

Barriers to Effective Human Trafficking Enforcement

Brian Iselin

Regional Legal Expert – Human Trafficking
UN Office on Drugs and Crime,
Regional Centre for East Asia and the Pacific, Bangkok



The Human Rights Challenge of Globalization in Asia Pacific US: Trafficking in Persons, Especially Women and Children

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Be in no doubt - human trafficking is a serious, violent and insidious crime. It's victims are often what are called the 'unpeople' of this world – that massive but quite voiceless 'underclass' of people who are largely invisible, forgotten and, in almost every catastrophe and war of the last half century, treated as disposable. Many times I am asked why so little has been done by 'the authorities' on human trafficking – is it perhaps the case that this 'underclass' identity of the victims is our first answer?

Allow me to set the scene with a statement of intent. All that we do against human trafficking should be done with a clear goal in mind. If we are serious about protecting the marginalised 'unpeople' who are the victims of trafficking, we have to look into the heart of the crime. The essence of trafficking, one that serves to distinguish it from people smuggling, is the extent to which people lose control over their own situation. In trafficking, victims lose almost total control and are stripped of their capacity for self-determination. Signing and ratifying international covenants, enacting national laws, and devoting rights-focused enforcement resources to this issue should all be done with the goal of restoring to those victims some control over their own destiny. Until we use the law to restore some control to trafficking victims, arguably despite all our words and good intentions, they will continue to be victims.

So why is so little perceived as being 'done' by 'the authorities'? Why does law enforcement, especially in many so-called hot-spots for example Southeast Asia, the Balkans, West Africa, and the Caribbean, fall so clearly short of the standards set by the law, or by all our expectations? Some of this shortfall can be attributed to phenomena including corruption, low capacity, variable skill levels, and the covert nature of the activity. But the same factors can be said to face enforcement of any other crime type, and yet with few other crime types is there this yawning gap between adequate law and adequate enforcement. The question should be asked why this is the case. What is it about human trafficking as a crime type in particular - in law, in enforcement, and within the criminal activity - that has meant enforcement is so inadequate to date?

I would like to take this time, to just go through a few issues that I have identified as applying in the Mekong Sub-region. I think many of the things we find there though may be also applicable in other countries and regions. I would like to run through what I see as 10 barriers to effective human trafficking enforcement, or what I also like to call "10 good reasons traffickers are whooping it up tonight".

But just quickly, before I do that, I would like to make one further preparatory comment, and that is about corruption. I want to say that as law enforcement professionals, corruption is a leading facilitating factor in the trade in humans, but it is no more serious an issue, it is no more at the heart of the issue than it is, for example, in the drugs or arms trades. This is simply, for organised crime investigators, another crime type – all of which invariably include official corruption to some degree. Official facilitation is a desirable tool for all criminal enterprises – the larger the enterprise, the more corruption is sought. In an organised crime, it is not remarkable. It is not even noteworthy. It is par for the course. It is not, and has not been in other crime types, an excuse for inaction. Intelligent policing strategies and well-structured interventions CAN and have many times been shown to work, at marginalising corruption as an active 'issue' in organised crime investigations.

Okay, so now for the ten reasons why traffickers are whooping it up tonight, why as an international generalisation, law enforcement does not live up to expectations:

1) I think that the first and perhaps single greatest obstacle to effective enforcement of trafficking, and it is a need that looms larger than simply the law enforcement sector - the inability to date of

all parties in the anti-trafficking community to come together and create a comprehensive, truly multi-sector strategy that equally addresses supply and demand, while at the same time working towards reducing the harm that is inflicted on those currently in the hands of traffickers. In the military analogy, a strategic objective can NOT be obtained without the judicious use and coordination of all tools at the disposal of those in command. Imagine a strategic objective, such as invading a country, without the use of all available arms? So why have we tackled trafficking for so long as a social development issue alone? A single strategy should be formulated that agrees on the one strategic objective – the elimination of all forms of human trafficking. And then all sectors sign up for various roles and the problem is tackled from every angle.

