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Kate Orr

Missing from the Data, Missing from the Law

Indigenous Women and Girls
and the Failures of Anti-Trafficking
Frameworks in Latin America

EMA, European Master's Programme
in Human Rights and Democratisation

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Foreword

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- Orr, Kate, *Missing from the Data, Missing from the Law: Indigenous Women and Girls and the Failures of Anti-Trafficking Frameworks in Latin America*. Supervisor: Davinia Gómez Sánchez, Univeristy of Deusto (Bilbao). European Master's Programme in Human Rights and Democratisation (EMA-GC Europe), coordinated by Global Campus of Human Rights Headquarters.

- Vasilenko, Darya, *Assessing the Extent of Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women: Concluding Observations on Kazakhstan*. Supervisor: Aigerim Kussaiynkyzy, Maqsut Narikbayev University (Kazakhstan). The Master's Programme in Human Rights and Sustainability in Central Asia (MAHRS-GC Central Asia), coordinated by the OSCE Academy in Bishkek (AY 2024-26).
- Yisa, Josephine Boye, *A Human Rights-Based Approach to Overfishing in West Africa: Comparative Study of Guinea-Bissau and The Gambia*. Supervisors: Magnus Killander, University of Pretoria and Emmanuel Kasimbazi, Makerere University (Uganda). Master's Programme in Human Rights and Democratisation in Africa, coordinated by Centre for Human Rights, University of Pretoria.

Biography

Kate Orr holds an undergraduate degree in Political Science and Business. She has a particular interest in anti-trafficking, women and children's rights, and indigenous rights. She had the pleasure of studying her second semester in the University of Deusto, Bilbao, where she gained valuable knowledge into the inner workings of the Latin American human rights system as well as indigenous rights in the Americas. She hopes to pursue a career in combatting human trafficking and will be starting an internship with the OSCE human rights department (ODIHR) in Warsaw in January.

Abstract

This thesis investigates the overrepresentation of indigenous women and girls among human trafficking victims in Latin America, a topic that is largely underexplored in mainstream academic and policy discourse. Their absence from statistical data, which is typically aggregated only by age and gender, has resulted in anti-trafficking frameworks that fail to account for their unique vulnerabilities shaped by race, ethnicity and social status. As a result, existing measures often neglect the specific risks faced by indigenous populations. Adopting a qualitative, interdisciplinary methodology grounded in decolonial and intersectional feminist theory, this research examines how colonial legacies continue to shape systems of oppression that contribute to circumstances like poverty and systemic violence. Therefore, the thesis critically assesses the regional and international anti-trafficking frameworks in place, arguing that a failure to adopt an intersectional decolonial approach weakens protection for marginalised victims. By including indigenous epistemologies in data collection, research and policy-making, it calls for a more inclusive and culturally informed response to trafficking. Such an approach would better protect those most at risk whilst simultaneously challenging the deeply rooted colonial legacies that persist within anti-trafficking mechanisms.

Keywords: *Human trafficking / indigenous women / Latin America / decolonial theory / intersectionality / anti-trafficking*

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Table of Abbreviations

CEDAW	United Nations Committee on the Elimination of Discrimination Against Women
IACHR	Inter-American Commission on Human Rights
ICS-TIP	International Classification Standard of Administrative Data on Trafficking in Persons
ILO	International Labour Organization
OAS	Organization of American States
SDG	Sustainable Development Goals
TIP	Trafficking in Persons
TIPR	Trafficking in Persons Report
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNHRC	United Nations Human Rights Council
UNODC	United Nations Office on Drugs and Crime

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1. Introduction and research rationale

This thesis investigates the overrepresentation of indigenous women and girls among human trafficking victims in Latin America. To date, this is a topic that is severely underexplored in mainstream academic and policy discourse. While human trafficking has become a widely discussed topic in global human rights agendas, very little focus is placed on addressing the disproportionate representation of indigenous women and girls among its victims. This is particularly evident in their lack of representation among statistical data, despite international and regional human rights bodies repeatedly expressing grave concerns over this disparity. Yet little has been done to address the cause of this issue, or to develop more comprehensive measures to protect those most vulnerable.

To address this gap, this thesis adopts a decolonial intersectional framework, which hopes to better explain the origins and reasons for vulnerability to trafficking. Decolonial theory, grounded in the everyday practices of indigenous people who engage in ongoing resistance and cultural continuance to heal from the impacts of colonialism, will offer a critical tool to examine the intersecting forces of colonialism, capitalism and patriarchy that structure the modern systems of domination. In applying such a framework to the present day human trafficking trends in Latin America, this research aims to expose the structural conditions and root causes that render indigenous women and girls especially vulnerable. In doing so, it explores how coloniality continues to reproduce inequalities in race, knowledge systems and ontological challenges, as a way of both sustaining indigenous marginalisation, whilst also contributing to patterns of exploitation such as trafficking. It will look not only at trafficking, but also policy and

legislative approaches to fighting it. Ultimately, the thesis hopes to reframe our understanding of human trafficking not only as a criminal act, but as a manifestation of colonial structures that continue to shape who is valued and who is invisible.

1.1 Background and research problem

Trafficking in human beings is characterised by the ongoing subjugation of victims, marked by a deep and systemic disruption of their well-being. This leads to a sense of helplessness, a lack of foreseeable alternatives and compromised consent to their exploitation.¹ Victims are chosen from areas of social marginalisation, economic and educational poverty, underdevelopment, family breakdown, gender discrimination and adult irresponsibility.² In general, research indicates that victims are statistically poor, have fewer job prospects, have a limited access to education and may come from more rural areas, depending on their country of origin.³ Correspondingly, Chong, alongside other scholars on human trafficking, identifies that among these victims, ‘women of certain racial and ethnic groups, indigenous and immigrants are much more vulnerable to trafficking, forced labour and slavery’.⁴ It is noted that such vulnerabilities are exacerbated based on racist and sexist stereotypes which categorise women of colour, indigenous women and women of ethnic minorities as vulnerable and submissive, thus making them ideal targets for trafficking. Increased vulnerability is also context sensitive and heightened in certain circumstances. For example, indigenous peoples are

¹ F Matera and C Boeris, ‘Gender Injustice and Human Trafficking: Decolonising Thinking Against the “Pedagogy of Cruelty”’ (2024) 4 *Centro de Latinoamericano de Estudios en Epistemología Pedagógica* 118 <<https://dx.doi.org/10.51896/reca>>.

² *ibid* 127.

³ H Box, ‘Human Trafficking and Minorities: Vulnerability Compounded by Discrimination’ (2011) 11 *Human Rights and Human Welfare* 28, 28 <https://digitalcommons.du.edu/hrhw/vol11/iss1/16?utm_source=digitalcommons.du.edu%2Fhrhw%2Fvol11%2Fiss1%2F16&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed 18 April 2025.

⁴ NG Chong, ‘Human Trafficking and Sex Industry: Does Ethnicity and Race Matter?’ (2014) 35(2) *Journal of Intercultural Studies* 196, 197 doi:10.1080/07256868.2014.885413.

disproportionately affected by extractive projects, environmental degradation and developmental projects on their lands, all of which end up making them more likely to be forcibly displaced or migrate out of necessity, which ultimately increases vulnerability.⁵

These stereotypes function as justifications for exploitation, as Bryant-Davis and Tummala-Narra explain: ‘There are long-standing and far-reaching stereotypes about members of racially and ethnically marginalized groups that contribute to the acceptability of trading, exploiting, and discarding them’.⁶ Such stereotypes that are created and perpetuated feed into the desire and justification for persons to purchase racially and ethnically marginalised persons, who can then be exploited or trafficked for sexual exploitation, forced labour, organ theft and drug smuggling, among other things. Furthermore, when such stereotypes intersect with gender, they promote socially reinforced cognitive distortions that specifically dehumanise and objectify women of particular cultural groups, as compared to their male counterparts.⁷ Therefore, it can be said that women facing such stereotypes based on both race and gender are met with a two-fold process of dehumanisation, based not only on their race or ethnicity but also on their gender.⁸ Such processes can be understood as the intersectionality of race and gender, and will be discussed in detail in the sections that follow. Furthermore, historically women and girls have been devalued through patriarchy, which affects all women, but especially those from ethnically and racially marginalised communities. This is also particularly evident in the way colonialism intensified pre-colonial patriarchy dynamics by fusing them with modern, Eurocentric models of gender domination to particularly affect indigenous women, which we will see more of in Chapter 2.

Building on from the above, further reasons why ethnically marginalised individuals are particularly vulnerable to trafficking are highlighted by Bryant-Davis and Tummala-Narra who note such vulnerabilities also relate to limited legal protection, social

⁵ R Weitzer, ‘Human Trafficking and Contemporary Slavery’ (2015) 41(1) Annual Review of Sociology 223 doi:10.1146/annurev-soc-073014-112506.

⁶ T Bryant-Davis and P Tummala-Narra, ‘Cultural Oppression and Human Trafficking: Exploring the Role of Racism and Ethnic Bias’ (2017) A Feminist Perspective on Human Trafficking of Women and Girls 152, 154 doi:10.4324/9781315203904-8.

⁷ *ibid.*

⁸ Oyèrónkẹ Oyèwùmí, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press 1997).

stigma and heightened risk of poverty.⁹ These vulnerabilities can also be understood by intersectionality. For example, the combination of race and gender often places women from certain groups on the outskirts of legal protection, where policies and legal instruments fail to consider how they may face additional vulnerabilities based on their race or ethnicity. Regarding risks of poverty, existing research easily identifies the vital role of economic factors in human trafficking, and yet it often fails to explore the deeper, intersecting relationships between poverty, discrimination and socio-cultural factors. Because of this, there is a distinct lack of research relating to traditionally disadvantaged groups and systemic discrimination within the body of human trafficking literature which tends to focus instead on the most visible victims, which we will come to see in general pertains to white women and girls.¹⁰

Indigenous women's vulnerabilities to trafficking has been noted in a number of UN Committee reports. The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) in General Recommendation No 39 on the rights of indigenous women and girls, for example, identifies the inherent risk of indigenous women and girls to being trafficked.¹¹ The Committee has consistently identified patterns of discrimination they face in the exercise of their human rights, and notes particularly the intersectional nature of such discrimination that is based on sex, gender, indigenous origin, ethnicity and age, among other factors. Furthermore, in the United Nations Office on Drugs and Crime (UNODC) 'Global Report on Trafficking in Persons',¹² women and girls were identified as most vulnerable to being trafficked in Latin America, predominantly for sexual exploitation purposes. However, throughout the 176 page report, the word indigenous only surfaces once.¹³ The indigenous population of Latin America consists of approximately 50 million people (about 10% of the

⁹ Bryant-Davis and Tummala-Narra (n 6) 156.

¹⁰ Box (n 3) 28.

¹¹ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (2022) UN Doc CEDAW/C/GC/39 <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigenous>> accessed 25 April 2025.

¹² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024* (United Nations 2024) <https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf> accessed 13 February 2025.

¹³ *ibid.*

population), who belong to around 500 ethnic groups,¹⁴ and yet they are significantly underrepresented in trafficking data, which serves as a significant reason why Latin America was chosen as the region for this analysis. This lack of data, as we will come to see, is not random, but rather an oversight. Country specific reports for Latin America divide victims statistics by gender and age, however, they do not go further in identifying specific characteristics of trafficking victims,¹⁵ despite continuous reports – especially from the United Nations Human Rights Council (UNHRC) – highlighting the specific vulnerabilities of indigenous women.¹⁶ Because of this, there is a significant gap in the literature relating to traditionally disadvantaged groups – particularly indigenous communities – and systemic discrimination they face within the context of trafficking.

While indigenous peoples do not show in trafficking statistics, much of the theoretical literature on human trafficking, as well as other forms of structural violence, point to an inherent vulnerability among indigenous communities to such forms of exploitation. In Canada for example, even though indigenous peoples only make up around 4% of the Canadian population, indigenous women and girls represent 50% of all sex trafficking victims.¹⁷ Due to the scattered nature of indigenous communities, data has not always been collected accurately.¹⁸ More broadly, human trafficking data is widely considered unreliable, due in part to the clandestine nature of the industry, but also due to a general structural neglect in data collection efforts and the interpretation of such data largely being based solely on gender and

¹⁴ M De Díos, 'The situation of Latin America's indigenous population and the impact of COVID-19' (UNDP, 2020) <<https://www.undp.org/latin-america/blog/situation-lat-in-americas-indigenous-population-and-impact-covid-19>> accessed 21 May 2025.

¹⁵ United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons 2024: Country Data - South America' (United Nations 2024) <https://www.unodc.org/documents/data-and-analysis/glotip/2024/SouthAmerica_GLOTIP2024.pdf> accessed 13 February 2025.

¹⁶ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (2015) UN Doc A/HRC/30/41 <<https://digitallibrary.un.org/record/803354?ln=en&v=pdf>> accessed 1 May 2025.

¹⁷ B Olson-Pitawanakwat and C Baskin, 'In Between the Missing and Murdered: The Need for Indigenous-Led Responses to Trafficking' (2020) 36(1) *Affilia: Journal of Women and Social Work* 10 doi:10.1177/0886109920944526.

¹⁸ M Nikkel, 'Human Trafficking in Native American and Indigenous Communities' (*The Exodus Road*, 20 July 2022) <<https://theexodusroad.com/human-trafficking-in-native-american-communities/>> accessed 13 February 2025.

age.¹⁹ While these broader socioeconomic factors provide essential context, they remain insufficient for explaining the uniquely heightened risks faced by indigenous women and girls, particularly in post-colonial societies like those in Latin America. Rather than simply identifying victim vulnerabilities, it is vital to ask why certain populations become targets and what power structures enable this violence.²⁰ Justification for the research is rooted in the fact that statistics highlighting the inherent vulnerabilities of indigenous women to trafficking are extremely limited, particularly in regions such as Latin America. However, the absence of data should not be mistaken for the absence of the issue itself. The lack of available data and discourse on this subject therefore does not reflect a lack of occurrence, but rather a systemic failure to adequately document and address the issue. This is what demands the urgent need for further research to fully capture the scope and gravity of the problem.

The existing limited research on this topic has severe implications. Without clear empirical data, national and international policies fail to adequately protect indigenous women and girls from trafficking.²¹ Existing anti-trafficking frameworks may not fully incorporate the historical and structural factors that place indigenous women at higher risk. Prior to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Palermo Protocol),²² there did not exist a commonly accepted definition of human trafficking, and most countries did not have laws to criminalise such activities.²³

¹⁹ SX Zhang, R Pacheco-McEvoy and R Campos, 'Sex Trafficking in Latin America: Dominant Discourse, Empirical Paucity, and Promising Research' (2012) 13(1) *Global Crime* 22 doi:10.1080/17440572.2011.632504.

²⁰ Olson-Pitawanakwat and Baskin (n 17) 11.

²¹ Weitzer (n 5).

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Crime (Palermo Protocol) (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>> accessed 7 February 2025.

²³ Zhang, Pacheco-McEvoy and Campos (n 19).

A critical step in prevention is to define and understand what constitutes vulnerability – which can lead to human rights violations – in specific social contexts, especially those informed by colonial legacies and identity-based marginalisation.²⁴ However, at present the concept of vulnerability based on certain identities seems to be the missing link in current policies and practices, and so they do not take into account the relationship between social, cultural, economic and political situations and how they might make certain groups – such as indigenous women and girls – more vulnerable. Instead these frameworks tend to individualise vulnerability rather than questioning the broader systems of oppression such as racism, colonialism and patriarchy. Therefore, this thesis argues that the social classification of women based on the construction of their racial and ethnic identities as non-dominant plays a significant role in exposing them to trafficking.²⁵

Currently, anti-trafficking legislation and enforcement initiatives have outpaced social science research on the topic and so domestic and international policies have been formulated largely without bases in empirical evidence and research.²⁶ The absence of extensive bodies of high-quality, empirical research means that the factors identified as potential risks to being trafficked are constructed in a way that may lack evidential basis. Commentary on the issue is often simplified drastically and often ignores the findings which highlight the diverse structural and experiential dimensions of trafficking.²⁷ Failure to address the intersection between racism and gender oppression, whilst also acknowledging the role of colonial domination and its manifestations in present day, means that policy responses are – and will continue to be – unable to offer effective prevention or protection to indigenous communities.

²⁴ N Loozen, 'Otherness and Human Trafficking: The Vulnerability of Indigenous Women to Sexual Exploitation' (Thesis, Global Campus of Human Rights 2013) 1 <<http://dx.doi.org/10.25330/1705>>.

²⁵ Chong (n 4).

²⁶ Weitzer (n 5).

²⁷ *ibid* 224.

1.2 Research objectives and methodological approach

On account of the above, this thesis aims to research the role of colonialism and the coloniality/modernity complex in the trafficking of indigenous women and girls in Latin America. It questions how systems born from colonialism and imperialism, that aimed for the destruction of existing diverse worlds whilst denying a shared humanity, continue to shape modern societies. Not only do these systems reinforce stereotypes that endanger indigenous women and girls, but we will come to see how they also actively facilitate trafficking through structures established during colonial rule. The thesis will analyse existing human trafficking trends in post-colonial Latin America from a decolonial perspective and will highlight how the legacy of colonial violence – through racial and gendered hierarchies and epistemic erasure – continues to manifest in modern trafficking systems. By applying a decolonial theoretical framework, the study will analyse the intersectionality of race, gender and structural marginalisation. It will also evaluate whether current anti-trafficking legislation and policy meaningfully addresses such deeply-embedded colonial structures and if it considers indigenous perspectives. It is through this approach that the thesis seeks to offer a more holistic understanding of indigenous vulnerabilities in order to more clearly identify pathways towards inclusive, context-aware trafficking prevention strategies.

Firstly, the thesis will analyse the intersectional factors – particularly race and gender – that contribute to the disproportionate vulnerability of indigenous women and girls to human trafficking in Latin America. This line of inquiry will aim to explore how the systems of oppression rooted in colonial legacies, such as patriarchy and racial hierarchies, contribute to circumstances such as poverty, land loss and systemic violence. These circumstances act as an enabling factor to being trafficked, as they shape the lived experiences of indigenous communities, especially among them indigenous women and girls. This research objective will mainly be examined in Chapter 2, where we will focus on the coloniality of gender and the intersectionality of gender and race through colonial construction.

Secondly, the thesis examines the contemporary human trafficking trends in Latin America through a decolonial lens, to highlight how coloniality has left indigenous communities inherently more vulnerable to being trafficked. It will question the absence of

data regarding this issue, and will challenge the conceptual limitations of mainstream trafficking discourse in the region. This will be explored in Chapter 3, using current regional trends and data collection practices to argue for improved ethnicity-based data measures that would improve visibility of indigenous peoples in trafficking statistics.

Lastly, the thesis will critically assess regional and international anti-trafficking frameworks, with a focus on whether and how they integrate indigenous worldviews and decolonial perspectives. The objective here is to identify theoretical and structural gaps in existing legislation and argue that the inclusion of indigenous perspectives in research methods, data collection and policy implementation is the only way forward in addressing such inequalities in trafficking trends. This is important for closing the gap between acknowledging indigenous vulnerabilities to trafficking on paper and actually taking measurable steps to address the causes in practice. Thus, the research hypothesis in this context will argue that such considerations would make anti-trafficking methods more effective, as they would more broadly consider the needs and vulnerabilities of women and girls at the intersections, who are often neglected and ignored in academia, legislation and policy implementation. By including indigenous epistemologies, measures could be put in place which takes into account the particular threats posed to indigenous women and girls, where a blanket anti-trafficking legislation that applies to ‘women’ currently does not consider the other factors that intersect with gender to make them more vulnerable.²⁸

As for the methodological approach, the thesis will adopt a qualitative, interdisciplinary approach grounded in decolonial theories focusing on the intersectionality of race and gender. It aims to apply such theories to a critical analysis of policy documents, international treaties and anti-trafficking legislation in Latin America, in order to explore how colonial legacies persist in contemporary legal frameworks. In doing so, it will lead to a critique of the current Western-centric international legal systems in place that are aimed at preventing trafficking and protecting its victims, to highlight how they instead often marginalise them to the point that they are actually more vulnerable.

²⁸ Palermo Protocol (n 22).

1.3 Scope and limitations

Researching human trafficking, especially among marginalised populations, is challenging due to the clandestine nature of the industry and the lack of reliable data.²⁹ Formal statistics reflecting the number of trafficked indigenous women and girls are particularly bad. Olson-Pitawanakwat and Baskin attribute a lack of statistics regarding indigenous trafficking to a few reasons, including the underground nature of trafficking, underreporting due to fear and concern, a lack of understanding of the violence and a tendency of states to focus on international trafficking while downplaying domestic trafficking.³⁰ However, reports from United Nations bodies such as the Special Rapporteur on the Rights of Indigenous Peoples³¹ and CEDAW emphasise how indigenous women and girls are disproportionately vulnerable to being trafficked,³² with particular concern for indigenous women in communities in Latin America.³³ With that in mind, the need for indigenous specific research is very clear to identify how trafficking and exploitation manifests for indigenous youth, what it constitutes, where it takes places and what are the risk factors.

Taking this into account, there are a number of limitations to this research. Firstly, the evidence that exists to substantiate trafficking statistics at the global level is limited as it is virtually impossible to count the number of victims or the magnitude of profits in an illicit underground economy both internationally and national.³⁴ With this in mind, the thesis will largely reference reports from international bodies who note with concern the vulnerabilities of indigenous women and girls to being trafficked. Not only do these reports support the claims that they are at higher risk to

²⁹ Box (n 3).

³⁰ Olson-Pitawanakwat and Baskin (n 17) 12.

³¹ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 16).

³² United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (n 11).

³³ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 16); United Nations Human Rights Council, 'Visit to Ecuador: Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2019) UN Doc A/HRC/42/37/Add.1 <<https://docs.un.org/en/A/HRC/42/37/Add.1>> accessed 19 May 2025; United Nations Human Rights Council, 'Visit to Costa Rica: Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2022) UN Doc A/HRC/51/28/Add.1 <<https://docs.un.org/en/A/HRC/51/28/Add.1>> accessed 19 May 2025.

³⁴ Weitzer (n 5).

trafficking, but they also emphasise the dire need to improve data and statistical analysis when it comes to identifying victims. By improving data collection and analysis and aggregation of statistics based on other characteristics than just age and gender would allow for a greater understanding of the situation, and would provide the necessary statistics to support the claims being made not only by academic scholars, but also international human rights bodies.

Secondly, the challenge to gather such evidence related to statistics of trafficking of indigenous women and girls is further limited, due to other factors such as under-reporting, or lack of awareness regarding exploitation. Given this, the thesis has taken a wider scope to analyse trafficking trends in Latin America more generally, and has opted to avoid focusing on a country specific case, where both types of data are extremely challenging to obtain. Of course this is not to suggest that all countries in Latin America experience and combat trafficking in the same ways, and acknowledging the diversity of the region and the specific contexts at national level is essential. Rather, conducting a detailed country-by-country analysis would not have been feasible due to significant limitations in available data. Taking a regional approach allows for an identification of common patterns and contextual factors, and so this approach was more practical and valuable in contributing to current gaps in the literature.

Finally, it is important to acknowledge that an analysis of certain legal and policy frameworks that pertain to indigenous women and girls were outside the scope of the analysis for this thesis. The United Nations Declaration on the Rights of Indigenous Peoples for example,³⁵ whilst a monumental soft law document, does not address trafficking of indigenous peoples explicitly and so was not within the scope of this thesis. The same can be said for the American Declaration on the Rights of Indigenous Peoples.³⁶ Having said that, this thesis does acknowledge their importance in recognising indigenous peoples contributions to international law and so should be mentioned.

³⁵ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (adopted 13 September 2007) UN Doc A/RES/61/295 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> accessed 23 March 2025.

³⁶ American Declaration on the Rights of Indigenous Peoples (adopted 15 June 2016) AG/RES.2888 (XLVI-O/16) <<https://www.oas.org/en/sare/documents/decamind.pdf>> accessed 23 March 2025.

