



Human Trafficking and Drug Trafficking

Felicity Gerry QC: @felicitygerry www.felicitygerry.com

London Bar, NTBA and Charles Darwin University, Australia.

Assisted Mary Jane Veloso

CLANT June 2015

- Human trafficking is a highly lucrative industry that extends to all corners of the globe. The phrases ‘human trafficking’, ‘slavery’ and ‘forced labour’ are used interchangeably but essentially amount to exploitation for profit and power. Developed countries have become the destination for slaves plucked from source countries and people are trafficked within their own states. These are generally the impoverished, the un-empowered, the uneducated and the dispossessed and largely women and girls, particularly in the context of sexual exploitation. Combatting human exploitation makes cooperation between nations imperative.
- There are concerns that the word “slavery” doesn’t cover children exposed to hazardous work or those who are not given a fair wage but this is probably semantics since those people have little choice and in any event slavery and trafficking are now commonly understood terms used interchangeably. Human exploitation is more over-arching.

Human Trafficking

- The potential profits from human exploitation are huge. In a 2012 survey by the International Labour Office it was estimated that 20.9 million men, women and children are in forced labour globally, trafficked for labour and sexual exploitation or held in slavery like conditions:
- Of the total, an estimated 9.1 million people (44%) moved either internally or internationally.
- The Asia-Pacific region has the largest number of forced labourers, at almost 12 million (56% of the global total and 89% of those in bonded labour and debt bondage.
- Women and girls make up about 55 per cent of all forced labour victims, they represent the vast majority of victims exploited for commercial sex work.
- The estimated total profits made by forced labour each year worldwide was estimated in 2012 at US\$150.2 billion per year with profits highest in Asia (US\$51.8 billion)
- Sexual exploitation makes up two-thirds of these profits at an estimated \$105 billion a year.
- Annual profits made per victim range from \$4100 to \$37,100. This includes construction, manufacture, mining and utilities, agriculture, fishing and domestic work. Profits are highest in forced sexual exploitation.

2014 International Labour Office report, “Profits and Poverty: The economics of forced labour”
<http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang-en/index.htm>

Statistics

- The plight of Mary Jane Veloso who faced the death penalty in Indonesia exposes the need to treat some alleged criminals as human trafficked victims.
- It took 20 days to reprieve Mary Jane: 7th April 2015 NUPL came on board. We made contact on the 9th and the rest is history
- **How many other victims of human trafficking are in prison and where?**
- *‘Trafficked Persons have been victims of one or more serious criminal offences. States have obligations to assist such persons, and not treat them as criminals.’*

[Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013)]

MJV and other victims.

- As a result of the recent death penalty cases the focus of this presentation is on the UK, Australia and Indonesia. It is vital that we identify victims of coercion, manipulation and deception and protect them. This includes non-prosecution and non-punishment of those victims in criminal justice systems.

Principles

- Article 3 of the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly Women and Children (Supplementing the UN Convention Against Transnational Organised Crime) (“the Trafficking Protocol”).

- Article 3 of the Protocol defines trafficking as follows:

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 abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.

- Guiding Principles on non-prosecution and non-punishment – Art 26
- 2014 Protocol to the Forced Labour Convention (art. 4)

International Law

- Most jurisdictions apply an undifferentiated approach to the prosecution and punishment of drug mules, tending to treat them all in the same way with the minimum attention paid to their personal circumstances. As Huling puts it: ‘They are twice victimised, once by a drug dealer and again by the law.’ A drug mule who is tricked or coerced into trafficking drugs fits the definition of a human trafficking victim perfectly. Drug-trafficking organisers who in terms of the definition in Article 3 ‘recruit’ a person ‘through the threat or use of force or other form of coercion’ or of ‘fraud’ or of deception’ ‘for the purpose of exploiting the person’ in this case to carry drugs – are clearly trafficking the drug mule.

