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**Abstract** | Police and prosecutors face a range of challenges while investigating, prosecuting and, ultimately, attempting to secure a conviction for human trafficking and slavery offences in Australia. In this study, investigation and prosecution data were analysed to chart the progression of matters and identify reasons for attrition. Analysis revealed an overall prosecution attrition rate of 73 percent. Attrition was most evident during the initial phases of prosecution, when the decision to lay charges was being considered. However, there was a 60 percent chance of conviction as a result of the defendant either pleading or being found guilty.

Defendants were more likely to be convicted for ancillary charges (eg migration offences) than the most serious charges of human trafficking and slavery. The prosecution attrition rate for the most serious charges was 80 percent, compared to 54 percent for lesser charges.

## Attrition of human trafficking and slavery cases through the Australian criminal justice system

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The investigation and prosecution of human trafficking and slavery cases is challenging. While there has been an upward trend in the number of convictions globally since 2009, the absolute number of convictions remains low (UNODC 2018). On average, 40 percent of countries secure fewer than 10 convictions per year, including 15 percent of countries that secure no convictions (UNODC 2016). Consequently, of the 9,813 persons investigated or arrested for human trafficking and slavery offences in 2016, 65 percent were prosecuted ( $n=6,370$ ) and only 16 percent were convicted ( $n=1,565$ ; UNODC 2018). This means that one conviction was secured for every six persons investigated. However, the most recently reported statistics from 2018 show that the conviction rate has more than doubled since then, with 78 percent of alleged offenders being prosecuted ( $n=7,368$ ) and 38 percent being convicted ( $n=3,553$ ; UNODC 2021).

Conviction rates are similarly low in Australia. Between 2004 and 30 June 2019, 24 offenders were convicted. Over the same time, 462 victims were referred to the Australian Government's Support for Trafficked People Program (Department of Social

Services 2019). Although Australia's response to human trafficking and slavery is centred on a strong criminal justice response, little is known about why there appears to be a high rate of attrition of cases as they progress through the criminal justice system (David 2008; Davy 2016; Simmons et al. 2013).

The purpose of this study was thus twofold: to identify the points of attrition in the criminal justice process (defined as when a matter was referred to the police until the achievement of a court outcome), and to identify the challenges that police and prosecutors face when investigating, prosecuting and, ultimately, attempting to secure a conviction. To this end, the study adopted a similar focus to Farrell, McDevitt and Fahy (2008; see also Farrell et al. 2012; Farrell, Owens & McDevitt 2014), whose research in the United States examined the legal, institutional and attitudinal barriers to investigating and prosecuting cases of human trafficking.

## Methodology

Three levels of the criminal justice system were examined—investigation, prosecution and court—and attrition was measured using three units of analysis: cases, defendants and offences. Quantitative data from the Australian Federal Police (AFP) and Commonwealth Director of Public Prosecutions (CDPP) were analysed for matters received between 10 December 1999 and 30 June 2017.

These data included:

- number of cases, defendants and offences;
- defendant characteristics;
- state/territory location of the prosecuting office;
- offence category;
- furthest stage reached in the investigation and/or prosecution process; and
- the outcome of the furthest stage reached.

To examine the factors that contribute to the movement or attrition of these cases, qualitative data were also obtained through 22 interviews with investigators, prosecutors, immigration officials and victim support personnel (collectively referred to as criminal justice practitioners). These interviews elicited information regarding:

- familiarity with (eg training, specialisation and use) and complexity of human trafficking and slavery legislation among police, prosecutors and the judiciary;
- collaboration between police and prosecutors in the referral, preparation and pursuit of matters;
- the role of evidence and victim testimony;
- factors influencing decisions to investigate, charge and prosecute a matter, and reasons why cases did not proceed;
- characteristics of matters that were likely to proceed; and
- the extent to which other charges have been pursued in combination with human trafficking and slavery charges.

Together, these data were analysed to chart the movement and attrition of cases, identify the reasons for attrition, examine whether challenges identified internationally were also evident within an Australian context, and determine whether there were challenges unique to the Australian experience.

Two methodological limitations affect the analysis. First, the AFP and CDPP data are unmatched, meaning that the progression of matters could not be tracked from the start of an investigation through to the end of a prosecution. Consequently, rates of attrition are unable to be presented overall. Second, only finalised cases were analysed from the CDPP dataset to ensure accuracy in the calculation of attrition; however, the AFP dataset comprised both finalised and ongoing cases as these were not able to be extracted due to data recording practices. Therefore, attrition was only able to be calculated for phases in the prosecution process.

## The investigation and prosecution of human trafficking and slavery matters in Australia

Federal legislation addresses the specific crimes of human trafficking, slavery and slavery-like practices (Divisions 271 and 270 of the Commonwealth *Criminal Code Act 1995*), with ancillary matters prosecuted under federal and state/territory laws. Investigators and prosecutors have discretion in pursuing these matters, guided by the Case Categorisation and Prioritisation Model (AFP 2016) and Prosecution Policy of the Commonwealth (CDPP 2014). Investigation and prosecution processes are not necessarily linear, and key decisions made by investigators, prosecutors, defence lawyers and the judiciary influence how a case progresses. Importantly, a case is assessed at each stage and decisions are made by the AFP and CDPP about whether to proceed.

