuda; S 17 Constitution of Bahamas; S5 Constitution of Grenada; S13(3)(o) and (6) Constitution of Jamaica; S5 Constitution of St Lucia; S 5 Constitution of St Kitts and Nevis; S 5 Constitution of St Vincent and the Grenadines; S 5 Constitution of Trinidad and Tobago; S 141 Constitution of Guyana; S 5 Constitution of Dominica

⁹² The 2020 Code of Judicial Conduct of the Caribbean Court of Justice defines equality as, ‘the right of every individual to an equal opportunity to make the most of their lives, talents, and ambitions, and not to be unfairly disadvantaged or discriminated against in relation thereto. It recognises that rights, entitlements, opportunities, and access are not equally enjoyed across society and is aimed towards equitably redressing these inequalities to affirm the equal and inherent dignity and value of all persons.’

18Brewer, M, OSCE International Conference, The Critical Role of the Judiciary in Combating Trafficking in Human Beings. (2019) <<https://www.gardencourtchambers.co.uk/news/what-role-do-judges-have-in-the-fight-against-human-trafficking-michelle-brewer-delivers-key-note-at-osce-international-conference>> accessed July 27, 2021.

ensuring convenient access to necessary information, amenities, and legal and other social services, (iv) considerations (where appropriate) of regularization of immigration status, safe repatriation, and community and filial reintegration, (v) the avoidance of revictimization, and (vi) the provision of relevant compensation tailored to the circumstances of each case.

Care however needs to be taken to avoid adverse effects on victims' rights, including rights to privacy, freedom of movement, and choices about the exercise and enjoyment of freedom.
(agency)

Dr Haynes itemizes some of the general human rights obligations, as follows:⁹³

- a. Give primacy to the rights of victims.
- b. Provide basic supplies to victims.
- c. Provide medical and psychological assistance to victims.
- d. Afford children specialized care and treatment.
- e. Provide safe and secure accommodation.
- f. Protect privacy of victims and ensure confidentiality.
- g. Provide information, documentation, and interpretation/translation.
- h. Regularize victims' immigration status.
- i. Ensure the safe repatriation of victims.
- j. Assist in the reintegration of victims.

⁹³ Ibid at 106

Key Legal Principles in International and Domestic Approaches to Anti-Trafficking Law

One of the major pillars of international anti-trafficking law is the protection of victim's rights. Like the Commonwealth Constitutions, international law has adopted a rights centric approach focusing on the rights of the victim and putting safeguards in place to prevent the revictimization of the person. To some extent these principles have been incorporated into the domestic law through the enactment of Trafficking in Persons legislation.

Non punishment principle

The principle of non-punishment is an important international anti trafficking law principle⁹⁴.

The principle is best explained in the case of *R v L*⁹⁵. This case consolidated several separate appeals as the appellants were all victims of human trafficking. The Appellants were all Vietnamese nationals who had been brought to the United Kingdom as children and forced to cultivate cannabis plants. The Appellants were charged and convicted of cultivating cannabis and being in possession of a fake passport.

At [13] of the Judgment the court held:

What, however, is clearly established, and numerous different papers, reports and decided cases have demonstrated, is that when there is evidence that victims of trafficking have been involved in criminal activities, the investigation, and the decision whether there should be a prosecution, and, if so, any subsequent proceedings require to be approached with the greatest sensitivity. The reasoning is not always spelled out, and perhaps we should do so now. **The criminality, or putting it another way, the culpability, of any victim of trafficking may be**

⁹⁴. UN Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002, E/2002/68/Add.1, available at: <https://www.refworld.org/docid/3f1fc60f4.html> [accessed 30 March 2022]. Principle 7 provides that: Trafficked persons shall not be detained, charged, or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. Similarly, Guideline 4(5) provides 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. In 2005, for the first time, an explicit reference to these ideas was included in a treaty. Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings provides that: Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. Similar text can be found in other regional instruments and documents,10 recommendations from international intergovernmental bodies11 and policy briefs from international organizations.12”

⁹⁵ [2014] 1 All ER 113.

significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals.

