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(Re)configuring the criminal justice response to human trafficking: a complex-systems perspective

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ABSTRACT

The multidimensional complexities associated with the criminal justice response to human trafficking are well documented. The transient and subversive nature of human trafficking as organised crime and the large number of multidisciplinary role-players involved in coordinating cross jurisdictional efforts to prevent, investigate and prosecute such cases, contribute to this complex undertaking. Complex systems theory suggests that a complex social problem such as human trafficking cannot be approached by using a linear or simplified lens, and requires a holistic perspective on the complex interactions between actors, and emergent behaviour in both the criminal justice system and the human trafficking system that it seeks to combat. This paper explores the characteristics of complexity, and uses illustrations from the lived experiences of actors in South Africa's efforts to combat human trafficking, in order to demonstrate how complex systems theory could be considered and integrated into the criminal justice response to human trafficking.

KEYWORDS

Complex-systems theory; human trafficking; criminal justice; investigation

Introduction

The notion of 'complexity' is increasingly mentioned in the context of human trafficking and, more specifically, in the context of combating the crime (Aronowitz, 2009; Holmes, 2010; Morehouse, 2009). Despite the numerous references to the highly adaptive and complex nature of human trafficking, there has been a growing recognition by criminal justice researchers and practitioners that human trafficking is one of the most difficult crimes for the counter-trafficking community to understand, detect, and combat (Morehouse, 2009). Moreover, even though considerable resources have been directed at combating human trafficking, Farrel, Owens, and McDevitt (2014) commented on the low number of human trafficking cases that have been identified and prosecuted internationally. Cases successfully prosecuted in South Africa involved mostly simple trafficking operations, with the government failing to prosecute any of the major international syndicates responsible for much of the sex trafficking in the country (United States (US) Department of State, 2015). This point towards challenges faced by the criminal justice system and the intricacies involved in prosecuting more complex organised crime syndicates that transcends the mere absence of political will (e.g., Araujo, 2011).

In this article, it is argued that an understanding of the characteristics of complexity, as it applies to human trafficking, will present an opportunity to the international criminal justice community to harness complexity, instead of being perplexed by it. This will enable criminal justice practitioners

and policy makers to utilise the complexity in human trafficking combating efforts through ‘strategic planning and tactical policy making’ (Leary & Thomas, 2011, p. 62), with the aim of shaping an effective criminal justice response that is similar to the criminal network it aims to combat (Williams, 2009). As practitioners, it is the contention of both authors that the inherent complexity of human trafficking can only be acted upon by actors who are able to recognise complexity and respond proportionally to the challenges that it presents. To this end, this article explores current insights from literature regarding complexities inherent to human trafficking followed by an exposition of complex systems theory. Illustrations from the lived experiences of actors involved in the criminal justice strategy to combat human trafficking, collected from two different data sets, are used to demonstrate how a complex-systems lens could be considered and integrated in a criminal justice response to anticipate and match the complexities inherent in the crime of human trafficking.

Literature review

The complexity of human trafficking

The complexity of human trafficking results from the interaction of a range of factors which include the nature of the crime (process not event), the range of perpetrators (from single perpetrators to large international organisations), the seemingly endless ways in which humans are exploited (e.g., sex, labour, domestic, baby farms, organs etc) and the variety of contextual factors (social, economic, cultural etc). Laczko (2007, p. 42) asserts that human trafficking ‘crosses so many disciplinary... boundaries’ that it requires the incorporation of a range of perspectives originating from more than one discipline. With no boundaries and no respect for laws (United States (US) Department of State, 2015), a permeating complexity shows itself through the fact that human trafficking, as a crime, is a process, not an event (Bales, 2005), which continuously adapts and changes in accordance with the dynamics of demand and supply (Daniel-Wrabetz & Penedo, 2015). This process involves many individuals, groups, organisations and a wide range of activities and forms of exploitations over many geographical locations, and during which a range of violations may occur (Araujo, 2011; Konrad, 2008; Kruger & Oosthuizen, 2011; Turner & Kelly, 2009; Verhoeven & Van Gestel, 2011). Geographical challenges in combating trafficking include long and complex supply chains that penetrate multiple borders and impede traceability (United States (US) Department of State, 2015). The complexity of efforts to cooperate across international borders and local jurisdictions is illuminated by Stoll, Edwards, and Mynatt (2010), who refer to one case study where 21 different entities were enumerated that had to be involved in the identification, intervention and subsequent rescue of a 15-year old victim of sex trafficking.