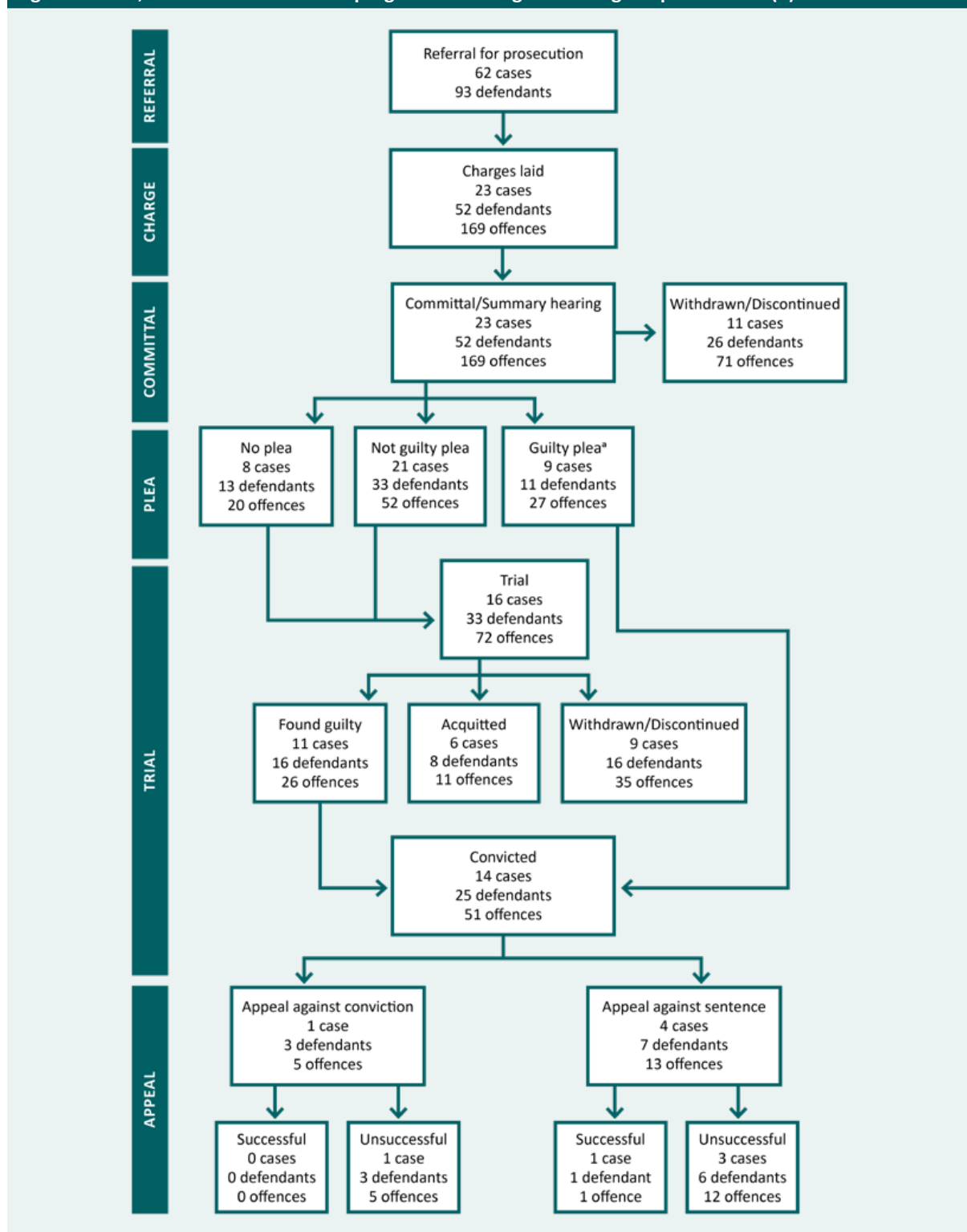
### Investigations

When a case is received by the AFP, an initial assessment is undertaken to determine whether it should progress to an active investigation phase. A defendant is not necessarily known at this point, with defendant identification sometimes only becoming clear through investigation. The present study found that between December 1999 and June 2017, the AFP received 841 cases of suspected human trafficking and slavery. Following an initial assessment, 452 cases progressed to an active investigation during the reference period. There are a range of reasons why a case may not progress to an active investigation phase, including:

- no offence identified;
- insufficient evidence;
- the victim withdrawing their complaint;
- the matter not being related to human trafficking or slavery;
- the matter being referred to another jurisdiction (eg if the victim declined to pursue the human trafficking and slavery matter but agreed to pursue a state-based offence);
- the matter being referred to another agency (eg if the victim declined to cooperate with a criminal justice investigation but accepted a referral to a victim support service); or
- successful resolution through prevention and disruption activity (most commonly in relation to forced marriage).

Although unable to be quantified, the increase in disruption efforts in response to the criminalisation of forced marriage in 2013 may account for a considerable proportion of cases that do not progress to an active investigation. According to the AFP, disruption activity delays, diverts or otherwise complicates the commission of criminal activity or the operations of a criminal entity (AFP 2019). Disruption represents a different outcome measure for the AFP, which reflects a broader range of operational tactics and strategies focused on the reduction of crime-related harm, but is more difficult to capture. In taking a victim-centric approach to human trafficking and slavery cases, the AFP considers disruption and intervention activities, which remove victims from harm, as important as successful prosecution outcomes.

Figure 1: Case, defendant and offence progression through each stage of prosecution (n)



a: Includes 1 case with 1 defendant and 2 offences that was discontinued/withdrawn by the CDPP following entry of a guilty plea. This case is not included in the conviction numbers as no conviction was recorded

Note: As each case may involve multiple defendants, and each defendant may be charged with multiple offences, the defendant and case numbers may not total at each stage of the attrition map

Source: AFP & CDPP data files

## Characteristics of defendants referred for prosecution

Of the 452 cases actively investigated, the AFP had referred 62 cases involving 93 human trafficking, slavery and forced marriage defendants to the CDPP for prosecution as at 30 June 2017 (see Figure 1). The number of cases not referred includes those where a decision was made by the AFP to close the case, as well as those where a decision was yet to be made. It is therefore possible that more of these cases will have been referred to the CDPP since then.

Most defendants were referred to prosecuting offices in Sydney ( $n=50$ , 54%) and Melbourne ( $n=23$ , 25%). This most accurately reflects the location of the defendant at the time the case was referred to the CDPP, rather than indicating the location of the incident. Over half of defendants were male ( $n=49$ , 53%), approximately one-quarter were female ( $n=25$ , 27%) and the gender of the remaining defendants was not recorded ( $n=19$ , 20%). Defendants were aged between 21 and 61 years, with the average age being 39 years. Female defendants tended to be older, with the majority aged over 34 years ( $n=18$ , 72%). Birthplace was recorded for 43 defendants (46%) who originated from 20 countries. Approximately one-third of defendants were born in South-East Asia ( $n=15$ , 35%) or East Asia ( $n=14$ , 33%). The remaining defendants were born in Europe ( $n=6$ , 14%), South Asia ( $n=4$ , 9%), Australia ( $n=2$ , 5%), and West Asia and the Pacific ( $n=1$ , 2% each).