1.4 Structure of the thesis

The following chapters will unfold in a way that aims to explicitly address the research objectives. Chapter 2 will focus on the theoretical and conceptual framework and the first research objective by applying decolonial theory to the concept of trafficking of indigenous women and girls. It will explicitly address the coloniality of gender and how the intersection of race and gender through colonial construction has rendered indigenous women and girls most vulnerable to being trafficked. While some scholars have argued that gender and patriarchal structures were constructed in colonial times to place women at the margins of society, a closer look at pre-colonial indigenous societies suggests that gender and patriarchal systems did exist before colonial domination. We will therefore come to see how colonialism intensified pre-colonial patriarchy dynamics by fusing them with modern, Eurocentric models of gender domination to place indigenous women at the margins of society. Moving on, Chapter 3 aims to explore the second research objective, as mentioned above, and will take a closer look at the human trafficking in Latin America specifically. It will highlight a significant gap in statistical trends that lacks ethnicity-based data collection methods, making indigenous women and girls the invisible victims in trafficking discourse. This will lead us onto Chapter 4 which takes a closer look at the legal and policy frameworks in place to combat trafficking. Such frameworks will be analysed from a decolonial perspective to highlight how they fail to protect and prevent indigenous women and girls from being trafficked. In doing so, it offers some suggestions for ways of moving forward, which takes us to the final Chapter 5 on the limitations of international law where indigenous voices are marginalised. This section focuses on the coloniality of law and offers a critique of current approaches to anti-trafficking and human rights from a decolonial perspective. It challenges the current Western-centric approach to human rights and anti-trafficking frameworks and posits instead that indigenous worldviews and rights must be considered and incorporated into anti-trafficking legislation if there is to be a change in the current trends. Both chapters together aim to address the third and final research objective, which will lead us to conclusions on the future for indigenous women and girls in the human trafficking context.

2. Theoretical and conceptual framework

2.1 Decolonial theory: An overview

This thesis draws on decolonial theory to try to explain the ongoing racial and gendered hierarchies that make indigenous women and girls disproportionately vulnerable to being trafficked. Decolonial theory argues that the economic, political, cultural and epistemic violence of colonialism has embedded systems of racism, patriarchy and economic extraction into global society today.³⁷ Firstly, it draws a clear distinction between coloniality and colonialism. Coloniality implies that colonial relations continue to shape and ground our present day economic, political, social and knowledge systems. Colonialism, in contrast, refers to the historical processes of European and Western domination over non-western territories from roughly the 15th century to the mid-20th century.³⁸

Furthermore, colonialism did not just produce territorial, economic and political violence. It also led to the erasure or diminishing of indigenous knowledge systems and cultural practices, whilst simultaneously creating a racialised, gendered hierarchy that separated the colonisers from the colonised.³⁹ As such, decolonial theory offers a framework to realise a decolonial future – a future that is necessarily feminist, anti-racist and anti-capitalist,

³⁷ WD Mignolo, 'Coloniality of Power and De-Colonial Thinking' (2007) 21(2-3) Cultural Studies 155, 164 doi:10.1080/09502380601162498.

³⁸ It is important to note that non-western colonization does exist, however, decolonial theory focuses on the expansion of the European and western empires and its long-lasting effects.

³⁹ S Duvisac, 'Decolonize: What Does It Mean?' (Oxfam International 2022) <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621456/rr-decolonize-what-does-it-mean-151222-en.pdf;jsessionid=7BA1AB05BF9ECC695CEFD2544DA-3DE4C?sequence=1>> accessed 22 February 2025.

which are struggles that are not inherently decolonial, but nonetheless become so when they strive to transform coloniality.⁴⁰ It provides an analytical lens to understand the concept of coloniality and to examine ways in which colonialism continues to shape modern political, economic, cultural, social and knowledge systems. This inherently feminist, anti-racist and anti-capitalist framework highlights how colonialism has and continues to produce patriarchal, capitalist and racist social hierarchies.⁴¹

Decolonial theory emerged from diasporic scholars from the Americas, and emphasises how the emergent concept of 'Europe' and 'the West' represents a recognition of identity that is formed through distinguishing itself *from* other cultures.⁴² It challenges the Europeanisation of the modern world, which hides under the guise of 'globalisation' and 'universalism'.⁴³ Decolonial theory is based within the modernity/coloniality group, and was first articulated by Quijano, who posited that with the conquest of lands that we now call Latin America, began the constitution of a new world order,⁴⁴ which has since created a global power that dominates the entire world.⁴⁵ Colonialism, as defined in the *Oxford English Dictionary*, consists of the 'principle, policy, or practice of acquiring full or partial political control over another country and occupying it with settlers'.⁴⁶ It generally aimed for a destruction of existing diverse worlds, but it was also equally as aggressive and ambitious in denying a common humanity to push other human beings below the invented 'human line'.⁴⁷ Coloniality however, instead refers to long-standing patterns of culture, labour, intersubjectivity relations and knowledge production that go far beyond the limits of colonial administration. Thus, we can understand coloniality as something that *survives* colonialism.⁴⁸

⁴⁰ Duvisac (n 39) 4.

⁴¹ *ibid.*

⁴² G Bhabra, 'Postcolonial and Decolonial Dialogues' (2014) 17(2) *Postcolonial Studies* 115, 118 doi:10.1080/13688790.2014.966414.

⁴³ SJ Ndlovu-Gatsheni, 'Discourses on Decolonization/Decoloniality' (2019) 55(3) *Papers on Language and Literature* 201, 203 <<https://www.blacfoundation.org/pdf/Ndlovu-Gatsheni-16.pdf>> accessed 12 February 2025.

⁴⁴ A Quijano, 'Coloniality of Power and Eurocentrism in Latin America' (2000) 15(2) *International Sociology* 215 <<https://doi.org/10.1177/0268580900015002005>>.

⁴⁵ Bhabra (n 42).

⁴⁶ 'Colonialism, n, 1' (*Oxford English Dictionary*) <<https://doi.org/10.1093/OED/3744685746>>.

⁴⁷ Ndlovu-Gatsheni (n 43).

⁴⁸ N Maldonado-Torres, 'On the Coloniality of Being: Contributions to the Development of a Concept' (2007) 21(2-3) *Cultural Studies* 240 <https://doi.org/10.1080/09502380601162548>.

Building on this, decolonisation is not just centred around the idea of obtaining political independence, but about promoting new ways of thinking and doing aimed at a re-humanised world.⁴⁹ It is about dismantling the power relations and conceptions of knowledge that incite harmful racial, gender and geo-political hierarchies that were birthed and nurtured in the early stages of colonial domination and have continued to grow in its aftermath. It seeks to make sense of the position of ex-colonised peoples within this Euro-American-centric, patriarchal, capitalist, hetero-normative, racially hierarchised and modern world system.⁵⁰

The decolonial framework is heavily informed by the everyday practices of indigenous people, who engage in ongoing resistance and cultural continuance to heal from the impacts of colonialism.⁵¹ It interrogates modern domination from the perspectives of epistemologies of the South, which involves questioning the colonial, capitalist and patriarchal characteristics of modernity.⁵² Within the decolonial framework, the main goal is to create and sustain a space for present and future generations, as a way to practice a form of care and love for ancestors and relatives.⁵³ Therefore, in order to apply this framework to the present day human trafficking trends as a way to identify *why* indigenous women and girls may be more vulnerable to being trafficked, one must further understand the idea of coloniality, and the ways in which it perpetuates such continued vulnerability in the modern day. Below is a discussion of the different aspects of coloniality, their emergence and applicability to Latin America during colonisation. By analysing the different aspects of coloniality, the next section aims to shed some light on the ways in which coloniality has and continues to perpetuate inequalities through race, knowledge systems and ontological challenges. It will hopefully form an understanding on which one can more clearly comprehend how coloniality in its different forms persists today, and how these forms manifest to perpetuate vulnerability to being trafficked.

⁴⁹ Ndlovu-Gatsheni (n 43) 204.

⁵⁰ *ibid* 216.

⁵¹ A Mukavetz, 'Decolonial Theory and Methodology' (2018) 46(1) *Composition Studies* 124, 126 <https://www.jstor.org/stable/pdf/26497809.pdf?refreqid=fastly-default%3A-ca30a86990f047edc589f5b5c3ec037d&ab_segments=&initiator=&acceptTC=1> accessed 12 February 2025.

⁵² Boaventura de Sousa Santos, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke UP 2018) 107.

⁵³ Mukavetz (n 51) 126.

2.2 The coloniality of power, knowledge and being

Decoloniality recognises that the modern world operates through an asymmetrical global order – one that is maintained not only by colonial systems of power but also by dominant ways of teaching and knowing that promote balance and homogeneity at the cost of the truth. At its core, decoloniality confronts these distortions of consciousness.⁵⁴ Decolonial scholars have thus developed theories of coloniality to highlight the different ways in which it continues to distort consciousness and exert power, particularly over those in post-colonial regions. Ndlovu-Gatsheni articulates perfectly how such systems continue to produce ‘alienated Africans who are socialised into hating the Africa that produced them and liking the Europe and America that rejects them’ which can simultaneously be applied to other areas in the Global South, such as Latin America.⁵⁵

As Maldonado-Torres notes in his 2007 article on coloniality, the coloniality of power was first located by Peruvian sociologist Aníbal Quijano. In the context of European colonisation of the Americas, new identities were created as a way of socially classifying individuals – European, white, Indian, black, mestizo.⁵⁶ A prominent feature of such social forms of classification was that the relationship between the subjects was not horizontal but rather vertical, meaning some identity depicted superior values over others.⁵⁷ In short, the lighter one’s skin was, the closer one was to ‘full humanity’ and vice versa. These hierarchical logics were demonstrated in the famous Valladolid Debate which took place from 1550–51.⁵⁸ While Bartolomé de las Casas, a Dominican friar and long-time bishop in the Chiapas, argued that indigenous people were fully human and capable of reason and civilisation, humanist scholar Juan Ginés de Sepúlveda countered that they were ‘natural slaves’, inferior by nature and incapable of self-government, requiring Spanish rule for their own benefit.⁵⁹ This debate served to exemplify the vertical power relations mentioned

⁵⁴ Ndlovu-Gatsheni (n 43).

⁵⁵ *ibid* 216.

⁵⁶ Maldonado-Torres (n 48).

⁵⁷ *ibid* 244.

⁵⁸ M Lyons, ‘The Valladolid Debate on the Rights of Indigenous People’ (*History Today*, August 2023) <<https://www.historytoday.com/archive/months-past/valladolid-debate-rights-indigenous-people>> accessed 28 April 2025.

⁵⁹ *ibid* para 3.

above, as Ginés de Sepúlveda justified colonisation by claiming the inferiority of indigenous peoples was inherent and a civilisational issue. This directly relates to the concept of the coloniality of power, where race became used as a tool for social classification and dehumanisation.⁶⁰

The coloniality of power helps to investigate how the current 'global political' was constructed and configured into what it is today – a racially hierarchised, Euro-American centric modern power structure.⁶¹ One of the patterns of power that emerged from colonisation was the social classification of the world population upon the basis of race. This social classification produced a new mental category to codify the relations between conquering populations and the conquered, which created an idea that among races existed biologically structural and hierarchical differences between those who dominated and those who were dominated.⁶² This idea was not just meant to explain the physical differences between dominants and dominated, but also the mental and cultural differences, leading to the idea of a European superiority over its colonised counterparts.⁶³

For example, when the Castilians conquered and named America, they encountered a great number of different peoples, each with their own language, history, memory and identities, some of the most well-known being the Aztecs, Mayas, Quechuas and Incas.⁶⁴ However, in the aftermath of colonial domination, they inhibit one identity: Indians. Those indigenous to the lands were dominated and deprived of their historic identities, and were instead classed into a social classification that continues to identify such groups today. Furthermore, race became one of the basic criteria to classify the population in the power structure of the new society. It became associated with the nature of roles, as well as places in the division of labour, in the control of resources and production and in the enjoyment of rights. Thus, when we talk about the coloniality of power, we refer to a very specific base element of the new pattern of world power that emerged in the colonial era. It was expressed in distribution of work, imposition of

⁶⁰ Quijano (n 44).

⁶¹ Ndlovu-Gatsheni (n 43) 215.

⁶² Quijano (n 44).

⁶³ *ibid* 216.

⁶⁴ *ibid* 219.

geo-cultural identities, as social relations and in the concentration of the control of productive resources and capital.⁶⁵ The colonisation of America became a model of power, a system of world domination that was structured around the idea of race.

While many consider the concept of 'modernity' to have emerged as a product of the Renaissance or the European Enlightenment, there is a much darker side shaped by coloniality. Maldonado-Torres highlights how coloniality and modernity were so intertwined that modernity would not be possible *without* coloniality, and coloniality continues to be an inevitable outcome of modernity.⁶⁶ Regarding race, Maldonado-Torres explains that over time in the context of the colonial invasion, the treatment of the overpowered indigenous population in conditions of war and conquest is perceived as legitimate long after the initial war and conquest is over.⁶⁷ The ethics of war shifted from a special code for behaviour during wartime to a normalised standard of conduct in the Americas (and gradually the modern world) by virtue of the idea of race and the coloniality of power, that reflects the way things are and have been for a long period of time. Over time, this treatment became so naturalised that continued discrimination, slavery and serfdom were justified not by indigenous resistance but by their race.⁶⁸

It is from this historical experience that Quijano presents the next concept, coloniality of knowledge,⁶⁹ which focuses on working through epistemological issues and politics of knowledge generation as well as questioning who generates such knowledge and for what purpose.⁷⁰ Ndlovu-Gatsheni posits that an understanding of the coloniality of knowledge is useful in enabling us to understand how endogenous and indigenous knowledge systems have been pushed to the 'barbarian margins of society'.⁷¹ In short, it assesses the impact of colonisation on different areas of knowledge production.⁷²

⁶⁵ Quijano (n 44) 218.

⁶⁶ Maldonado-Torres (n 48) 246.

⁶⁷ *ibid.*

⁶⁸ *ibid.* 248.

⁶⁹ Quijano (n 44).

⁷⁰ Ndlovu-Gatsheni (n 43) 216.

⁷¹ *ibid.* 217.

⁷² Maldonado-Torres (n 48).

Quijano explains that coloniality of power – seen in political and economic systems – is deeply tied to a coloniality of knowledge, shaped by the ideals of modernity and rationality.⁷³ Quijano characterises modernity as a way of knowing that was born in the colonial period and sustained in hegemonic centres of power that it produced.⁷⁴ Such a way of knowing is Eurocentric, referring not only to a European perspective, but to a worldview shaped by those educated under the dominance of global capitalism.⁷⁵ This worldview treats knowledge like property: as a relationship between an individual and an object, rather than a shared, social process aimed at collective understanding. Such an individualistic approach to knowledge erases the presence of the ‘Other’ and denies the idea of a larger social whole, which allows for the affirmation of a European identity, while obscuring the colonial structures that sustain it.⁷⁶ Thus, Mignolo suggests that a decolonisation of knowledge occurs when one acknowledges the sources and geo-political locations of knowledge, whilst simultaneously affirming the modes and practices of knowledge that were denied by the dominance of particular forms.⁷⁷

And finally, we turn to the concept of coloniality of being, which promotes the idea that colonial relations of power left profound effects in not only areas of authority, knowledge and the economy, but also in the general understanding of being.⁷⁸ The coloniality of being can be understood as a ‘division that separates our world through an existential abyss, according to a racial and ethnic hierarchy, “saving” the colonisers (whose humanity is manifest and indubitable), and ‘condemning’ others (the colonised) to an ontologically inferior mode of subjectivity’.⁷⁹ Eurocentric modes of domination included domination based on ontological deprivation, that is, the refusal to acknowledge the other’s full humanity.⁸⁰

⁷³ Quijano (n 44).

⁷⁴ Maria Lugones, ‘The Coloniality of Gender’ in Wendy Harcourt (ed), *The Palgrave Handbook of Gender and Development* (Palgrave MacMillan 2016) 35 doi:10.1007/978-1-137-38273-3_2.

⁷⁵ *ibid* 39.

⁷⁶ Bhabra (n 42) 118.

⁷⁷ Mignolo (n 37).

⁷⁸ Maldonado-Torres (n 48).

⁷⁹ J Liotta and A Szpiga, ‘Unsettling the Regime of Human Rights: Decolonial Reflections Beyond the Law’ (2022) 12(1) *Oñati Journal of Emergent Socio-Legal Studies* 153, 158 <<https://opo.iisj.net/index.php/sortuz/article/view/1590>> accessed 22 February 2025.

⁸⁰ De Sousa Santos (n 52).

In a colonial-modern worldview, for something to be recognised as fully human or complete in being, it must first be stripped of its radical uniqueness.⁸¹ Difference or ‘otherness’ is viewed as problematic, with a need to be neutralised through a system that homogenises and flattens out individual and group distinctions. Thus, figures such as the ‘Indian other’, the ‘non-white other’ and the woman were to be reshaped into identities that fit within the dominant global order.⁸² The coloniality of being works to delegitimise the other, by excluding them from what is considered valuable or worthy of political recognition. In this system of modernity, those that do not fit into the environment of universal equivalence are instead placed at the margins of humanity, towards the area of sub-humanity.⁸³ And it is within these areas of sub-humanity, on the outskirts of ontological being, that indigenous women and women of colour occupy the most space.

Maldonado-Torres also argues that coloniality of being does not merely reveal acts of ontological violence, but rather reveals the very selective and intentional nature of that violence.⁸⁴ During colonial domination, victims were chosen from the socially hierarchised groups to reflect a claiming of power through the commodification and domination – both physical and symbolic – of human beings. This dynamic is rooted in capitalist systems, where certain groups (typically white and property-owning) exploit others (racialised and dispossessed).⁸⁵ It highlights how colonial dehumanisation is not accidental or isolated, but rather the product of enduring structures and alliances formed between colonising and certain colonised men to maintain domination.

Santos further contributes to this discussion in his articulation of the abyssal line, which he describes as the radical separation between metropolitical and colonial societies, where one side is considered human and the other is dehumanised and

⁸¹ L Segato, ‘Gender and Coloniality: From Low-Intensity Communal Patriarchy to High-Intensity Colonial-Modern Patriarchy’ (2021) 36(1) *Hypatia* 781 doi:10.1017/hyp.2021.58.

⁸² *ibid* 792.

⁸³ *ibid*.

⁸⁴ Maldonado-Torres (n 48).

⁸⁵ F Matera and C Boeris, ‘Gender Injustice and Human Trafficking: Decolonising Thinking Against the “Pedagogy of Cruelty”’ (2024) 4 *Centro de Latinoamericano de Estudios en Epistemología Pedagógica* 118 <<https://dx.doi.org/10.51896/reca>>.

exploited.⁸⁶ He argues that while modern social science did acknowledge the existence of historical colonialism, it fails to recognise colonialism as a form of sociability that is an integral part of capitalist and patriarchal domination.⁸⁷ The key distinction between abyssal and non-abyssal exclusion lies in the nature of how the excluded are perceived. Abyssal exclusion is based on the idea or belief that its victims are not fully human, but rather fundamentally inferior beings. Because of this, it becomes unacceptable or even unimaginable to treat them as fully human. As long as the three interconnected systems of modern domination – capitalism, colonialism and patriarchy – continue to operate, large groups of people will systematically experience this ‘fatal crossing of the abyssal line’.⁸⁸ Therefore, a resistance to the coloniality of being requires not just a political or economic struggle, but rather an ontological struggle, a reclaiming of being.⁸⁹

The above analysis highlights ways in which coloniality continues to perpetuate inequalities through race, knowledge systems and ontological challenges. While frameworks of coloniality of power, being and knowledge are essential for understanding the broader structures of colonial domination and its lasting impact, they fall short in capturing the specific experiences of indigenous women within colonial and post-colonial societies. These frameworks often overlook how gender – and its intersections with race and colonial violence – shaped and continue to shape the lived realities of those most marginalised. To grasp this dimension it is therefore necessary to turn to what scholars have termed the coloniality of gender, or in some cases, the modern/colonial gender system, which offers a more nuanced lens for analysing how colonial systems have specifically targeted and reconfigured indigenous gender roles to place indigenous women at the margins of society.⁹⁰ Thus, the next section moves towards understanding coloniality and its relationship with gender, and how this can only truly be understood by applying an analysis of intersectionality of race and gender. This framework shows how indigenous women

⁸⁶ B de Sousa Santos, ‘Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges’ (2007) 30(1) *Review (Fernand Braudel Center)* 45 <<https://www.jstor.org/stable/40241677>> accessed 21 March 2025.

⁸⁷ *ibid.*

⁸⁸ *ibid.* 46.

⁸⁹ *ibid.*

⁹⁰ Lugones (n 74).

are marginalised due to a failure to recognise their simultaneous discrimination based on gender and race. This lack of intersectional understanding contributes to systemic violence against them, including human trafficking.

2.3 The coloniality of gender and the intersectionality of gender and race through colonial construction

As discussed above, coloniality works to produce and shape the subject through practice, discourse, beliefs and institutions.⁹¹ The non-Western subject is constructed mirroring the Western subject and is therefore judged by Western standards. Liotta and Szpiga highlight how, in this sense, white European feminist approaches to understanding forms of coloniality in post-colonised societies fail to take an intersectional approach and instead reinvent a homogenised category of ‘woman’ according to its own values and norms.⁹² With this vision, understandings of gender and womanhood in the South are ignored on the grounds of belonging to an inferior civilisation, perpetuated by the coloniality of knowledge systems and coloniality of being that places indigenous women in the category of subhuman.

Decolonial scholars such as Lugones have challenged the intersections of race, class, gender and sexuality, and highlight how a particular understanding of this construction of indifference to such systematic violence towards women of colour places tremendous barriers in the path of their struggles for freedom, integrity and wellbeing.⁹³ She combines the important work on gender, race and colonisation with Quijano’s coloniality of power to arrive at what she refers to as ‘the modern/colonial gender system’.⁹⁴ As mentioned above, global, Eurocentric capitalist power systems from the colonial period are organised around two axes Quijano

⁹¹ Liotta and Szpiga (n 79).

⁹² *ibid* 162.

⁹³ Lugones (n 74) 35.

⁹⁴ *ibid* 36.

calls the coloniality of power and modernity.⁹⁵ However, Lugones argues this view is too narrow, as it overlooks how gender varies along racial lines and obscures those who are oppressed by both categories.⁹⁶

In Quijano's conceptualisations, 'race' is the axis from which all other relations of power emanated.⁹⁷ However, Lugones identifies gaps in this model, arguing that gender is not just an 'addon' to the coloniality of power, but rather fundamentally a part of it, and it shapes how that power works.⁹⁸ Because of this, Lugones critiques Quijano's model for reducing gender domination mainly to the control over sex and reproduction, treating it as something primarily about bodies and biological roles.⁹⁹ This conceptualisation is inadequate because it overlooks how gender is also a broader system of social meaning, identity and hierarchy, especially when viewed through the lived realities of colonised indigenous women. Thus, Lugones shows how the coloniality of power reflects a heteronormative and male-centred perspective that not only simplifies but also biologises and dimorphises gender.¹⁰⁰

With that in mind, understanding intersectionality is a crucial aspect of acknowledging the space that goes unnoticed when race and gender are treated as separate categories. By acknowledging their intersectionality, it makes visible those who have been dominated and victimised in terms of both categories, which mostly relates to women of colour.¹⁰¹ Intersectionality offers an alternative lens through which we can interpret coloniality, allowing for a greater understanding of how it operates across social groups. As Lugones explains, while all individuals in capitalist, Eurocentric modernity are both racialised and gendered, not all experience oppression or domination as a result of these identities.¹⁰²

⁹⁵ Quijano (n 44) 342.

⁹⁶ Lugones (n 74) 40.

⁹⁷ Catherine Walsh, 'On Gender and its "Otherwise" in Wendy Harcourt (ed), *The Palgrave Handbook of Gender and Development* (Palgrave Macmillan 2016) 34, doi:10.1007/978-1-137-38273-3_3.

⁹⁸ Lugones (n 74).

⁹⁹ *ibid* 36.

¹⁰⁰ Walsh (n 97) 36.

¹⁰¹ K Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1(8) University of Chicago Legal Forum 139 <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>> accessed 3 April 2025.

¹⁰² Lugones (n 74).

Thus an important aspect of this perspective is the category of gender and its importance in distinguishing particular types of oppression. Crenshaw highlights how white feminist struggle became one against the oppressive systems imposed on white bourgeois women and notes how no one else's gender oppression was considered in this context.¹⁰³ Lugones coined this the 'light side', which constructs the meaning of gender to reflect the hegemonic ordering of the lives of white bourgeois men and women, as well as what constitutes the modern/colonial meaning of men and women in white heterosexual terms.¹⁰⁴ Meanwhile, the 'dark side' to her analysis is marked by the lived violence of coloniality, which endeavoured to convert indigenous people who were perceived as non-gendered from animal-like savages into men and women.¹⁰⁵ Women who were racialised as inferior were redefined and reshaped into different versions of 'womanhood' to serve the needs of Eurocentric capitalism and its heterosexual, patriarchal systems of domination and control.

As Eurocentric, global capitalism was constituted through colonisation, Lugones argues that gender differentials were introduced where, in pre-colonial times, there were none, meaning gender was a colonial construction.¹⁰⁶ Such arguments are further supported by, who refers to the Yoruba society in West Africa to highlight how systems of gender imposed through colonialism encompassed the subordination of females in every aspect of life.¹⁰⁷ She emphasises how gender was predominantly introduced by the West as a tool of domination that designates two binarily opposed and hierarchical social categories.¹⁰⁸ She notes how women were defined in relation to men, as those who did not have power or could not participate in the public arena. None of this, she claims, was true of the Yoruba peoples and females prior to colonisation. The colonisation process categorised and reduced women in subordination to their male counterparts, and so colonisation for women was a twofold process of *both* racial inferiorisation and gender subordination.¹⁰⁹

¹⁰³ Crenshaw (n 101).