As a ‘deep and dense sociological abyss’ (Van der Watt, 2015a, p. 3), human trafficking is infused by a plethora of political, economic, social, and cultural factors, which all interpenetrate at some point (Moloney, 2015). The aforementioned factors are also contextual and have to be considered when measures to combat the problem are framed. The criminal justice system, in response, had to formulate broad definitions of human trafficking in legislation (Pharoah, 2006). As the ‘landmark treaty’ on human trafficking (Kruger, 2010: 190), the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, known as the ‘Trafficking Protocol’, contains a broad definition to encompass the activities and violations in all the forms of human trafficking (Andrees, 2008). In addition, complexities evident in the contextual differences in human trafficking (Pharoah, 2006) influence the criminal justice response. In South Africa, local realities necessitated legislators to widen the already broad scope of the Trafficking Protocol in the country’s comprehensive human trafficking legislation in order to tailor it to the South African context (Mollema, 2014). While a broad definition enables the criminal justice system to charge traffickers with some aspect of the crime, it also makes it difficult to identify a victim of human trafficking when, for example, human trafficking is concealed in activities such as migration, smuggling, and prostitution. Police officers are frequently confronted by the challenge of distinguishing between women who, on the one hand, prostitute themselves voluntarily but who also experience abuse, rape, or exploitation, and on the

other, trafficked persons forced into prostitution (Gould, 2010). There are thus many complexities to navigate and consider in 'real-life' situations (Pharoah, 2006, p. 11).

Secondary victimization through the criminal justice system and investigative challenges, such as the failure of intelligence-sharing protocols and cultural and language barriers, adds to the complexity list (Kingshott, 2015). Additional complexities that the criminal justice system has to contend with include the diverse and complex operations of organised crime networks that involve a diverse range of actors, trafficking routes, and *modus operandi* (Pharoah, 2006; United States Department of State, 2013, 2014, 2015). Characteristic of the nature of organised crime, human trafficking operations constantly evolve and adapt to their environment (Bruns, 2015), whilst networked structural models are implemented by tech-savvy criminals who internationalise their operations (Bjelopera & Finklea, 2011). The flexibility of these models makes it difficult for law enforcement to infiltrate, disrupt, and dismantle conspiracies. Furthermore, several modern-day organised crime groups opportunistically form around specific, short-term schemes, and outsource segments of their operations rather than keeping them all 'in-house' (Bjelopera & Finklea, 2011, p. 1). International factors such as the subversive nature (Kingshott, 2015) of human trafficking activities, a distrust of law enforcement, the levels of trauma of human trafficking victims, and the lack of awareness that they are victims of the crime were also found to contribute to low rates of victim identification (Gallagher & Holmes, 2008). Other compounding factors include corruption (Transparency International, 2011; Swart, 2011) and harmful or distorted cultural practices (Ngcukana, 2009; Olujuwon, 2008; Van der Watt & Ovens, 2012). Deep divisions relating to issues of principles, theories, perceptions and strategies to address transnational human trafficking persist (Sawadogo, 2012), and so does the need to identify impediments that inhibit or thwart the identification, investigation and prosecution of human trafficking cases (Kingshott, 2015).

From a criminal investigation perspective, the intricacies of human trafficking deny investigators the convenience of a simple linear process where predictability guarantees proportionality between inputs and outputs. Human trafficking investigations are also more testing than other criminal investigations, due to their tedious and complex nature (Verhoeven & Van Gestel, 2011). As a complex, diverse, and multifaceted crime (Araujo, 2011; Van Zyl & Horne, 2009) it requires an equally multifaceted and integrated response to effectively address the fluid and systemic nature of organised crime involved in its perpetration (Araujo, 2011). Despite these complexities, counter-trafficking practitioners seem to try to reduce a complex crime to a 'simplistic, one-dimensional issue' (Konrad, 2008, p. 179). This could be suggestive of the lack of sensitivity to the complex nature of human trafficking (Konrad, 2008).