Most cases involved a single defendant ( $n=48$ , 77%). Of the 14 cases with co-defendants (range=2–6), 12 cases involved a combination of male and female defendants and two cases involved only male defendants. In most cases, co-defendants originated from different countries of birth within South-East Asia, or a mix of South-East Asian and European countries.

## Pre-brief advice and brief assessments

The AFP may choose to seek advice from the CDPP prior to the preparation of a brief of evidence. This pre-brief advice can assist investigators to 'focus their efforts and most efficiently gather admissible evidence to address the elements that must be established to prove an offence beyond reasonable doubt' (CDPP nd: np). Pre-brief advice is generally provided in matters that are:

- significant, complex or major;
- sensitive;
- of particular importance for the AFP's enforcement strategy; or
- likely to have an impact on a broader class of cases (CDPP nd: np).

Once a brief of evidence has been prepared and referred to the CDPP, a brief assessment will be undertaken by the CDPP to ensure that there are reasonable prospects of securing a conviction and to identify any complex legal issues, evidentiary difficulties and relevant public interest considerations, in line with the Prosecution Policy of the Commonwealth (CDPP 2014). A brief assessment is undertaken for all matters referred to the CDPP, although the timing of the assessment will vary based on decisions regarding the arrest of a defendant. Whether investigators choose to arrest a defendant before referring the matter to the CDPP for the brief assessment depends on practical considerations, such as the likelihood of the defendant absconding, preventing the continuation of the offence or concealment of evidence. Pre-brief advice and brief assessments are useful as they provide investigators with advice on the complex legal, evidentiary, practical and logistical issues of a case (CDPP nd: np).

The AFP sought pre-brief advice from the CDPP in 34 of 62 cases (55%). In all 34 cases, prosecution was not initiated and the case was discontinued. This is not unexpected, as the AFP likely sought pre-brief advice due to their uncertainty about the prospects of a case. A brief assessment was undertaken by the CDPP prior to the arrest of a defendant in five cases (7%), all of which did not proceed either because the investigation was terminated, there was insufficient evidence, there were no reasonable prospects of conviction, or prosecution would not be in the public interest. A brief assessment was undertaken in 23 cases (37%) following the arrest of a defendant, all of which resulted in the prosecution being continued. As a result, 82 percent of cases where a brief assessment was undertaken resulted in prosecution being initiated or continued.

## Charges

Fifty-two defendants (56%) were charged with a combined total of 169 offences, most commonly slavery and servitude ( $n=27$  defendants, 52% each), followed by human trafficking ( $n=17$  defendants, 33%) and migration/passport offences ( $n=16$  defendants, 32%; see Table 1). Three-quarters of defendants had multiple charges recorded ( $n=38$ , 73%). The number of charges per defendant ranged from one to 12, with an average number of three charges. Female defendants were more likely to be charged than male defendants ( $n=23$ , 79% vs  $n=43$ , 72%). No other differences were observed based on the defendants' characteristics.

	Defendants <sup>a</sup> ( $n=52$ )		Offences <sup>b</sup> ( $n=169$ )	
	$n$	%	$n$	%
Slavery	27	52	32	19
Human trafficking <sup>c</sup>	17	33	22	13
Servitude <sup>d</sup>	27	52	39	23
Forced marriage	1	2	1	1
Debt bondage	7	13	7	4
Child sex offences <sup>d</sup>	1	2	11	7
Migration/passport	16	31	23	14
Prostitution <sup>e</sup>	4	8	5	3
Other	25	48	29	17

a: The number and percentage of defendants may not total as each defendant could be charged with multiple offences

b: Percentages do not sum to 100 due to rounding

c: Includes child trafficking

d: Includes state/territory and Commonwealth offences

e: Use of the term 'prostitution' to describe offences within this category reflects the language used in Australian legislation; it does not denote criminality of sex workers or the sex industry (see Renshaw et al. 2015 for an overview of the legal status of the Australian sex industry)

Source: CDPP data file

## Committal and trial proceedings

All charged defendants ( $n=52$ ) appeared for a committal hearing. Ten defendants were dismissed on all charges ( $n=28$  charges) at or following the committal hearing either due to insufficient evidence or because the prosecutor decided to withdraw the case. A further 43 offences were discontinued, although these defendants continued to be prosecuted for other charges. Of the 71 charges dropped at the committal phase, most related to servitude ( $n=20$ , 28%), slavery ( $n=12$ , 17%) or human trafficking ( $n=10$ , 14%).

Eleven defendants pleaded guilty to a total of 27 offences. Thirty-three defendants were committed for trial in relation to 72 offences as a result of pleading not guilty ( $n=52$  offences) or entering no plea ( $n=20$  offences). At trial, 16 defendants (48%) were found guilty of 26 offences (36%), eight defendants (24%) were acquitted of 11 offences (15%) and 16 defendants (48%) had 35 offences (49%) withdrawn/discontinued.

