

Law enforcement responses to trafficking in persons: challenges and emerging good practice

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In recent years, the Australian Government has committed significant resources to combating trafficking in persons. Within this larger anti-trafficking effort, the community sector, law enforcement, prosecutors, health professionals and members of the community all have an important role to play. As each sector comes to terms with the reality of trafficking in Australia, it is important that emerging challenges and possible solutions are identified. This paper focuses on the challenges that may confront law enforcement officials in any country in their efforts to detect trafficking, identify victims, investigate offences and contribute to the successful prosecution of offenders. Drawing on international experience, this paper identifies some examples of emerging good practice that can help to overcome these challenges, and contribute to the effectiveness of the larger criminal justice response to trafficking.

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Since the entry into force of the UN Trafficking Protocol in 2003, 115 countries, including Australia, have agreed to a set of key legal obligations relating to trafficking. These include obligations to:

- criminalise trafficking and provide appropriate penalties
- extradite or prosecute traffickers
- actively identify victims
- diligently investigate and prosecute traffickers
- assist and protect victims
- refrain from detaining and prosecuting victims
- provide adequate and appropriate remedies to victims of trafficking
- provide special measures for children
- work towards preventing trafficking
- cooperate across borders (Gallagher 2007: 2).

Having agreed on the legal framework, the next challenge for countries is to convert these legal obligations into practical outcomes. The translation of law into practice is rarely easy, particularly for a crime as complex as trafficking. Experience in Australia and overseas confirms that enacting appropriate criminal laws is just the first step. Greater challenges lie in giving full effect to these laws, while recognising the special rights and needs of victims of trafficking.

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Drawing on the international literature, this paper seeks to identify some of the practical challenges that are likely to confront law enforcement officials in their efforts to:

- detect trafficking and identify victims of trafficking
- investigate trafficking cases
- contribute towards an effective prosecution of those accused of trafficking.

Many of these challenges are inter-related, and reflect both the nature of trafficking and the impact of the crime on victims of trafficking. This paper provides an overview of some of the strategies developed in response to these challenges. These strategies take account of the particular nature of the crime type and recognise the need to protect and support victims of crime.

Why is it so hard for law enforcement to detect and investigate trafficking?

Unlike many crimes, trafficking is not a single, static 'event'. It is a process that can involve multiple offenders and crime sites across several jurisdictions, ultimately leading to exploitation of the victim (ICMPD 2003: 87). Many investigations will be conducted in the country of destination where the exploitation is perpetrated. However, important evidence such as information about deceptive recruitment practices may be located in the country of origin or transit. Investigators in one country need to work closely with law enforcement officials in other countries to exchange information, and possibly also to secure evidence and extradite offenders.

The international legal definition of trafficking is complex, and incorporates a number of concepts that need to be clearly defined such as coercion, exercise of control over another, and exploitation. Many countries are still coming to terms with how best to translate these

concepts into national law. Gaps in coverage, confusion or lack of clarity in legal frameworks will affect law enforcement.

Unlike simplistic stereotypes about sex slavery, trafficking cases can be complex and subtle. Victims of trafficking may or may not hold legitimate visas and they may or may not be located in the sex industry. Some cases might involve victims being controlled through violence and physical confinement but in other cases, coercion and control might be exercised through far more subtle means, such as:

- threats to turn victims over to the authorities, with threats of imprisonment or deportation and an ever increasing 'debt' that still has to be paid off
- threats of violence or other harm, including to family
- social, cultural and physical isolation that results in effective dependence.

As a result of these and other complexities, the line between willing work and the criminal exploitation involved in trafficking can be difficult to locate and even harder to prove.

Victims of trafficking may not report their experiences to law enforcement agencies. European research found that law enforcement officials were most likely to come into contact with victims of trafficking through indirect means, such as referrals of cases from NGOs, immigration raids, or law enforcement activity around prostitution. The least common means of contact was for women to approach officials voluntarily and directly as victims of crime (Zimmerman et al. 2003: 72). The implication is that law enforcement cannot simply react to crime reports. It will need to work closely with a range of agencies, including NGOs, and be ready to recognise trafficking in a range of contexts.

Deterrents to victims of trafficking reporting their experiences include fear of reprisals from traffickers, the political and social pressures that work against undocumented and sex workers reporting abuse, the victim seeing the situation as their own fault or believing that they have committed a crime, fear of deportation and fear of law enforcement acting in collusion with traffickers (Zimmerman et al. 2003: 72). Many migrants and members of minority communities do not trust law enforcement. They may perceive it as a threat rather than a source of help (Anti-Slavery International 2005: 21).