Conceptualising complexity: complex systems theory

Complex-systems theory is a significant departure from positivist knowledge creation approaches which embraces specialisation and compartmentalisation (Skyttner, 2005). A significant assumption of positivist knowledge creation approaches is the attempt to understand and manage a complex phenomenon such as human trafficking by reducing it to its simplest parts, a process called 'reductionism', with the aim of establishing clear cause-and-effect relationships to formulate solutions (Morgan, 2005, p. 6). Reductionism, however, becomes increasingly deficient in a world that escalates to new heights of complexity on an almost daily basis. 'Complexity' is underscored by Heylighen, Cilliers, and Gershenson (2007, p. 117) as probably the most fundamental characteristic of modern-day society, since the most pressing problems are increasingly recognised as global, complex and nonlinear (Mainzer, 1994). Recognising the danger of reductionist reasoning, Mollema (2014) asserted that even though the South African legal response to human trafficking is comprehensive, human trafficking 'cannot be solved by legislation alone' (p. 262). In this sense, De Toni and Comello (2010, p. 26) aptly argue that 'nothing happens in isolation and nothing can be understood in isolation', since phenomena and events are linked to a vast number of other phenomena and events. According to Cilliers (1998) it is vital to differentiate between complex and complicated systems. This is particularly relevant when formulating the criminal justice response to human trafficking. Cilliers (1998) explained that both complex and complicated systems can consist of a large number of components. If a system can be

understood in terms of its individual constituent parts, then it is merely complicated. Complicated systems include objects such as jumbo jets or computers. When a problem occurs within a jumbo jet engine, one or more of its constituent parts can usually be replaced, after which the system returns to its full functionality. From a criminal justice perspective, a 'single-event' crime such as a rape or murder case can be considered complicated rather than complex. Such crimes usually consist of an event that takes place within a specific context or set of circumstances, namely the criminal act, a victim, a perpetrator or perpetrators, possible witnesses and the crime scene. The investigation will require the 'collection of information and evidence for identifying, apprehending, and convicting suspected offenders' (Osterburg & Ward, 2010, p. 5) and represents a systematic and organised piecing together of evidence in a linear fashion to determine the truth of what happened.

Complex-systems theory has a number of important and interwoven features that should be considered by the criminal justice system when responding to human trafficking. In complex systems, there are intricate non-linear interactions and relationships between a myriad of components and actors that comprise the phenomenon. The complexity of the phenomena can be fathomed only when these interrelationships between the constituent parts, which comprise the phenomena, are grasped (Cilliers, 1998). Constituent parts in the human trafficking system include the actors involved in trafficking (the trafficker subsystem), the victim(s) and their context (victim subsystem), the demand and end-users of the services of the victims, the various criminal justice agencies, other government departments, civil society, and the context in which all these subsystems operate. De Toni and Comello (2010) likened a complex system to an intricately interwoven piece of fabric. It is not possible to recreate the whole piece of fabric by merely analysing and understanding each individual thread of the fabric. Rather, synthetic logic that looks at the fabric from above, recognising the interconnectedness between strands to form patterns, is required. It is, for example, vital to understand the complex pattern of interwoven strands which together form the psychological 'fabric' of a victim of trafficking. These strands can include the characteristics from which the victim originated, such as the socio-economic conditions in this context, and his or her cultural and familial background. Other strands in this highly patterned piece of fabric may include the method through which the specific victim was recruited, the existing relationship with the exploiter, the length of captivity and trauma experienced during the trafficking process, and post-trafficking psychological and health needs.