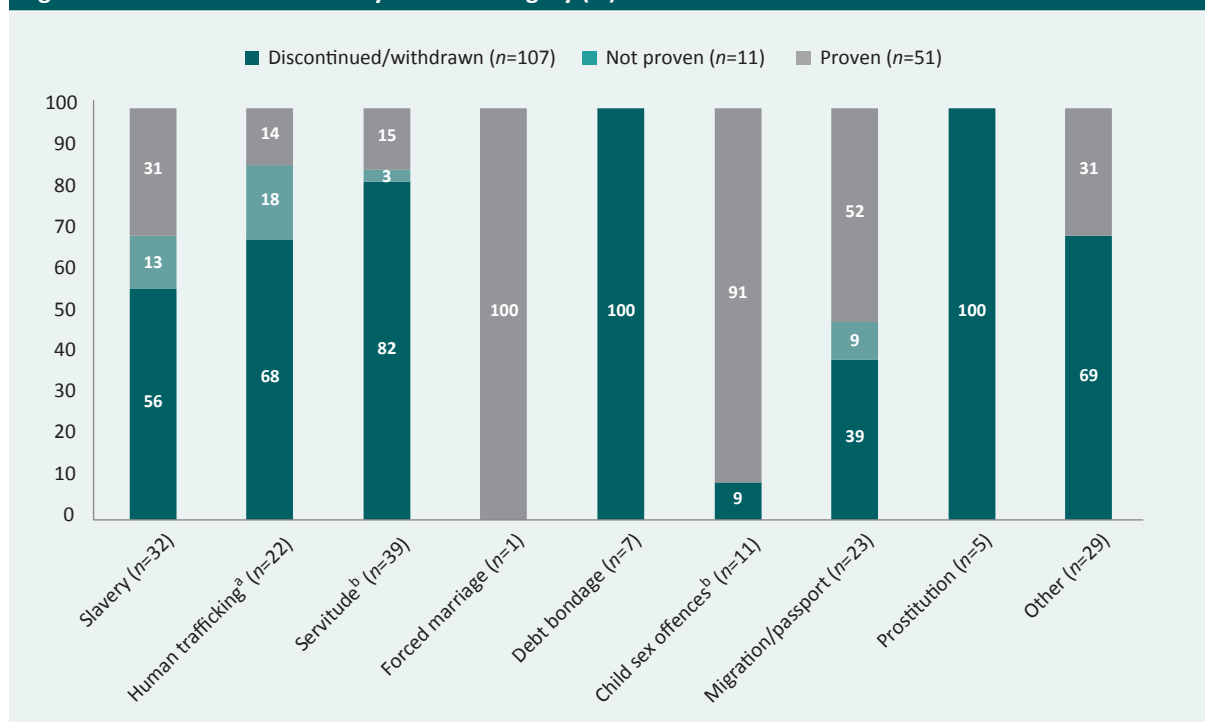
## Convictions

In total, 25 defendants (60%) were convicted of a combined total of 51 human trafficking, slavery, slavery-like or ancillary offences. As a result, 30 percent of charges were proven ( $n=51$ ), seven percent were not proven ( $n=11$ ) and 63 percent were withdrawn/discontinued ( $n=107$ ). Defendants with multiple charges were more likely to be convicted than those with a single charge. Sixty-nine percent of defendants ( $n=22$ ) with multiple charges were convicted (of at least one charge) compared to 30 percent of defendants ( $n=3$ ) with a single charge. Moreover, 60 percent of convicted defendants ( $n=15$ ) had at least half of their charges proven. While female defendants were more likely to be charged, male and female defendants were equally likely to be convicted ( $n=16$ , 48% vs  $n=9$ , 47%). However, female defendants were more likely to have a greater number of charges proven. Two-thirds of female defendants had at least half of their charges proven ( $n=6$ , 67%), compared with 56 percent of male defendants ( $n=9$ ). Defendants aged above 34 years were more likely to be convicted than younger defendants (43% vs 25%). Consistent with patterns observed for charged defendants, convicted defendants most commonly originated from South-East Asia.

Child sex offences were most likely to be proven ( $n=10$ , 91%), followed by migration/passport offences ( $n=12$ , 52%; see Figure 2). These were the only offence categories to have a greater than 50 percent success rate (excluding the single forced marriage offence). Among the human trafficking and slavery offences, slavery was most commonly proven ( $n=10$ , 31%). Human trafficking ( $n=3$ , 14%) and servitude ( $n=6$ , 15%) charges were least likely to be proven. Three defendants appealed their conviction and seven defendants appealed their sentence. No defendant successfully appealed their conviction; however, one defendant successfully appealed their sentence.



**Figure 2: Conviction outcomes by offence category (%)**



a: Includes child trafficking

b: Includes state/territory and Commonwealth offences

Source: CDPP data file

## Prosecution length

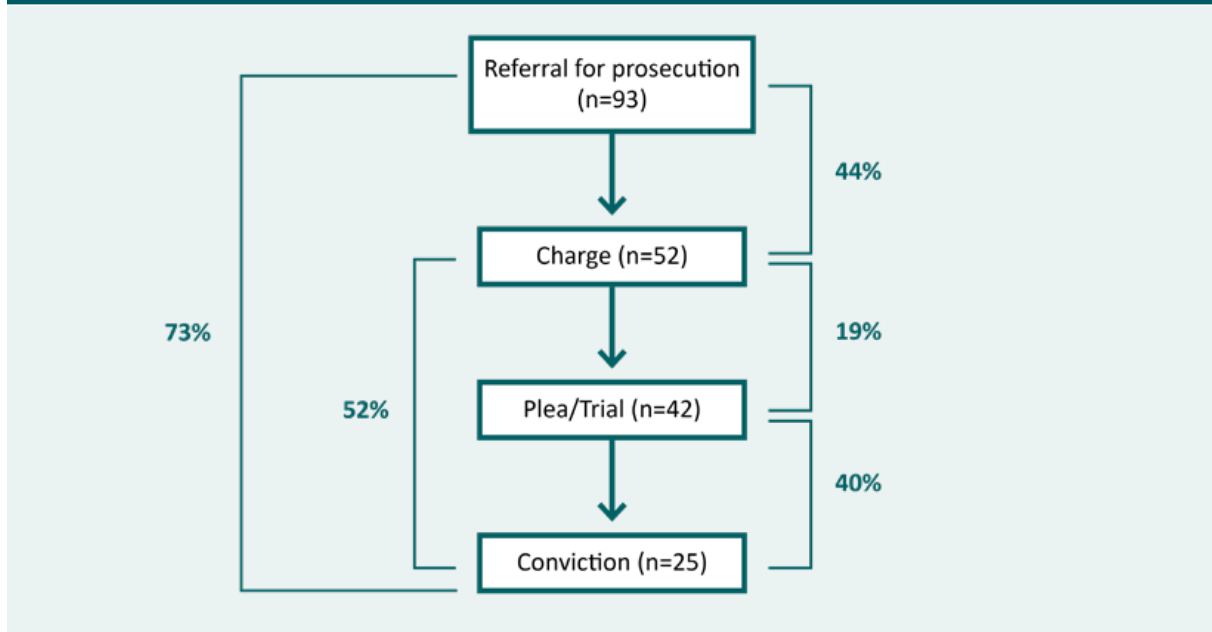
The overall length of time between when a defendant was referred for prosecution and when their case was finalised was, on average, 2.5 years. For convicted defendants, the average length of the prosecution process increased to 3.4 years.