2) The second barrier I identified relates to the economics of the trade in people: demand versus supply. The dynamics of the market must be better understood, easily achieved through such as illicit market analysis, so that effective interventions can be directed at the places in the trafficking chain where most impact can be made. What does it mean to take a comprehensive approach to human trafficking? We need to very simply look at three things that define a successful trafficker – he is the one who stays out of gaol, who stays alive, and who stays in the black. Given that this is a profit-motivated crime, successful traffickers are those who maximise returns – whose income far exceeds their outlay. This entails bringing supply and demand together in the nearest and most cost-effective match. Attacking supply alone, or demand alone, simply serves to displace the trade. Both sides of this illicit market must be tackled equally. Much money and time has been thus far spent against trafficking, and yet the international community often decries its singular lack of impact on the trade. This lack of impact is very largely due to the very limited range of interventions thus far, and NOT addressing the problem as a single community simultaneously coming at a problem from all its angles. This relates again to the need for a single strategy to which we all sign up. And this takes international political will, of the sort demonstrated in the creation of the trafficking protocol in the first instance.

3) Thirdly - there is much in the nature of human trafficking to suggest that it is first and foremost a human rights offence, in that the essence of the offence that could be called human trafficking is the denial of the most basic human rights to the victim. It is often the case that human trafficking cases arise from the detection of the exploitative act at the end of the trafficking chain of events. It is very much the case that at this point in the chronology of the crime that a victim presents as an illegal migrant first. It is only after some investigation that a victim may be recognised as such, if at all. The continued deprivation of liberty of the victim at this point is almost tantamount to a state-sanctioned continuation of the human rights offence perpetrated against the victim. In many cases of note, such is exactly the case where rescued victims are deprived their liberty by the state, denied any status, and deported as illegal migrants. This is essentially a re-victimisation by the criminal justice or immigration authorities of a State.

A significant difference could be made in the process if a different approach was taken to the provision of justice for human trafficking victims. Much can be said for a restorative justice approach to be adopted, that is, the enforcement personnel attending the crime scene understand that there may be trafficking victims present and seek to err on the side of treating the people they come across firstly as victims, and only after investigations change that presumption if indicated. The 'default' position should be that people located/detected are trafficking victims. No harm can be done from providing basic human rights to all found in such circumstances, but much harm can be done by denying such rights to people already victimised and probably traumatised. We already apply this approach in child protection enforcement cases in many western countries. Why not extend these ideals to human trafficking? A change in presumption by detecting personnel at this point would be achieved by adopting more broadly a human rights-informed approach, from one of seeking to apply punitive justice to applying restorative justice. This is a

lengthy and educative process that starts with the injection of such approaches into the training of all enforcement personnel, and the identification through police psychology of personnel particularly empathetic and thus suited to delivering this form of restorative policing.

4) Fourthly. Human trafficking is less a recognised normative crime than, for example, murder: all societies in the world recognise in a normative sense that taking a life is wrong. Human trafficking, or slavery, is not so clear-cut in this regard. In several of the cultures in the Mekong for instance, there is a relative normative acceptance of the concept of human servitude, in particular the servitude of children, women, and the poor. This lack of egalitarianism translates into trafficking not necessarily being considered wrong by all. The extent to which the trade in humans is facilitated by social acceptance, or at least a lack of clear social opprobrium, varies in degree and nature from jurisdiction to jurisdiction but does play a role in inhibiting effective enforcement in almost all areas in the Mekong. This fourth identifiable barrier to effective enforcement against trafficking is about social values and the need for change such that the nature of trafficking becomes recognised normatively as wrong. A form of consciousness-raising is called for in this regard.

5) Another identifiable barrier to effective enforcement arises from problems of definition and the related lack of comprehension of trafficking. In the more esoteric levels of government and in international organisations and academia, the concept of trafficking is contested and debated. The Transnational Organised Crime Convention and its Trafficking Protocol have offered internationally agreed definitions of the crime, but these are little understood outside the circles of professionals dealing with the issue. Even in the context of this conference of the anti-trafficking community, and amongst panellists even, we have seen a singular lack of even basic understanding, such as the difference between human trafficking and people smuggling. And if there is confusion and ignorance in the professional community, there is an even sadder lack of understanding of trafficking at the grassroots, where people most need more understanding of what is going on around them. There is a crying need for arriving at, and fostering greater common understanding, including non-legal, common-sense definitions of trafficking, to filter down to those in most need of the protection of the law.