Communication and information exchange between the constituent parts of a complex system and between different complex systems result in feedback loops (Friedman & Allen, 2011). Feedback loops occur when information about the result of the activities within a complex system are fed back into the system (Skyttner, 2005) from one system component to the next in a circular manner (Walby, 2007). Negative feedback within a system results in the suppression of activities (Marion, 1999), the inhibition of communication between system components (Cilliers, 1998), and the dampening of change within a system (Byrne, 1998). The lack of sufficient training in human trafficking investigations among South African police officers and state prosecutors was cited in the literature (e.g., Seethal & Ngwira, 2009) as a contributing factor to the lack of activities to combat human trafficking, thus functioning as a negative feedback loop. Positive feedback, on the other hand, refers to communication between system components that confirms or encourages existing activities within the complex system (Anderson, Carter, & Lowe, 1999). Positive feedback loops thus stimulate interactions between system components, which reinforce and escalate change within the system (Byrne, 1998; Walby, 2007). Successful interactions or actions, for example, could encourage other system components to attempt similar interactions or actions, thereby accelerating change in a system (Mitleton-Kelly, 2011). An example of a positive feedback loop may be a new recruitment strategy that proves to be successful and which encourage traffickers to target more individuals with this strategy, thereby increasing human trafficking activities. Interactions and feedback in complex systems are nonlinear: Input does not equal output, neither is it possible to trace linear, simple cause-and-effect relationships (Cilliers, 1998). This results in a large amount of randomness and many unanticipated consequences (Morgan, 2005) as small causes can have complex, dramatic results and vice versa (Cilliers, 1998). While it is important to be aware of non-linear interactions between system components, it is also essential to conceptualise how

these interactions between system components contribute to dynamic, often unpredictable, changes within the system as a whole (Phelan, 2001).

Synthetic logic, essential to gain understanding of a complex system, requires holistic thinking. South African statesman Jan Smuts (1926) coined the term 'holism' to argue that scientists studying evolution should consider the whole to understand systemic changes, such as evolution. Holism or wholeness is an integral part of complex systems theory, as seen in the definition of a system as 'a set of interacting units of elements that form an integrated whole intended to perform some function' (Skyttner, 1996; p. 16). A holistic view of a system, such as human trafficking, requires not only a conceptualisation of how the interconnectedness within systems and subsystems contributes to dynamics within the system, but also requires contextual knowledge. Knowledge and an understanding of the context, that is, the environment in which a complex system is embedded, are vital (Phelan, 2001). To 'survive', a complex system or large enough parts within the larger system, called subsystems, must change and adapt to novel conditions both outside and inside the system (Cilliers, 1998). A fascinating characteristic of complex systems is that they are able to spontaneously change, adapt, or self-organise without some kind of centralised control (Cilliers, 1998). This is called 'emergent behaviour' (Dekker, 2011). For example, when people in an organisation take action without direction, it is self-organisation (Morgan, 2005). Self-organisation occurs when interactions and feedback loops between the component parts of a system spontaneously results in the emergence of a new structure and new behaviours (De Toni & Comello, 2010).

Methodology

A qualitative research approach was used, as it allowed for an open, flexible and unstructured mode of enquiry (Kumar, 2014). This research approach was also considered suitable for exploring the multi-layered complexities intrinsic to a criminal justice response to human trafficking, whilst using interview data to portray these complexities in their multifaceted form (Leedy & Ormrod, 2013). As active practitioners in various counter-trafficking roles, and students of complex systems theory, the authors positioned themselves as co-participants in this research. The primary author's experience comes from a law enforcement and investigative background concerning the reality and inner workings of human trafficking operations since 2002, as well as his current role as human trafficking case incident manager for the National Freedom Network in South Africa. The secondary author's exposure to human trafficking originated from her doctoral research on the topic of human trafficking. She is also active in civil society counter-trafficking activities.

In order to create a 360 degree perspective on the human trafficking system, role players from various organisations and vantage points, including criminal justice agencies, were approached for participation. Data emanating from two qualitative data sets – an ongoing PhD study¹ conducted by the primary author, and a completed PhD study² by the second author was used. The studies, which explored the dynamics of human trafficking and the value of complex-systems theory to understand the complexity of human trafficking, collectively included 81 in-depth interviews and multiple perspectives from law enforcement, prosecution, social services, civil society, victims of trafficking, and perpetrators. Interviews were transcribed and imported into ATLAS.ti (Scientific Software Development GmbH, 2014) qualitative data analysis software. Thereafter, the data was reduced into meaning units from which complex systems illustrations were identified to co-create a 360-degree perspective regarding the complexity of human trafficking. The illustrations emanating from participants' perspectives are then interwoven into an exposition and discussion of complex systems theory and its relevance to the criminal justice response to the issue of human trafficking.