Some victims of trafficking will not want to cooperate. They may not self-identify as victims, seeing themselves instead as people who have had bad luck. In these instances, an intervention may be seen more as an oppressive interference than a rescue from an exploitative situation (Anti-Slavery International 2005: 19; Zimmerman et al. 2003: 72).

A lack of cooperation can also be related to the impact of the crime on victims themselves. A victim of trafficking may have experienced severe and persistent abuse and trauma. The health impacts of this can be devastating, resulting in symptoms similar to those observed in victims of other types of chronic abuse and trauma, such as domestic violence, repeated sexual abuse and torture (ICMPD 2003: 28–30; Zimmerman et al. 2003: 23–24). Trauma can fundamentally affect a person's psychological state and behaviour, and recall and perception of events. For example, a person who has experienced a traumatic event might depersonalise the experience and come to regard it as having happened to someone else, suffer from an altered sense of time and impairment of memory, or suffer from fragmentation of perception, feeling, consciousness and memory (ICMPD 2006: 28–29, 2003: 28; Zimmerman et al. 2006: 21).

While clearly the largest impact is on the victim of crime, trauma also affects the efforts of law enforcement. For example, victims of trauma may say they do not remember key events or situations, deny that key events took place, appear to consent or agree to their situation, display a high level of apathy or indifference about their situation, or be overtly hostile, refuse to cooperate and avoid release (ICMPD 2003: 28–30). These behaviours can indicate a deliberate, rational decision not to cooperate with law enforcement. However, they might indicate that an individual is suffering from trauma and is in need of professional support and assistance (ICMPD 2003: 28–30; Zimmerman et al. 2006: 4).

The impact of fear, the victim's personal situation and trauma can play out in a number of ways in an investigation. For example, some victims may seek to change or correct their version of events over time. This may reflect the fact that they have very little recall of what happened, and their memory may improve over time. This can easily be misread as a lack of truthfulness or credibility (Zimmerman et al. 2006: 22). Other victims may have full recall of what happened but hesitate to tell their story to complete strangers, particularly foreign law enforcement officials. This scenario presents law enforcement with practical difficulties. Consistency in statements, and the related issue of credibility of witnesses, have a considerable impact on whether prosecutions proceed and the outcome of prosecutions (Lievore 2004: 1). Inconsistency in witness statements can be used to attack the credibility of a witness in court, and undermine their evidence.

Law enforcement also has to work within the reality that many victims will not want to participate in an investigation if it means appearing in court as a prosecution witness. This can involve waiting several years for a case to get

to court, then being subjected to intrusive and hostile questioning, which can be very stressful and potentially dangerous to the victim and/or family and friends.

Efforts to respond to these challenges

Law enforcement agencies have been developing approaches and methods to improve the effectiveness of their response to trafficking. Many approaches are new and few have been evaluated (Putt 2007). Nonetheless, it is possible to identify a number of emerging good practices that:

- have been developed in response to clearly identified problems
- have been developed through extensive consultation with a wide range of people working in the field
- balance the rights of victims with the interests of criminal justice
- reflect the inter-connected nature of all actors in the response.

Law enforcement approaches that respect the rights of victims

Internationally, there is strong support for the argument that supporting the rights and needs of all victims of trafficking is not only humane, it supports the criminal justice response. If the criminal justice system wants to secure the evidence of victims (who cannot be compelled to testify), it must establish their trust and address their genuine needs and fears so that:

- victims are willing to cooperate with the criminal justice system
- victims are able to cooperate with the criminal justice system
- the victim support sector feels able to cooperate with the criminal justice system (ICMPD 2003: 53).

Far from undermining the criminal justice response to trafficking, a victim-centred approach is a vital part of ensuring the effectiveness of the criminal justice

response (Anti-Slavery International 2005: 11; EC 2004: 119; Pearson 2002: 35; WHO 2003: 3).

Studies of the health impacts of trafficking on victims support this approach. A recent European study of 207 female victims found that it took at least 90 days for their mental health symptoms to start to reduce once they escaped their traffickers. Even at this point, their symptoms remained problematic, to the extent that they inhibited women from re-engaging in normal daily activities (Zimmerman et al. 2006: 17).