¹⁰⁴ Walsh (n 97) 37.

¹⁰⁵ *ibid* 37.

¹⁰⁶ Lugones (n 74).

¹⁰⁷ Oyèrônkẹ Oyèwùmí, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press 1997).

¹⁰⁸ *ibid* 40.

¹⁰⁹ *ibid* 124.

These gender differences that define women in relation to men within a frame of binary-opposed dichotomous, antagonistic and hierarchical social categories are compound characters of the modern/colonial system Lugones describes.¹¹⁰ The evidence clearly shows that colonialism was instrumental in constructing and institutionalising a patriarchal system in which women were systematically oppressed, particularly through the intersecting structures of race, gender and class. Such coloniality persists today, disproportionately affecting women of colour, including indigenous women. However, understanding intersectionality from the indigenous perspective, an essential part of this decolonial analysis, is considering all aspects of their experiences of oppression. While scholars such as Lugones and Oyěwùmí posit that gender was created and perpetuated by colonial domination, there have been other accounts from indigenous communitarian feminists in Latin America that postulate pre-colonial patriarchies did exist in some societies. Such accounts instead emphasise how their coming into contact with colonial forms of patriarchy is what introduced new tools of domination that encompassed the subordination of women in every aspect of life. Thus, while patriarchy may not have existed in pre-colonial Yoruba society, to apply this analysis to every other indigenous society in the world would be unjust and would ultimately fail to encapsulate the deeply historical and diverse nature of these societies. Instead, this next section considers other perspectives that argue that in *some* pre-colonial societies – particularly in Latin America – patriarchal structures did exist prior to colonial invasion, albeit not in the same forms as Western patriarchal structures we know today. Instead, their interaction with colonial systems of domination is what ultimately shaped new forms of patriarchy which subordinated indigenous women. Thus, the next section builds on Lugones and Oyěwùmí, whilst simultaneously considering the indigenous perspective to highlight how colonialism created a new form of patriarchy which exists today.

¹¹⁰ Walsh (n 97) 38.

2.4 (En)gendering: The indigenous intersectional perspective

Considering the above, whilst scholars such as Oyěwùmí and Lugones encapsulate the intersectionality of gender and race and the role colonialism played in their construction, from an indigenous communitarian feminists perspective in Latin America, further conversations have arisen that investigate the ethnocentricity and homogeneity of the gender and patriarchy categories.¹¹¹ In doing so, they question the idea that patriarchy began with colonial invasion, as Lugones and Oyěwùmí posited. In her extensive research on gender, Catherine Walsh highlights how indigenous feminist scholars speak of the historical structures of oppression created by patriarchies, in plural; that is, the relationship or ‘*entronque*’ of patriarchies of ancestral origin and of the West.¹¹² Walsh highlights how Bolivian Aymara feminist Julieta Paredes emphasises that gender-based oppression manifested in other forms within societies and cultures prior to the Spanish colonisation, and was instead *deepened and intensified* following colonial domination. Therefore, it can be said that forms of patriarchal control had already existed within pre-colonial societies and cultures but were worsened by colonial domination.¹¹³

Forms of patriarchal control said to have existed in pre-colonial societies are also mentioned by Segato,¹¹⁴ who argues for the existence of two patriarchal moments: first a patriarchy of low impact proper to the world of the community or village, and secondly the perverse patriarchy of colonial/modernity,¹¹⁵ which imposed a Western logic and order, including relation to sexuality, the body, gender relations and genderised violence.¹¹⁶ In comparison to Lugones and Oyěwùmí, Segato – a decolonial feminist from Argentina-Brazil – argues that gender has manifested in societies and communities through varying forms since the beginning of humanity. Constructions of masculinity for example, in many pre-colonial societies and communities, compelled male subjects to constantly demonstrate his worth – through resilience, aggression, dominance and a display of power in various domains:

¹¹¹ Walsh (n 97).

¹¹² *ibid* 39.

¹¹³ *ibid* 39.

¹¹⁴ Segato (n 81).

¹¹⁵ *ibid* 787.

¹¹⁶ Walsh (n 97) 39.

political, sexual, intellectual. These attributes are what validate and position him within the hierarchical masculine identity, particularly in relation to women.¹¹⁷ However, similarly to how there is a history to how the episteme of coloniality of power with race as its classifier was installed, there is also a history to gender relations within the very matrix of patriarchy.¹¹⁸ She goes on to explain how in the modern colonial order, these pre-colonial gender hierarchies become intensified. Masculinity is inflated within community structures, as men become intermediaries with the external (often white colonising) world. At the same time, they are emasculated in their interactions with white authority. This puts them under stress and relativises their masculine position by subjecting them to the domination of the coloniser.¹¹⁹ Segato notes that this stress ultimately triggers violence because the men are oppressed in the colonial scene while being simultaneously over empowered in the village scene, which forces them to exhibit their capacity for control in the village as a way of restoring their masculinity that was wounded in the colonial scene.¹²⁰ This is further supported by Rachel Sieder who notes how verbal and physical racialised violence against indigenous men within these colonial systems brought about such humiliation and shame that it in turn generated dynamics where violence was exercised by these men over the bodies of women and children.¹²¹ As a result, indigenous women are the bearers of the brunt of this violence, resulting in them experiencing violence not only from the colonisers but also oftentimes the colonised males.

The colonial/modern order thus creates a far more intricate power matrix, where gender is not confined to the binary of men and women, but rather functions as a relational structure embedded in all levels of the social world. In this sense, the supposition made by Lugones that patriarchy was a colonial construct is valid insofar as it marks a global model of power that began with the Western intrusion.¹²² However, as other communitarian feminists have argued, forms of patriarchal domination did exist prior to colonialism, even if they did take different shapes. When colonial

¹¹⁷ Segato (n 81) 788.

¹¹⁸ *ibid* 785.

¹¹⁹ *ibid* 791.

¹²⁰ *ibid* 791.

¹²¹ Rachel Sieder, *Demanding Justice and Security: Indigenous Women and Legal Pluralities in Latin America* (Rutgers UP 2017) 9.

¹²² Walsh (n 97) 44.

patriarchy arrived, it merged with these pre-existing systems, creating what Bolivian Aymara feminist Julieta Paredes calls a *patriarchal entronque* – a junction of oppressive systems that has particularly harmed indigenous women.¹²³ Similarly, Lorena Cabnal, a Maya-Xinka communitarian feminist from Guatemala developed an epistemology which acknowledged the existence of an ‘ancestral origin patriarchy’, a millennial structural system of oppression against native or indigenous women.¹²⁴ According to Cabnal, this system is based on a cosmological philosophy that enforces a heteronormative reality as a mandate for both women and men, shaping their relationship to each other and to the cosmos.¹²⁵ However, with the arrival of the Western patriarchy, this ancestral system was not replaced but rather reconfigured and intensified. When the ancestral origin patriarchy came into contact with the colonial patriarchy, much like what Segato describes above, it created a space for the two systems to interact in a way that laid the grounds for deeper forms of oppression,¹²⁶ specifically towards native and indigenous women.¹²⁷

Thus, for Cabnal, Paredes and other indigenous communitarian feminists, patriarchy and gender oppression cannot be understood only within the context of coloniality and the colonial invasion, nor can its manifestations and expressions be solely understood from the modern/colonial frame.¹²⁸ Segato supports this, following her extensive work with indigenous women in Latin America. She argues that the transformation of pre-colonial gender structures by the modern gender system is what exacerbates inequality, increases violence against women, and disempowers them politically.¹²⁹ She notes that today, we are witnessing the frightening development of newfound methods of assault towards females and feminised bodies. The violence that is being unleashed on women manifests itself in ‘unprecedented forms of bodily destruction, and in the trafficking and commercialisation of what these bodies can offer’.¹³⁰ She also observes that such cruelties towards women increase as modernity and the global market

¹²³ Walsh (n 97) 39.

¹²⁴ *ibid* 40.

¹²⁵ *ibid* 41.

¹²⁶ Segato (n 81).

¹²⁷ Walsh (n 97) 41.

¹²⁸ *ibid*.

¹²⁹ Segato (n 81) 781.

¹³⁰ *ibid* 783.

expand. Thus, talking about structural violence in non-European countries that have a history of colonialism and decolonisation, gender-based violence and *machismo* can be seen as an extension of the colonial mentality, which saw the conquered territories as property that could be exploited without limits of ethical constraints.¹³¹ By extension, trafficking transforms living beings into *things* that can be bought, sold, used and destroyed, as capitalism has taught us. Thus women's bodies – violated, commodified, exploited and sold – become both the site and the means through which dominant men and marginalised men – who despite their own dispossession, go on to oppress others – assert their power and authority.¹³²

During colonisation (and continuing under the modern nation state) colonisers strategically chose to engage with men, which served to strengthen colonial control by giving men political power and excluding women, who were often entirely 'domesticated'.¹³³ What Segato notes is so interesting about this is that men's traditional roles thus altered significantly, as they became agents of the colonial state, returning to their communities operating under a new logic that was shaped by colonial norms.¹³⁴ Thus, when colonial modernity came into contact with the village conception of gender, it brought about dangerous changes of reorganising the structures from within. Any previous hierarchical languages that came into contact with colonial norms thus created a hyper-hierarchical way of understanding, by over inflating men's importance within the community as the 'intermediaries' with the external world.¹³⁵ To further reinforce her point, Segato illustrates what happened when they tried to run the FUNAI Women's Office workshops in villages in Brazil, where they hoped to speak to indigenous women about the growing violence against them.¹³⁶ Yet she notes that caciques and men made sure to show up and express that the state had nothing to discuss with their women and that the control being exerted over 'their' women was the same as it had always been.¹³⁷ Such an interaction reveals that colonial gender hierarchies were not just imposed from the outside, but

¹³¹ Matera and Boeris (n 85) 124.

¹³² *ibid* 125.

¹³³ Segato (n 81) 790.

¹³⁴ *ibid*.

¹³⁵ *ibid* 789.

¹³⁶ *ibid*.

¹³⁷ *ibid* 790.

rather were internalised and reproduced within these communities by elevating the male authority, as mentioned above. As Segato makes clear here, colonial powers significantly reshaped gender dynamics by embedding patriarchal control at both the state and community levels, which continues to marginalise indigenous women under the premise of it being ‘the same as it had always been’.¹³⁸

Of course the abuses and mistreatment perpetrated against native and indigenous women did not come only from the male leaders in their communities who interacted with the colonial powers. Much of the oppression and violations against these women were perpetrated directly by colonial invaders, who saw women – and their bodies – as a site to assert their power and domination.¹³⁹ Conquerors of the Americas not only wanted resources and land, but also slaves and ‘sexual vassals’.¹⁴⁰ Both military expeditions and the establishment of the *encomienda system* – whereby settlers were granted groups of natives for the purpose of labour¹⁴¹ – gave them the opportunity to possess indigenous women, subjecting them to all kinds of plunder, exploitation and control of their labour, bodies and sexuality.¹⁴² Acosta notes how such control manifested horrifying ways of exerting domination over women and their bodies.¹⁴³ In the conquest of countries like Mexico for example, it was reported that a soldier conceived 30 children from different indigenous women under his command in the short span of three years.¹⁴⁴ Another account of the soldiers under the command of Álvaro de Luna in the conquest of Chile – with barely 100 men – developed such sexual activity with aboriginal women in their camp that there were weeks in which they gave birth to 60 babies.¹⁴⁵ Thus, it is said that one of the founding acts of America was – and is – sexual colonisation, a process that Acosta defines as the appropriation and control of bodies, sexuality and the

¹³⁸ Segato (n 81) 790.

¹³⁹ Matera and Boeris (n 85).

¹⁴⁰ A Acosta, ‘Trata de mujeres indígenas en Venezuela: la continuidad de la conquista sexual de América’, (2020) 25(25) *Revista Venezolana de Estudios de la Mujer* 91, 94. <http://saber.ucv.ve/ojs/index.php/rev_vem/article/view/18276> accessed 8 May 2025.

¹⁴¹ Shannon Speed, *Incarcerated Stories: Indigenous Women Migrants and Violence in the Settler-Capitalist State* (University of North Carolina Press 2019).

¹⁴² Acosta (n 140) 94.

¹⁴³ *ibid.*

¹⁴⁴ *ibid.* 94.

¹⁴⁵ Arsenio Suárez Franceschi, ‘La mujer indígena en la época de la Conquista’ in Emilio Cordero Michel, *CLÍO: Órgano de la Academia Dominicana de la Historia* (Santo Domingo 2009) 15–28, 18.

reproductive capacity of racialised women, through the individual or group use of techniques of power related to sexual violence perpetrated by men of a racial/ethnic group that considers itself superior over other cultures (my translation).¹⁴⁶

Speed also highlights how, in a study carried out by a group of Mayan women survivors of the armed conflict that took place in Guatemala (1960–96), they put forward an analysis of sexual violence to highlight how gendered control of women's bodies and women's sexuality was endemic *before* the armed conflict and rooted in colonial domination.¹⁴⁷ In fact, they locate forms of oppression inflicted upon women during the conflict directly to colonialism.¹⁴⁸ For example, they note how large landowners regularly regarded indigenous women working for them as their property, available to be used, including for sexual purposes. Sons of family owners were even encouraged to use domestic staff however they pleased as a way of limiting their excesses outside the home. They also note how these methods of domination and objectification of women normalised forms of masculine control over their communities, noting that rape within marriage and within the community was commonplace.¹⁴⁹

Therefore, with the above in mind, it can be said that what colonialism did was intensify and configure the pre-colonial patriarchy dynamics by fusing them with modern, Eurocentric models of gender domination. Walsh argues that a recognition of this contrast is vital. It highlights how colonial modernity has redefined and imposed its own rigid constructions of gender and patriarchy – constructions that continue to shape and constrain how we think and act today.¹⁵⁰ Of course, it is important to note that this way of understanding gender and patriarchy is applicable to many but not all indigenous societies. If we look at the Yoruba society as mentioned above, gender and patriarchy did not exist in these societies pre-colonial invasion. Furthermore, other pre-colonial indigenous societies worldwide may have been led by matriarchal and matrilineal structures. However, the end result remains the same, and that is that colonial domination interacted with these societies in their varying forms to produce a new form of

¹⁴⁶ Acosta (n 140) 95.

¹⁴⁷ Speed (n 141).

¹⁴⁸ *ibid* 70.

¹⁴⁹ *ibid* 70.

¹⁵⁰ Walsh (n 97).

patriarchy which placed indigenous women at the bottom of the tier. Understanding the layered and hybrid form of patriarchy is essential for developing a truly decolonial perspective, one that accounts for both historical continuity and colonial transformation in the oppression of indigenous women. With that in mind, the next section of this chapter will turn to how these forms of patriarchy have manifested into colonial continuities today, which perpetuate structural violence and Othering of indigenous women.

2.5 Colonial continuities in the treatment of indigenous women and girls today: Structural violence and Othering

Carrying out research on indigenous women and their representation ‘requires an ethical approach to their lived experience of colonialism – of being subjected to violence, made invisible and muted throughout historiography, and lately, reduced to stagnant and degrading stereotypes’ today.¹⁵¹ This section exposes how the treatment of indigenous women and girls today can be directly related to the past, and the direct colonial logics of control, exploitation and erasure of indigenous women. By integrating decolonial and feminist thought, it reveals how structural violence and the process of ‘Othering’ continue to shape the lives and vulnerabilities of indigenous women in the Americas. This will lay the ground for understanding their inherent vulnerabilities to human trafficking. As we will see, human trafficking contains the key characteristics of colonialism, where the different spheres of coloniality that have been discussed above (power, gender, knowledge, being) operate simultaneously as multiple oppressions (racism, classism, sexism).¹⁵²

With the new system of patriarchal power that was developed during colonial domination came new ways of racialised and sexual exploitation that inherently devalued indigenous women in the Americas.¹⁵³ With that came a new way of seeing women as distant objects – submissive, sexualised and separate from political life; Others. The concept of Othering gives a useful theoretical tool to

¹⁵¹ C Valdivia, ‘Toward a Decolonial Feminist Research on Indigeneity in Contemporary Peru’ (2020) 9(5) *Journal of Peripheral Cultural Production of the Luso-Hispanic World* 107, 108 <<https://doi.org/10.5070/T495051215>>.

¹⁵² Matera and Boeris (n 85) 125.

¹⁵³ Acosta (n 140).

analyse these processes of inferiorisation.¹⁵⁴ It is a process of marginalisation, dehumanisation and stereotyping, rooted in colonial, racial and gendered power structures and allows humanity to be divided into groups.¹⁵⁵ Decolonial intersectional frameworks emphasise the need to analyse how colonial power relations, gendered violence and racialisation interact to produce specific forms of othering and harm.¹⁵⁶

Methods of othering continuously facilitate the abuse and exploitation of indigenous women.¹⁵⁷ It can operate across multiple dimensions including race, gender and ethnicity. So, understanding the intersectionality of these factors can also shed light on how an individual or community may be othered based on more than one characteristic. This is what Todres refers to as intersectional othering, where a population possesses multiple characteristics that are devalued in the current global power structure.¹⁵⁸ Othering operates on a global scale to jeopardise the other, and directly relates to the others vulnerability or susceptibility to exploitation. Thus, the myriad forms of violence that indigenous women suffer today are neither random, nor products of chance. For example, othering operates to construct the dominant view of who is responsible for gross human rights violations like human trafficking. It leads those in the Global North to blame the problem exclusively on peoples and governments ‘over there’ who do not have the same values as they do. Todres notes that othering is particularly identifiable in exploitation of humans for the purpose of sexual exploitation, which we have seen above was an inherent part of the colonial domination over indigenous women.¹⁵⁹ He notes that in the case of sex trafficking, racial and ethnic stereotypes about the other not only drive a demand for their sexual exploitation, it also eases perpetrators’ guilt they may have over exploiting women and children as they are seen as distant objects in comparison

¹⁵⁴ N Loozen, ‘Otherness and Human Trafficking: The Vulnerability of Indigenous Women to Sexual Exploitation’ (Thesis, Global Campus of Human Rights 2013) 1 <<http://dx.doi.org/10.25330/1705>>.

¹⁵⁵ Jean-François Staszak, ‘Other/Otherness’ in Rob Kitchin and Nigel Thrift (eds), *International Encyclopaedia of Human Geography* (Elsevier Science 2009).

¹⁵⁶ Valdivia (n 151).

¹⁵⁷ J Todres, ‘Law, Otherness, and Human Trafficking’ (2009) 49(3) Santa Clara Law Review 605 <https://www.researchgate.net/publication/228166778_Law_Otherness_and_Human_Trafficking> accessed 21 April 2025.

¹⁵⁸ *ibid* 609.

¹⁵⁹ *ibid*.

to white women.¹⁶⁰ In this way, othering enables the exploitation of women, however, it also obscures the historical and systematic roots of the violence, absolving the perpetrators of their responsibility by viewing others as distant objects. This sets the stage for understanding how such processes are not fragments of the past but are instead deeply rooted in contemporary forms of violence like human trafficking, which disproportionately impacts indigenous women and girls.

And so one of the ways that we see colonial continuities in the treatment of indigenous women and girls is through human trafficking. While growing literature on the phenomenon of trafficking of indigenous women envisions how colonialism and racism deepened the associated vulnerability factors to gender, much less of this literature applies to the context of the Americas, despite the fact that a good part of the colonialist projects established since the conquest of the Americas was based on the sexual plundering and trafficking of racialised and sub-alternised women.¹⁶¹ Based on the analysis of intersectionality, it is also applicable to further explain how colonial hierarchies have perpetuated oppressive and discriminatory treatment of indigenous women and girls. Intersectional analysis has made it indisputably clear that the different axes of oppression are not interrelated but mutually constitutive. In other words, one cannot explain nor understand the oppression faced by an indigenous woman solely based on the characteristics of her gender.¹⁶²

The ideological construction of indigenous women as violable has paved the way for policies that undermine indigenous existence from colonial through to modern times.¹⁶³ As discussed above, indigenous women have been made to disappear because they have been deemed killable, rapeable and expendable. With that, their bodies have been rendered less valuable because of what they have been taken to represent: land, reproduction, indigenous kinship and governance, an alternative to heteropatriarchal and Victorian rules of descent. Therefore, colonial ideologies of gender and race have constructed indigenous women to represent inevitable subjects of sexual violence and control.¹⁶⁴ This not

¹⁶⁰ Todres (157) 627.

¹⁶¹ Acosta (n 140) 91.

¹⁶² Speed (n 141).

¹⁶³ *ibid* 67.

¹⁶⁴ *ibid* 67.

only manifests itself in systemic violence, but other forms of media that are created for leisurely consumption. Lucchesi observes how representations of indigenous women in things like the media are tied to ongoing patterns of gender and sexual violence.¹⁶⁵ She examines the lives of three indigenous historical figures and their representations over time – Malinche, Pochahontas and Sacagawea. In doing so, she clearly demonstrates how all three women were narrated as sexually desirous of white men, despite them possessing political and diplomatic power among their peoples. Under colonial patriarchy, the idea of indigenous women's agency and sovereignty becomes so inconceivable that it is reinterpreted through the lens of sexual desire, a framing that conveniently legitimises colonial domination and the domination of indigenous lands and bodies. These narratives remain worryingly persistent, to the point that stereotypes stemming from stories like Pocahontas's and Malinche's become excuses for continued denigration of indigenous women as dirty, sexually promiscuous and an exotic, fantasy sexual object.¹⁶⁶ Such portrayals reflect colonial logics that construct indigenous women as inherently violable, as well as legitimising both historical and ongoing violence against them. Therefore with the above in mind, in order to fully grasp the persistence of this violence, it becomes necessary to adopt an intersectional lens to be able to account for the ways both gendered and racialised forms of othering continue to interact and manifest in these contexts.

Intersectionality is thus essential as it highlights how indigenous women occupy a very important space in this conversation. Not only are they othered based on their gender, but also along racialised lines. As we will see, these methods of othering that exist within the social and cultural context of patriarchal dominance continue to exploit women and girls in Latin America today. Several studies show how an emerging naturalisation of the commodification of adolescent female bodies is alarmingly on the rise in many Latin American countries, and often manifests itself through trafficking of women and girls (many of whom are indigenous) for the purpose of sexual exploitation. Zhang, Pacheco-McEvoy and

¹⁶⁵ A Lucchesi, 'Indigenous Trauma is Not a Frontier: Breaking Free from Colonial Economies of Trauma and Responding to Trafficking, Disappearances, and Deaths of Indigenous Women and Girls' (2019) 43(3) *American Indian Culture and Research Journal* 55 <<https://doi.org/10.17953/aicrj.43.3.lucchesi>>.

¹⁶⁶ *ibid* 58.

Campos, for instance, draw on a wide-ranging study across seven Latin American countries, where they reveal that many men justified paying for sex with minors as culturally accepted male behaviour.¹⁶⁷ The research also highlights how such views are deeply embedded in social belief systems that see girls and young women as sexually available and submissive, which as was mentioned above was an inherent aspect of othering. Thus, such findings strongly support the arguments made that current vulnerabilities of indigenous women and girls are not merely personal preference or accidental, but rather are structurally produced, shaped by colonial continuities and racial and gendered hierarchies. And so it is these forms of normalised exploitation that set the stage for understanding the systematic nature of human trafficking, which will be the focus of the next section.

The failure to account for the intersecting dynamics of gender and race, which results in the systemic erasure of indigenous women from both discourse and policy making, will be demonstrated in the following chapters. Legal instruments such as anti-trafficking frameworks, while aiming to address the vulnerabilities of 'women', often operate within a framework that as we have seen privileges the needs and experiences of white, middle-class women. This reflects a broader pattern of frequent universalisation of the category of 'woman' while overlooking the structural and historical conditions that shape the lives of racially and ethnically marginalised women. The continued marginalisation, commodification and exploitation of indigenous women cannot be tackled by frameworks that treat 'women' as a universal category. Only by confronting the racial, colonial and gendered structures that define who is protected and who is vulnerable, can we protect those most at risk. The next section therefore turns to one of the clearest expressions of intersecting violence, which takes shape in the form of trafficking of indigenous women and girls.

¹⁶⁷ SX Zhang, R Pacheco-McEvoy and R Campos, 'Sex Trafficking in Latin America: Dominant Discourse, Empirical Paucity, and Promising Research' (2012) 13(1) *Global Crime* 22 doi:10.1080/17440572.2011.632504.