At [16] the court further stated:

The court reviews the decision to prosecute through the exercise of the jurisdiction to stay. **The court protects the rights of a victim of trafficking by overseeing the decision of the prosecutor and refusing to countenance any prosecution which fails to acknowledge and address the victim's subservient situation, and the international obligations** to which the United Kingdom is a party. The role of the court replicates its role in relation to agents provocateurs. It stands between the prosecution and the victim of trafficking where the crimes are committed as an aspect of the victim's exploitation⁹⁶.

The legal principle in operation is that where the crime committed (the offence) has a *sufficient nexus* to the fact that the person was trafficked and there was evidence of *compulsion* (to commit the offence) to a degree that the victims' culpability can be considered to be effectively extinguished, then a judicial officer should exercise their discretion to grant a stay of the proceedings. The jurisprudential basis for the stay is that the proceedings or their continuation amounts to an abuse of process

The case of *R v Sermanfure Joseph*⁹⁷ is a case involving a St Lucian national who was a victim of human trafficking in the UK and had smuggled cocaine into the UK. The court affirmed the sufficient nexus and compulsion test but noted that the seriousness of the offence must also be considered when determining whether a stay was appropriate in the instance. In the case of a child, however it was determined that it is not necessary to consider the element of compulsion in determining whether to stay a matter.

It should also be noted that in the Caribbean several countries have statutorily incorporated the non-punishment principle.⁹⁸ The principle is stated differently in the jurisdictions, falling into

⁹⁶ See also *R v Looseley, A-G's Ref (No 3 of 2000)* [2001] UKHL 53

⁹⁷ [2017] EWCA Crim 36

⁹⁸ These jurisdictions are: **broad coverage** - Barbados (s 14 TIP Act), Belize, (s 27 TIP Act), Guyana (ss 11 TIP Act), St Lucia (s 13 TIP Act), St Vincent and the Grenadines (s 11 TIP Act), Trinidad and Tobago (s 31 TIP Act); **relatively limited coverage** - Bahamas (s 10 TIP Act), Cayman Islands (s 7 TIP Act), and Jamaica (s 8 TIP Act); **limited coverage** - Antigua and Barbuda (s 28 TIP Act), Grenada (s 21 TIP Act), St Kitts and Nevis (s 10 TIP Act), and Turks and Caicos Islands (s 23 TIP Act).

three categories (i) broad coverage, (ii) relatively limited coverage, and (iii) limited coverage.⁹⁹ The protection is broadest where the provisions state – ‘A victim is not criminally liable for any immigration-related offence, or any other criminal offence that is a direct result of being trafficked.’ In the relatively limited category, the principle only applies to immigration and prostitution offences. And in the limited category, the principle only applies to immigration offences.

Duress

In the Commonwealth Caribbean, the defence of duress is a recognized defence, and it has applicability in the area of human trafficking and victim criminality. However, this will usually mean that the victim must go through a full trial to prove duress, as opposed to a court ordering a stay of the prosecution.

According to the Jamaican case of *Clement Reid v R*¹⁰⁰ a defence of duress will be successful where:

- a. The victim was forced against his/her will to act as he or she did by threats which he genuinely believed would cause serious harm to him/ her or his/ her family.
- b. A reasonable person of the victim’s age and circumstance would have been forced or compelled to act as he/she did in the commission of the offence.
- c. The victim could not reasonably have avoided acting as he or she did without either being harmed or having his/her family harmed as a result.

Avoidance of Revictimization

Building upon the above, particularly on procedural fairness requirements that include understanding, respectful treatment, availability of amenities, and access to information,¹⁰¹ judicial officers must be careful to avoid secondary victimization caused by court proceedings in relation to victims/survivors of modern-day slavery.

⁹⁹ Ibid at 315 – 319.

¹⁰⁰ [2013] JMCA Crim 41,

¹⁰¹ Justice Peter Jamadar and Elron Elahie, ‘*Proceeding Fairly Report on the Extent to which Elements of Procedural Fairness exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago*’. Judicial Education Institute of Trinidad and Tobago. 2018.