These health impacts have implications for law enforcement. If a law enforcement official seeks to interview a victim too early in the process, or if they push too hard during an interview, this may result in an uncooperative or traumatised informant who cannot recall what happened, or who gives two or more conflicting versions of events. Accordingly, it is important to ensure that victims have sufficient time to stabilise after their experience, begin the process of recovery, and consider the range of options available to them, before being asked to make important decisions such as whether to participate in a criminal justice process. This is often referred to as a reflection or stabilisation period (ICMPD 2003: 68; Pearson 2002: 41; Zimmerman et al. 2003: 5). This necessarily involves a high level of coordination and cooperation between victim support agencies and law enforcement (EC 2004: 105).

Effective cooperation between law enforcement and NGOs

Holmes argues that law enforcement should accept its dependence on NGOs for the following reasons:

- because of endemic lack of trust in law enforcement, it is NGO personnel that are able to build relationships of trust with trafficking victims

- high-grade intelligence critical to the successful identification and investigation of traffickers is likely to be provided to NGOs and not police
- NGOs have the specialist skills and experience to treat, counsel and accommodate the victims whom investigators wish to convert to witnesses.

Similarly, NGOs should accept their dependence on law enforcement for:

- the legal powers and resources to respond to requests to remove victims from exploitative situations
- referral of trafficked victims to NGOs
- protection to victims and NGO personnel (Holmes 2002: 5–6).

Having accepted this interdependency, strategies based on mutual recognition and respect are developed to ensure effective cooperation. For cooperation to succeed, victim supporters must feel confident that they will be able to fully meet their duty of care to victims, and support those who participate in the criminal justice process. Similarly, law enforcement must feel confident it can trust and work effectively with victim supporters (ICMPD 2003: 50–54).

One way of clarifying roles and responsibilities is through the formulation of protocols, such as memoranda of understanding (MOUs) (ASEAN 2006: 79; Clawson 2003: 31; ICMPD 2003: 50–54), a strategy used effectively in other contexts for many years. For example, many police services already have MOUs with providers of sexual assault or domestic violence services. Negotiating and implementing an MOU can enhance cooperation and clarity between police and victim support services in addressing issues such as:

- objectives underpinning cooperation
- division of roles and responsibilities
- standard operating procedures, for example, around referral

- information sharing and confidentiality
- strategies for regular communication between the parties.

MOUs also give the parties an objective frame of reference, against which to measure progress and resolve difficulties.

Specialist and local law enforcement responses

Many countries have established specialist units to investigate trafficking cases. Benefits to this approach include:

- consolidation of resources, including expertise and experience

- a focal point that can build strong working relationships with other key agencies, including law enforcement in other jurisdictions
- capacity to develop, test and refine appropriate and effective standard operating procedures and training.

Specialist units focused on a narrower range of crime types are likely to have an increased capacity to undertake proactive or intelligence-led policing – rather than simply responding to crime reports. They can build strong working relationships with units in other countries. This is likely to improve the flow of

Example: Technique for victim identification

The regional standard for anti-trafficking police training in south eastern Europe sets out a three-part process for victim identification. The standard notes that the main challenge with victim identification arises from insufficient knowledge and analysis of facts. Any potential trafficking situation needs to be considered from at least three angles – the law, the criminal and the victim. Specifically:

- How do the facts of the situation compare to the legal concept of trafficking?
- What did the criminal intend to do with the victim?
- What are the circumstances of the victim?

Information to answer these questions should be gathered in three ways:

- consideration of the surrounding circumstances, such as:
 - age, gender and nationality of the victim
 - control over documentation
 - last location of the victim before coming to the attention of law enforcement
 - evidence of abuse
 - circumstances leading to the referral
 - assessment of the referring agency
 - current local knowledge about methods of operation of traffickers
- assessment interview with the victim, ideally in the presence of a trained psychological counsellor
- consideration of additional corroborative material.

According to the standard, it is only once all of this information has been gathered and analysed that it is possible to decide whether the victim has been trafficked, smuggled or is an independent economic migrant.

Source: ICMPD 2003: 61–67

intelligence and facilitate the processes involved in mutual assistance and extradition (ASEAN 2006: 77–78).

While specialist units may be at the centre of many trafficking investigations, it is essential that local or frontline law enforcement officials know how to identify and respond to trafficking. They know their local area, have local contacts, and are best placed to identify what is out of the ordinary in a way that specialist units can not. Accordingly, it is vital that frontline officials know how to:

- quickly and accurately identify victims and perpetrators
- identify, preserve and collect evidence
- ensure victims are removed to safety and receive immediate assistance and support.

It is important that there are clear lines of communication around roles between specialist unit and frontline police. This will require the development and implementation of standard operating procedures, supported by training (ASEAN 2006: 85).