Results

Numerous illustrations of complex systems characteristics emerged from both data sets. Interrelationships and nonlinear interactions were evident in Van der Westhuizen's (2015) study, which

found that the complex-systems lens revealed a myriad of relational interactions between traffickers and the victims of trafficking that result in the emergence of a new relational dynamic of paradoxical attachment. Physical, emotional, and sexual violence enabled traffickers to achieve psychological control over victims of trafficking, which then ensure compliance to earn money for traffickers and remain in the trafficking situation. A NGO manager conveyed the effect of this relational interaction between traffickers and their victims:

When a girl stops fighting, then she starts working. (Van der Westhuizen, 2015, p. 504)

However, despite the abuse and exploitation victims of trafficking experienced, they often exhibited a sense of loyalty towards their traffickers. Participants in Van der Westhuizen's (2015) study attributed it to emotional manipulation of vulnerable victims, which consisted of aforementioned violence and abuse interspersed with gifts and praise by the trafficker. An investigating officer provided examples of such gifts and praise:

Wow, you did a great job. Heavens, you brought back R10 000! Here, you can have R1000. Jis, you're amazing. You are sexy; here are beautiful clothes for you. (Van der Westhuizen, 2015, p. 508)

The 360-degree perspective co-created in Van der Westhuizen's (2015) study revealed that the paradoxical attachment dynamic is central to the development and maintenance of the exploitation of human beings in sex trafficking. Despite its salience, an academic in the legal field explained that the relationship between trafficker and victim of trafficking is counter-intuitive and confused actors in the criminal justice system:

They don't understand the dynamic. They don't understand they're protecting the trafficker. (Van der Westhuizen, 2015, p. 526)

The lack of understanding acted as a negative feedback mechanism, which significantly contributed to unsuccessful prosecutions and impunity by traffickers, which in turn served as a positive feedback mechanism, encouraging the growth of human trafficking activities. International interconnections between crime networks in South Africa and West Africa, was also identified by participants in both studies as a positive feedback loop which contributed to the growth in size and influence of crime syndicates and their South African operations. West African crime syndicate members, for example, recruited other West African foreign nationals in South Africa and in their countries of origin, victims of trafficking, and their own family members to participate in other criminal activities, such as drug trafficking. A significant element in the human trafficking system in South Africa, is the nexus between human trafficking and drug trafficking, as expressed by one investigator:

You can't separate the two, especially where you work with Nigerians. It is intertwined, they run together. (Van der Westhuizen, 2015, p. 265)

A member of a West African community in a South African city, illustrated how the reach of this international interconnection combined with the ruthlessness of traffickers acted as a positive feedback loop for trafficking activities when he described how a Nigerian foreign national was first deceived by a family member, forced into the drug trade, and then eventually jailed in South Africa for drug trafficking:

his brother came home [in Nigeria]. Told him he was into business and all of that. Told him: 'Ok, you come over [to South Africa]'. He came over only to realise his brother was dealing in drugs. He had nothing to do [for an income], nowhere to go. Can't go back and he was forced into the drug trade. (Van der Westhuizen, 2015, p. 483)

Again, participants identified that the criminal justice system's lack of conceptualisation of the reach and intricacy of the international interconnectedness of organised crime activities acted as encouragement, and positive feedback, for human trafficking activities. An ex-brothel owner and current member of a transnational organised crime syndicate in South Africa, explained that human trafficking is but one of a range of crime activities his associates are involved in. With regards to the criminal justice response he stated:

What I can say from my own experience is that the police or the law enforcement agencies in South Africa doesn't realise how large or how far these business stretches. According to them it is just a crime without realising that

the whole setup is run on a very, very high international level and it sometimes appears to me that the police aren't interested in actually looking further than just a crime. So it doesn't take into consideration what led to the children [as victims] being involved. (Van der Watt, 2015b, STP 1 interview, 30 March)