According to *the Anti-Trafficking Training Material for Judges and Prosecutors Handbook*,¹⁰² Judges should put all measures in place to eliminate security risks to the victim and manage the victim’s psychological trauma and stress. Judges should treat the victim with compassion, fairness, respect, and dignity and encourage and arrange special support for the victim. These measures include:

- a. Explaining the nature of the proceedings to victims in understandable terms.
- b. Arranging for victims to be under the care of an established NGO.
- c. Allowing victims to be accompanied to Court by a person they trust.
- d. Ensuring access to translation services.
- e. Monitoring the types of questions put to the victim.
- f. Providing Witness Protection: Victims of human trafficking may have endured significant abuse (physical, emotional, and psychological) inflicted by their traffickers. According to Haynes¹⁰³: “The importance of protection ... lies in the fact that trafficked victims are, by virtue of the exploitation which they have had to endure, vulnerable individuals whose mental and physical wellbeing could easily be compromised by the recalcitrant practices of traffickers and their associates who wish to regain their “property” or dissuade victims from cooperating with prosecuting authorities in the institution of criminal proceedings.

The safety of these persons can easily be compromised by their vulnerable positions. Many Commonwealth Caribbean Countries now have legislation to ensure that the victims are safe from threats and intimidation from their traffickers.¹⁰⁴ The legislation in some countries even goes further to provide reasonable protection to the family members of the victims¹⁰⁵, and protection to potential witnesses where there is a threat of harm such as relocation and the provision of new identity documents, new residence, work permits and confidentiality¹⁰⁶.

¹⁰² International Centre for Migration Policy Development, *‘Anti-Trafficking Training Material for Judges and Prosecutors Handbook’*, (International Centre for Migration Policy Development 2006).

¹⁰³ Ibid at 31

¹⁰⁴ S12(2) The Bahamas TIP Act; s15(b) Barbados TIP Act; s29(b) Belize TIP Act; s 8(2) Cayman Islands TIP Act; s13 Guyana TIP Act; s9(2) Jamaica TIP Act; s16(1)(b) St Kitts and Nevis TIP Act; s19(1)(b) St Lucia TIP Act; s20(b) St Vincent and the Grenadines Act; s32(b) Trinidad and Tobago TIP Act

¹⁰⁵ S12(3) Bahamas TIP Act; s 15(c) Barbados TIP Act; s29 (c) Belize TIP Act; s 13 Guyana TIP Act; s16(1) © St Kitts and Nevis TIP Act; s19(1) (c) St Lucia TIP Act; s 20© St Vincent and the Grenadines TIP Act; s32© Trinidad and Tobago TIP Act.

s14 Guyana TIP Act.

¹⁰⁶ s13 The Bahamas TIP Act; s14 Guyana TIP Act; s 20 St Lucia TIP Act; s21 St Vincent and The Grenadines TIP Act; s 33 Trinidad and Tobago TIP Act

- g. Ensuring the basic needs of Trafficked Victims are met: the anti-trafficking legislation provides that certain basic needs are as far as possible met such as food, clothing, and personal hygiene products.¹⁰⁷
- h. Medical and Psychological Assistance: Victims of human trafficking are often in need of medical and psychological assistance. In the EU, states have a directive to provide for the medical and psychological care to victims of human trafficking¹⁰⁸. Many Commonwealth Caribbean Islands have legislation requiring that the medical and psychological needs of a victim are provided for.¹⁰⁹
- i. Accommodation: Some of the Commonwealth legislation provide for the provision of accommodation to victims of human trafficking. However, as a matter of practicality not all countries have been able to designate a shelter for trafficked victims.¹¹⁰

Judges ought to enquire into the circumstances of the victim to ensure that the above are provided for. The rights and safety of the victim must be a paramount consideration. Judges should not hesitate to make orders that the victim be referred to the relevant organization to ensure that all the basic needs are met, for identification or for a psychological report. Judges should be sensitive to the types of orders and safeguards that should be put in place to prevent revictimization.