3. Human trafficking in Latin America

Despite increasing global attention and regional and national responses, human trafficking today is still a very tragic reality,¹⁶⁸ particularly for women and girls in Latin America. While over 193 states – including every country in Latin America – have ratified the Palermo Protocol,¹⁶⁹ existing literature and emerging reports on trafficking highlight how such Protocols systematically fail to protect those most vulnerable.¹⁷⁰ In order to take the steps towards combating human trafficking, we must improve our knowledge of its nature, the underlying conditions and the profiles of both traffickers and victims. It is an inherent lack of data on the nature and severity of human trafficking that remains a significant barrier to addressing its root causes.¹⁷¹ Thus, this section of the thesis aims to provide a regional overview of trafficking in Latin America, highlighting statistical trends disaggregated by gender

¹⁶⁸ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024* (United Nations 2024) <https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf> accessed 13 February 2025.

¹⁶⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Crime (Palermo Protocol) (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>> accessed 7 February 2025.

¹⁷⁰ United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (17 July 2020) UN Doc A/75/169 <<https://www.ohchr.org/en/documents/thematic-reports/a75169-20-years-after-implementing-and-going-beyond-palermo-protocol>> accessed 17 May 2025; United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (2015) UN Doc A/HRC/30/41 <<https://digitallibrary.un.org/record/803354?ln=en&v=pdf>> accessed 1 May 2025; L Segato, 'Gender and Coloniality: From Low-Intensity Communal Patriarchy to High-Intensity Colonial-Modern Patriarchy' (2021) 36(1) *Hypatia* 781 doi:10.1017/hyp.2021.58.

¹⁷¹ United Nations Office on Drugs and Crime, 'Human Trafficking: An Overview' (UNODC 2008) 1 <<https://www.unodc.org/documents/human-trafficking/2008/HumanTrafficking-AnOverview.pdf>> accessed 12 April 2025.

and age. By doing so, it will shed light on the inherent lack of data that pertains to the trafficking of indigenous women, despite an abundance of reports from varying international bodies highlighting their vulnerabilities to being trafficked. The lack of data reinforces the arguments made in earlier chapters about the heightened vulnerability of indigenous women and girls to trafficking. That is because it directly connects to the ideas previously discussed, particularly societal attitudes toward indigenous women that have contributed to structural marginalisation and the neglect of their specific risks. Thus, by emphasising this gap in the data, supported with reports highlighting their disproportionate vulnerability, the below discussion aims to support the development of future strategies or protection policies that address these issues more effectively.

3.1 Regional overview and definitions

After an observed decrease in the detection of victims of human trafficking during the global pandemic, the UNODC Global Trafficking Report identified rising levels of victims globally to have surpassed pre-pandemic levels by 25%.¹⁷² Human trafficking continues to target the vulnerable, as can be seen in the emerging statistical reports. Women and girls remain the biggest share of detected victims worldwide, accounting for 61% of the total in 2022.¹⁷³ Most of them continue to be trafficked for sexual exploitation purposes, however, female victims are increasingly trafficked in large numbers for forced labour, particularly domestic work, and for other forms of exploitation including forced marriages and forced criminality. Furthermore, the number of child victims – of which girls account for the majority – is growing at an alarming rate, increasing by over a third in the space of three years.¹⁷⁴

This thesis chose to examine the case of Latin America in relation to human trafficking for a number of reasons. Firstly, in 2022 women and girls comprised 82% of the victim profile in both Central America and the Caribbean (52% of victims were girls

¹⁷² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024* (n 168).

¹⁷³ *ibid.*

¹⁷⁴ *ibid* 3.

and 30% of victims were women),¹⁷⁵ and South America (women and girls together comprised 62% of victims).¹⁷⁶ However, despite these statistics, much of the literature surrounding trafficking trends and statistics solely focuses on regions like the United States and Canada, and makes references to Latin America only where victims are identified as being transited from there. Furthermore, when focusing on the issue of trafficking of indigenous peoples, general research is scarce. However, unlike Canada or the US, there is a worrying lack of focused research on indigenous women in Latin America, despite them constituting a disproportionately vulnerable demographic to trafficking.¹⁷⁷

There are an estimated 476.6 million indigenous peoples globally, of whom more than half (238.4 million) are women. CEDAW has repeatedly stressed that indigenous women face systemic discrimination and violence,¹⁷⁸ which is supported by other reports by UN bodies which relate this discrimination and violence to perpetuating trafficking vulnerabilities.¹⁷⁹ Yet, regional focused research on these vulnerabilities is scarce in comparison to other regions such as Canada.¹⁸⁰ Therefore, this chapter seeks to address this gap. To do so, it first outlines definitions of trafficking

¹⁷⁵ United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons 2024: Country Data - North America, Central America and the Caribbean' (United Nations 2024) <https://www.unodc.org/documents/data-and-analysis/glotip/2024/NorthAmerica_CentralAmerica_Caribbean_GLOTIP2024.pdf> accessed 13 February 2024.

¹⁷⁶ United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons 2024: Country Data - South America' (United Nations 2024) <https://www.unodc.org/documents/data-and-analysis/glotip/2024/SouthAmerica_GLOTIP2024.pdf> accessed 13 February 2025.

¹⁷⁷ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 170).

¹⁷⁸ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (2022) UN Doc CEDAW/C/GC/39 <<https://www.ohchr.org/en/documents/general-comments-and-/general-recommendation-no39-2022-rights-indigeneous>> accessed 25 April 2025.

¹⁷⁹ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 170).

¹⁸⁰ A Lucchesi, 'Indigenous Trauma is Not a Frontier: Breaking Free from Colonial Economies of Trauma and Responding to Trafficking, Disappearances, and Deaths of Indigenous Women and Girls' (2019) 43(3) *American Indian Culture and Research Journal* 55 <<https://doi.org/10.17953/aicrj.43.3.lucchesi>>; Shannon Speed, *Incarcerated Stories: Indigenous Women Migrants and Violence in the Settler-Capitalist State* (University of North Carolina Press 2019); B Olson-Pitawanakwat and C Baskin, 'In Between the Missing and Murdered: The Need for Indigenous-Led Responses to Trafficking' (2020) 36(1) *Affilia: Journal of Women and Social Work* 10 doi:10.1177/0886109920944526; Daniella Robinson, 'The Harms of Helping: An Indigenous Perspective on the Industrial Rescue Complex' in B Barton, B.G Brents and A Jones, *Sex Work Today: Erotic Labour in the Twenty-First Century* (New York UP 2024) 222-32.

and its intersections with modern slavery, before analysing statistical data and highlighting its limitations. To conclude, it shows how a lack of ethnicity based data collection has failed to both highlight and efficiently address the ongoing vulnerability of indigenous women to being trafficked in Latin America, making them invisible victims without protection.

The Palermo Protocol defines human trafficking 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 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 organs.¹⁸¹

In short, human trafficking consists of three basic elements that must be present together; the action of trafficking, the means through which the conduct is carried out and the purpose or objective of trafficking.¹⁸² It involves the ongoing subjugation of victims, marked by a deep and systemic disruption of their well-being. This leads to a sense of helplessness, a lack of foreseeable alternatives and compromised consent to their exploitation.¹⁸³ Traffickers often select their victims from environments marked by social exclusion, poverty, limited educational opportunities, underdevelopment, inequality, family instability and gender-based discrimination.¹⁸⁴ Victims are often recruited through various methods. For example, in cases involving sexual exploitation, a common pattern of recruitment by traffickers involves deceiving young people

¹⁸¹ Palermo Protocol (n 169) art 3.

¹⁸² Ana Isabel Pérez Cepeda and Demelsa Benito Sánchez, *Trafficking in Human Beings: A Comparative Study of the International Legal Documents* (Europa Law Publishing 2014).

¹⁸³ F Matera and C Boeris, 'Gender Injustice and Human Trafficking: Decolonising Thinking Against the "Pedagogy of Cruelty"' (2024) 4 Centro de Latinoamericano de Estudios en Epistemología Pedagógica 118 <https://dx.doi.org/10.51896/reca>.

¹⁸⁴ *ibid* 127.

– often by promising well paid jobs or false offers of marriage in destination countries that are not real.¹⁸⁵ Traffickers in most situations exploit the victims and their families' vulnerable social and economic conditions.

Prior to the definition outlined in the Palermo Protocol, there did not exist a commonly accepted definition of human trafficking, and thus most countries did not have laws to criminalise such activities.¹⁸⁶ Still, definitional problems plague general understanding about what constitutes trafficking and the literature will often conflate it with modern forms of slavery.¹⁸⁷ Weitzer notes that conflating the two terms may be driven by an incentive to draw greater attention to the problem, however, it also runs the risk of oversimplifying its definition.¹⁸⁸ Trafficking of human beings occurs as a result of a multitude of factors, as mentioned above. It is also, however, not always so obvious in its forms, more often than not undetectable in nature. The definition includes recruitment, receipt or harbouring of a person, any of which qualifies as trafficking provided that other conditions (eg coercion, deception, exploitation) are met, regardless of geographical movement. Weitzer notes that even deception in recruitment by a pimp, for example, is now defined as trafficking.¹⁸⁹ This conflation has real consequences for how trafficking is understood by the public, and even victims of trafficking themselves. Many people assume that trafficking must resemble historical images of slavery – chains, abductions or international smuggling. As a result, they may not recognise the less visible forms of coercion or abuse as trafficking.

¹⁸⁵ H Box, 'Human Trafficking and Minorities: Vulnerability Compounded by Discrimination' (2011) 11 Human Rights and Human Welfare 28, 28 <https://digitalcommons.du.edu/hrhw/vol11/iss1/16?utm_source=digitalcommons.du.edu%2Fhrhw%2Fvol11%2Fiss1%2F16&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed 18 April 2025; NG Chong, 'Human Trafficking and Sex Industry: Does Ethnicity and Race Matter?' (2014) 35(2) Journal of Intercultural Studies 196, 197 doi:10.1080/07256868.2014.885413.

¹⁸⁶ S SX Zhang, R Pacheco-McEvoy and R Campos, 'Sex Trafficking in Latin America: Dominant Discourse, Empirical Paucity, and Promising Research' (2012) 13(1) Global Crime 22 doi:10.1080/17440572.2011.632504.

¹⁸⁷ R Weitzer, 'Human Trafficking and Contemporary Slavery' (2015) 41(1) Annual Review of Sociology 223 doi:10.1146/annurev-soc-073014-112506.

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid* 226.

Issa also notes how conflating trafficking with modern slavery focuses on the criminal aspect of moving people across borders to exploit and enslave.¹⁹⁰ This unfortunately fails to highlight the prevalence of trafficking that occurs *within* the borders of a state. While trafficking generally implies the movement from one location to another, such movement is not a necessary requirement according to international law.¹⁹¹ Importantly, trafficking and modern slavery are not synonymous. Trafficking, as already mentioned, refers to the process through which individuals are recruited or coerced into exploitation, whereas slavery describes the conditions of extreme exploitation itself, defined as the ‘status or condition of a person over whom any or all of the power attaching to the rights of ownership are exercised’.¹⁹² Therefore, modern slavery can include human trafficking, but is not limited to it. It also can include bonded labour, forced marriage and domestic servitude, which may not involve the element of trafficking at all. Therefore, while there is undoubtedly an overlap of the two, the two terms describe distinct phenomena and should not be used interchangeably. By conflating the two, it risks distorting public understanding, misguiding policy-making efforts and can undermine victim identification. With that in mind, this thesis will treat the two as distinct, in contrast to much of the literature, as precision in definition is necessary for both clarity in the research and policy-making.

3.2 Statistical trends: Disaggregated by gender and age

Looking now more closely at the statistical trends, according to the ‘Global Report on Trafficking in Persons 2024’ which covers statistics from 2020–22, women and girls continue to make up the majority of victims detected worldwide.¹⁹³ In Latin America, trends showed an increase in victims trafficked for forced labour in 2022, out of which females comprised 69% of all those detected

¹⁹⁰ D Issa, ‘Modern Slavery and Human Trafficking in Latin America’ (2017) 44(6) *Latin American Perspectives* 4 <<http://doi.org/10.1177/0094582X17725488>>.

¹⁹¹ Weitzer (n 187).

¹⁹² *ibid* 226.

¹⁹³ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024* (n 168).

for this purpose. Furthermore, in South America women and girls comprised the largest victim profile in 2022 (as mentioned above), and made up the dominant pool of victims for sexual exploitation, representing 77% of all detected victims.¹⁹⁴

Taking a closer look at country-specific data, Guatemala recorded 227 victims of trafficking in 2022, 39 of which were women and 172 were girls. In Argentina, out of the 1186 victims in 2022 595 were women and 40 were girls. In Bolivia, out of the 708 victims in 2022, 152 were women and 299 were girls. In Colombia out of the 162 victims in 2022, 126 were women and 8 were girls. Finally, in Venezuela, out of the 244 victims in 2022, 63 were women and 142 were girls.¹⁹⁵ Among all of these victims across countries, the majority were trafficked for the purpose of sexual exploitation. In their General Recommendation No 38 on trafficking in women and girls in the context of global migration, CEDAW noted that the root causes of trafficking include gender-based discrimination, economic inequality, and the feminisation of poverty – all of which were discussed in the previous chapter to have directly impacted indigenous women both during and after colonial domination.¹⁹⁶ Furthermore, in their General Recommendation No 39 on the rights of indigenous women and girls, the Committee further highlights that all of the above driving factors of trafficking disproportionately affect indigenous women.¹⁹⁷ The Committee noted that women and girls most vulnerable to being trafficked are those belonging to marginalised groups, such as women and girls living in remote or rural areas, those belonging to indigenous and ethnic communities, those with disabilities and those with irregular migration status.¹⁹⁸ Members of these groups are highly likely to experience forms of social, political and economic exclusion, resulting in their being more likely to be impoverished, uneducated

¹⁹⁴ United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons 2024: Country Data - South America' (n 176).

¹⁹⁵ *ibid*; United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons 2024: Country Data - North America, Central America and the Caribbean' (n 175).

¹⁹⁶ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 38 on trafficking in women and girls in the context of global migration' (2020) CEDAW/C/GC/38 <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women>> accessed 25 April 2025.

¹⁹⁷ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (n 178).

¹⁹⁸ *ibid* 5.

or undereducated, undocumented, unemployed and to experience intimate partner and domestic violence.¹⁹⁹ It is the intersection of these women's race and gender that significantly increases their likelihood of experiencing such forms of exclusion, which in turn produce an abundance of consequences. Therefore, it is particularly important to highlight the intersectional nature of these vulnerabilities, as they not only reinforce one another but also contribute to a continuous cycle of marginalisation – where exclusion leads to greater exploitation, and the consequences of that exploitation further deepen their exclusion.

This calls to question why the above data collected by the UN-ODC is disaggregated solely by gender and age, despite other inherent vulnerabilities being explicitly recognised by other UN bodies. While international mechanisms have improved data classification and tracking, a major gap remains. Several Sustainable Development Goals (SDGs) address the issue of Trafficking in Persons (TIP), and SDG indicator 16.2.2 specifically calls the international community to monitor the number of victims by forms of exploitation, sex and age,²⁰⁰ as a way of tracking progress in combating these crimes.²⁰¹ Furthermore, UNODC and the International Organization for Migration in 2023 developed and published the 'International Classification Standard of Administrative Data on Trafficking in Persons' (ICS-TIP),²⁰² which is designed to integrate data collected by different entities at the international and national level.²⁰³ Such a tool would allow for analysis and comparisons of the data collected through different sources to more closely understand trends relating to victims, perpetrators, crime

¹⁹⁹ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 38 on trafficking in women and girls in the context of global migration' (n 196).

²⁰⁰ United Nations, 'SDG Indicator Metadata: 16.2.2 - Number of victims of human trafficking per 100,000 population, by sex, age and form of exploitation' (United Nations Statistics Division 2021) <<https://unstats.un.org/sdgs/metadata/files/Metadata-16-02-02.pdf>> accessed 10 May 2025

²⁰¹ United Nations Office on Drugs and Crime, 'Discussing the challenges and methodologies to measure trafficking in persons for the purpose of forced labour' (UNODC, 2024) <<https://www.cdeunodc.inegi.org.mx/unodc/index.php/2024/02/09/discussing-the-challenges-and-methodologies-to-measure-trafficking-in-persons-for-the-p/index.htm>> accessed 10 May 2025.

²⁰² United Nations Office on Drugs and Crime and International Organisation for Migration, 'International Classification Standard for Administrative Data on Trafficking in Persons (ICS-TIP)' (United Nations Statistics Division 2023) <https://unstats.un.org/unsd/classifications/Meetings/UNCEISC2024_2nd/Session_4_ICS_TIP.pdf> accessed 10 May 2025.

²⁰³ UNODC, 'Discussing the challenges and methodologies to measure trafficking in persons for the purpose of forced labour' (n 201).

and reporting entities. However, all of these measures share the common problem of missing a demand for collection of data that pertains not only to ‘victims’ or ‘gender’ or ‘age’ but rather, more accurate indicators of vulnerability to being trafficked. Despite compiling comprehensive data on the number of trafficked persons, reports and data continuously fall short of identifying *who* is trafficked. These mechanisms fail to identify the many other factors that play a role in one’s vulnerability to being trafficked, despite clear evidence of their heightened risk.

Failure to include other characteristics of trafficked victims such as race, ethnicity, disability and social status fails to consider the intersectional nature of these characteristics with gender and age, which is what often creates the perfect victim for traffickers. In 2015, then Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, submitted a report to the UNHRC where she made several observations with regards to the current status of indigenous women and trafficking.²⁰⁴ Firstly, she notes that indigenous women experience a broad, multifaceted and complex spectrum of human rights abuses, which is influenced by intersecting forms of vulnerability and forms of discrimination and marginalisation that are shaped by gender, class and socio-economic circumstances.²⁰⁵ She highlights how, while there has been much progress made in the matter of addressing indigenous rights within the international sphere, there still remains a very limited attention given to indigenous women rights, and how the intersecting forms of discrimination and vulnerability contribute to abuses of their rights.²⁰⁶

Furthermore, she observes how indigenous communities will often subjugate the rights of women in a battle to assert their collective rights of self-determination.²⁰⁷ In this context, women’s rights have been often considered divisive, and more connected to ‘external’ or ‘Western’ values that privilege individuals over communal rights. Crenshaw had previously highlighted this point in her analysis of the intersections of race and gender, where she observed that often black women’s interests were relegated to

²⁰⁴ United Nations Human Rights Council, ‘Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz’ (n 170).

²⁰⁵ *ibid.*

²⁰⁶ *ibid* 4.

²⁰⁷ *ibid* 5.

the periphery for a consideration of what is ‘best for the greater good’.²⁰⁸ She most relevantly highlighted how often a communities that struggle against racism and discrimination will resultantly subordinate certain aspects of the marginalised female experience in order to ensure the security of the larger community. However, Tauli Corpuz stresses that such a false dichotomy between collective and women’s rights has only served to *further* perpetuate the vulnerability of indigenous women to abuse and violence.²⁰⁹ By failing to recognise their rights in this context, women are stripped of their rights twofold, both in their right to self-determination by violations against their collective rights, as members of indigenous communities themselves, but also violations against their individual rights, as sub-collectives within those communities. This, Tauli Corpuz highlights, has had a significant impact on the prevalence of violence against indigenous women by reinforcing the power structures that perpetuate systemic vulnerability.²¹⁰

One of the most tangible manifestations of this dual marginalisation can be seen in the context of land dispossession, as it is not gender neutral and indigenous women’s rights interact significantly with violations of collective land rights. Loss of land significantly undermines indigenous women’s rights and will manifest in situations where women may lose their livelihoods, such as food gathering, agricultural production and herding (among other things). The Inter-American Commission on Human Rights (IACHR) has also stressed how loss of land has a disproportionate impact on indigenous women, generally because it has previously highlighted how indigenous women are generally recognised as the key to the continuation of their culture, and the guarantors of their people’s survival.²¹¹ Land loss entails harm to women and their key roles within the community, as well as seriously

²⁰⁸ K Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1(8) University of Chicago Legal Forum 139, 166 <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>> accessed 3 April 2025.

²⁰⁹ United Nations Human Rights Council, ‘Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz’ (n 170).

²¹⁰ *ibid* 5.

²¹¹ Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas* (OEA/Ser.L/V/II. Doc. 44/17 Organization of American States 2017) <<https://www.oas.org/en/iachr/reports/pdfs/indigenouswomen.pdf>> accessed 21 May 2025.

impacting their collective identity.²¹² Furthermore, compensation and job opportunities following land seizures tend to benefit male members of the indigenous communities, meaning that women can be left in positions of socioeconomic vulnerability, potentially leading to abuse and violence such as sexual violence, exploitation and trafficking.²¹³ For example, in a 2015 UNHRC mission to Peru for the Working Group on the issue of discrimination against women in law and practice, a report documented the impact of extractive industries on indigenous women and communities.²¹⁴ Indigenous women reported losing access to essential resources such as land, water and subsistence farming due to mining operations. An influx in male workers and lack of public safety infrastructure was linked in the report to increased prostitution, trafficking (including girls) and gender-based violence.²¹⁵ More worryingly, these issues were ignored by the authorities, further exacerbating the insecurities faced by the indigenous women in this region.²¹⁶

Systematic violence against indigenous women is also rampant, and the report provides some harrowing statistics regarding the multiple forms of violence perpetrated against them. Different forms of violence have been reported, including rape, which can be perpetrated by individuals known to the indigenous woman or girl, as a form of punishment, control or abuse. It is noted that indigenous women are significantly more likely to experience rape than non-indigenous women. It has been estimated that more than one in three indigenous women are raped during their lifetime. Women have also reportedly been subject to harassment, extortion and rape by state officials at border crossings. In the UNHRC report for example, Miskito women, whose territories straddle Nicaragua and Honduras cross the national border every day to work their lands or to gather medical plants. These women

²¹² Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas* (n 211) 46.

²¹³ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 170) 6.

²¹⁴ United Nations Human Rights Council, 'Mission to Peru: Report of the Working Group on the issue of discrimination against women in law and in practice' (2015) UN Doc A/HRC/29/40/Add.2 <<https://docs.un.org/en/A/HRC/29/40/Add.2>> accessed 19 May 2025.

²¹⁵ *ibid* 16.

²¹⁶ *ibid* 17.

are routinely exposed to sexual violence and harassment.²¹⁷ Other forms of sexual violence committed against indigenous women are commonplace, yet a failure to disaggregate the data obscures the severity of the issue. Furthermore, reporting of such crimes is also limited in large part due to fear of not being taken seriously.²¹⁸ These violations may also take place where indigenous women, who are compelled by economic need to migrate from their home communities in rural areas to urban areas. In these situations, they also become increasingly vulnerable to trafficking, which can further lead to other human rights violations, economic exploitation and sexual violence. The 2019 visit to Ecuador by former Special Rapporteur on the Rights of Indigenous Peoples, Tauli Corpuz, it was highlighted how the impoverishment of indigenous communities – exacerbated by land loss – forces many to migrate under dangerous conditions, where they face heightened risks of trafficking and exploitation, particularly along clandestine migration routes.²¹⁹ In the northern border regions, indigenous communities such as the Awá, Chachi, Épera and others have faced long-standing insecurity due to conflict spill over from Colombia. These populations have experienced forced displacement, militarisation and the presence of illegal armed groups, which has led to reports of forced recruitment, trafficking and sexual exploitation of women and girls.²²⁰

Of course, indigenous women migrating from their homes is not the only way they can be targeted and recruited for trafficking purposes. There are also many cases of indigenous women being targeted by organised traffickers within their own communities.²²¹ According to UN Women rural women and girls, including indigenous women and girls, are at specific risk of being

²¹⁷ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 170) 14.

²¹⁸ *ibid* 14.

²¹⁹ United Nations Human Rights Council, 'Visit to Ecuador: Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2019) UN Doc A/HRC/42/37/Add.1 <<https://docs.un.org/en/A/HRC/42/37/Add.1>> accessed 19 May 2025.

²²⁰ *ibid* 15.

²²¹ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 170) 17.

trafficked because of the remote nature of their living.²²² The economic hardships faced by many of the world's indigenous groups, coupled with a lack of information about trafficking, as well as the numerous factors mentioned above, can make them particularly vulnerable.

In conclusion, based on the above discussion it is evident that the aforementioned international bodies have all explicitly recognised the vulnerability of indigenous women and girls to human trafficking. Yet, they still represent an invisible victim in the emerging statistics on trafficking, as can be seen from the statistics provided by the global and regional reports on TIP 2024. Thus, indigenous women and girls continue to be the invisible victims of TIP due in large to a lack of ethnicity based data, which would undoubtedly draw attention to the disproportionate space they take up in trafficking statistics.