Unfortunately, participants in both authors' research had ample examples of the ability of organised crime to be flexible in their operations. A police investigator juxtaposed the dynamism of the trafficking networks with the slow-moving operations within law enforcement:

They [organised crime syndicates] don't have protocols to follow. If I get called out at eight o'clock in the night because a girl that is being kept against her will; I don't have the mandate to jump in my car, get a team, and rescue this girl. I must first go and get authority, number one. I must convince my commander that I have to go out and rescue this girl. I must convince him as to why I can't go tomorrow morning and why do I need to go now. Now, let's look at the flip side of this with the syndicate. If they wanna move the girl from point A to point B there's no red tape. The girl jumps in the car and they gone, simple as that. As quick as that. If they wanna take the girl from A [city name] to B [city name] there's no financial authority, there's no thirty, forty applications, there's nothing of that sort. They don't have to go through the due process stuff we have to go through. I have to convince so many different people. (Van der Watt, 2015b, SAPS 9 interview, 8 May)

Similarly, a police investigator revealed his frustration with the slow responses by his commanding officers due to their lack of understanding regarding the responsiveness necessary to accurately respond to the methods utilised by trafficking networks. This investigator likened it to him 'crawling' while 'the criminals are using sports cars' (Van der Westhuizen, 2015, p. 269). Comparing the 'unholy alliances' that characterises organised crime, with the fragmented response by the criminal justice system to human trafficking, a police investigator in Van der Watt's ongoing study cites a phrase from a book he read as metaphorical expression of the tendency that traffickers have to outwit law enforcement agencies:

the bad guys have all the money and no rules. The good guys have all the rules and no money. (Van der Watt, 2015b, SAPS 3 interview, 10 April)

The complex nature of investigations into human trafficking was echoed by participants in both authors' research. The investigative task requires extraordinary commitment and knowledge which is not forthcoming from all criminal justice stakeholders. The lack of effective communication and coordination of activities between different departments in response to a possible human trafficking case involving twenty-three minors was lamented by a social worker:

it was just such a mess.

Voicing her unease with a police investigator's less than favourable rapid assessment of the potentially major situation where 'she spoke to everybody', the social worker explains:

She [police investigator] then just phoned to give verbal feedback and I said to her, no, the verbal feedback doesn't work so nice. You will have to put it in writing. I cannot just work on [verbal feedback]. (Van der Watt, 2015b, DSD 1 interview, 16 June)

The emerging nuances from interspersing actions of multi- and interdisciplinary role players was highlighted by a police investigator who indicated that evidence gathering at some human trafficking crime scenes:

lasted eight to ten hours, sometimes going on to thirteen hours.

As a result, in his experience, he noticed:

Very few people wanna do that. They wanna find the easiest way in and out and I'm saying to you human trafficking is not as simple as that. (Van der Watt, 2015b, SAPS 9 interview, 8 May)

A police investigator in Van der Westhuizen's (2015) study echoed this sentiment by stating, 'there's no case that should be investigated like human trafficking' (p. 277) as these investigations are 'complex...multifaceted. You know there's a problem around every corner that you can't predict' (p. 277).

Discussion

According to the traditional, reductionist approach, a criminal justice practitioner would study the features and characteristics of discrete human trafficking system components such as the perpetrators

of the crime, victims of trafficking, *modus operandi*, and the legislative framework in a country in an attempt to create a deeper understanding of the human trafficking system. However, according to Skyttner (2005), this approach has resulted in an ‘archipelago of disconnected data’ (p. 37) that ‘completely misjudges the complexity of human trafficking’ (Konrad, 2008, p. 179). In combating human trafficking, Capra’s (1996) critique of reductionist analysis in his discussion of a comprehensive theory of living systems becomes vitally important. He calls for synthesis between the study of substance (or structure) and the study of form (or pattern). Structure involves quantities, where things are measured or weighed, whereas patterns involve qualities, which must be mapped, as they cannot be measured or weighed. Systemic properties, Capra argues, are properties of a pattern. In addressing a human trafficking network as a complex ‘living’ system, reductionist interventions may include consistent and aimless disruptive actions by law enforcement agencies, premature arrests of targets, pressure on victim service providers for statement submissions, and a lack of proactive investigations – all of which can cause serious impairment to a desired big picture perspective and synthetic logic. As Capra highlights