## Attrition rates in Australian human trafficking and slavery cases

Due to data limitations, attrition was unable to be calculated between phases in the investigation process, and therefore for the complete criminal justice process from when a case was identified by police to the finalisation of a matter in court. Attrition was able to be calculated between phases in the prosecution process, which showed an overall attrition rate of 73 percent between the number of defendants referred for prosecution ( $n=93$ ) and the number of defendants who were convicted ( $n=25$ ; see Figure 3). Attrition was similarly high from charge to conviction, with half of defendants (52%) being dismissed between these stages. Comparable levels of defendant attrition were observed between referral for prosecution and charge (44%), and between plea/trial and conviction (40%).

A lower rate of attrition was observed between charge and plea/trial (19%), indicating that most defendants who were charged either pleaded guilty or were found guilty at trial. Therefore, the conviction rate was higher than the rate of acquittal and withdrawal once a prosecution was commenced. In other words, most matters were withdrawn/discontinued before reaching the plea/trial phase; however, if a matter progressed to the plea/trial phase then there was a 60 percent chance of securing a conviction.

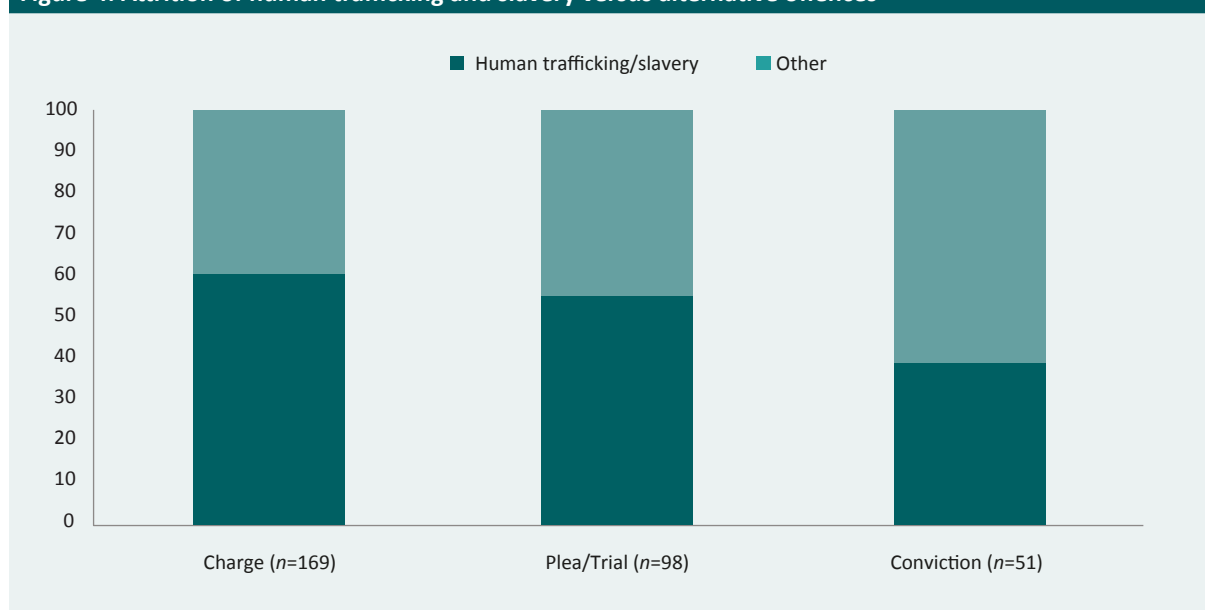
**Figure 3: Rate of defendant attrition between the stages of prosecution**



Source: CDPP data file

At the offence level, the more serious charges of human trafficking and slavery had a lower conviction rate than alternative charges. Whereas human trafficking and slavery offences comprised the largest proportion of charges ( $n=101$ , 60% vs  $n=68$ , 40% for alternative offences), they comprised the smallest proportion of convictions ( $n=20$ , 39% vs  $n=31$ , 61% for alternative offences; see Figure 4). Therefore, the prosecution attrition rate for human trafficking and slavery offences was 80 percent, compared to 54 percent for alternative offences. Attrition for human trafficking and slavery offences was most likely to occur between plea/trial and conviction (63%), although 47 percent of offences did not proceed from charge to plea/trial. In comparison, there was a comparable rate of attrition for alternative offences between charge and plea/trial (35%), and plea/trial and conviction (30%).

**Figure 4: Attrition of human trafficking and slavery versus alternative offences**



Source: CDPP data file

## Challenges with investigating and prosecuting human trafficking and slavery cases

A strong criminal justice response intends to curb impunity for traffickers, act as a deterrent for future offending, and facilitate justice and redress for victims (Gallagher & Karlebach 2011). However, the global criminal justice response has been historically weak and there have been far fewer prosecutions and convictions than expected based on the estimated prevalence of human trafficking and slavery offences (Farrell, Owens & McDevitt 2014; Gallagher & Karlebach 2011; Matos, Gonçalves & Maia 2017; McDonald 2014). Research has indicated the reasons why human trafficking and slavery investigations and prosecutions have faltered, which centre on victim identification and cooperation, victim credibility and evidentiary difficulties, the complexity of legislation, and training and experience of investigators and prosecutors. Interviews with criminal justice practitioners confirm many of these challenges in the Australian context; however, differences were also identified.