Before moving on to the next section, it is worth noting that while there is much to be said for arguing in favour of data collection based on other factors like race and ethnicity, it is also important to acknowledge the potential pitfalls to such types of data collection. Acknowledging the potential risks allows for a more responsible approach to *how* such data is collected. As highlighted by McMillan and others categorising individuals based on race or ethnicity may carry risks such as misclassification, stereotyping or unintended reinforcement stigmas.²²³ For example in the context of trafficking, if statistical data came to overwhelmingly represent a particular demographic, it runs the risk of reinforcing the narrative that trafficking is something that 'happens' to members of that group, who may already be categorised as weak or vulnerable.²²⁴ Such framings may risk perpetuating colonial rescue complexes,²²⁵ which encapsulates the self-justifying of actions and attitudes by the colonisers who frame their oppressive

²²² UN Women, 'Recomendaciones Generales y Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer sobre mujeres indígenas y/o afrodescendientes realizadas a Estados de América Latina' (UN Women 2017) <<https://lac.unwomen.org/sites/default/files/FIELD%20Office%20Americas/Documentos/Publicaciones/2017/10/20170927CEDAWIndigenasAfrodescendientescompressed.pdf>> accessed 21 May 2025.

²²³ J McMillan and others, 'The Wrong Word for the Job? The Ethics of Collecting Data on 'Race' in Academic Publishing' (2024) 50(3) *Journal of Medical Ethics* 149 <<https://doi.org/10.1136/jme-2024-109915>>.

²²⁴ J Todres, 'Law, Otherness, and Human Trafficking' (2009) 49(3) *Santa Clara Law Review* 605 <https://www.researchgate.net/publication/228166778_Law_Otherness_and_Human_Trafficking> accessed 21 April 2025.

²²⁵ Robinson (n 180) 223.

behaviours as benevolent interventions.²²⁶ In the particular case of indigenous peoples it may also undermine their rights to self-determination by reinforcing the idea that they lack independence and need rescuing.

Furthermore, Varcoe, Browne and Wong highlight how members of racialised or marginalised communities often anticipate potential harms from the collection of ethnicity based data – especially if they see no tangible benefits to disclosing such information.²²⁷ Placing an overemphasis on demographic characteristics may risk reinforcing stereotypes, which in turn may serve as an excuse to overlook systemic drivers of exploitation. It may also directly contribute to ongoing stigmatisation of already marginalised groups. With the above in mind, a clear emphasis should be placed on designing such data collection methods that are intersectional and context-sensitive, ultimately taking a more responsible approach in how such data is both collected and interpreted. As we will discuss more in Chapter 5, this thus involves including indigenous perspectives and epistemologies in these conversations to ensure they are closely aligned with the lived realities of the communities involved.

3.3 Challenges of data collection and underreporting

Finally, taking a closer look at the challenges of data collection and underreporting, it can be noted that several factors contribute to the invisibilities of indigenous women and girls in this context. First and foremost, there is a systemic failure to consider intersectionality in data collection and policy. As CEDAW observes, indigenous women face structural discrimination that is seen in the laws that fail to protect them, the authorities that fail to listen and the society that perpetuates crimes against them.²²⁸ One of the many examples of this was presented in a report by the

²²⁶ D Zubizarreta, 'The Colonial Saviour Complex: A Critical Examination of Self-Justified Altruism in Colonial and Postcolonial Contexts' (2024) LEAP Institute for the Arts 1 doi:10.13140/RG.2.2.11589.05601.

²²⁷ C Varcoe and others, 'Harms and Benefits: Collecting Ethnicity Data in a Clinical Context' (2009) 68(9) Social Science and Medicine 1659 <<https://doi.org/10.1016/j.socscimed.2009.02.034>>.

²²⁸ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (n 178).

Special Rapporteur on the Rights of Indigenous Peoples, Francisco Calí Tzay, on a country visit to Costa Rica where it was noted with concern the number of cases reported where indigenous women had suffered racism and discrimination at the hands of the prosecutor's office in the southern territories.²²⁹ Either their complaints were delayed or rejected, which ultimately exposed the women to re-victimisation. Such impunity for sexual violence against indigenous women and girls was noted with particular concern, attributed to the lack of a gender-sensitive and culturally appropriate judicial services.²³⁰ Thus, without intersectional consideration, policies will continue to fail to address these realities, and will never understand the intersecting forms of vulnerability and discrimination that plays a role in these violations.²³¹ Intersectional discrimination against indigenous women and girls needs to be understood in the context of the multifaceted nature of their identity. They face discrimination and gender-based violence, which are frequently committed by both state and non-state actors.²³²

In non-European countries, where most trafficked women and girls come from and which have a history of colonialism, patriarchies and gender-based violence can be considered an extension of the colonialist mentality that leads to patterns of oppression and discrimination through their impositions of hierarchies of race and gender.²³³ These patterns of oppression and discrimination, as explored in the previous chapter, have manifested in the continuous oppression of women and girls in education, employment and legal protection. As a result, often women and girls involved in trafficking suffer from this colonial mentality by considering it as 'normal' or 'necessary' to be mistreated and trafficked.²³⁴ This prevents victims from coming forward. As

²²⁹ United Nations Human Rights Council, 'Visit to Costa Rica: Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2022) UN Doc A/HRC/51/28/Add.1 <<https://docs.un.org/en/A/HRC/51/28/Add.1>> accessed 19 May 2025.

²³⁰ *ibid* 11.

²³¹ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (n 170).

²³² United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (n 178).

²³³ Matera and Boeris (n 183).

²³⁴ *ibid* 127.

mentioned above, women's rights are also often subjugated within indigenous communities to pursue a common, collective goal of rights, which may in turn affect them coming forward to report crimes of trafficking.

In conclusion, human trafficking in Latin America cannot be understood without acknowledging the colonial legacies and structural inequalities that shape indigenous lives. Despite occupying a disproportionately vulnerable position within society, indigenous women and girls remain largely invisible in trafficking discourse, statistics and policy making. And even where they are mentioned in specialised reports from bodies like the UN, there is a failure to apply these concerns into measurable and achievable prevention measures. The absence of data that considers other contributing factors to trafficking – such as race, ethnicity, disability etc – in turn hide the true scale of the effects the trafficking industry is having on indigenous women. Addressing these challenges requires more than a generic anti-trafficking solution. It calls for a decolonial, intersectional approach that centres indigenous epistemologies, strengthens data collection and interpretation, and ensures that indigenous women are central to drafting policy responses to the problems that affect them most. Only by acknowledging and addressing the colonial continuities of violence against indigenous women can those most at risk be better protected. With that in mind, the next section of this thesis offers a deeper analysis of the anti-trafficking policy and normative frameworks that are currently in place at both international and regional level, and will analyse these frameworks – along with steps taken to address human trafficking trends – from a decolonial perspective.

4. Anti-Trafficking legal and policy frameworks: An analysis from a decolonial perspective

This section of the thesis aims to add to the existing bodies of knowledge on human trafficking by analysing various anti-trafficking frameworks. In doing so, it hopes to offer some insights into how anti-trafficking frameworks are put into practice, and where they fall short of protecting some of human trafficking's most vulnerable victims. Specifically, it contributes a critical, decolonial perspective by centring the experiences of indigenous women and girls and examining how structural and colonial legacies shape their vulnerability and limit anti-trafficking approaches. This perspective is often underexplored in dominant trafficking discourse. The following analysis will suggest where the existing anti-trafficking frameworks efficacy can be improved, and stresses that a consideration and participation of indigenous perspectives is essential for a rounded application of these frameworks. It will first provide an analysis of the global anti-trafficking framework – the Palermo Protocol – followed by a consideration of the regional frameworks in place in Latin America. Finally, it identifies the critical gaps detected within these frameworks and argues for the inclusion of an indigenous perspective as a potential means of addressing these deficiencies. This analysis will set the stage for Chapter 5, which will examine the colonality of law and its limitations in contexts where indigenous voices are marginalised. The aim is to stress how genuine engagement with indigenous perspectives and epistemologies constitutes the ultimate decolonial approach to fighting human trafficking. With the previous chapters in mind, our awareness of the decolonial perspective, as well as our discussion on the experiences of indigenous women and girls in the trafficking context, allows for an examination of anti-trafficking laws from a more nuanced perspective. Furthermore, it enables us to better understand why existing laws

have had mediocre impacts on incidences of human trafficking where indigenous women and girls are affected. And so, the ultimate goal of these next two chapters is to assist in creating a more effective approach to preventing, stopping, repressing and prosecuting human trafficking.

As argued by Pérez Cepeda and Benito Sánchez, one of the dominant reasons why trafficking continues to persist is because globalisation has taken place in a world that is inherently unequal, ruled by asymmetric power relations that emerged from colonialism to form modern day capitalist, patriarchal and racially hierarchised structures.²³⁵ It has resulted in a domination of gender, race and social class by Western powers over Others.²³⁶ Consequently, any protocol designed to address trafficking must be critically understood within this context. Failing to examine the underlying factors that shape the creation and implementation of such frameworks risks overlooking the very structural factors that sustain human trafficking. Resultantly, such frameworks would fail to encompass protective and preventative measures that benefit all potential victims, especially those who are inherently more vulnerable.

Building on this critique, it becomes essential to interrogate the role of law itself within these systems of inherent inequality. Todres posits that the law is often presented to us as an objective or neutral force within society.²³⁷ Because the ‘rule of law’ is a necessary aspect of a just society, one may assume that the law is therefore objective and just. However, history reveals how legal systems have been used as a way of institutionalising the values of the dominant group whilst simultaneously marginalising the voices and experiences of those outside the dominant power structures.²³⁸ During colonial times for example, ideals of equality under the law prospered in Europe, yet such ideals were noticeably absent in the governance of colonial territories. Indigenous populations – particularly women and girls – were not seen as part of the population to whom this ideal of ‘equality’ could

²³⁵ Ana Isabel Pérez Cepeda and Demelsa Benito Sánchez, *Trafficking in Human Beings: A Comparative Study of the International Legal Documents* (Europa Law Publishing 2014).

²³⁶ J Todres, ‘Law, Otherness, and Human Trafficking’ (2009) 49(3) Santa Clara Law Review 605 <https://www.researchgate.net/publication/228166778_Law_Otherness_and_Human_Trafficking> accessed 21 April 2025.

²³⁷ *ibid.*

²³⁸ *ibid* 636.

be applied.²³⁹ In short, throughout history society has developed legal systems that promote equality for some whilst also simultaneously permitting or indirectly promoting the exploitation of others. As a result, 21st century international legal responses to human trafficking have taken form in a context that is hostile to those experiencing marginalisation, poverty and dispossession in a globalised, neoliberal capitalist society.²⁴⁰ As Todres points out, it therefore comes as no surprise that human trafficking is a persistent phenomenon where indigenous women and girls represent some of its most vulnerable victims.²⁴¹ While many anti-trafficking efforts may be well-intentioned, they are nonetheless grounded in Western legal and epistemological traditions, which frequently exclude indigenous worldviews and leave indigenous communities unprotected. Therefore, the following section examines how these frameworks may not only fail to safeguard indigenous women and girls, but at times may even reinforce the very structures that enable their exploitation.

4.1 The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Palermo Protocol)

As already briefly mentioned in Chapter 3, the Palermo Protocol is currently the leading global anti-trafficking framework aimed at fighting human trafficking. It is the first international, legally binding instrument with an agreed upon definition of trafficking in persons and its adoption was an important effort of legal harmonisation and promotion of international judicial cooperation.²⁴² It is a supplementary Protocol to the United Nations Convention against Transnational Organised Crime, and is therefore designed to be implemented alongside the main Convention for

²³⁹ Todres (236) 636.

²⁴⁰ Kamala Kempadoo and Elena Shih, *White Supremacy, Racism and the. Coloniality of Anti-Trafficking* (Routledge 2023) 79.

²⁴¹ Todres (n 236).

²⁴² Pérez Cepeda and Benito Sánchez (n 235) 9.

combating organised crime.²⁴³ The intention behind the Protocol was to facilitate convergence in national approaches that would support international cooperation in investigating and prosecuting cases of trafficking.²⁴⁴ While the Protocol also includes provisions on victim protection and prevention, these mechanisms are much less obligatory and are instead, softer measures for states to adopt, which is an inherent limitation of the instrument. Nonetheless, its adoption marked a significant turning point in the global approach to trafficking, as reflected in the near-universal ratification of the Protocol, including by all states in Latin America. However, in the lead up to the Protocol's 25th anniversary, growing criticisms highlight the inherent weaknesses in its implementation and efficacy. At the epicentre of these critiques is the concern regarding the prioritisation of criminalisation efforts over meaningful prevention and victim protection, which will be examined below.

4.1.1 Criminalisation of trafficking in human beings

The Protocol signifies the international community's commitment to eliminating human trafficking that requires action on three fronts – prosecution, prevention and protection. However, the below analysis of the wording of some of its key articles underpins how states are permitted to do less vis-à-vis protection and prevention steps, whilst placing an overemphasis on prosecution measures.²⁴⁵ It is this lesser commitment to protection and prevention measures that only further reinforce the expressive function of law, which reflects societal expression of what – or who – is valued. From a decolonial perspective, such a narrow approach to combating trafficking only risks reinforcing the systems of inequality that are rooted in colonial, racialised and gendered hierarchies, that facilitate trafficking in the first place, particularly for indigenous women and girls.²⁴⁶

²⁴³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Crime (Palermo Protocol) (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>> accessed 7 February 2025.

²⁴⁴ Pérez Cepeda and Benito Sánchez (n 235) 9.

²⁴⁵ Todres (n 236) 644.

²⁴⁶ *ibid.*

The Protocol defines trafficking as the ‘recruitment, transportation, transfer, harbouring, or receipt of persons ... for the purpose of exploitation’.²⁴⁷ Under article 4, the Protocol shall only be applied to offences that have an element of transnationality as well as some degree of involvement of an organised criminal group.²⁴⁸ Such a definition firstly limits the scope of application, as it is widely accepted that trafficking in human beings can – and does – occur inside the borders of a country and does not have to be linked to organised crime.²⁴⁹ Thus, the generally accepted definition of trafficking is one that is limited in scope of application and focuses mainly on trafficking in the transnational organised crime context. Of course that organised crime is involved in and surely benefits from human trafficking is not to be denied.²⁵⁰ However, this framing reflects a narrow understanding of the issue by centring attention on a limited number of criminal groups. By placing focus on prosecuting the ‘bad actors’, the dominant group reinforces their own perceptions of saving helpless victims, whilst simultaneously providing very little assistance to actual victims or those who may be at serious risks.²⁵¹

And so, one of the main flaws recognised in the application of the Palermo Protocol has been an overemphasised approach to criminal prosecutions which contradicts a human rights based approach to anti-trafficking.²⁵² The strongest obligations for states under international law are tied to the first requirement of state action under article 5 – the criminalisation of acts of trafficking.²⁵³ Under article 5, the Protocol emphasises how each state party ‘shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the Protocols definition of trafficking in persons’.²⁵⁴ Criminalisation also extends to any form of participation in such offences, such as

²⁴⁷ Palermo Protocol (n 243) art 3.

²⁴⁸ *ibid* art 4.

²⁴⁹ Pérez Cepeda and Benito Sánchez (n 235) 18.

²⁵⁰ Todres (n 236) 645.

²⁵¹ Daniella Robinson, ‘The Harms of Helping: An Indigenous Perspective on the Industrial Rescue Complex’ in *Sex Work Today: Erotic Labour in the Twenty-First Century* (New York UP 2024) 222–32.

²⁵² United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (17 July 2020) UN Doc A/75/169 <<https://www.ohchr.org/en/documents/thematic-reports/a75169-20-years-after-implementing-and-going-beyond-palermo-protocol>> accessed 17 May 2025.

²⁵³ Pérez Cepeda and Benito Sánchez (n 235).

²⁵⁴ Palermo Protocol (n 243) art 5.

aiding, abetting and inciting.²⁵⁵ States who are seeking to comply with international law thus focus their resources on complying with obligations to criminalise trafficking, and know they can fulfil obligations with minimal efforts regarding action on the other two fronts.

Penalisation of crimes committed can also extend to those committed by victims themselves. While the Protocol includes language promoting assistance and protection of victims – which will be discussed more below – it does not explicitly require states to refrain from punishing victims for unlawful acts that they were compelled to commit as a result of being trafficked.²⁵⁶ Former Special Rapporteur on Trafficking in Persons Maria Grazia Giammarinaro has highlighted the risks of not implementing a non-punishment provision in her report pursuant to the UNHRC regarding the Protocol.²⁵⁷ She notes with concern that the provision must be implemented in a way that avoids treating trafficking victims like criminals and prevents them from claiming their rights and gaining access to remedies. Such a provision would avoid secondary victimisation whilst also encouraging victims to come forward as witnesses in criminal proceedings, which would focus on their vulnerability and the fact that they may have been forced to commit such crimes.²⁵⁸ Thus an absence of a non-punishment provision proves extremely problematic in both victim identification, rehabilitation and future protection of a victim. Without a non-punishment provision, victims may face detention or deportation. Furthermore, fear of law enforcement may make them less likely to report crimes committed against them, meaning many victims of trafficking continue to go undetected. Heavy-handed responses – aimed at prosecuting criminals – such as arresting, detaining or even deporting victims hinders efforts to properly identify them and denies victims the chance to participate in holding their traffickers accountable.²⁵⁹ From a decolonial perspective, the absence or weak implementation of a

²⁵⁵ Pérez Cepeda and Benito Sánchez (n 235) 18.

²⁵⁶ *ibid* 22.

²⁵⁷ United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (n 252).

²⁵⁸ Pérez Cepeda and Benito Sánchez (n 235) 23.

²⁵⁹ K Heinrich, “Ten Years After the Palermo Protocol: Where are Protections for Human Trafficking?” (2010) 18(1) Human Rights Brief 2, 2 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1145&context=hrbrief&utm_source=chatgpt.com> accessed 14 May 2025.

non-punishment provision disproportionately affects indigenous women, who are more likely to be criminalised due to intersecting forms of systemic discrimination based on race, gender and socio-economic status.²⁶⁰ Their overrepresentation in statistics of incarcerated women in many Latin American countries for example,²⁶¹ means that without these protective measures, anti-trafficking responses risk further perpetuating colonial patterns of control and punishment rather than actually helping these women.

Given the above, the Protocols limited focus on prosecution measures and transnational criminal networks has effectively side-lined other essential strategies for combating human trafficking, particularly those that are more aimed at addressing root causes, such as strengthening vulnerable communities and understanding and addressing the demand for exploitative services.²⁶² To further elaborate, below offers a further examination of the prevention measures outlined in the Protocol.

4.1.2 Prevention of trafficking in human beings

Looking at the prevention measures required by states to take action against trafficking in human beings shows a very different approach to meeting such obligations. Article 9 of the Protocol requires state parties to ‘establish comprehensive policies, programmes and other measures’ aimed at preventing human trafficking. However, the obligation is immediately weakened further on where it mentions that ‘states parties shall *endeavour to undertake* measures such as research, information and mass media campaigns and social and economic initiatives to combat trafficking in persons’.²⁶³ Not only does this explain why there is an inherent lack of research and statistical analysis on human trafficking on a global scale, but the weak language in article 9 expresses a lesser commitment by states to this aspect of human trafficking, which involves prevention measures.²⁶⁴ As states seek to implement or comply with international law, they have focused their resources on complying with obligations to criminalise trafficking,

²⁶⁰ Inter-American Commission on Human Rights, *Women Deprived of Liberty in the Americas* (OEA/Ser.L/V/II.Doc.91/23 Organization of American States 2023) 57 <https://www.oas.org/en/iachr/reports/pdfs/2023/informe-mujeres-privadas-libertad_eng.pdf> accessed 21 May 2025.

²⁶¹ *ibid* 32.

²⁶² *Todres* (n 236) 646.

²⁶³ Palermo Protocol (n 243) art 9 (emphasis added).

²⁶⁴ *Todres* (n 236).

whilst doing much less to actually assist vulnerable populations, mainly because it is not as inherently explicit for them to do so. Pérez Cepeda and Benito Sánchez also highlight how the obligations imposed on states under article 9 are so broad that it is almost meaningless when it comes to actually measuring compliance.²⁶⁵ Thus, states know they can fulfil their obligations to international law with minimal efforts in assisting victims or investing in the development of prevention measures.²⁶⁶

When international laws like the Palermo Protocol express a lower priority on assisting vulnerable populations to be trafficked, it reaffirms the societal values held towards these groups, whilst simultaneously permitting or even promoting their exploitation, as mentioned above. Coming up to its 25 year anniversary in November, the dominant global anti-trafficking Protocol remains centred on enforcement, with prevention and protection sidelined to secondary or even optional roles.²⁶⁷ Article 7 of the Protocol highlights further these shortcomings, particularly in ways which may disproportionately affect indigenous women and girls. Under the article, states parties are invited to ‘consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in [their] territory, temporarily or permanently, in appropriate cases’.²⁶⁸ However, the weak wording and lack of obligation for states to carry out such requirements means that many states have made assistance and residence status conditional on a victim’s collaboration in criminal proceedings. The nature of this type of reward-based dynamic, as noted in the report by former Special Rapporteur Maria Grazia Giammarinaro, is used when dealing with criminals in exchange for information in criminal proceedings.²⁶⁹ Access to support as a reward is not justifiable where states have the primary responsibility to support and assist victims. This is further supported by Heinrich who highlights how criminal law enforcement only uncovers a small number of victims, as a fear of law enforcement often makes them more likely to report to other trusted individuals or organisations, or no one at all.²⁷⁰ Where there is a condition of provision of ser-

²⁶⁵ Pérez Cepeda and Benito Sánchez (n 235) 34.

²⁶⁶ Todres (n 236) 643.

²⁶⁷ Pérez Cepeda and Benito Sánchez (n 235).

²⁶⁸ Palermo Protocol (n 243) art 7 (emphasis added).

²⁶⁹ United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (n 252).

²⁷⁰ Heinrich (n 259).

vices based on victims cooperation with the law enforcement, it devalues trafficking victims to the information they can provide, which resultantly sends a message that the government does not care about the trafficked person.²⁷¹ Not only does this create a lack of incentive for victims to participate, it also risks re-traumatizing the victims. Furthermore, where a failure to cooperate results in deportation, there is no assessment of the danger posed to the victim upon return home, which poses serious risks of retaliation from traffickers or even re-trafficking of the victim.²⁷² These risks are preventable, if states were to take their obligations under the Protocols prevention measures seriously and commit to measures that address these shortcomings.

4.1.3 Protection of victims of trafficking in human beings

The third mechanism outlined under the Palermo Protocol is that of protection measures states should take towards trafficking. Article 6 outlines how states should provide assistance to and protection of victims of trafficking in persons,²⁷³ including to protect their privacy and identity, as well as the provision of assistance to aid victims' physical, psychological and social recovery with regard to their age, gender and special needs of victims.²⁷⁴ However, much like the prevention provisions, some of the protection measures listed in article 6 are not mandatory for states, leaving them to decide whether to implement them or not.²⁷⁵

Victims of trafficking will very often have their passports or identity documents confiscated or destroyed by traffickers. In such cases, victims may be primarily treated as illegal immigrants, prostitutes or illegal workers by state authorities, which may result in punishment or deportation without receiving the necessary help. For this reason, Pérez Cepeda and Benito Sánchez highlight a specific need for identification of victims to be part of states approaches to protecting victims.²⁷⁶ However, the Palermo Protocol contains no specific provisions on identifying potential victims.

²⁷¹ Heinrich (n 259) 5.

²⁷² United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (n 252); *ibid.*

²⁷³ United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (n 252).

²⁷⁴ J Ezeilo, 'Achievements of the Trafficking Protocol: Perspectives from the former UN Special Rapporteur on Trafficking in Persons' (2015) 4(1) *Anti-Trafficking Review* 144 doi:10.14197/atr.20121548.

²⁷⁵ Pérez Cepeda and Benito Sánchez (n 235).

²⁷⁶ *ibid.*

Former Special Rapporteur Maria Grazia Giammarinaro further highlights how a lack of victim identification provisions means that states still take the form of identification techniques that are modelled for use in criminal proceedings, which she notes consequently singles out the ‘real’ victims deserving of protection, whilst simultaneously criminalising other victims who may face intersectional forms of discrimination by authorities.²⁷⁷ Many trafficked individuals who do not conform to this image are overlooked and instead are treated as irregular migrants. Such a misclassification exposes them further to risks such as detention and deportation, even when there may be clear signs of trafficking and exploitation. She also notes that there is a failure to consider the gender component, as women and girls are subject to intersecting discrimination as a consequence of patriarchal social norms.²⁷⁸ Grazia Giammarinaro also mentions that detecting vulnerabilities and adapting an assistance plan to those persons is indeed how many organisations outside of the state officials operate. Synchronising public policies and identification protocols with these realities could in fact greatly facilitate not only their work but also the ongoing identification of vulnerable victims of trafficking.²⁷⁹

With the above in mind, there is evidentially the need for long-term social inclusion measures to be put in place by states. Protection is not solely accomplished through identification and referral and therefore, cannot be limited to short-term assistance.²⁸⁰ Protection means that states must take measures to allow trafficked persons to be free from fear and exploitation, in order to rebuild their lives beyond the recovery and rehabilitation phase. Recognising protection as a long-term process also involves understanding the deeper structural and historical conditions that shape vulnerability in the first place. It is within this context that the experiences of indigenous women and girls can be focused. Below presents a final discussion on the Palermo Protocol and observes how its failure to account for intersectionality acts as another barrier to meaningfully addressing trafficking cases of indigenous women and girls.