[Huling, ‘Women Drug Couriers: sentencing reform needed for prisoners of war’, 19]

Drug Mules

- Modern Slavery Act 2015 creates a defence for slavery or trafficking victims who commit an offence.
- EU Directive 2012/29/EU which establishes minimum standards on the rights, support and protection of victims of crime and
- *Directive 2011/36/EU* of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings.
- Istanbul Convention

EU / English Approach

- *R v N; R v LE*, [2012] EWCA Crim 189
- The UK Court of Appeal considered four unconnected appeals involving offenders who, at different stages after conviction, had been found to be victims of trafficking in human beings and to have been coerced into committing the offences which were integrally related to their exploitation. In giving judgement, the Court of Appeal gave guidance on how the interests of those who were or might be victims of human trafficking and who became enmeshed in criminal activities in consequence, in particular child victims, should be approached after proceedings had begun.
- The court had the advantage of European Directive 2011/36 and previous decisions. The court noted that the reasoning for what is effectively immunity from prosecution is that “the culpability of the victims might be significantly diminished, and sometimes effectively extinguished, not merely because of age, but because no realistic alternative was available to them but to comply with those controlling them”. The court went on to state that “where a court considered issues relevant to age, trafficking and exploitation, the prosecution would be stayed if the court disagreed with the decision to prosecute”.
- The Court made clear that the international frameworks did not prohibit the prosecution or punishment of victims of trafficking *per se*, but did require the Prosecutor to give careful consideration as to whether public policy calls for a prosecution at all. The court quashed the convictions of more than one of the Appellants effectively on the basis that the whole process had been an abuse of process. Abuse of process is not a novel concept in Australia but there is scope for it to be used in a novel way if trafficked victims in prison are to be properly assisted.

Appeals

- There are currently no figures available for how many human trafficked victims are caught in the criminal justice system in Australia and no clear mechanisms available to allow victims who have been prosecuted for criminal offending to successfully appeal. Logically this must mean that some victims will be in prison as a result of their status as trafficked victims as they are not being picked up during the criminal justice process.
- How many victims of human trafficking are in Australia?

<http://www.cla.asn.au/News/trafficked-women-suffer-doubly/>

Australia

- Indonesia has mandatory protection for human trafficked victims via its law 21 of 2007. The Philippines have had similar since 2003, updated 2012.
- Resolving the conflict between mandatory protection and mandatory drug trafficking laws requires non-prosecution, non punishment and clemency.
- The reprieve for Mary Jane is an opportunity for Indonesia to lead ASEAN in protecting victims of exploitation – it is a vital component of ASEAN integration.

- In order to effectively tackle trafficking in human beings (THB), all States need to identify all types of victims and divert them out of criminal justice systems. This includes in cases where there is credible evidence they have been trafficked in order to commit criminal offences on behalf of those who make criminal profit. Decisions need to be taken not to prosecute those people and to release those who have been wrongly convicted.

Decisions

- Is there a reason to believe that the person has been trafficked? if so,
 - If there is clear evidence of a credible defence of duress, the case should be discontinued on evidential grounds; but
 - Even where there is no clear evidence of duress, but the offence may have been committed as a result of compulsion arising from trafficking, prosecutors should consider whether the public interest lies in proceeding to prosecute or not.
 - Lawyers to bring the issues to the attention of prosecutors and judges and argue that continuation of prosecution is an abuse of process and / or not in the public interest
-
- UK CPS Legal Guidance at www.cps.co.uk
 - Credible evidence – Rantsev case
-
- LET'S TALK ABOUT SLAVES...HUMAN TRAFFICKING: EXPOSING HIDDEN VICTIMS AND CRIMINAL PROFIT AND HOW LAWYERS CAN HELP END A GLOBAL EPIDEMIC 2015 (3) GJLHD By Felicity Gerry QC <<http://www.griffithlawjournal.org/#!/volume-3-issue-1/c1z2j>>

Practical steps

- Women's empowerment
- Effective referral mechanisms
- Effective MLATs
- Social policing – exploitation and abuse
- Authorities cooperating with NGOs
- Transnational policing and cooperation

International Cooperation

- The complaints by NUPL identified alleged recruiters who then said they were the subject of some sort of pressure and came forward for "protection" and were arrested
- I suspect they are pretty low down a long chain of command and there are others in real control. I believe the evidence will reveal an international network but I do not have access to all the evidence which is why my input is limited to legal principle.
- Remember - this is a concept where we accept people have committed crimes but do not prosecute or punish so in principle there may be evidence against a lot of people but the ones at the bottom are the most exploited and need protection - especially if they have been deceived or manipulated.

Attitude change