### *Victim identification and cooperation*

The international and Australian trafficking literature establishes victim identification and cooperation as one of the most significant causes of criminal justice attrition, due to the central role that victims play in providing evidence to police and recounting testimony in court (Clawson et al. 2008; David 2008, 2007; Gallagher & Karlebach 2011; Matos, Gonçalves & Maia 2019, 2017; Nguyen, Le & Luong 2020). Failure by authorities to (correctly) identify victims not only precludes justice but prevents referral and access to support (Nguyen, Le & Luong 2020). Once identified, victims are often reluctant to cooperate as a result of not identifying as victims themselves, lacking trust in criminal justice practitioners and processes, and viewing cooperation as inconsistent with their best interests (Bales & Lize 2007; Clawson, Dutch & Cummings 2006; Farrell, McDevitt & Fahy 2008; Farrell, Owens & McDevitt 2014; Gallagher & Karlebach 2011; UNODC 2008).

Interviews with Australian criminal justice practitioners for this study affirm many of these challenges. In contrast, however, practitioners commented on the strong desire by most victims to participate in criminal justice processes initially. Therefore, front-end attrition was not thought to be explained by a lack of victim cooperation, but rather the decisions of criminal justice practitioners to withdraw the case early in the process based on the likelihood of a successful prosecution outcome. For instance, even when victims were eager to participate, investigators identified complex trauma, lack of English language skills, and cultural and institutional issues related to mistrust in police or misunderstanding of the police's role as barriers to effective engagement. Practitioners also perceived cooperation to be dependent on the type of exploitation and the relationship between the victim and offender. For example, labour exploitation victims were the least likely to self-identify or acknowledge their victim status due to differing normative standards of employment and workplace relations in Australia versus origin countries. However, once engaged in the criminal justice process, labour exploitation victims were perceived as more willing to cooperate because of the motivation to recover lost income. Victims of all forms of exploitation were less likely to cooperate if the perpetrator was known to them or their family. This was particularly the case if the perpetrator was a family member and the victim was a child, which most commonly occurred in cases of forced marriage.

Australian prosecutors identified the choice of victims to return home as a significant reason for later-stage attrition. Due to the lengthy duration of most trafficking prosecutions, practitioners found that victims wanted to move on and rebuild their lives. Prosecutors spoke about the stress that victims felt knowing that a trial was going on in the background of their lives, and having to take leave from employment and family commitments to travel to Australia for what could also be a lengthy trial appearance. Victims were also identified as being hesitant to tell employers, family members and new partners the reasons for going to Australia, especially if those people had no prior knowledge of their victimisation.

### *Victim credibility and evidentiary difficulties*

Human trafficking and slavery cases often rely on victim testimony as the primary or only source of evidence, and the quality of such evidence is a strong determinant of the success of a prosecution (Bales & Lize 2007; David 2007; Matos, Gonçalves & Maia 2019; UNODC 2017). Problems with victim cooperation mean that the evidence used to investigate and prosecute cases is often unsatisfactory, yet even when victims do cooperate the credibility of their evidence is likely to be challenged in court. Victims may provide inconsistent statements due to fear or memory loss from trauma, which leads them to change or correct their story over time (Bales & Lize 2007; David 2008, 2007; Farrell, Owens & McDevitt 2014; UNODC 2017). They may lie about or omit details to protect themselves or family members, as has been demonstrated in Australian cases (David 2008; UNODC 2017). Critical judgement of actions that are counterintuitive and do not appeal to notions of the ideal victim is therefore likely, such as appearing complicit, capable of leaving, apathetic or hostile (David 2007; Wilson & Dalton 2008). Victims may also face accusations of dishonesty by defence counsel if opportunities to obtain assistance or a visa are offered in exchange for cooperation (David 2008). Consequently, Farrell, Owens and McDevitt (2014) found that prosecutorial charging decisions were based on evaluations of how victims might be perceived by judges and juries, including their level of blameworthiness.

Australian criminal justice practitioners interviewed for this study acknowledged the significant impediments arising from perceptions of victim credibility and how these were influential in the decision to initiate and continue a prosecution. Practitioners noted the difficulty of corroborating evidence, and therefore how the focus at trial is the reliability, truthfulness and completeness of the victim's testimony. Investigators and prosecutors held concerns that victim credibility would be challenged by defence counsel based on inconsistent and contradictory evidence provided by victims, the victim's visa status (ie if they were in breach of their visa conditions at the time of being identified), and that defence counsel would make accusations that victim cooperation and testimony were induced by offers of support, including the granting of visas to remain in Australia.

Investigators also raised that evidence quality can be impacted by delays in evidence collection, often because of multi-jurisdictional collaboration to obtain evidence located across borders, as well as the recovery and reflection period afforded to victims under the Support for Trafficked People Program. The 45-day recovery and reflection period, with a possible extension of another 45 days, is designed to enable victims to stabilise their situation and make informed decisions about their future options for criminal justice participation (Australian Red Cross 2013). During this time, victims can receive tailored support and advice without being required to engage with investigators. While criminal justice practitioners viewed the recovery and reflection time as important and necessary, including for the potential benefits in aiding victim participation in criminal justice proceedings, it also presented some evidentiary challenges. Delays in obtaining victim statements prevented police from developing an investigative strategy and pursuing avenues for corroborative evidence.

Non-government organisations play a key role in assisting victims prior to and during any criminal justice involvement and therefore develop relationships with victims in advance of criminal justice contact. Investigators and prosecutors are cognisant that this places support providers in a position to influence victim testimony. Support providers may also elicit information from victims for different purposes to criminal justice practitioners—for example, for the purpose of compensation—which may result in different versions of events being recorded. Investigators and prosecutors held concerns that case notes for managing client support may contradict victim statements to police or provide evidence of induced cooperation and therefore be used to discredit victim testimony. Finally, practitioners recounted the challenges of inaccurate translation of victim testimony in court, which add to issues of victim credibility. Prosecutors weigh these factors when deciding whether to proceed with a case, and may choose to withdraw proceedings even if victims express the desire to continue.