Because of the complexity of trafficking investigations, it is vital that law enforcement develops clear and practical policies and procedures to guide the conduct of both reactive and proactive investigations. For example, the regional standard for anti trafficking police training in south eastern Europe (ICMPD 2003) includes a number of detailed policies and procedures for law enforcement officials in relation to:

- risk assessment
- processes for victim identification
- obtaining the victim-witness evidence
- scene preservation and evidence gathering
- counter-trafficking intelligence.

The standard was developed by a group including the Police Development Unit at the Organization for Security and Co-operation in Europe, the Austrian

Federal Police Directorate, Federal Criminal Investigation Unit and Ministry of Interior, and General Police Directorate Croatia, in addition to ICMPD and NGOs. The training program was tested and validated in a number of pilot sessions (ICMPD 2003: 3).

Investigations that build a broad base of evidence

The evidence of the victim-witness will generally be crucial to the success of any trafficking prosecution. Also, the victim's participation in the prosecution is an important part of ensuring access to justice. Nonetheless, experience from sexual assault prosecutions confirms that the most difficult cases to prosecute are those where it is 'her word against his' (Lievore 2004: 3). Similar considerations apply to trafficking prosecutions, where it is very likely that the evidence of the victim-witness will be called into question particularly through attacks on their credibility. Accordingly, law enforcement faces the challenge of building a broad base of evidence that includes, but is not limited to, the victim's testimony (ICMPD 2004: 122). This will need to include evidence that supports the testimony of the victim-witness (corroboration) and that anticipates and undermines any defences likely to be put forward by the defendant (Lievore 2004: 3).

Law enforcement will need to draw on the full range of powers and resources available, including search and seizure, phone intercepts, surveillance, financial investigations and the use of forensics. For example, several law enforcement training programs note the importance of conducting financial investigations as part of larger trafficking investigations (EC 2004: 126; ICMPD 2004: 115–117; UNODC 2006: 76). Investigation of financial transactions can help build up a better picture of the network, and thereby target investigations more strategically. Evidence from financial investigations

can also form an important part of a prosecution case. For example, financial transactions have the capacity to:

- place a suspect at a given location and time
- establish who paid for items such as visas, accommodation, advertising, travel and daily necessities
- establish the existence of relationships between individuals
- demonstrate a gap between legitimate earnings and actual expenditure.

Evidence of financial transactions is usually in the form of documents that are difficult to rebut. The same evidence can then be used to form the basis of post-conviction confiscation of property (ICMPD 2004: 115–117).

Some law enforcement agencies have gone further by adopting proactive approaches to detecting and investigating trafficking. The objective of a proactive approach is to investigate, arrest and prosecute traffickers without having to rely on the cooperation and testimony of the victim. The intention is not to disenfranchise victims but to respond to the fact that a victim's testimony will not always be forthcoming or available. It relies on intelligence gathering, human and technical surveillance, undercover deployments and standard investigative techniques. This approach was developed by the UK Metropolitan Police, and has been incorporated into police training around the world (ICMPD 2004: 102; Kelly & Regan 2000: 33).

Supporting victims as witnesses

Police generally have limited or no control over the conduct of prosecutions. However, they continue to play an important role in prosecutions by taking part as witnesses. They can also help to ensure that victims of trafficking are

properly supported and protected as witnesses in prosecutions. Internationally, relevant strategies include:

- ensuring victims are kept up to date about progress of court cases, particularly if the accused is about to be released (EC 2004: 112; OSCE 2004: 99–103; Pearson 2002: 52)
- provision of police protection, ranging from simple measures such as escorts to and from court, provision of mobile phones or panic buttons through to formal police witness protection programs (OSCE 2004: 99; Pearson 2002: 52).

In many cases, law enforcement agencies will have built up close relationships with the victims of trafficking and can advise the prosecution on working effectively with the victim of trafficking as a witness.

Conclusion

The entry into force of the UN Trafficking Protocol represented a major step forward in the fight against trafficking. In response, many countries have implemented criminal laws against trafficking. However, experience confirms that the introduction of criminal laws is just the first step towards an effective criminal justice response to trafficking. There are many practical challenges for the agencies responsible for implementing and enforcing the anti-trafficking laws, including law enforcement.

As individual countries and regions come to terms with the challenges, it is important that lessons learnt are collected, documented and shared. Emerging responses need to be tested and evaluated, so that it is possible to know their impact and effectiveness. This will make a significant contribution towards the larger effort of securing justice for victims, and ending the impunity of traffickers.

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