

COMBATING TRAFFICKING IN PERSONS THROUGH CRIMINAL INVESTIGATION, PREVENTION AND COOPERATION IN TIMOR-LESTE

*Paulo Anuno**

I. Introduction

Trafficking in people in East Timor is increasingly widespread, both domestically and across national borders. Prominent among trafficking in persons is the trafficking of children and women associated with the sex industry, which is now starting to become a public concern. Of course, it cannot be concluded that this phenomenon is new; it is likely that this phenomenon has occurred since independence, occurring on a small scale or because the activities are organized so neatly that they are unattractive and unreachable by news media.

Prostitution and human trafficking for sexual exploitation have existed in East Timor for centuries. From the Portuguese colonial period (1511-1975), to the Japanese occupation during World War II (1942-1945), to the Indonesian occupation (1975-1999), there has been some form of sexual exploitation that can be considered trafficking under the international standard set forth in the 2000 "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime" (Trafficking Protocol).

In May 2002, East Timor gained the restoration of its independence when the United Nations Transitional Administration in East Timor (UNTAET) transferred its interim authority to the new government. By that time in Dili, East Timor's capital city had an estimated population of 150,000 inhabitants. There are approximately 250 female sex workers from East Timor (100), Indonesia (60), China (35), Thailand (30), Philippines (20), and Australia (3). In addition, Dili has 100 East Timorese male sex workers and 10 Indonesian male sex workers. Research indicated that the sex workers in the nation's districts are exclusively East Timorese women.

Between March and June 2004, the Alola Foundation¹ conducted an Anti-trafficking for Sexual Exploitation Needs Assessment in East Timor. This research focuses on a qualitative study with three main objectives:

1. To analyse the situation and assess the needs of trafficking victims for sexual exploitation,
2. To uncover the scope of trafficking operations by understanding how the sex industry operates, and
3. To evaluate the political, legal, cultural, and social context of prostitution and the efforts to combat human trafficking.

To achieve the first two objectives, an assessment team surveyed 42 sex workers (women, girls, men, and boys) as a means to identify trafficked persons and their needs. In addition, the team contacted over 400 other sources to complement and confirm the data obtained from the sex workers themselves. Over 60 persons were interviewed in governmental agencies, local and international non-governmental organizations, and the United Nations mission and agencies, as well as private individuals.

In 2006, 3 men and 1 woman were arrested, investigated and accused. In 2007, 8 women and 2 men were arrested, investigated and accused but no convictions were recorded prior to 2007.

* Investigator, Criminal Investigation Unit (CIU), Investigation Division (ID), Anti-Corruption Commission, Timor-Leste.

¹ Alola Foundation is a nonprofit NGO to improve the lives of women and children. Founded in 2001 by former First Lady, Dr. Kirsty Sword Gusmão.

In 2009, UNPOL² and PNTL³ conducted an operation for human trafficking that apprehended 22 women between the ages of 17 and 29 years old. In 2006 and 2010, the International Organization of Migration (IOM) estimated that there were close to 1,000 construction workers and large percentages of the 550 commercial sex workers in Dili. In 2012, there were 3 people investigated and 1 was charged. But between 2013 and 2014, legislation was pending approval from the Council of Ministers. Thus, no trafficking cases were successfully investigated during that period.

II. TRAFFICKING IN PERSONS

Article 163 of the Criminal Code of East Timor⁴ states that “Trafficking in people” is punishable by a prison sentence of 8 to 20 years, applying to those who “recruit, alienate, assign, acquire, transport, transfer, to host or welcome people, using the threat, the use of force, other forms of coercion, abduction, fraud, deceit, abuse of authority or situation of vulnerability, or through the delivery or acceptance of payments or benefits, to obtain the consent of a person who has authority over another to achieve the purpose of exploitation” (paragraph 1); and those who “recruit, transport, transfer, host or host a child under the age of 17 for even if it does not involve any of the means referred to in the previous paragraph” (paragraph 2). Explaining the conduct in paragraph 3, that the “holding” must include at least the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, or extraction of organs.

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 East Timor confirms that enacting appropriate criminal laws is just the first step. Greater challenges lie in giving full effect to these laws, while recognizing the special rights and needs of victims of trafficking.

III. INVESTIGATION AND PREVENTION

Trafficking in persons, especially of women, is a form of crime that is very complex. Of course it requires a comprehensive and integrated effort. Not only knowledge and professionalism are needed, but also information collection and exchange, good cooperation between law enforcement officers such as the police, prosecutors, judges and other related parties, namely government institutions (relevant ministries) and non-governmental institutions (NGOs) both locally and internationally. All parties can exchange information and professional expertise in accordance with their respective authority and agency code of ethics not only about prevention, but also handling cases and protecting victims increasingly justifies the efforts to prevent and combat trafficking in an integrated manner.