6) The sixth identified barrier relates to what we know, and what we don't know. The fact is that much IS known about human trafficking. I have in the past worked on mainly drug crime and generally Asian organised crime investigations. I was so surprised when I turned to working against human trafficking for in my experience it is indeed rare to find so many actors who know so much about the nature and extent of a criminal activity. But little is done to aggregate and to validate this information. It is also the case that little in the way of comprehensive gain is made from this information. Criminal intelligence practices offer much in this situation, by providing a means by which the huge range of information available can be cultivated and developed, and turned into meaningful advice, assisting in not only evidence-based and rational policy formulation, but also potentially offering a way of predicting change in trafficking patterns and flows. Potentially the anti-trafficking community could change its directions and focuses as readily as do the traffickers themselves, by simply recognising the likely future criminal opportunities for trafficking, and arriving there with interventions first. Serious effort at criminal intelligence analysis is not just the basis for intelligence-led policing, which would be a dramatic improvement on the current 'collar-focused' practice, but also may serve as the basis for intelligence-led interventions in all anti-trafficking effort.

7) The seventh barrier to effective enforcement is largely the problem of access. Access to the law, for those in most need, is a problem made of three parts: finding out or knowing about the law, secondly about understanding it and knowing what it can do for a victim, and thirdly,

invoking its power. This accessibility issue is one that can be addressed by educative and other actions designed to promote the role of the law among those at-risk people, and providing them with access to the laws that should serve to protect them. This access must extend from pre-trafficking situations through to final resolution and return home.

8) Another key area to be looked into is the relationship that certainly seems to exist between efforts to reduce people smuggling and protect the integrity of national borders, and human trafficking. There is good evidence of tension existing between the two – where efforts to strengthen border control regimes to crack down on illicit labour migration, actually may serve to expand markets for traffickers. While the demand remains, the traffickers will continue to seek ways of filling the void. In the trafficker's world, supply is close to infinite. Tight migration controls, especially over labour movements, may serve to frustrate legitimate demand, and even legitimate supply. Trafficking is often borne of the frustration of supply or demand, the imbalance. Anything that delivers an imbalance potentially is a facilitating factor in increasing the proportion of trafficking within overall migration.

As this would also suggest, there is considerable evidence that tighter border controls may lead traffickers to adopt more desperate measures for the 'smuggling' phase of their operation, taking more high-risk approaches to concealment. With a human cargo, this can often prove seriously damaging or fatal for those being moved. Attention needs to be paid to exploring this important area of the implications for anti-trafficking efforts arising from public policy on migration.

9) My second last reason trafficker are whooping it up, is about a lack of recognition amongst law enforcement personnel that they can or should do anything to combat trafficking. Further, the roles to be played by law enforcement personnel in combating trafficking are neither articulated nor considered. It is not enough for law enforcement personnel to play only an arresting role, nor is it appropriate that their only role is criminal investigations. Much could be achieved in the anti-trafficking effort if police organisations took it upon themselves to become much more community-focused, community-based, and community-friendly rather than acting simply as an arm of government. This needs some more research, but it seems there might be something in the proposition that trafficking is more prevalent and traffickers are far more successful in jurisdictions without the community-based traditions of policing. Much as has happened in many western societies, community police now more view themselves as offering a service to the community, and place their greatest stock in building close ties with the community and work on addressing jointly identified concerns. There is good reason to believe that anti-trafficking efforts would be greatly aided by such a shift in policing culture and approach.

The police as an organisation to provide a service for a community can contribute much to anti-trafficking efforts, including leading in the establishment of neighbourhood and community networks against trafficking. Effort should be made to promote closer links between enforcement personnel and at-risk communities. Much could also be done in the way of street-wise education for at-risk women and children in particular, a role that very much fits with the brief of community-oriented policing. Further, effort at demand-reduction by enforcement personnel is a very clear preventative role that could be played and add considerable value.

10) This need for change in police culture brings me to my last point – the need for a paradigm shift in policing if we are to effectively deal with trafficking. There are many characteristics of human trafficking as a criminal activity, that mitigate against the application of current policing models, as well as against the largely punitive, criminal justice approaches presently taken. Much law in the Mekong for example requires that for crimes against persons, as opposed to crimes against states, for there to be a recognisable human victim - and that victim must be the

complainant. In the absence of a criminal complaint, many police in this region are not empowered to act. It is the nature of trafficking that often victims are reticent to complain, or not compellable, or perhaps not even competent as witnesses and therefore considered not competent as complainants. Almost all of the jurisdictions in this region require an identifiable legal person as the victim to be the complainant for crimes against their person. Much could be done to address this legislatively and in the criminal justice process, to allow, for example, third party or *ex parte* complaints from NGO's, or even the police themselves, on behalf of the state as many of our countries already do for crimes committed against the state.