### *Complexity of legislation and lack of case law*

Research has noted the complexity of human trafficking and slavery legislation compared to other crime types (David 2007; Gallagher & Karlebach 2011; Matos, Gonçalves & Maia 2017; UNODC 2017). Criminal justice actors must contend with imprecisely defined concepts such as coercion, deception, exploitation and the victim's position of vulnerability (David 2007; Farrell, Owens & McDevitt 2014; Matos, Gonçalves & Maia 2017) and prove a constellation of elements related to the act, means and purpose of the crime (UNODC 2017). The lack of case law, due to the relatively small number of convictions, means there is little guidance on the evidentiary requirements to establish a prima facie case and on legal concepts tested in court. Research has also highlighted the lack of community awareness of this type of offending, and therefore raised concerns about how judges

and juries understand the elements of human trafficking and slavery offences (Joudo Larsen et al. 2012; Schloenhardt, Astill-Torchia & Jolly 2012). Misunderstandings and stereotypical views about the nature of this type of offending may shape juries' views, as well as practitioners' views of how judges and juries will receive and interpret the information provided to them, which may result in unjust trial outcomes (Farrell, Owens & McDevitt 2014; Joudo Larsen et al. 2012). In response, it is common for prosecutors to charge human trafficking and slavery defendants with alternative offences that are more familiar, have been tested, and for which prosecutors can be satisfied of a higher likelihood of conviction (Farrell, Owens & McDevitt 2014; McDonald 2014).

Explaining and proving difficult concepts at trial was one of the greatest challenges identified by Australian prosecutors. Few of the offences were thought to be well defined, and many have not yet been tested in court. The absence of precedent meant practitioners were unsure of what the courts would accept as the legal elements of each offence, especially as particular concepts could manifest in different ways. Therefore, practitioners raised concerns about inconsistent interpretation, understanding and application of human trafficking and slavery offences across each stage of the criminal justice process. Prosecutors felt they were making predictions about how provisions could be interpreted, and held concerns about whether sufficient evidence could be gathered to establish and satisfy each element of the offence. The structure of human trafficking and slavery legislation has also resulted in multi-layered definitions related to each of the acts, means and exploitation elements. In the experience of prosecutors, this has led to juries experiencing particular difficulty in understanding the legal elements of the offences made up of concepts that are unfamiliar and abstract, and therefore to jurors relying on stereotypical perceptions of victims. Prosecutors advised that concerns about judge and jury understandings of human trafficking and slavery had influenced their decision to carry a case forward.

### *Training, experience and exposure*

Similarly, research has established a link between the level of training, experience and exposure among criminal justice practitioners and prosecution outcomes (Bales & Lize 2007; Clawson et al. 2008; Dutch National Rapporteur on Trafficking in Human Beings 2012; Farrell, Owens & McDevitt 2014). Human trafficking and slavery are complex offences requiring a specialised response from investigators, prosecutors and victim support providers (Gallagher & Karlebach 2011; Dutch National Rapporteur on Trafficking in Human Beings 2012; Matos, Gonçalves & Maia 2017). In the experience of Australian investigators and prosecutors, one of the greatest barriers to developing specialisation is staff mobility. The movement of staff primarily affects federal investigators who are required to transfer roles every two to three years; however, it was considered a broader problem affecting a range of criminal justice actors. Staff mobility results in loss of consistency and qualification across the area, and necessitates frequent rebuilding of multi-agency relationships, which becomes particularly problematic when cases take years to progress and conclude. Crucially, staff mobility affects the relationships between practitioners and victims, which may be influential in the decision of victims to continue to engage with investigation and prosecution processes.

Another barrier relates to the appropriateness and relevance of training provided as part of the Human Trafficking Investigations Course. This course 'is designed to develop expertise in areas critical to the successful investigation of human trafficking, including legislation, investigative methodologies and victim liaison and support' (Interdepartmental Committee on Human Trafficking and Slavery 2020: 66). The course is delivered by personnel from relevant Australian government agencies (including the CDPP) and non-government organisations to frontline officials from the AFP, Australian Border Force and state and territory law enforcement agencies. Investigators argued that the training was not operationally focused and had limited practical applicability to crucial aspects of an investigation, such as interviewing vulnerable witnesses and compiling evidence. The training was critiqued for being too high-level and information-based (ie providing an overview of trends in victimisation and offending).

## Conclusion

Australian investigators and prosecutors have demonstrated the importance of pursuing human trafficking and slavery cases in the public interest, yet they are hindered by the poor likelihood of conviction. Successful prosecution requires a variety of measures, including adequate national legislation, appropriate victim protection and support, appropriate training, and effective collaboration between investigators, prosecutors and victim support services. Investigators and prosecutors have considerable discretion over case progression and are required to weigh myriad factors at each stage of the criminal justice process. Determining and understanding the points of attrition can help shape strategies to improve criminal justice outcomes. To this end, a focus on victim engagement, specialist training and the breadth and quality of evidence may reduce the range of reasons that investigators and prosecutors decide to discontinue a case.