What is destroyed when a living system is dissected is its pattern. The components are still there, but the configuration of relationships among them – the pattern – is destroyed, and thus the organism dies. (1996, p. 81)

Reductionist actions will therefore inhibit an understanding of the configuration of relationships in a human trafficking network, which is central to a complex-systems perspective. Admittedly, some components of the trafficking network may be neutralised through reductionist actions, but others will remain and self-organise with new, emergent properties. Unless criminal justice efforts to combat human trafficking are reconfigured, reductionism will continue to prevail, whilst missed opportunities to address the ‘whole’ become the norm. A complex-systems perspective confirms that the criminal justice response to trafficking is in a constant adversarial relationship with trafficking networks. Williams (2009) characterised this relationship to be a ‘battle of wits’ (p. 423) and underscores the vital need for agility and the capacity for adaptability and flexibility as key components of the criminal justice response. The value of synthetic logic and the need for a conceptual shift can also be drawn from Osterburg and Ward (2010) who emphasised, most importantly, ‘the changing role of the investigator as a specialist, educated and trained to be knowledgeable about complex systems, societal differences, and organisational theory’ (p. 5). In addition, prosecutorial authorities have to embrace holistic thinking as they ensure that the work conducted by law enforcement is not compromised and squandered. A prevailing lack of knowledge or commitment at this level could lead to poorly prepared cases, failure to optimally utilise and protect witnesses, and failure to apply trial procedures properly (Gallagher & Holmes, 2008).

An effective criminal justice response thus requires a more comprehensive understanding of how interconnections between components of the human trafficking system contribute to the workings of the whole system. The effects and consequences of interrelationships between all the previously mentioned subsystems and actors also have to be considered in order to harness the complexity of human trafficking to the advantage of an investigation. Van der Watt (2014), for example, noted the interactions between system elements such as social networking, information and communications technology, and increasingly effective transportation systems, which stimulate complexity and allow for more innovative ways to commit crime. Comprehensive evidence gathering (Van Zyl & Horne, 2009) is fundamental to proving each element of the crime. Stakeholders in a human trafficking investigation have to be cognisant of such specific contextual interconnections between actors in the human trafficking system that could interfere with the investigation. Contextual knowledge could give the criminal justice system the proverbial ‘heads up’ regarding challenges that can be expected in an investigation and allow for proactive strategies. A significant contextual factor exposed by research (Hübschle, 2010; MoloSongololo, 2005; Ngwira, 2011) is corruption involving civil servants, business corporations and politicians, with ‘widespread corruption among the police force’ (United States (US) Department of State, 2015, p. 309) as a major inhibiting factor in combating human trafficking. Contextual knowledge could also help unearthing ‘hidden transcripts’ in accounts provided by victims and witnesses whilst illuminating ‘significance in seemingly insignificant events’ (Van der Watt, 2014, p. 2) encountered by

criminal justice practitioners. Detecting wholes and relationships may just be the difference between closing down one illegal brothel, and apprehending a transnational syndicate. Thus, a holistic awareness and an attempt to think systematically and globally to appreciate the complex configuration of actors and factors within the human trafficking system are essential. Morgan (2005) underscores this holistic self-awareness by rhetorically asking whether we can ‘recognize the dance while we are dancing?’ (p. 16). The challenge to the criminal justice system is therefore: Can we develop adequate awareness of our own system dynamics to empower us to cultivate agile strategies that parallel the complexity of system dynamics in the larger human trafficking system? The sobering alternative is that we will insist on dancing a formulaic line dance when we are, in fact, dancing a tempestuous tango.