¹⁰⁷ S56 Antigua and Barbuda TIP act; s 20(1) The Bahamas TIP Act; s18(1) Barbados TIP Act; s 6(1)(c) Belize TIP Act; s 9(1) Cayman Islands TIP Act; s 29 Grenada TIP Act; s10(1) Jamaica TIP Act; s 19(1) St Kitts and Nevis TIP Act; s 24(1) St Lucia TIP Act; s 35(1) St Vincent and the Grenadines TIP Act; s 6(1)(b) Trinidad and Tobago Act; s 40 Turks and Caicos TIP Ordinance

¹⁰⁸ The Queen on the Application of EM v The Secretary of State for the Home Department [2018] EWCA Civ 107

¹⁰⁹ S50 Antigua and Barbuda TIP Act; s 20(1)b-d The Bahamas TIP Act; s18(1)(c) and (i) Barbados TIP Act; s26(1) Grenada TIP Act; s 24 (1) b-d St Lucia TIP Act; s 35(1) (a) St Vincent and the Grenadines TIP Act; ss6(1)(b) and 37 (1)(b) and (d) Trinidad and Tobago TIP Act; s41(1)(b)-(c) Turks and Caicos Islands TIP Ordinance.

¹¹⁰ S 56 Antigua and Barbuda TIP Act; s20(1)(a) The Bahamas TIP Act; s18(1)(a) Guyana TIP Act; s 10(1)(f) Jamaica TIP act; s 19(1) St Kitts and Nevis TIP Ac; s 24(1) (a) St Lucia TIP act; s 24(3)(3), ss32(2) and 35(1)(a) St Vincent and the Grenadines; ss6(1)(b) and 37(1)(a) Trinidad and Tobago TIP Act; s 41(1)(a) Turks and Caicos Islands TIP Ordinance

The Special Case of Child Victims

Children have always been recognized by the law as being especially vulnerable. Kokaram J, sitting in the Trinidad and Tobago High Court, has explained:

It is commonly said that it takes a village to raise a child. Such a notion recognizes the inherent vulnerability of children, their need for guidance, their easy prey to negative influences but equally their potential for positive growth through the collective wisdom of parents, family units and social structures or institutions.¹¹¹

Article 3 (1) Convention on the Rights of the Child (CRC), provides that:

[I]n all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Many Commonwealth Caribbean Countries have enacted legislation that recognize this vulnerability and the best interests of the child¹¹². The respective Acts also require housing care and support, that the victims are reunited with their families as soon as practicable. In some instances, there is a requirement that criminal proceedings involving child victims be held in camera to prevent secondary victimization¹¹³The legislation in some of these countries provide that child victims are not to be housed in prison or other detention facilities¹¹⁴ and that child victims are assigned trained social or case management workers to support them in court proceedings¹¹⁵.

¹¹¹ Claim No. CV2015-02799; B v Her Worship Magistrate Marcia Ayers Caesar and The Attorney General of Trinidad and Tobago

¹¹² S36 Belize TIP Act; s 21 Barbados TIP Act; s 25 Guyana TIP Act; s 31 St Lucia TIP Act; s32 St Vincent and the Grenadines TIP Act; s 44(1) Trinidad and Tobago Act

¹¹³ S 63 Antigua and Barbuda TIP Act; s 15 The Bahamas TIP Act; s16(2) Barbados TIP Act; s30(a) Belize TIP Act; s 10 Cayman Islands TIP Act; s 10(3) Dominica Transnational Organized Crime (prevention and Control) Act 2013; s 15(20) Guyana TIP Act; s 11Jamaica TIP Act; s 17(20) St Kitts and Nevis TIP Act; s 21(2) St Lucia TIP Act; s 22(2) St Vincent and the Grenadines TIP Act; s34(2) Trinidad and Tobago TIP Act; s 48 Turks and Caicos Islands TIP Ordinance

¹¹⁴ S 20(3) The Bahamas TIP Act; s18(3) Barbados TIP Act; s 18(6) Guyana TIP Act; s 24(7) St Lucia TIP Act; s25(6) St Vincent and the Grenadines TIP Act; s 37(4) Trinidad and Tobago TIP Act; s 41(3) Turks and Caicos TIP Act.

¹¹⁵ S 4(2) Child Care and Protection act (Jamaica); s 30€ Belize TIP Act; s 25(b) Guyana TIP Act; s19(3) St Kitts and Nevis TIP act; s 31(3) (b) St Lucia TIP Act; s 32(3)(b) St Vincent and The Grenadines Act.