In the context of investigation and prosecution, law enforcement officials can maximize the network of cooperation with fellow law enforcement officials within a country to exchange information and conduct joint investigations. Collaboration with law enforcement officials in destination countries can be done through information exchange, or even through mutual legal assistance, for the prevention and control of cross-border trafficking in women:

1. The State must take appropriate measures to discourage and reduce the demand that favours all forms of exploitation of persons, particularly women and children, conducive to trafficking, including:
 - (a) Measures to raise awareness of the responsibility and the important role of the media and civil society in identifying demand as one of the root causes of human trafficking, including through the internet, information and awareness-raising campaigns, research and education;
 - (b) Preventive measures including educational programmes for children and young people in education, stressing the unacceptable nature of discrimination based on sex and its harmful consequences, the importance of equality between women and men, and the dignity and the

² United Nations Police (UNPOL).

³ National Police of East Timor (PNTL).

⁴ Decree law no. 19/2009, approval of the Penal Code of Timor-Leste.

integrity of every human being.

2. The State shall further promote the regular training of officials and other servants of justice and others who may intervene or contact victims of trafficking in persons, including police officers on the ground, so that they may identify and deal with victims.
3. The State shall act in cooperation with relevant international organizations, civil society and other interested parties.

IV. PROSECUTION

The government has made increased law enforcement efforts and took steps to strengthen relevant legislation. Articles 163 and 164⁵ of the criminal code criminalize all forms of trafficking and prescribe eight to 25 years' imprisonment as penalties which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. The government reported that it investigated 176 cases of suspected trafficking a significant increase from 12 in 2015. It confirmed 79 of these as genuine trafficking cases and initiated 16 prosecutions, an increase from six in 2015. For the fourth consecutive year, the government did not obtain any convictions; all prosecutions remained pending at the end of the reporting period. The government did not report any investigations, prosecutions, or convictions of government employees complicit in human trafficking offences. In the past, police officers reported using their own personal funds to pursue trafficking investigations due to inadequate resource allocation from the government.

In February 2017, the government promulgated the Law on Preventing and Combating Human Trafficking to amend the criminal code, extending criminal liability for trafficking to "legal persons," such as corporations. The new law prescribes fines, judicial dissolution, and asset forfeiture as penalties, and authorizes compensation of victims.

After the entry into force of the UN Trafficking Protocol⁶ in 2003, East Timor ratified the protocol in 2009, establishing a set of key legal obligations relating to trafficking. These include the following obligations:

- criminalization of trafficking and providing appropriate penalties;
- extraditing or prosecuting traffickers;
- actively identifying victims;
- diligently investigating and prosecuting traffickers;
- assisting and protecting victims;
- refraining from detaining and prosecuting victims;
- providing adequate and appropriate remedies to victims of trafficking;
- providing special measures for children;
- working towards preventing trafficking;
- cooperating across borders.

V. REGIONAL AND INTERNATIONAL COOPERATION

According to the Timor-Leste Constitution, article 8, nos. 1 – 4, addresses creating better international relationships. Moreover, article 9, nos. 1 – 3, adopts international human rights law. Law no. 3/2017, the Law on Prevention and Fight against Trafficking in Persons and a Fourth Amendment to the Criminal Code, article 32 states that:

1. The State and the entities competent under this law and their agents shall promote cooperation through bilateral, regional and international mechanisms in the development of common strategies and forms of action to prevent and combat trafficking of people.
2. Without prejudice to the results of the obligations already assumed by the Timorese State, for the

⁵ Ibid.

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

purposes of the preceding paragraph, the competent authorities shall, in particular:

- (a) Develop cooperation agreements to facilitate the rapid identification of victims of trafficking in persons, including the dissemination and sharing of information on the nationality and right of residence of the persons concerned;
- (b) Establish mechanisms to facilitate the sharing of information on traffickers and their methods of operation;
- (c) Develop procedures and protocols for the joint conduct of surveys;
- (d) Ensure international judicial cooperation in investigations and prosecutions relating to trafficking in persons;
- (e) Establish cooperation mechanisms for the seizure of the proceeds of trafficking in persons;
- (f) Share information on the implementation of assistance, repatriation and integration programmes;
- (g) Encourage and facilitate cooperation between non-governmental organizations and other civil society organizations in the countries of origin of victims of trafficking in persons, so as to ensure the provision of support and assistance to repatriated victims.

There is an opportunity to establish Mutual Legal Assistance (MLA) to work together for better criminal justice. The cooperation from government to government not only with Portuguese Speaking Countries (CPLP) but also with ASEAN, the European Union, the United States of America, China, Japan, Australia and others.