Smuts (1926) highlighted that it is creativity that contributes to the emergence of new behaviours, suggesting that the criminal justice system not only has to consider this system attribute, but also has to nurture it within organisations in order to respond to novel challenges offered during the investigation and prosecution of human trafficking cases. Sterman (2006), however, cautioned that people tend to make decisions based only on information available to them, without conscious consideration of the impact of unintended consequences resulting from these decisions or the actions and decisions of other actors within the complex system. Each participant in a human trafficking investigation should be cognisant of the contextual factors, intricate relationships between system components, feedback mechanisms, and emergent behaviours within the specific system. The proverbial ‘one size fits all’ investigative approach has proven to fall short of conceptualising or even pre-empting the dynamic shifts or changes that can take place in a system as complex as human trafficking. The essence of complex systems theory permeated the insights offered by a shelter manager in Van der Watt’s (2015b) ongoing PhD study and is well worth considering by the criminal justice system in a response to human trafficking:

we’re dealing with very clever, well-organised syndicates and I don’t think we’ll ever be able to beat them until we work in a very trusting, efficient network ourselves. We can’t individually fight them and so we have to become a syndicate, we need to be working together, but it means a lot of trust between each other and keeping each other...accountable, in the loop, informed. (Van der Watt, 2015b, SHT 1 interview, 26 March)

Both authors’ research suggests that the scoreboard in the ongoing ‘battle of wits’ between the criminal justice system, and the human trafficking system that it seeks to combat, is convincingly in favour of well organised and agile human trafficking networks. Complex systems theory not only encourages actors in the criminal justice system to confront the notion of complexity head-on, but its implications are within grasp of everyday ‘coalface’ actors (Geyer & Rihani, 2010, p. 187) who strive to bring an end to the global exploitation of human beings at the hands of traffickers.

Conclusion

A different perspective can be found in the use of theories that are important in the study of social phenomena (Silverman, 2013), as they provide ‘landmarks’ and ‘guideposts’ that facilitate the knowledge of what is important to observe and where an action is required (Holland, 1995, p. 5). Cilliers (1998) suggests that philosophical perspectives have immense untapped value and can change the way in which we approach complex phenomena. He states that ‘we have to deal with what we do not understand, and that demands new ways of thinking’ (Cilliers, 1998, p. 2). The traditional scientific method’s approach to solving complex phenomena is an ‘either/or’ approach, where a social problem is solved by remedying a clear cause with a clear solution. However, in an increasingly complex ‘both/and’ world, the reductionist approach’s difficulty in dealing with complexity means that the solution to a problem is reduced to merely dealing with the symptoms – thus fixing things in the short term, but possibly making them worse in the long term (Morgan, 2005, p. 6). Pycroft (2014) describes this approach as being part of the human endeavour to survive and flourish by reducing uncertainty and ambiguity to, at least, create the illusion of control. Complexity in the criminal justice system, and the human trafficking system that it seeks to combat, cannot be compressed or simplified. A growing awareness around the globe has confirmed a less than favourable track record of attempts by the

criminal justice system to convincingly address the human trafficking agenda. A complex-systems lens suggests that quick fixes and ill-considered reactive actions have led to unintended consequences and a continued, disappointing lack of success. Complex-systems thinking allows for complexity to be harnessed and more effective criminal justice strategies to be formulated, based on the distinction between a complex and a complicated case. Embracing the concept of holism prompts novel perspectives on a complex crime, whilst an understanding of feedback loops increases agility in the criminal justice system and greater anticipation for the proverbial rabbit being pulled out of the trafficking hat.

Notes

1. The PhD study titled 'Investigating human trafficking for sexual exploitation: A phenomenological exploration towards a complex-systems understanding' explores a 360 degree perspective on the investigation of human trafficking for sexual exploitation. Participants in the research include all the multidisciplinary actors in the criminal justice system that contributes to the investigation of the crime. Victims of trafficking and actors in the sex trade, i.e., pimps and traffickers, are included in the study. A complex-systems lens is used in an attempt to understand the multi-layered complexities associated with the investigation.
2. The D. Phil study titled 'Co-mapping the maze: A complex-systems view of human trafficking in the Eastern Cape' aimed to provide a multi-layered perspective of the crime in a province with one of the lowest socio-economic levels in South Africa. This qualitative study explored the human trafficking system by using participant perspectives sifted through the complex-systems lens. It enabled a view of human trafficking that highlighted the highly complex nature of the interrelationships that contribute to the growth of human trafficking.

Disclosure statement

No potential conflict of interest was reported by the authors.

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