Practical Considerations: For the Benefit of Judicial Officers and Court Systems

Red flags and Indicators that a Person may be a Victim of Human Trafficking

In order to afford the victim¹¹⁶ their rights and prevent secondary victimization and revictimization in society, it is crucial that the victim is identified. Sometimes victims themselves are unaware of their possible victim status; lived experiences of mistreatment and abuse are “common” to some migrants; victims may have a negative perception of authority and are afraid of being deported¹¹⁷.

Human trafficking may occur in the following situations¹¹⁸:

- a. Prostitution and escort services;
- b. Pornography, stripping, or exotic dancing;
- c. Massage parlours;
- d. Sexual services publicized on the Internet or in newspapers;
- e. Agricultural or ranch work;
- f. Factory work or sweatshops;
- g. Businesses like hotels, nail salons, or home-cleaning services;
- h. Domestic labour (cleaning, childcare, eldercare, etc. within a home);
- i. Restaurants, bars, or cantinas; or
- j. Begging, street peddling, or door-to-door sales.

¹¹⁶ According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (1985), "victims" means "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power" (para. 1). "A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" (para. 2).

¹¹⁷ Office of Trafficking in Persons, '*Fact Sheet: Identifying Victims of Human Trafficking*' <<https://www.acf.hhs.gov/archive/otip/fact-sheet/fact-sheet-identifying-victims-human-trafficking>> accessed March 10, 2022

¹¹⁸ Ibid

General Physical Indicators of Human Trafficking¹¹⁹:

- a. Bruises, broken bones, burns, and scarring;
- b. Chronic back, visual, or hearing problems;
- c. Skin or respiratory problems;
- d. Infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation;
- e. Untreated chronic illnesses, such as diabetes or cardiovascular disease; or
- f. Reproductive health problems, including sexually transmitted diseases, urinary tract infections, pelvic pain and injuries associated with sexual assault, or forced abortions.

Special Indicators:¹²⁰

(i) Forced Labour:

- a. Evidence of a failure to pay a worker the minimum wage;
- b. Work is extracted from workers by physical or sexual violence;
- c. Confinement to the workplace;
- d. Retention of identification documents;
- e. Threats of deportation or harm to family;
- f. The person feels linked to the employer by debt bondage; or
- g. Working hours are disproportionate

(ii) Domestic Servitude:

- a. Cohabitation;
- b. Disproportionate working hours and lack of time off;
- c. Perpetration of offensive acts or manifestation of racist attitudes against the domestic worker;
- d. Exposure to physical or sexual abuse/violence;
- e. They are prevented from leaving the place of residence/work freely;
- f. No negotiation of work conditions is allowed;

¹¹⁹ Ibid

¹²⁰ Anti-Trafficking Training Material for Judges and Prosecutors

- g. Inadequate remuneration such as to maintain dependent relationships; or
- h. The person feels linked to the employer by debt bondage - for instance to pay back travel expenses often for an undefined amount.

(iii) *Sexual Exploitation*

- a. Women without passports or identification documents or visas and whose personal data cannot be verified;
- b. Women speak only their native language;
- c. Women seem to be very anxious or in a helpless situation;
- d. Women are not able to explain how they entered the country;
- e. Women do not have their earnings at their free disposal;
- f. The price of sexual services is considerably lower than market prices;
- g. Women have to earn a minimum amount of money per day;
- h. Women are limited in their freedom of movement; or
- i. Women have a relatively high debt.

Judicial Attitudes for Increasing Awareness - Ascertaining Red Flags

(i) *Situational Awareness and Intersectionality*

This speaks to the recognition, understanding, and awareness that a matter may present itself as a straightforward case, when in reality it involves intersecting and other influencing considerations. The nature of human trafficking, how and why humans are trafficked and who is trafficked (currently there is an overwhelming and disproportionate number of women and children)¹²¹, is constantly changing; contemporary forms of slavery are shifting, changing forms, yet fundamentally the same. Judicial officers who operate in a closed-minded way, within the four-corners of a case, can miss the existence and impact of contemporary forms of slavery in those cases.

(ii) *Mindful Judging*

Mindful judging requires judicial officers to adopt a 360-degree internal and external view of court proceedings and court relationships. This approach places an enhanced and specific focus on not only the substance of a case, but also on behaviours, the environment, and

¹²¹ Walk Free, '*Stacked Odds*', (Walk free, 2020) accessed <<https://www.walkfree.org>> 30 March 2022

communications in the court room (and courthouse). Mindful judging offers judicial officers an opportunity to understand how victims/survivors may be impacted by judicial proceedings.