²⁷⁷ United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (n 252).

²⁷⁸ *ibid.*

²⁷⁹ *ibid* 6.

²⁸⁰ *ibid* 8.

4.1.4 Final observations and steps forward

Finally, as mentioned in previous chapters, trafficking in relation to indigenous women and girls is a contemporary expression of colonial violence, which has been shaped by the legacies of colonialism and the erasure of indigenous sovereignty.²⁸¹ When it comes to combating trafficking, anti-trafficking frameworks should therefore take into careful consideration these circumstances. However, the Palermo Protocol fails to acknowledge the colonial nature of such violence, and instead focuses on the ‘inherent vulnerability’ of these communities, rather than acknowledging the role of the state and the wider legal system in perpetuating these vulnerabilities.

The Protocol outlines in article 2 its purpose to prevent trafficking, and places a particular attention on prevention measures to consider women and girls, who are more vulnerable to being trafficked.²⁸² However, there is no mention of race, ethnicity, or indigenous status throughout the Protocol. With the above in mind, a final criticism can be made using Lugones decolonial approach to Western feminism, which observed its priority in centring white, bourgeois women, while excluding racialised and colonised women from the category of full womanhood.²⁸³ Such a critique makes it evident that the framework fails to take an intersectional approach to race and gender in this context. The Protocol is laid out in a way that treats all women’s experiences of oppression as the same and so does not consider how race, class and other identities intersect with gender to increase vulnerability of some more than others.²⁸⁴ As also mentioned in previous chapters, Crenshaw had highlighted how dominant identity categories will often take centre stage in contexts like international law.²⁸⁵ She uses the example of how the term ‘women’ is predominantly understood as white bourgeois women, or how ‘Black’ usually

²⁸¹ B Olson-Pitawanakwat and C Baskin, ‘In Between the Missing and Murdered: The Need for Indigenous-Led Responses to Trafficking’ (2020) 36(1) *Affilia: Journal of Women and Social Work* 10, 11 doi:10.1177/0886109920944526.

²⁸² Palermo Protocol (n 243) art 2.

²⁸³ Maria Lugones, ‘The Coloniality of Gender’ in Wendy Harcourt (ed), *The Palgrave Handbook of Gender and Development* (Palgrave MacMillan 2016) 35 doi:10.1007/978-1-137-38273-3_2.

²⁸⁴ *ibid.*

²⁸⁵ K Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1(8) *University of Chicago Legal Forum* 139, 166 <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>> accessed 3 April 2025.

brings to mind the Black heterosexual man. When such categorisation occurs, one distorts what exists at the intersection, and instead only considers the most privileged members of the category. In the case of the Palermo Protocol, the collective categorisation of 'women and girls' without specific identification of those at the intersection fails to identify not only their vulnerabilities, but also the deeper meaning behind such vulnerabilities.

Anti-trafficking efforts in the 19th-century were mainly concerned with the protection of white women from sexual exploitation, who were the group that were ultimately responsible for 're-producing' the white nation.²⁸⁶ Thus, when we reflect on today's trafficking policies, it is important to note that concerns over trafficking in women were mainly related to fears about sexual harm to white femininity. Therefore, whiteness and white femininity in particular, remain a salient ideological component in informing the dominant understanding of human trafficking and as a result, the dominant frameworks put in place to fight it. An obvious example of this is identified through the emergence of the dialogue for the Palermo Protocol. Between the late 1970s to the 1990s, Third World feminists raised concerns about the trafficking of women from South Asia, Latin America and North Africa into Europe for sexual exploitation. However, a global response to trafficking of women – particularly in the context of sexual exploitation – only evolved after the fall of socialist projects in Central and Eastern European nations resulted in large numbers of white women being found in the sex industries for the purpose of sexual exploitation.²⁸⁷ Therefore, if we can assume based on the above discussions, that white bourgeois women are at the centre of the global anti-trafficking framework, then there are likely to be harmful consequences to persons positioned at the intersections who do not fall into this category. Mainstream anti-trafficking narratives, largely informed by Western and Eurocentric feminist thought, thus align with the prevailing interests and power structures of modern Western democracies, and therefore do not challenge the foundations of global whiteness.²⁸⁸ Lugones therefore posits that in order for international frameworks like the Palermo Protocol to move in the direction of recognising all women at

²⁸⁶ Kempadoo and Shih (n 240) 84.

²⁸⁷ *ibid.*

²⁸⁸ *ibid* 85.

risk of trafficking, they need to consider the intersectional nature of gender with other aspects such as race and class.²⁸⁹ This in turn avoids ‘separability’, and allows for a perception of gender and race as intermeshed to place a spotlight on marginalised women in the context of trafficking.²⁹⁰

Following the above analysis, the next section moves to more acutely focus on the Latin American region, and examines the varying frameworks in place to combat human trafficking.

4.2 Regional frameworks

This section of the chapter reviews the Latin American case, and argues that rather than finding solutions to trafficking of indigenous women and girls, anti-trafficking frameworks reinforce power relations that present indigenous as dependent on the colonial government and the law to be saved and protected from violence. Instead of protection, such laws have not worked in indigenous women’s favour and have instead led to the perpetuation of colonial power relations.²⁹¹ This section will first take a look at the Palermo Protocol and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention),²⁹² before moving onto an assessment of the United States Trafficking Victims Protection Act (TVPA) and Trafficking in Persons Report (TIPR),²⁹³ and the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victim of Human Trafficking (Inter-American Principles). Through a decolonial analysis of each, this section hopes to shed light on the systematic failure of international law and the states that abide by it in protecting some of human trafficking’s most vulnerable victims.

²⁸⁹ Lugones (n 283).

²⁹⁰ *ibid* 40.

²⁹¹ S Hunt, ‘Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law’ (2016) 37(1) *Atlantis* 25, 26 <https://www.academia.edu/9127880/Representing_Colonial_Violence_Trafficking_Sex_Work_and_the_Violence_of_Law> accessed 1 June 2025.

²⁹² Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention) (adopted at Belém do Pará, Brazil, 9 June 1994) <<https://oas.org/juridico/spanish/tratados/a-61.html>> accessed 5 May 2025.

²⁹³ Although the United States is not a Latin American country, it is a member of the OAS and plays a significant role in shaping regional and global anti-trafficking agendas.

As already mentioned above, law is an instrument of power, which makes visible or excludes those who are or are not considered subjects of the law.²⁹⁴ In other words, one of the most effective ways of justifying and legitimising power is law. When considering the law in this context, previous discussions on decoloniality are useful in questioning the hegemonic, Eurocentric nature of legal norms that have been installed since colonisation, and which unfortunately continue to justify the differential treatment of people who do not fit the modern classification of ‘male, white, literate, heterosexual and wealthy’.²⁹⁵ Decolonial feminist theories have also been commended for their work in highlighting the patriarchal origin of the vast majority of legal norms. However, stereotypical, sexist and discriminatory imaginaries still persist in their application, which affects the guarantee of women’s rights today.²⁹⁶

Saldarriaga Grisales and Gómez Vélez note that law has served as an androcentric system that legalises women’s inequality, either by limiting their benefits or by penalising their behaviour in order to maintain the established order in favour of the masculine.²⁹⁷ This is what we will come to see in particular in the following analysis of the Latin American case. While there are anti-trafficking frameworks in place, a significant gap remains between what is written on paper and what is done in practice. Thus, the following section aims to analyse the anti-trafficking measures used in the Latin American context. In doing so, it will offer some critiques from a decolonial perspective on where these frameworks fall short of protecting some of human trafficking’s most vulnerable victims with examples from several reports from the IACHR. The following analysis will in turn lead us into the final chapter of the thesis, which offers suggestions for ways forward, by looking at indigenous participation in international law, and where changes need to be made.

²⁹⁴ D Saldarriaga Grisales and M Gómez Vélez, ‘Teorías feministas, abolicionismo y decolonialidad: Teorías críticas que cuestionan la efectividad de los derechos humanos de las mujeres’ (2018) 21(41) *Prolegómenos: Derechos y valores* 43, 57 doi:[10.18359/prole.3329](https://doi.org/10.18359/prole.3329).

²⁹⁵ *ibid* 46.

²⁹⁶ *ibid* 45.

²⁹⁷ *ibid* 48.

In a report by the IACHR covering violence and discrimination against women and girls in Latin America,²⁹⁸ it was emphasised that while it has become clear that states are taking steps in the right direction to combat human trafficking in the region, they still face manifold challenges in providing effective and adequate responses to long standing and intersectional violence and discrimination against women and girls.²⁹⁹ The report further notes that such challenges arise from difficulties in eliminating structural factors of discrimination, which include male chauvinism (machismo), patriarchy, and the prevalence of sexist stereotypes, ‘as well as the longstanding discrimination woven into the social fabric, further compounded by society’s tolerance of violence against women in all of its dimensions’.³⁰⁰ With that being said, it is first important to note that there is no one, all-encompassing anti-trafficking framework for the Latin American region. Thus, it must be acknowledged that the main guiding document for anti-trafficking in the Latin American region continues to be the Palermo Protocol. Having said that, there are other frameworks in place that contribute to the anti-trafficking efforts of each state in Latin America. The American Convention on Human Rights for example recognises the right not to be subjected to slavery, involuntary servitude, forced labour, or the slave trade and traffic in women,³⁰¹ which is inalienable even in times of war, public danger or other threats.³⁰² Importantly, the IACHR has drawn attention to restrictive interpretations made by some national courts in trying alleged trafficking offences and has therefore determined that the expression ‘slave trade and traffic in women’ under article 6 of the American Convention should be interpreted broadly as referring also to trafficking in persons.³⁰³ Furthermore, as we will see below the Belém do Pará Convention also plays a role in states taking anti-trafficking measures, specifically with regard to threats

²⁹⁸ Inter-American Commission on Human Rights, *Violence and Discrimination Against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean* (OEA/Ser.L/V/II. Doc.233, Organization of American States 2019) 128 <<https://www.oas.org/en/iachr/reports/pdfs/violencewomengirls.pdf>> accessed 21 May 2025.

²⁹⁹ *ibid* 47.

³⁰⁰ *ibid* 48.

³⁰¹ American Convention on Human Rights Pact of San José, Costa Rica (adopted at San José, Costa Rica, 22 November 1969), art 6 <<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>> accessed 2 May 2025.

³⁰² *ibid* art 27.2.

³⁰³ Inter-American Commission on Human Rights, *Violence and Discrimination Against Women and Girls* (n 298).

of trafficking posed to women and girls. However, despite these frameworks in place, the realities of trafficking in general – and particularly of indigenous women and girls – in Latin America presents extremely worrying trends that do not positively correlate with international laws aimed at preventing it. With that in mind, one must question how truly effective they are, and where it is they might be going so wrong.

4.2.1 The legal-policy contradiction: Anti-trafficking commitments on paper versus in practice

Much of the literature on anti-trafficking measures in Latin America points to a general problem with international commitments, legal reforms and human trafficking initiatives based on a sheer lack of resources and political will to fund such programmes.³⁰⁴ Many countries face challenges, such as drug trafficking and gang violence – which they perceive to be larger problems.³⁰⁵ Financial limitations are a major obstacle to implementing successful anti-trafficking frameworks, and many Latin American countries face economic crises and competing priorities such as drug trafficking and violence.³⁰⁶ As there is no one, all-encompassing anti-trafficking framework for the Latin American region, states rely significantly on the Palermo Protocol for guidance on combating trafficking in the region. However, despite its influence, both the IACHR and the UN Special Rapporteur on Trafficking in Persons have noted the challenges that persist for trafficking victims in the region, including difficulties in accessing justice, assistance and comprehensive reparations.³⁰⁷ From a decolonial perspective, a deeper issue emerges: although human rights are often presented as reflecting universal values, Gómez

³⁰⁴ P Rout and others, 'Analyzing the Palermo Protocol on Human Trafficking: Implementation, Efficacy and Challenges' (2024) 6(1) Indian Journal of Law and Legal Research 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4740886> accessed 15 May 2025.

³⁰⁵ CR Seelke, *Trafficking in Persons in Latin America and the Caribbean* (CRS Report RL33200, Congressional Research Service 2016) <<https://sgp.fas.org/crs/row/RL33200.pdf>> accessed 24 May 2025.

³⁰⁶ M Saiz, 'How to harness data to fight human trafficking in Latin America' (*InSight Crime*, 17 March 2025) <<https://insightcrime.org/news/harness-data-fight-human-trafficking-latin-america/>> accessed 25 May 2025.

³⁰⁷ Organization of American States (OAS) and Inter-American Commission on Human Rights (IACHR), 'IACHR and UN Special Rapporteur on Trafficking in Persons: States must enhance the protection of victims of human trafficking' (Press release, 30 July 2024) <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleas-es/2024/172.asp> accessed 21 May 2025.

Sánchez argues that their conceptualisation remains rooted in Western ideological principles,³⁰⁸ which may explain why such barriers to justice exist in a non-Western society applying Westernised principles. Applying Western-centric human rights models – like those embedded in the Palermo Protocol and to some extent the Belém do Pará Convention – to post-colonial societies in the Global South is inherently problematic. A uniform, ‘one size fits all’ approach to legal and policy frameworks, particularly in the context of human trafficking, often fails to account for the specific historical, social and cultural realities of non-Western regions.³⁰⁹ Thus, in Latin America an overreliance on the Palermo Protocol could be one of the main reasons why the effectiveness of anti-trafficking efforts is so poor. Rooted in Western legal traditions and normative understandings of human rights instead imposes a framework that does not reflect the complexities of Latin American societies. The ongoing use of the Palermo Protocol by Latin American states may inadvertently contribute to the problems it seeks to resolve, because the Protocol is deeply embedded in a Western-centric approach to combating trafficking, and so it fails to consider the multicultural, historical nature of the Latin American context. Furthermore, as the first universal definition of human trafficking, the Protocol has significantly shaped states obligations towards victims. Limitations to which are evident when viewed through a decolonial lens. Gordon’s critique of the International Labour Organization Convention 169 highlights how the instrument fails to genuinely protect indigenous rights as it remains couched in the vocabulary of traditional, Western-centric international law.³¹⁰ If we are to view the Palermo Protocol with this same critique, one can see how it privileges Western legal and epistemological frameworks, ultimately influencing states in the region to do the same.³¹¹ Thus, an inherent flaw of the state’s approach

³⁰⁸ D Gómez Sánchez, ‘Reformulating Human Rights From an Indigenous Perspective: Embedding the San Views on Property Rights’ (PhD thesis, University of Deusto 2023) 11.

³⁰⁹ SJ Ndlovu-Gatsheni, ‘Discourses on Decolonization/Decoloniality’ (2019) 55(3) *Papers on Language and Literature* 201, 203 <<https://www.blacfoundation.org/pdf/Ndlovu-Gatsheni-16.pdf>> accessed 12 February 2025.

³¹⁰ International Labour Organisation, *Indigenous and Tribal Peoples Convention*, 1989 (No 169) (adopted 27 June 1989) <https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEX-PUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,/_Document> accessed 14 March 2025; S Gordon, ‘Indigenous Rights in Modern International Law From a Critical Third World Perspective’ (2006) 31(2) *American Indian Law Review* 401 <https://doi.org/10.2307/20070793>.

³¹¹ Gómez Sánchez (n 308).

to fighting human trafficking in the Latin American region is that they have not yet developed their own legally grounded regional framework that reflects the realities of the region's experiences, and instead rely heavily on a Western-centric approach to tackling human trafficking.

Shifting the focus away from the Palermo Protocol, it is equally important to examine the regional legal instruments. Of particular interest is the Belém do Pará Convention.³¹² This is because human trafficking constitutes a form of gender-based violence that disproportionately affects women and girls.³¹³ As observed by the IACHR,³¹⁴ in addition to its prohibition under the American Convention on Human Rights, trafficking in women in all its forms is recognised as a form of violence against women under the terms of the Belém do Pará Convention. The Convention is commended for having influenced the drafting of various laws on violence against women at national level, as well as undertaking numerous awareness campaigns and supporting legal and health services for women throughout the Americas.³¹⁵ Unlike the Palermo Protocol, the Belém do Pará Convention emerged from within the Latin American context and is thus arguably much more attuned to the region's specific needs and colonial histories. It was developed for and by Latin American states, with a specific focus on the lived realities of women in the region. Unlike the Palermo Protocol it alludes to the multiplicity of factors that generate the vulnerability of women to violence, highlighting the need for states to take an intersectional approach to understanding and protecting women's rights.³¹⁶ However, despite the provisions enshrined

³¹² Belém do Pará Convention (n 292).

³¹³ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024* (United Nations 2024) <https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf> accessed 13 February 2025.

³¹⁴ Inter-American Commission on Human Rights, *Northern Central America: Impact of Organized Crime on Women and Girls* (OEA/Ser.L/V/II.Doc.9/23, Organization of American States 2023) <https://www.oas.org/en/iachr/reports/pdfs/2023/nortecentroamerica_mujeres_en.pdf> accessed 21 May 2025.

³¹⁵ JASS, '20 years after Belém Do Pará: Women defending rights' (*JustAssociates*, 9 May 2014) <<https://justassociates.org/article/20-years-after-belem-do-women-defending-rights/>> accessed 1 June 2025.

³¹⁶ Belém do Pará Convention (n 292) art 9.

in the Convention, reports from the IACHR stress the ongoing widespread corruption, impunity and violence against women – including trafficking – that continues to take place across Latin America.³¹⁷

For example, one of the main challenges to enforcing anti-trafficking laws in Latin America, as highlighted by the Commission is that courts that hear such cases are often overburdened and lack sufficient courtrooms and technical support teams, which results in the postponement of trials and delay in justice.³¹⁸ While the Belém do Pará Convention obligates states to act with due diligence in preventing, punishing and eradicating violence against women,³¹⁹ such insufficient support in these aspects highlights a significant gap in states commitments on paper vs in practice. Furthermore, judicial personnel in these countries lack the tools and training required to handle such cases of gender violence. For example in El Salvador, despite having ratified the Belém do Pará Convention, the Commission has observed a failure by the Attorney General's Office to include gender perspectives in its actions.³²⁰

Despite states being required to consider intersectionality, they also may often fall short of considering the multifaceted ways in which intersectional discrimination can affect certain groups of women. An example of this is through access to justice. Guatemala has adopted three specific regulations to address the issue of violence against women – the Law to Prevent, Punish and Eradicate Family Violence, the Law against Femicide and Forms of Violence against Women and, finally, the Law against Sexual Violence, Exploitation and Human Trafficking.³²¹ However, despite what may seem like very positive steps in the right direction, the Commission highlights how a centralisation of justice services has meant indigenous and rural women in particular face further barriers to filing complaints and lawsuits, as well as taking other forms of

³¹⁷ Inter-American Commission on Human Rights, *Northern Central America: Impact of Organized Crime on Women and Girls* (n 314).

³¹⁸ *ibid* 111.

³¹⁹ Belém do Pará Convention (n 292) art 7.b.

³²⁰ Inter-American Commission on Human Rights, *Northern Central America: Impact of Organized Crime on Women and Girls* (n 314) 111.

³²¹ Inter-American Commission on Human Rights, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (OEA/Ser.L/V/II.Doc.143, Organization of American States 2015) <<https://www.oas.org/en/iachr/reports/pdfs/legalstandards.pdf>> accessed 21 May 2025.

legal action. This directly undermines the Convention's goal of ensuring equal access to justice for all women, particularly those most at risk of intersectional violence.³²² Oftentimes, indigenous women need to travel for long hours to report a crime of human trafficking, where they may then face further discrimination by state authorities. They may encounter linguistic and cultural barriers where they cannot report a crime in their own language or in a culturally sensitive manner.³²³ They may also face further barriers due to financial challenges or lack of available time to go through the state process of acquiring justice. This lack of accessible reporting mechanisms is further perpetuated by the state's misallocation of resources, which reflects a disproportionate priority to tackling issues of gender based violence in general, and especially in indigenous communities. In Honduras for example, for two years the Unit for Investigation of Violent Deaths of Women and Femicide and the Public Ministries Forensic Criminal Investigation Agency were allocated *half* the budget of the State Commission for Sport Promotion,³²⁴ highlighting the priorities of some states in tackling the issue.

Even more interestingly, is the strong correlation between human trafficking and corruption in the region.³²⁵ The Commission highlights that by its very nature, the crime of human trafficking to a certain extent requires the collaboration of certain sectors of the state, particularly in border areas, at migration checkpoints and among police and customs officials. According to information obtained by the Commission, public servants will often receive payments in the form of money or sexual services forcibly provided by victims in return for impunity. The Commission also notes that such situations become more concerning when the operation is run by government apparatus.³²⁶ In Guatemala and Honduras for example, organised crime groups are closely allied with political powers:

³²² Belém do Pará Convention (n 292) art 4.f.

³²³ Inter-American Commission on Human Rights, *Violence and Discrimination Against Women and Girls* (n 298) 113.

³²⁴ Inter-American Commission on Human Rights, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System* (n 321) 111.

³²⁵ Inter-American Commission on Human Rights, *Northern Central America: Impact of Organized Crime on Women and Girls* (n 314).

³²⁶ *ibid* 94.

In Guatemala, government officials participate in human trafficking as 'users', covering it up or tolerating it, or as managers of the illicit enterprise. Specifically, municipal officials and employees have been identified as 'users' of the sexual services for girls, as have police officers and judicial officials, who receive sexual favours in exchange for not prosecuting or favourable rulings. Added to this are groups of police who directly engage in the trafficking business as owners, serving as frontmen for brothels and passing off their earnings as legal by investing in minibuses and taxis. In Honduras, security forces and military personnel have been the accomplices of criminal trafficking groups that exploit people for domestic work as well as sexual services. In addition, immigration authorities receive sexual favours from victims, who become 'currency' to pay off debts of traffickers.³²⁷

And so, while it can be said that corruption is a crucial factor in human trafficking, its importance contrasts with the limited effectiveness of its prosecution. Díaz Rivillas and Solano López note that actions have been taken in various Latin American countries, but they note that there are still few structured policies or strategies for preventing and investigating these criminal practices.³²⁸

Based on the above, a decolonial critique of the Belém do Pará Convention must emphasise that placing primary responsibility on the state to prevent and respond to violence against women is insufficient, and also in this context, deeply problematic. It assumes a capable, willing and neutral state structure, and thus it fails to take into consideration what happens when the state or members of state authorities themselves are part of the problem. Such an assumption directly ignores the history of state violence against women – particularly indigenous – and also offers no alternatives to implementing justice where the supposed protectors are also the perpetrators or beneficiaries of the violence.³²⁹ In other words, the Belém do Pará Convention still operates within Western legal paradigms that do not recognise other justice systems, such as community-based indigenous legal systems that operate

³²⁷ Inter-American Commission on Human Rights, Northern Central America: Impact of Organized Crime on Women and Girls (n 314) 95.

³²⁸ B Díaz Rivillas and AL Solano López, 'Funcionarios corruptos, un eslabón imprescindible en la trata de personas' (*El País*, 19 July 2020) <https://elpais.com/elpais/2020/07/15/planeta_futuro/1594821972_794679.html> accessed 21 May 2025.

³²⁹ Saldarigga Grisales and Gómez Vélez (n 294) 56.

outside or in parallel to the state, thus failing to legitimise other forms of justice for gender-based violence.³³⁰ Community-based or indigenous legal systems that operate outside or in parallel to the state are therefore disenfranchised, despite being more accessible and culturally appropriate for many women.³³¹ Thus, despite being drafted in the Latin American context, it must be said that the Belém do Pará Convention replicates colonial hierarchies of knowledge and authority, and reinforces Western power structures by allowing for the impunity of crimes to be committed by both state and non-state actors without guarantee of repercussions. With this in mind, without addressing such limitations of the Belém do Pará Convention, it also risks reinforcing the very systems of systemic violence it aims to fight.

4.2.2 The Trafficking Victims Protection Act 2000 (TVPA) and the Trafficking in Persons Report (TIPR)

Moving on from the above, this section takes a closer look at the United States TVPA and the TIPR. Since the inception of the Palermo Protocol, the seriousness of all forms of human trafficking have been duly recognised and definitions have advanced beyond understanding human trafficking solely in the context of sex trafficking.³³² Having said that, debates surrounding the agency of victims and the nature of trafficking victimisation remains ongoing. Boukli, Papanicolaou and Dimou note that this dimension has clear implications insofar as it shapes the forms and focus of interventions to address trafficking.³³³ Thus, this section moves to a decolonial analysis of the TVPA and TIPR. It posits that the TIPRs – whilst not a legally binding document – carries significant importance and, therefore, acts as both an imperial knowledge

³³⁰ Rachel Sieder, *Demanding Justice and Security: Indigenous Women and Legal Pluralities in Latin America* (Rutgers UP 2017) 9.