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## References

URLs correct as at October 2021

- Australian Federal Police (AFP) 2019. *Annual report 2018–19*. <https://www.afp.gov.au/annual-report-2018-19>
- Australian Federal Police (AFP) 2016. *The case categorisation & prioritisation model: Guidance for AFP clients*. <https://www.afp.gov.au/what-we-do/operational-priorities/case-categorisation-and-prioritisation-model>
- Australian Red Cross 2013. *Human trafficking in Australia: Frequently asked questions*. <https://www.redcross.org.au/getmedia/c25b6d6e-e52c-464a-92bf-8afc79c3836f/Trafficking-FAQs.PDF.aspx>
- Bales K & Lize S 2007. Investigating human trafficking: Challenges, lessons learned, and best practices. *FBI Law Enforcement Bulletin* 76(4): 24–32
- Commonwealth Director of Public Prosecutions (CDPP) 2014. *Prosecution policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*. Canberra: Australian Government. <https://www.cdpp.gov.au/prosecution-process/prosecution-policy>
- Commonwealth Director of Public Prosecutions (CDPP) nd. Partner agencies. <https://www.cdpp.gov.au/partner-agencies>
- Clawson HJ, Dutch N & Cummings M 2006. *Law enforcement responses to human trafficking and the implications for victims: Current practices and lessons learned*. Washington: US Department of Justice
- Clawson HJ, Dutch N, Lopez S & Tiapula S 2008. *Prosecuting human trafficking cases: Lessons learned and promising practices*. Washington: US Department of Justice
- David F 2008. Prosecuting trafficking in persons: Known issues, emerging responses. *Trends & issues in crime and criminal justice* no. 358. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi358>
- David F 2007. Law enforcement responses to trafficking in persons: Challenges and emerging good practice. *Trends & issues in crime and criminal justice* no. 347. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi347>
- Davy D 2016. Justice for victims of human trafficking in Australia? Issues associated with Australia's criminal justice response to trafficking in persons. *Contemporary Justice Review* 20(1): 115–31. <https://doi.org/10.1080/10282580.2016.1262773>
- Department of Social Services 2019. Extend the Support for Trafficked People program. <https://plan4womenssafety.dss.gov.au/initiative/extend-the-support-for-trafficked-people-program/>
- Farrell A et al. 2012. *Identifying challenges to improve the investigation and prosecution of state and local human trafficking cases*. Washington, DC: National Institute of Justice
- Farrell A, McDevitt J & Fahy S 2008. *Understanding and improving law enforcement responses to human trafficking: Final report*. Human Trafficking Data Collection and Reporting Centre Research and Technical Reports. Boston: Northeastern University
- Farrell A, Owens C & McDevitt J 2014. New laws but few cases: Understanding the challenges to the investigation and prosecution of human trafficking cases. *Crime, Law and Social Change* 61: 139–68. <https://doi.org/10.1007/s10611-013-9442-1>
- Gallagher AT & Karlebach N 2011. *Prosecution of trafficking in persons cases: Integrating a human rights-based approach in the administration of criminal justice*. Background Paper. United Nations Human Rights Office of the High Commissioner. <https://www.ohchr.org/EN/Issues/Trafficking/Pages/meetingProsecutionTrafficking.aspx>
- Interdepartmental Committee on Human Trafficking and Slavery 2020. *Trafficking in Persons. The Australian Government Response 1 July 2016 – 30 June 2017. The Ninth Report of the Interdepartmental Committee on Human Trafficking and Slavery*. Canberra: Commonwealth of Australia. <https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/human-trafficking>



- Joudo Larsen J, Renshaw L, Gray-Barry S, Andreovski H & Corsbie T 2012. *Trafficking in persons monitoring report: January 2009 – June 2011. Monitoring report no. 19*. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/mr/mr19>
- Matos M, Gonçalves M & Maia A 2019. Understanding the criminal justice process in human trafficking cases in Portugal: Factors associated with successful prosecutions. *Crime, Law and Social Change* 72: 501–25. <https://doi.org/10.1007/s10611-019-09834-9>
- Matos M, Gonçalves M & Maia A 2017. Human trafficking and criminal proceedings in Portugal: Discourses of professionals in the justice system. *Trends in Organized Crime* 21: 370–400. <https://doi.org/10.1007/s12117-017-9317-4>
- McDonald WF 2014. Explaining the under-performance of the anti-trafficking campaign: Experience from the United States and Europe. *Crime, Law and Social Change* 61: 125–138. <https://doi.org/10.1007/s10611-013-9511-5>
- National Rapporteur on Trafficking in Human Beings 2012. *Case law on trafficking in human beings 2009–2012: An analysis*. The Hague: BNRM. <https://www.dutchrapporteur.nl/publications/reports/2013/04/26/case-law-on-trafficking-in-human-beings-2009-2012-interactive>
- Nguyen OV, Le TQ & Luong HT 2020. Police failure in identifying victims of human trafficking for sexual exploitation: An empirical study in Vietnam. *Journal of Crime and Justice*. <https://doi.org/10.1080/0735648X.2020.1724816>
- Renshaw L, Kim J, Fawkes J & Jeffreys E 2015. *Migrant sex workers in Australia*. Research and public policy series no. 131. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/rpp/rpp131>
- Schloenhardt A, Astill-Torchia P & Jolly JM 2012. Be careful what you pay for: Awareness raising on trafficking in persons. *Washington University Global Studies Law Review* 11(2): 415–35
- Simmons F, O'Brien B, David F & Beacroft L 2013. Human trafficking and slavery offenders in Australia. *Trends & issues in crime and criminal justice* no. 464. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi464>
- United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) 2008. *From protection to prosecution – A strategic approach: A victim centred approach as a key to increasing the effectiveness of criminal justice responses to human trafficking*. Vienna: UN.GIFT
- United Nations Office on Drugs and Crime (UNODC) 2021. *Global report on trafficking in persons 2021*. Vienna: UNODC. <https://www.unodc.org/unodc/data-and-analysis/glotip.html>
- United Nations Office on Drugs and Crime (UNODC) 2018. *Global report on trafficking in persons 2018*. Vienna: UNODC. <https://www.unodc.org/unodc/en/data-and-analysis/glotip.html>
- United Nations Office on Drugs and Crime (UNODC) 2017. *Evidential issues in trafficking in persons cases: Case digest*. Vienna: UNODC
- United Nations Office on Drugs and Crime (UNODC) 2016. *Global report on trafficking in persons 2016*. Vienna: UNODC. <https://www.unodc.org/unodc/data-and-analysis/glotip.html>
- United Nations Office on Drugs and Crime (UNODC) 2008. *Toolkit to combat trafficking in persons*. Vienna: UNODC. <https://www.unodc.org/unodc/en/human-trafficking/2008/electronic-toolkit/electronic-toolkit-to-combat-trafficking-in-persons---index.html>
- Wilson JM & Dalton E 2008. Human trafficking in the heartland: Variation in law enforcement awareness and response. *Journal of Contemporary Criminal Justice* 24(3): 296–313. <https://doi.org/10.1177/1043986208318227>

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