In Caribbean spaces, for example, judicial officers are required to become aware of whether there are factors which may influence ‘rites of domination’¹²², and more generally whether there are incidences of power and control and of manipulation at play, that operate to intimidate, silence, and re-victimise. For victims/survivors who have notably endured trauma (which can be both immediate and long-term), the judicial environment can reinforce unequal power relations that negatively impact on the victim/survivor’s safety and comfort, impact their levels of trust, and their capacity to meaningfully participate in proceedings. Mindful judging thus gives rise to enhanced degrees of courtroom consciousness that may otherwise be overlooked on account of familiarity.

In more concrete terms, this kind of judicial mindfulness may be described as:

... the ability to be fully present to what is happening at every moment in relation to all relevant considerations in the context of court proceedings ..., with an attitude of openness and receptivity (non-judgementally), and with the intention to deal with each case fairly, effectively, and according to the evidence, the law, and the Constitution (purposively).¹²³

(iii) *Judicial Humility, Compassion, and Concern*¹²⁴

Victims/survivors of human trafficking have already suffered trauma, exploitation, dehumanization. They enter court systems disadvantaged. Their core human rights to dignity, respect, and equality have already been compromised. Achieving substantive equality for them may necessitate appropriate differential treatment.

In this context, judicial humility is a necessity. It is an antidote to the hubris that judicial officers can be prone to develop following appointment; otherwise known as judicial arrogance, it

¹²² Mindie Lazarus-Black, ‘*The Rites of Domination: Practice, Process, and Structure in Lower Courts*’, *American Ethnologist*, Vol. 24, No. 3 (Aug. 1997), pp. 628-651.

¹²³ Peter Jamadar and Kamla Braithwaite, ‘*Exploring the Role of the CPR Judge*’, (Judicial Education Institute of Trinidad and Tobago, 2017). 62-63

¹²⁴ *Ibid* (Judicial Education Institute of Trinidad and Tobago 2017). ‘**Judicial Humility** is premised on the insight that, whereas we often assume that we see things as they are, we actually ‘see’ things as they appear to us. This insight, about the inherent subjective element in all perception, is equally true in relation to interpretation.’ ‘**Judicial Compassion** is a rational, jurisprudential, cultural, and societal sensitivity for the well-being of both people and the law as they intersect in the context of (court proceedings).’

creates a limiting and closed-minded approach to matters and court-users. Judicial humility begins when judicial officers give up their need to be right, be in control, have power over, and the predisposition to be judgmental (including their identification with these mindsets as part of their judicial personas).

Judicial humility leads to genuine attitudes of openness and receptivity. And consequently, to judicial compassion and concern. Indeed, these three judicial attitudes may be exactly what victims/survivors of contemporary forms of slavery are both entitled to and need.

Key Takeaways

1. Human trafficking and modern-day slavery are prevalent in alarming numbers in today's society. With the onset of COVID 19, the increased use of technology and globalization, these figures are increasing at an alarming rate.
2. Human trafficking is a crime that affects us all, internationally, regionally as an individual as it has catastrophic effects that can tear down the fabric of society, threaten the rule of law, confidence in the governments and hinder economic development.
3. Judges as guardians of the Constitution have an undeniably important role in the eradication of human trafficking and modern-day slavery.
4. The Caribbean is a region of strategic importance to human trafficking, the proximity of the region to the United States of America, the challenged border security, developing economies and influx of tourists make Caribbean countries a prime source, destination, and transit for the trafficking of persons. It is therefore imperative that Judicial Officers are knowledgeable about the international law principles and their domestic legislation to protect the rights of these victims. This will assist as when victim's needs are not addressed there is a high probability that victims will again fall prey to their original perpetrators and remain in modern day slavery.
5. Judges should be mindful and alert to the status of a potential victim.

Final Thoughts: A Call to Action

There is much to think about. And there is much to be done. And we, as judicial officers, are the ones called upon to think and to do.

We have the tools. Are we up to the task?

For thousands of innocent and vulnerable lives, for hundreds of communities and families, we are their only hope.

Now is the time to act!