³³¹ *ibid* 1.

³³² United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-suppression-traffic-persons-and-exploitation>> accessed 4 June 2025.

³³³ A Boukli, G Papanicolaou and E Dimou, 'Constructing 'Indigenous People' Reproducing Coloniality's Epistemic Violence: A Content Analysis of the Trafficking in Persons Reports' (2024) *Modern Slavery in the Global Context* 81, 84 <<https://doi.org/10.51952/9781529224733.ch004>>.

construction and a colonial monitoring tool.³³⁴ Because of this and the power these reports hold over states, they play a central role in imposing colonial frameworks of knowledge and intervention measures globally.³³⁵

The TVPA, first enacted in 2000, is a United States federal law that carries substantial geopolitical and policy influence.³³⁶ Part of its mandate includes the production of annual TIPRs, which not only define United States anti-trafficking efforts, but also function as a powerful tool of soft diplomacy through their ranking of countries based on their annual anti-trafficking efforts. Despite the many positive outcomes to have emerged from the TVPA and subsequent TIPRs, Boukli, Papanicolaou and Dimou undertake a content analysis of the TIPRs from 2001–20 to show how policy interventions continue to impose colonial frameworks of knowledge and intervention both globally and locally.³³⁷ Coming up to its 25th anniversary, the TIPR remains one of the most authoritative reports on human trafficking globally. Its combined effect of exercising ‘imperial soft power’ with the extent of its coverage has meant it has emerged as a force that shapes the field of anti-trafficking in terms of policy development and state priorities.³³⁸

As already discussed in Chapter 2, coloniality survives colonialism through the construction of race and gender dimensions that created differences between the ‘conquerors’ and the ‘conquered’ as a way to place the conquered individuals in a situation of natural inferiority in comparison to the conquerors.³³⁹ Therefore, as we already know, coloniality involves interpreting the colonised as ‘non-human’, in need of ‘civilising’, and using this civilising mission to justify continued exploitation and cruelty.³⁴⁰ One of its most impactful methods of colonising was through the

³³⁴ Boukli, Papanicolaou and Dimou (n 333) 85.

³³⁵ N Clark, ‘Perseverance, Determination and Resistance: An Indigenous Intersectional-Based Policy Analysis of Violence in the Lives of Indigenous Girls’ (2021) Policy Analysis Framework 133 <https://learningcircle.ubc.ca/files/2013/10/7_Indigenous-Girls_Clark-2012.pdf> accessed 3 June 2025.

³³⁶ United States Trafficking Victims Protection Act of 2000, Pub L No 106-386, 114 Stat 1464 <<https://www.congress.gov/106/plaws/publ386/PLAW-106publ386.pdf>> accessed 9 June 2025.

³³⁷ Boukli, Papanicolaou and Dimou (n 333).

³³⁸ *ibid* 84.

³³⁹ A Quijano, ‘Coloniality of Power and Eurocentrism in Latin America’ (2000) 15(2) *International Sociology* 215 <<https://doi.org/10.1177/0268580900015002005>>; N Maldonado-Torres, ‘On the Coloniality of Being: Contributions to the Development of a Concept’ (2007) 21(2-3) *Cultural Studies* 240 <<https://doi.org/10.1080/09502380601162548>>.

³⁴⁰ Boukli, Papanicolaou and Dimou (n 333) 87.

colonisation of knowledge, where epistemological hegemony and the dominance of quantitative research became an essential asset of colonial control.³⁴¹ Thus, when we talk about emerging anti-trafficking knowledge, influential reports like the TIPR act as a powerful shaper of knowledge and awareness on what trafficking is, what it constitutes and who are its most vulnerable victims.³⁴² From a decolonial perspective, this leads us to question to what extent such reports contribute to the ongoing attitudes and understandings of marginalised persons in the trafficking context, and whether such narratives are what directly contribute to the systemic violence perpetrated against them.

And so it is important to reinforce what was mentioned above, that international instruments are not immune to coloniality, and instead have been utilised to continue the subordination of colonised people and societies to Western conquest and domination. Among these are the annual reports on Trafficking in Persons issued by the United States. When looking at the institutional origins of the reports, this becomes even more clear. The reports, as mentioned above, are grounded in the TVPA, a United States federal legislation that mandated the creation of the annual reports.³⁴³ On the surface the TVPA is a domestic policy response to anti-trafficking efforts that established a structural framework for assessing the scale of trafficking and outlined the mechanisms for legal intervention, which include minimum standards, criminal penalties and victim assistance measures.³⁴⁴ However, upon closer inspection the international scope of the TVPA is revealed. A key aspect is the requirement to annually assess the extent to which foreign governments comply with its minimum standards.³⁴⁵ An assessment of these countries is directly connected to the United States economic and security assistance, whereby states that fail to comply with these standards of assessment shall not receive any humanitarian or non-trade-related foreign assistance from the US.³⁴⁶ Not only does this have symbolic impacts on states' anti-trafficking approaches, but it also poses serious material implications for the assessed countries.³⁴⁷ The annual report publishes

³⁴¹ Boukli, Papanicolaou and Dimou (n 333) 88.

³⁴² Kempadoo and Shih (n 240).

³⁴³ Trafficking Victims Protection Act (n 336) s 104.

³⁴⁴ Boukli, Papanicolaou and Dimou (n 333) 95.

³⁴⁵ Trafficking Victims Protection Act (n 336) s 110.

³⁴⁶ *ibid.*

³⁴⁷ Boukli, Papanicolaou and Dimou (n 333) 96.

a ranking system, and countries placed in the lowest tier risk losing access to humanitarian aid, alongside other forms of non-trade related foreign assistance provided by the US. As the IACHR highlights,³⁴⁸ cutting off funding in this way may create obstacles for some Latin American states which may already be lacking the necessary resources to combat trafficking. Ironically, these states could end up being denied the very assistance needed to strengthen their anti-trafficking capabilities. Thus, it can be said that the scope of the TVPA and the TIPRs goes beyond global to imperial, allowing the United States to exert pressure and influence on other states and incentivise them to comply with United States standards of anti-trafficking.³⁴⁹

Based on their analysis of 20 years of TIPRs, Boukli, Papanicolaou and Dimou further highlight how the reports also perpetuate a coloniality of knowledge, whereby an ‘indigenous victim’ is constructed in human trafficking discourse.³⁵⁰ Across various countries and years, the TIPRs have consistently depicted indigenous communities as being ‘at risk’ or ‘particularly vulnerable’ to human trafficking.³⁵¹ Such portrayals are consistently accompanied with recommendations that advocate for a stronger state-led anti-trafficking intervention, however such measures are rarely developed with meaningful engagement with indigenous perspectives, worldviews or structural remedies.³⁵² For example, the 2009 Report identifies indigenous populations in Bolivia as especially vulnerable to forced labour, mainly in sectors such as ranching, sugar cane harvesting and Brazilian nut production.³⁵³ In Mexico, the same report categorises indigenous persons – alongside

³⁴⁸ Inter-American Commission on Human Rights, *Northern Central America: Impact of Organized Crime on Women and Girls* (n 314) 111.

³⁴⁹ Boukli, Papanicolaou and Dimou (n 333) 97.

³⁵⁰ *ibid.*

³⁵¹ United States Department of State, ‘Trafficking in Persons Report 2012’ (United States Department of State 2012) <<https://2009-2017.state.gov/documents/organization/192587.pdf>> accessed 3 June 2025; United States Department of State, ‘Trafficking in Persons Report 2014’ (United States Department of State 2014) <<https://2009-2017.state.gov/documents/organization/226844.pdf>> accessed 3 June 2025; United States Department of State, ‘Trafficking in Persons Report 2015’ (United States Department of State 2015) <<https://2009-2017.state.gov/documents/organization/245365.pdf>> accessed 3 June 2025; United States Department of State, ‘Trafficking in Persons Report 2017’ (United States Department of State 2017) <<https://bg.usembassy.gov/wp-content/uploads/sites/256/2017/06/2017-TIP-Report.pdf>> accessed 3 June 2025.

³⁵² Boukli, Papanicolaou and Dimou (n 333).

³⁵³ United States Department of State ‘Trafficking in Persons Report 2009’ (United States Department of State 2009) 82 <<https://2009-2017.state.gov/documents/organization/123357.pdf>> accessed 3 June 2025.

women and children and undocumented migrants – as among those most vulnerable to trafficking.³⁵⁴ Similarities are also connected to indigenous peoples in Peru.³⁵⁵ The purpose of highlighting these characteristics is to emphasise the construction of a dominant narrative in which indigeneity is equated with inherent vulnerability and precarity. Such a framing reinforces the ‘outsider’ status of indigenous peoples and oversimplifies the reality of the violence they face. By placing indigenous peoples into these ‘vulnerability clusters’ they are relegated to an exceptional zone where victims are placed outside of the legal order, and indigeneity is by extension construed as a risk and vulnerability factor in itself.³⁵⁶ Vulnerability is not an inherent condition of indigenous peoples, but rather a structural condition that was consciously created through the colonial process.³⁵⁷ As Speed notes, when we use terms like vulnerable and vulnerability, we must be mindful of how they can imply an existential state that risks blaming women for the violence they face or underestimating their agency.³⁵⁸ Instead, the use of the terms should be acknowledged *alongside* an understanding of the reasons for such vulnerability, as a way of revealing the multiple ways colonial systems have rendered indigenous women vulnerable. Vulnerability then must be understood not as an inherent characteristic, but as one imposed through multiple, intersecting ways.³⁵⁹ Therefore, when referring to indigenous women and girls as vulnerable to trafficking, as in the TI-PRs, it is essential to contextualise this label within the broader conditions that produce such vulnerability. A failure to do so risks framing indigeneity as a risk factor in itself.

Therefore, the Reports continue to construct indigenous peoples – particularly women and girls – primarily through the lens of victims rather than agents, which positions them in a certain category that could risk reinforcing stereotypes if not explained alongside the factors that victimise them. As a result, this narrows the scope of policy responses which centre on criminal justice measures, rather than addressing the underlying structural conditions

³⁵⁴ United States Department of State ‘Trafficking in Persons Report 2009’ (n 353) 206.

³⁵⁵ *ibid* 238.

³⁵⁶ Boukli, Papanicolaou and Dimou (n 333) 104.

³⁵⁷ Shannon Speed, *Incarcerated Stories: Indigenous Women Migrants and Violence in the Settler-Capitalist State* (University of North Carolina Press 2019) 12.

³⁵⁸ *ibid*.

³⁵⁹ *ibid* 13.

that produce vulnerability in the first place.³⁶⁰ Where states push for criminal justice measures, they are more likely to be placed in a better position in the TIPR ranking system, as such measures align with the United States standards of anti-trafficking. Furthermore, the trafficking problem is often framed as acts of interpersonal violence against indigenous peoples, where human traffickers prey on vulnerable and weak individuals or communities. However, by reducing these problems to interpersonal acts of violence, the reports obscure the broader colonial frameworks that continue to perpetuate these vulnerabilities. Therefore, there is a complete disconnect from the structural conditions of coloniality, and instead the targeting of indigenous women is merely portrayed as a consequence of human trafficking. The TIPR instead treat trafficking as an interpersonal issue and thus completely fail to consider the structural backdrop against which trafficking plays out. Thus, the core source of the risks posed to indigenous women and girls in this context is omitted from the TIPR, which in turn inherently contributes to global understanding of trafficking from a victim-centred perspective rather than the systemic oppressors that make it possible.

In light of these framings, it therefore becomes essential to explore alternative frameworks that may shift the focus from individualised victim narratives that frame trafficking as an act of interpersonal violence, to other measures aimed at guiding states in combating trafficking. Thus, below provides an analysis of the Inter-American Principles which aims at guiding states in combating trafficking.

4.2.3 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking (The Inter-American Principles)

The Inter-American Principles, while non-legally binding, are a set of Principles which offers guidance for governments and other actors as they develop legislation, regulations, administrative decisions, public policies, practices and programmes.³⁶¹

³⁶⁰ Boukli, Papanicolaou and Dimou (n 333).

³⁶¹ Inter-American Commission on Human Rights, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking (Resolution 04/19 Organization of American States 2019) <<https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>> accessed 22 May 2025 (Inter-American Principles).

In particular Principles 20, 42 and 43 pertain to the protection of trafficking victims. Importantly, they highlight a requirement of states to approach anti-trafficking with a non-criminalisation, gender perspective, and note that states should address the vulnerable situation of victims of human trafficking by ways of facilitating their access to justice. This includes, but is not limited to, ensuring victims' ability to report without fear of arrest, deportation or punishment, a fatal flaw already identified within the Palermo Protocol to inherently limit victims willingness to report violations committed against them.³⁶² Unfortunately however, similar to the above, the Principles fail to acknowledge the historical and structural roots of trafficking, particularly as they affect indigenous women and girls. For example, in Principle 20, states are called upon to adopt an 'integrated approach' to combating the crimes of trafficking. By definition, such an approach would 'bring (racially or culturally differentiated peoples) into equal membership of a society'.³⁶³ However, such suggestions remain extremely vague, and do not specify which knowledge systems and practices may be considered within such an approach, leaving it up to states to decide the extent to which – if at all – they consider indigenous legal orders or community-based mechanisms for justice and healing in this context.

The same can be argued for Principle 43 which stresses a requirement for access to justice without fear of arrest or deportation. Whilst on the right track to ensuring better methods of protection for victims of trafficking, it falls short of mentioning how such justice systems may particularly adhere to indigenous needs. The IACHR has already made clear in multiple reports the many obstacles posed to indigenous women in terms of protection and access to justice,³⁶⁴ which include 'geographical, institutional, economic, sociocultural, linguistic and gender barriers as well as

³⁶² United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (17 July 2020) UN Doc A/75/169 <<https://www.ohchr.org/en/documents/thematic-reports/a75169-20-years-after-implementing-and-going-beyond-palermo-protocol>> accessed 17 May 2025.

³⁶³ 'Integrated, v, 2.b' (*Oxford English Dictionary*) <<https://doi.org/10.1093/OED/1914869112>>.

³⁶⁴ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas* (OEA/Ser.L/V/II.Doc.68, Organization of American States 2007) <<https://cidh.oas.org/women/access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf>> accessed 24 May 2025; Inter-American Commission on Human Rights, *Violence and Discrimination Against Women and Girls* (n 298); Inter-American Commission on Human Rights, *Women Deprived of Liberty in the Americas* (n 260).

stereotypes and strong social stigmatization'.³⁶⁵ From a decolonial perspective, the wording of such Principles is problematic because it paints every victim's experience with the same brush, and fails to account for the challenges to accessing justice that are posed to women existing at the intersection. And while the Inter-American Principles do mention the need for an intersectional approach, the vague language leaves states to consider intersectionality with as much or as little relation to indigenous intersectionality as they please. Therefore, when we talk about access to justice from the indigenous perspective, it is essential that it is not just justice administered by the state but also one that includes a recognition of and respect for indigenous laws.³⁶⁶

Based on the above, it can be argued that the law itself, built within a hegemonic power system, acts as a form of violence against indigenous women and girls in particular. As argued by some scholars, the liberatory potential of law is constrained by the violence of law itself, that is imposed on indigenous bodies through continued legal action and inaction, as legal systems inflict violence through a hierarchy that marginalises those at the intersection.³⁶⁷ Therefore, in order to meaningfully address trafficking of indigenous women and girls, legal and policy frameworks must move beyond Western models of justice and the violence they continue to impose. A decolonial approach to policy making would centre indigenous worldviews, legal systems and community-based forms of protection which recognise land rights, cultural authority and kinship as a central aspect of preventing such forms of exploitation. Furthermore, it would more explicitly recognise indigenous ideas of harmony, social inclusion, victim reparation and restoration. For example, Enrique Dussel highlights how in indigenous law, the first punishment for a murderer may be for them to cultivate the land of the deceased (in addition to their own) as a way of allowing for both families to continue to survive whilst the offender begins to face punishment – a punishment that is educational, meritorious and one that begins to reintegrate them into society.³⁶⁸ Thus, the idea is to restore as much as

³⁶⁵ The Inter-American Principles (n 361) 71.

³⁶⁶ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas* (n 364).

³⁶⁷ Hunt (n 291) 27.

³⁶⁸ J Merçon, 'Filosofia, Política y Educación: Entrevista a Enrique Dussel' (2010) *Revista Sul-Americana de Filosofia e Educação* <<https://periodicos.unb.br/index.php/resafe/article/view/4401/4015>> accessed 25 May 2025

possible the balance that was disrupted by the crime committed. Therefore, while colonialism aimed to destroy such communal, egalitarian relations among indigenous peoples, an effective solution would thus need to restore such relations as a way of empowering indigenous voices in the international sphere.³⁶⁹ The following chapter moves to advocate towards a decolonial legal future, doing so by exploring the development of indigenous voices in international law.

5. The limitations of international law where indigenous voices are marginalised

This final chapter of the thesis aims to question the current nature of indigenous participation in international law, arguing that indigenous peoples should be recognised as sovereign legal actors with distinct epistemologies and legal orders.³⁷⁰ It will explore how colonial structures continue to underpin international law, limiting meaningful indigenous engagement and will therefore advocate for a more pluralistic legal framework that centres indigenous worldviews and sovereignty.

Former Special Rapporteur on the Rights of Indigenous Peoples James Anaya highlights that indigenous people do not merely seek a seat at the table but rather assert pre-existing sovereignty and demand recognition of legal systems that predate colonial structures and existing international legal frameworks.³⁷¹ Furthermore, indigenous people throughout Latin America have organised demands for higher degrees of legal and territorial autonomy over the years as a means of defending their territory and specific ways of life.³⁷² Furthermore, Bruce and Gilio-Whitaker highlight how indigenous participation in international law has contributed to restoring a degree of original sovereignty through decolonisation.³⁷³ This has been done predominantly through the fight for a change in the meaning of self-determination, which Charters argues is international law's second highest prize for any group

³⁷⁰ D Gómez Sánchez, 'Reformulating Human Rights From an Indigenous Perspective: Embedding the San Views on Property Rights' (PhD thesis, University of Deusto 2023) 11.

³⁷¹ James Anaya, *Indigenous Peoples in International Law* (2nd edn, OUP 2004).

³⁷² Rachel Sieder, *Demanding Justice and Security: Indigenous Women and Legal Pluralities in Latin America* (Rutgers UP 2017) 12. In recent decades, the rights of indigenous peoples to exercise 'indigenous law' (*derecho propio* in Latin America) have been recognised in international law.

³⁷³ H Bruce and D Gilio-Whitaker, 'Indigenous Nations and Political Autonomy' (2014) 13 *Fourth World Journal* 69 doi:[10.5250/amerindiquar.34.4.0543](https://doi.org/10.5250/amerindiquar.34.4.0543).

behind the related concept of sovereignty.³⁷⁴ In short, it is an essential aspect of recognising indigenous groups as an independent peoples, allowing them to move away from the bounds of colonisation towards bringing colonial states to justice. And yet despite this, the previous chapters have highlighted a deeply systemic problem that continues to persist within the international sphere: human trafficking of indigenous women and girls. As we have already reflected on the policies and frameworks in place aimed at fighting trafficking, a further critique points us therefore in the direction of questioning the colonial nature of law and how this in turn affects indigenous women's realisation of their human rights.

5.1 Coloniality of law and critiquing human rights from a decolonial perspective

Despite claims of universality, international human rights law has long since been recognised by decolonial scholars to be unified in resisting diversity. Instead, it maintains a Western hegemonic authority, which asserts control over what is considered legitimate knowledge, identity and rights.³⁷⁵ Thus, such a framework maintains the dominance of the Western legal and cultural discourse, whilst simultaneously reinforcing colonial power structures under the guise of universal values.³⁷⁶ According to Michel Foucault law is to be understood not only as a coercive apparatus of the state, but as a *dispositif* – namely, a mechanism of power that disciplines and shapes its subjects.³⁷⁷ From a decolonial perspective, it is thus assumed that international law does not just reflect reality, but rather shapes it. And when it only legitimises certain norms and identities, it simultaneously denies recognition to those who fall outside of the Western framework. As

³⁷⁴ C Charters, 'The Sweet Spot Between Formalism and Fairness: Indigenous Peoples' Contribution to International Law' (2021) 115 *AJIL Unbound* 123, 126 doi:<https://doi.org/10.1017/aju.2021.9>.

³⁷⁵ J Liotta and A Szpiga, 'Unsettling the Regime of Human Rights: Decolonial Reflections Beyond the Law' (2022) 12(1) *Oñati Journal of Emergent Socio-Legal Studies* 153, 158 <<https://opo.iisj.net/index.php/sortuz/article/view/1590>> accessed 22 February 2025.

³⁷⁶ D Gómez Sánchez, 'Transforming Human Rights Through Decolonial Lens' (2020) (15) *The Age of Human Rights Journal* 276 doi:10.17561/tahrj.v15.5818.

³⁷⁷ Michel Foucault, *Vigilar y Castigar: Nacimiento de la prisión* (Siglo XXI 1975).

previously discussed in Chapter 2, this explains the ways in which international law has operated on lines of race, gender and class and thus continues to structure the colonised subject as ‘other’ or incomplete.³⁷⁸

However, taking one step further, it has also been argued that the law itself has its own specific coloniality.³⁷⁹ Instead of understanding the law as a by-product of colonial structures of knowledge, power and being, it can instead be interpreted as ‘an integral and constitutive element of these factors, as it is a way of knowledge, form of power and way of being’.³⁸⁰ While appearing inclusive, this theory therefore highlights that international law assimilates indigenous peoples through norms rooted in Western ways of thinking, erasing the validity of indigenous worldviews in the process. It includes them through regulation,³⁸¹ while simultaneously excluding them by failing to recognise their own ways of knowing, being and governing.³⁸² Thus, when we talk about the Palermo Protocol, the Belém do Pará Convention, the TVPA and the Inter-American Principles, it must be noted that they all operate within a legal system that, from the beginning, was not designed to recognise indigenous epistemologies, sovereignties or legal orders. This calls to question who truly is the subject of universal human rights, and by extension, who is the subject of the anti-trafficking policies in place.

Furthermore, law has been used to create categories through which the lives, rights and humanity of indigenous people can fit neatly into normalised colonial power relations. Hunt posits that socio-legal discourse and the material power of law have played a powerful role in perpetuating colonial relations, which create categories of knowledge that limit possibilities in which we can interpret the world, and determine how one becomes a legitimate

³⁷⁸ N Maldonado-Torres, ‘On the Coloniality of Being: Contributions to the Development of a Concept’ (2007) 21(2-3) *Cultural Studies* 240 <<https://doi.org/10.1080/09502380601162548>>.

³⁷⁹ DJ García-López and L Winter-Pereira, ‘Emancipación, Descolonización y Uso del derecho’ (2021) *Revista Andaluza de ciencias sociales* 253 doi:10.12795/anduli.2021.i20.14.

³⁸⁰ *ibid* 261.

³⁸¹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005).

³⁸² García-López and Winter-Pereira (n 393).

subject of the law.³⁸³ She notes that indigenous peoples are thus caught in a double bind of representation, as marginalised groups that can only be heard in terms that have been set by norms emerging within dominant power relations.³⁸⁴ When recognition is determined by dominant power structures, it affects both symbolic representation as well as material reality. Failure to be recognised as a legitimate subject is not only dehumanising, it also plays a key role in normalising violence. Within dominant institutions, the production of knowledge enacts an epistemic violence that defines what counts as real and renders other forms of existence unintelligible. Thus, as mentioned in the last chapter, the potential of law to liberate subjects from violence is constrained by the violence of law itself.³⁸⁵ And by extension, violence is not an outcome of power, but also the means through which power is exercised. Thus, legal systems perpetuate violence through both action and inaction. Most interestingly, Hunt notes that despite our appeals to law to address violence, law itself is dependent on violence for its power.³⁸⁶ For indigenous women and girls, the legal system has always treated them in ways that support and justify their marginalisation within colonial society. This means that the law itself has played a significant role in making them vulnerable and less protected. So, when we try to place indigenous women into legal categories – such as ‘victim of human trafficking’ – it is important to remember that the law is already shaped by colonial violence. Because of that, the justice the law can offer is limited and may never fully address the systemic risks that they face.³⁸⁷

Therefore, a decolonial approach to anti-trafficking mechanisms demands a fundamental rethinking of what human rights are and where they come from. It means acknowledging the current legal order and redirecting it towards epistemologies,

³⁸³ S Hunt, ‘Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law’ (2016) 37(1) *Atlantis* 25, 26 <https://www.academia.edu/9127880/Representing_Colonial_Violence_Trafficking_Sex_Work_and_the_Violence_of_Law> accessed 1 June 2025.

³⁸⁴ *ibid* 27.

³⁸⁵ *ibid* 28.

³⁸⁶ *ibid*.

³⁸⁷ *ibid*.

ontologies and legal traditions of indigenous peoples, alongside other marginalised communities.³⁸⁸ With that in mind, one must question what an indigenous-sensitive anti-trafficking approach might look like.

5.2 What would an indigenous-sensitive anti-trafficking approach look like?

Gómez Sánchez argues that despite being framed as universal entitlements, human rights are continuously becoming disconnected from reality.³⁸⁹ Their formulation, almost entirely shaped by Western liberal thought, conceals an imperial and economic agenda hidden under the hegemonic grammar of universality, which she argues only further legitimises domination and places indigenous knowledge systems on the outskirts.³⁹⁰ As Datta and Starlight further highlight, the dominance of Western knowledge systems therefore creates a barrier for indigenous communities, whose ontologies and philosophies are routinely undermined.³⁹¹ To challenge the coloniality of law, we must therefore bridge a meaningful gap between indigenous and Western systems, through mutual respect for autonomy and validity.³⁹² Todres proposes a way forward that would move towards a more indigenous-sensitive approach to anti-trafficking frameworks.³⁹³ In doing so, he puts forward a number of questions that should be an essential part of developing, implementing, monitoring and evaluating anti-trafficking laws, policies, programmes and initiatives. Below is provided a further analysis of some of these questions and how they may fit into fights against human trafficking in the future.

³⁸⁸ Gómez Sánchez (n 383).

³⁸⁹ *ibid.*

³⁹⁰ *ibid* 12–13.

³⁹¹ R Datta and T Starlight, 'Building a Meaningful Bridge Between Indigenous and Western Worldviews: Through Decolonial Conversation' (2024) 23(1) *International Journal of Qualitative Methods* 1 <<https://doi.org/10.1177/16094069241235564>>.

³⁹² García-López and Winter-Pereira (n 393).

³⁹³ J Todres, 'Law, Otherness, and Human Trafficking' (2009) 49(3) *Santa Clara Law Review* 605 <https://www.researchgate.net/publication/228166778_Law_Otherness_and_Human_Trafficking> accessed 21 April 2025.

Firstly, he highlights a need to question the impact that any law/policy/programme may have on subaltern communities.³⁹⁴ The impact of new anti-trafficking initiatives on historically disadvantaged individuals and communities including persons of colour, women, children and indigenous peoples must be considered on an ongoing basis at all stages of the process. For example, a legislative amendment that increases penalties for trafficking may be welcomed, but ultimately it may have little or no impact on indigenous communities.³⁹⁵ Especially, where we have already seen how prosecution measures often extend towards the victim, making them less likely to feel safe in reporting instances of trafficking to the authorities. Furthermore where it is the case that victims of trafficking are also prosecuted, this may serve to actually place indigenous women and girls at further risk of experiencing violence. For example, in a report by the IACHR on women deprived of liberty in the Americas,³⁹⁶ the Commission noted the two fold risks posed to indigenous women in facing incarceration. They firstly highlight how indigenous women are more at risk of facing incarceration due to situations of poverty and socioeconomic exclusion, which we have already seen disproportionately affects indigenous women. As a result, they are more likely to be involved in the commission of crimes, which is very often the result of human trafficking, whereby they are required to commit crimes on behalf of their traffickers. Secondly, they face discrimination during their prosecution which is linked to discrimination on the part of the authorities based on their ethnic origin and barriers to access to justice, particularly due to the lack of interpreters in criminal proceedings.³⁹⁷ With this in mind, a legislative amendment that increases penalties for trafficking may therefore act to place indigenous women and girls at further risk of experiencing violence, both in their prosecution stage and within the prison itself. Thus, we must acknowledge the ongoing othering of

³⁹⁴ Todres (n 393) 659.

³⁹⁵ *ibid* 660.

³⁹⁶ Inter-American Commission on Human Rights, *Women Deprived of Liberty in the Americas* (OEA/Ser.L/V/II.Doc.91/23 Organization of American States 2023) 57 <https://www.oas.org/en/iachr/reports/pdfs/2023/informe-mujeres-privadas-libertad_eng.pdf> accessed 21 May 2025.

³⁹⁷ *ibid* 33.

individuals, which means that the privileging of some is continual unless we account for the impact on subaltern communities. Doing so requires asking not if but how bias against these communities is either addressed or further entrenched by an initiative.³⁹⁸

Secondly Todres asks what impact subaltern communities believe law/policy/programme may have and if they will have a role in developing the initiative.³⁹⁹ Much of the narrative on human trafficking in the West relies on the perception of the white 'saviour' or 'rescuer'. When this complex focuses on saviourism, it promotes in itself a sense of superiority.⁴⁰⁰ The current discourse on human trafficking tends to conflate victimhood with lack of agency. The resulting picture is that of a voiceless, helpless victim. Robinson notes that this type of saviourism approach overemphasises the power of individual action.⁴⁰¹ However, in order to support the community, equal attention must be paid to the systemic issues that create difficulties for so many marginalised groups.⁴⁰² Furthermore, former Special Rapporteur on the Rights of Indigenous Peoples Tauli Corpuz notes how denial of agency of indigenous women has had a pronounced impact on the prevalence and abuses through the entrenchment of power structures that create and perpetuate systemic vulnerability.⁴⁰³ She highlights how a further loss of their agency caused by both the violations and their subsequent victimisation contributes to a negative cyclical pattern of violence perpetrated against them.⁴⁰⁴ When vulnerability is viewed as a weakness, trafficked indigenous women and girls are viewed not as rights holders with the capacity to carry forward their own life projects, but rather as objects of protection.⁴⁰⁵ Former Special Rapporteur on Trafficking in Persons, Maria Grazia Giammarinaro, stressed how, in order to value the agency of

³⁹⁸ Todres (n 393) 661.

³⁹⁹ *ibid* 663.

⁴⁰⁰ Daniella Robinson, 'The Harms of Helping: An Indigenous Perspective on the Industrial Rescue Complex' in *Sex Work Today: Erotic Labour in the Twenty-First Century* (New York UP 2024) 222-32.

⁴⁰¹ *ibid*.

⁴⁰² *ibid* 226.

⁴⁰³ United Nations Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz' (2015) UN Doc A/HRC/30/41 <<https://digitallibrary.un.org/record/803354?ln=en&v=pdf>> accessed 1 May 2025.

⁴⁰⁴ *ibid* 5.

⁴⁰⁵ United Nations General Assembly, *20 Years After: Implementing and Going Beyond the Palermo Protocol. Notes by the Secretary-General* (17 July 2020) UN Doc A/75/169 <<https://www.ohchr.org/en/documents/thematic-reports/a75169-20-years-after-implementing-and-going-beyond-palermo-protocol>> accessed 17 May 2025.

trafficked persons, it is important to engage directly with survivors, through an inclusive and participatory process, in the design, implementation and evaluation of anti-trafficking policies.⁴⁰⁶ However, the same should be said for engagement with those most at risk of becoming victims of human trafficking. This is because they offer insights that those who are part of the dominant power structure do not see or more so, struggle to appreciate. Thus, if those in the dominant power structure do not consult indigenous communities and allow them to participate in and design solutions, anti-trafficking efforts will fail to realise their potential.⁴⁰⁷

Thirdly, it should be questioned whether the law/policy/programme helps the dominant group come to better understand and know those existing in the subaltern.⁴⁰⁸ If the international community is to make meaningful progress in reducing incidence of human trafficking, then it needs to better understand what makes a particular individual or group susceptible to being trafficked. As Todres notes, this includes understanding that there is not a single profile of 'victim' but rather there is diversity of background, experience and position in society.⁴⁰⁹ Anti-trafficking strategies that assume that all victims are 'similarly oppressed' can have unintended results of perpetuating the exclusion of the very constituency they claim to represent, through continuous othering. This is evident, for example, in the discussion in Chapter 4 on the Palermo Protocol and its emphasis on protection measures for women and girls, without distinguishing the intersectional vulnerabilities of some women and girls over others.⁴¹⁰ A more conscious understanding of indigenous communities and their experiences is crucial to combating trafficking. In doing so, the dominant group must go beyond a superficial desire to learn about the Other, and must hear and learn from the diversity of their voices, and their experiences, especially of those who have been trafficked, so that the dominant group may come to better understand how its actions directly impact them.⁴¹¹

⁴⁰⁶ United Nations General Assembly (n 405) 9.

⁴⁰⁷ Todres (n 397) 663.

⁴⁰⁸ *ibid* 666.

⁴⁰⁹ *ibid*.

⁴¹⁰ M Lugones, 'The Coloniality of Gender' (2016) 35(1) *The Palgrave Handbook of Gender and Development* 35 doi:10.1007/978-1-137-38273-3_2.

⁴¹¹ Todres (n 393) 668.

Finally, the question of ‘then what’ must be addressed. Where do we go from here?⁴¹² However well-intentioned anti-trafficking solutions have been, thus far as we have observed their successes have varied and oftentimes they have further harmed rather than helped indigenous women and girls who have fallen victim to trafficking. Victims rarely receive protection measures in the aftermath of the violations committed against them, never mind authorities extending consideration to what happens to her after she is repatriated to her home country.⁴¹³ If for example, she returns to her community – where she fell victim to human traffickers when searching for job opportunities – where there remain no opportunities for work, then what? Understandably, she may be likely to continue searching for opportunities, and is thus continuously vulnerable to exploitation as before.⁴¹⁴ Therefore, the ‘then what’ approach serves to ensure that, as we develop responses to human trafficking, we are more likely to think through the implications of new laws and policies that resultantly would address the structural issues that often lead to indigenous women and girls being trafficked.

5.3 Opportunities for reform: From one size fits all to pluriversality

With the above in mind, Gómez Sánchez posits that the option here is to theorise human rights through indigenous worldviews, which would contribute to the incorporation into mainstream discussions and discourse of conceptualisation that are ultimately grounded in indigenous epistemologies.⁴¹⁵ These include, but are not limited to their relationship toward unity with nature, non-living entities, individuality-community, a collective rather than individualistic sense of belonging, and family as a natural unit and basis of society. The *buen vivir* (collective wellbeing) movement from South and Central America serves as a good example for perspectives that have influenced and shaped binding

⁴¹² Todres (n 393) 670.

⁴¹³ K Heinrich, “Ten Years After the Palermo Protocol: Where are Protections for Human Trafficking?” (2010) 18(1) Human Rights Brief 2, 2 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1145&context=hrbrief&utm_source=chatgpt.com> accessed 14 May 2025.

⁴¹⁴ Todres (n 393) 670.

⁴¹⁵ Gómez Sánchez (n 383) 281.

normative orders.⁴¹⁶ In short, they are an example of decolonial theory in practice. The movement has radically reimagined concepts such as development by drawing on alternative knowledge systems, as a way of capturing what it means to engage in epistemic reconstitution and reparations.⁴¹⁷ It draws from pre-Columbian systems of collectivity to critique capitalism and to provide alternate visions of collective wellbeing, which are inherently distinct from mainstream, Western notions. Most importantly, it advocates for a way of life that centres justice for individuals within the context of community and environmental wellbeing.⁴¹⁸

Findings by Olson-Pitawanakwat and Baskin further reflect how centring justice for individuals within the context of community has benefitted indigenous trafficking victims.⁴¹⁹ In recent years, indigenous-led, culturally-based services have increasingly highlighted that service users find cultural and spiritual teachings and practices to be the most beneficial aspects of their healing journeys.⁴²⁰ Thus, access to indigenous based resources – including ceremonies – stood out as particularly helpful for the victims of trafficking that took part in their research. They note that for the most part, indigenous peoples want services that are led by indigenous people, communities and agencies based on traditional values, knowledge and practices, as they are often offered services that they are not able to access anywhere else.⁴²¹

The above findings thus challenge the dominant ways of providing justice to victims and instead affirm that for some, indigenous ways of knowing and accessing justice are often more beneficial. Building on these alternative epistemologies, the concept of pluriversality emerges as a complementary framework that resists singular, imposed worldviews and instead embraces the coexistence of multiple ways of knowing and being.⁴²² Drawn from the indigenous movements in Latin America, the concept of

⁴¹⁶ Gómez Sánchez (n 390).

⁴¹⁷ S Duvisac, 'Decolonize: What Does It Mean?' (Oxfam International 2022) <<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621456/rr-decolonize-what-does-it-mean-151222-en.pdf;jsessionid=7BA1AB05BF9ECC695CEFD2544DA-3DE4C?sequence=1>> accessed 22 February 2025.

⁴¹⁸ *ibid* 4.

⁴¹⁹ B Olson-Pitawanakwat and C Baskin, 'In Between the Missing and Murdered: The Need for Indigenous-Led Responses to Trafficking' (2020) 36(1) *Affilia: Journal of Women and Social Work* 10, 11 doi:10.1177/0886109920944526.

⁴²⁰ *ibid* 20.

⁴²¹ *ibid* 21.

⁴²² Boaventura de Sousa Santos and César A Rodríguez Garavito, *Law and Globalisation from Below: Towards a Cosmopolitan Legality* (CUP 2005).

pluriversality ‘directly challenges the one dimensional solutions to diverse problems and impositions of universal claims to the very nature of humanity’.⁴²³ As the Zapatistas would say, pluriversality fights ‘for a world where other worlds are possible’ (my translation).⁴²⁴ Pluriversality envisions a world where many worlds could and would coexist in a pluriverse, one that would include all the epistemic particularities towards a transmodern decolonial socialisation of power. Grosfoguel posits that a truly decolonial perspective would have to be the result of the critical dialogue between diverse critical epistemic/ethical/political projects towards a pluriversal as opposed to a universal world.⁴²⁵ It is only then that a real horizontal dialogue and communication could exist between all peoples of the world. However, to achieve such a world would require the fundamental transformation of the systems of domination and exploitation of the present colonial power matrix of the modern/colonial capitalist/patriarchal Western-centric/Christian-centric world system.⁴²⁶

Of course, it is important to mention that when dealing with alternative epistemologies and other world-views that are distinct from the dominant, Gómez Sánchez highlights how we must keep in mind Grosfoguel’s caveat:⁴²⁷ ‘The fact that one is socially located in the oppressed side of power relations does not automatically mean that he/she is epistemically thinking from a subaltern epistemic locations’.⁴²⁸

Grosfoguel notes that the exact success of the modern/colonial world system consists of making subjects that are located in the oppressed side to think like the ones in the dominant positions.⁴²⁹ It teaches them to see the world through the perspective of the dominant group. Thus, he advises awareness to the fact that all knowledge from marginalised people is not inherently better or more truthful. Instead, one must be aware that all knowledge

⁴²³ SJ Ndlovu-Gatsheni, ‘Discourses on Decolonization/Decoloniality’ (2019) 55(3) *Papers on Language and Literature* 201, 204 <<https://www.blacfoundation.org/pdf/Ndlovu-Gatsheni-16.pdf>> accessed 12 February 2025.

⁴²⁴ R Grosfoguel, ‘Decolonising Postcolonial Studies and Paradigms of Political Economy: Transmodernity, Decolonial Thinking, and Global Coloniality’ (2011) 1(1) *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World* 1, 38 <<https://doi.org/10.5070/T411000004>>.

⁴²⁵ *ibid* 4.

⁴²⁶ *ibid* 28.

⁴²⁷ Gómez Sánchez (n 383).

⁴²⁸ Grosfoguel (n 424) 6.

⁴²⁹ *ibid*.

comes from a certain place, and that an awareness of this is essential.⁴³⁰ And so, in light of this, any attempt to confront human trafficking in Latin America must move beyond the adoption of externally imposed frameworks and toward a genuine engagement with the knowledge systems, experiences and priorities of the most affected. A decolonial approach demands not only the recognition of alternative epistemologies, but a restructuring of the global and local systems that perpetuate these forms of violence, marginalisation and inequality. The solution is not just new programmes, services and improved intervention strategies. The solutions instead lie in being proactive to address the harms caused by structural factors like poverty and marginalisation, whilst simultaneously addressing the harm caused by root factors such as colonisation. In conclusion, by centring community-defined notions of justice and wellbeing, and by connecting dominant with subaltern discourse, anti-trafficking interventions can begin to reflect the complex, lived realities of the people they aim to protect. Only then can we imagine a pluriversal future where dignity, agency and justice are not reserved for the ‘deserving’ few but rather are a shared foundation for all.

6. Conclusion and recommendations

This thesis set out to explore the overrepresentation of indigenous women and girls among human trafficking victims in Latin America using a decolonial and intersectional approach. It has shown how systems of oppression rooted in colonial legacies, such as patriarchy and racial hierarchies, contribute to circumstances such as poverty, land loss and systemic violence, which disproportionately affect indigenous women and girls, making them more vulnerable to being trafficked. Failures to address the intersections between racism and gender oppression – while simultaneously acknowledging the role of colonial domination and its manifestations in the present day – means that anti-trafficking responses are unable to offer effective protection to indigenous communities. Instead, these frameworks tend to individualise vulnerability rather than questioning the broader systems of oppression that produce it. Therefore, concluding arguments note how social classification of women based on the construction of their racial and ethnic identities as non-dominant plays a significant role in exposing them to trafficking.

Chapter 2 highlighted how the colonisation of the Americas became a system of world domination that was structured around the idea of race, resulting in coloniality surviving colonialism through forms of sociability that are integral parts of capitalist and patriarchal domination. When considering gender in this context, it is evident that indigenous women have been made invisible by the ideological constructions that have undermined their existence from colonial to modern times. An intersectional analysis was essential in shedding light on how indigenous women occupy a very important space in this conversation. They do not merely face discrimination based on their gender, but also along racialised lines. Furthermore, when colonial powers came into

contact with pre-colonial indigenous societies, it was shown how it merged with pre-existing systems of patriarchy, fusing them with modern, Eurocentric models of gender domination to create a junction of oppressive systems that has particularly harmed indigenous women. Resultantly, when we talk about the myriad forms of violence that indigenous women suffer today, Chapter 2 showed how they are neither random nor products of chance, and are instead structurally produced, shaped by colonial continuities and racial and gendered hierarchies. This section aligned with the first research objective to analyse the intersectional factors that contribute to vulnerability of indigenous women and girls to being trafficked. In doing so, it created the space for a more in depth and nuanced perspective of analysing trafficking in Latin America in Chapter 3.

Chapter 3, aimed to address the second research objective, and showed how an inherent lack of data on the nature and severity of human trafficking is what remains a significant barrier to addressing its root causes. It was shown that a lack of ethnicity based data collection and analysis has failed to both highlight and efficiently address the ongoing vulnerability of indigenous women and girls to being trafficked in Latin America. Bodies such as CEDAW noted that women and girls most vulnerable to being trafficked belong to marginalised groups – such as indigenous communities – and emphasised how they are highly likely to experience forms of social, political and economic exclusion, resulting in their being more likely to be impoverished, uneducated and unemployed.⁴³¹ At the same time, women and girls may face systemic discrimination and violence within their own communities and families, reflecting the historical gender biases that were intensified by colonialism. All of these factors are said to directly contribute to things like displacement and forced migration, which increase vulnerability to being trafficked. Despite these findings, data on the number of trafficked persons continuously fall short of

⁴³¹ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 39 on the rights of Indigenous women and girls' (2022) UN Doc CEDAW/C/GC/39 <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigenous>> accessed 25 April 2025.

identifying *who* is being trafficked, and instead only identify victims by age and gender. Such gaps fail to account for intersecting forms of discrimination and vulnerability that contribute to the abuses of indigenous women's rights.

Chapters 4 and 5, focused on the final research objective, where the goal was to assess the regional and international anti-trafficking laws and frameworks in Latin America, to show how genuine engagement with indigenous perspectives and epistemologies constitutes the ultimate decolonial approach to fighting human trafficking. While many anti-trafficking efforts may be well-intentioned, they are nonetheless grounded in Western legal and epistemological traditions, which frequently exclude indigenous worldviews and leave indigenous communities unprotected. This is reflected in the Palermo Protocol and its emphasis on pursuing criminalisation measures in comparison to protection and prevention measures. Furthermore, the absence of a non-punishment provision was shown to disproportionately affect indigenous women, who are more likely to be criminalised due to intersecting forms of systemic discrimination based on race, gender and socioeconomic status. In Latin America, both an overreliance on the Palermo Protocol and a failure by states to prevent and respond to violence against women under the Belém do Pará Convention has meant that women and girls who fall victims to trafficking very often do not access any sort of justice. More worryingly, we have also often seen violence that is directly exercised by the state, or violence that is permitted because of a government's failure to protect its citizens and uphold their rights. Furthermore, operating within Western legal paradigms that do not recognise other justice systems fail to legitimise the other – and sometimes only – possible roads to justice for indigenous victims. The TVPA and TI-PR further contribute to these failures. Not only is the TIPR a powerful shaper of knowledge on what trafficking is and who are its most vulnerable victims, its ranking system also continues to ensure states pursue criminalisation methods as their top priority in order to be ranked well in the annual reports, which reflects well on their anti-trafficking efforts and ensures they continue to receive financial aid from the US. Therefore, it has been made evident that the hegemonic power system within which the law was built acts as a form of violence against indigenous women and girls. Any attempt to confront human trafficking in Latin America would need to move beyond the adoption of externally imposed

frameworks and toward a genuine engagement with the knowledge systems, experiences and priorities of those most affected. It demands not only the recognition of alternative epistemologies, but a restructuring of the global and local systems that perpetuate such forms of violence, marginalisation and inequality. With that in mind, these are recommendations for future research.

6.1 Recommendations for future research

To further decolonise the study of human trafficking, the following recommendations for future research are provided. As already mentioned in Chapter 5, there is firstly an inherent need for research methodologies that acknowledge and consider indigenous voices and knowledge systems. Future studies should prioritise the development of disaggregated, ethnicity-specific data alongside indigenous communities in a participatory, community-based research approach. Importantly, a clear emphasis must be placed on designing such data collection methods that are intersectional and context-sensitive to avoid misclassification, stereotyping or unintended reinforcement stigmas. This cannot be done without including indigenous perspectives and epistemologies to ensure that they are closely aligned with the lived realities of the communities involved.

Secondly, future research should more closely engage with indigenous feminist communitarian thinkers, much like those mentioned in Chapter 2. As discovered through engagement with thinkers such as Julieta Paredes and Lorena Cabnal, new understandings of gender and patriarchy in pre-colonial societies allowed for a much more accurate understanding of the emergence of patriarchal structures in Latin America. Considering such perspectives provided new aspects of understanding coloniality and how it places indigenous women and girls at the margins, which in turn can provide for a more informed, effective and culturally resonant approach to anti-trafficking.

Finally, because the existing models have failed, future research should investigate how indigenous methods of restorative justice models might offer better ways for indigenous women and girls to access justice away from state systems of anti-trafficking. As noted in Chapter 5, indigenous women in Canada found that the most helpful services for their healing journey were access to

indigenous based resources, including ceremonies. For the most part, indigenous peoples want services that are led by indigenous peoples, communities and agencies that are based on their traditional values, knowledge and practices and which place particular emphasis on reconciliation and social healing. Therefore, a reimagination of justice must also include indigenous perspectives on ways they can access justice that aligns with their perspectives on accountability, protection and healing.

As a final reflection, the violence perpetrated against indigenous women and girls through human trafficking is a complex and multidimensional phenomenon. It is something that cannot be reduced merely to physical or interpersonal violence, it is also structural, symbolic and political.⁴³² As we have seen throughout the thesis, women and girls from different indigenous groups in Latin America face varying forms of physical, psychological and structural violence due to their race/ethnicity and how it intersects with gender. And yet, despite the complex, intersectional nature of these structural and historical forms of violence against indigenous women and girls, existing laws and policies aimed at tackling it view it as isolated, interpersonal incidents of aggression that are carried out by a perpetrator or organised criminal group against an individual victim.⁴³³ Such an approach risks a decontextualised and oversimplified approach to dealing with direct manifestations of violence, rather than addressing the complex and multi-faceted causality of it. Addressing it requires more than gathering statistics and surface level interventions, to a shift in how we think, research and legislate. This thesis has attempted to begin that conversation, but much more is needed. By embracing decolonial, intersectional and indigenous-centred approaches, future research can and will contribute to a more comprehensive understanding of and response to human trafficking.

⁴³² Rachel Sieder, *Demanding Justice and Security: Indigenous Women and Legal Pluralities in Latin America* (Rutgers UP 2017) 1.

⁴³³ *ibid*; A Boukli, G Papanicolaou and E Dimou, 'Constructing 'Indigenous People' Reproducing Coloniality's Epistemic Violence: A Content Analysis of the Trafficking in Persons Reports' (2024) *Modern Slavery in the Global Context* 81, 84 <<https://doi.org/10.51952/9781529224733.ch004>>.

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