In January 2017, the Indonesian government reported 5 residents for violating immigration procedures in Lombok, Nusa Tenggara Barat (NTB). Recently in 2019, one concrete example of cooperation is that the government of Timor-Leste and the Chinese government have negotiated to repatriate 31 workers from Timor-Leste illegally working in Chian, China. The Immigration Police⁷ played an important role in investigating and the report submitted to the Prosecutor's Office. The case is now being handled by the Prosecutor's Office in Timor-Leste. However, there is another way for the Prosecutor to decide whether to continue investigating or delegating the mandate to the police organs. Usually, cases relating to corruption will be given to the Anti-Corruption Commission, cases relating to trafficking in persons or drug trafficking will be given to the NDI Police and PCIC Police, and illegal immigrants will be handled by the Immigration Police and so on.

Cooperation with civil society is very necessary to jointly fight trafficking in persons, as stated in article 33 of the above-stated law, and the competent entities under this law shall cooperate with other public entities, non-governmental organizations and other relevant organizations in order to establish strategic partnerships with a view to:

- (a) Prevent and combat trafficking in persons;
- (b) Protect and provide assistance to victims;
- (c) Investigate or prosecute criminal offences relating to trafficking in persons.

⁷ According to the L. Barreto the Attache, Police and Immigration and current acting Interim Director of Immigration Police said that from 2018 to March 2019 there were East Timorese around 31 people who worked in Fujian, China. They were arrested by Police in Fujian for violating the immigration rules and misused the visa. Immigration Police of Timor-Leste work in a protocol to work together with China Police to repatriate them. In the first stage there were 7 people, the second stage was 11 people and in the third stage there were 13 people who would arrive in Dili, Timor-Leste on 23 April 2019.

VI. CONCLUSION

Trafficking for sexual exploitation is occurring in East Timor, the world's newest nation. Due to conflicting views about prostitution, its legality versus cultural acceptance, there has been confusion between trafficked persons (crime victims) and non-coerced adult sex workers whose commercial sex work is a legal activity in East Timor. The misconceptions have resulted in almost all women and girls suspected of prostitution activities being treated as criminals. Through this period, however, the East Timorese government has made progress toward recognizing the rights of trafficking victims and targeting the traffickers as opposed to legal prostitution activities. Important steps are still ahead including the formulation of a comprehensive anti-trafficking law that addresses the needs of law enforcement as well as trafficked persons, and the coordination of anti-trafficking policies that include civil society organizations as strategic partners. Although trafficking is occurring, it is not so entrenched that effective multidimensional measures enacted soon could not dramatically reduce, if not halt, its incidence. Moreover, concerted holistic efforts now may also prevent East Timorese women, girls, men, and boys from being targeted by traffickers in the future. The more trafficking is recognized as a global human rights issue, not just a local law enforcement challenge in East Timor but in the rest of the world, the more we will move toward stopping this affront to human dignity.

Therefore, we should provide guidance to overcome trafficking in persons at the community level by providing labour intensive training to communities that do not yet have the ability to increase the economy of the community, providing knowledge about trafficking to communities, improving relations between communities so that there is no mutual use for their own interests and introducing to the communities the modes commonly used by traffickers.

At the national level, it is important to uphold Law no. 3/2017, Law on Prevention and Fight against Trafficking in persons and fourth Amendment to the Penal Code of East Timor, Law no. 11/2017, on Immigration and Asylum law, Law no. 2/2017 25 January, Law to Combat Illicit Drug Trafficking, East Timor Penal Code and Procedure Penal Code and Law no. 15/2011, Judicial International Cooperation. Increasing the security of safeguards in the country's borders, both land and sea, improve security at immigration (overseas permission), increase employment, improve education, close discotheques and cafes that are used for sexual exploitation, training the sex workers who are arrested so that they do not return to the dark world and sentencing traffickers to the death penalty.

REFERENCES

- Law no. 3/2017, 25 January, Law on Prevention and Fight against Trafficking in persons and fourth Amendment to the Penal Code of East Timor.
- Law no. Lei n° 11/2017, Immigration and Asylum law.
- Law no. 2/2017, Law to Combat Illicit Drug Trafficking.
- Timor-Leste Penal Code and Procedure penal Code.
- Constitution of the Democratic Republic of East Timor.
- Law no. 15/2011, Judicial International Cooperation.
- Law no. 8/2009, Law on the Anti-Corruption Commission
- Decree law no. 15/2014, Approved the Scientific Police of Criminal Investigation.
- [ALOLA TRAFFICKING REPORT.pdf](#).
- https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en
- [GLO.ACT_Pakistan_HTMS-Conference-Report_Oct-2017.pdf](#).
- <https://globalmigrationgroup.org/theme/migrant-smuggling-and-trafficking-persons>
- https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_335667.pdf.
- <https://www.unmit.unmission.org>
- www.un.org
- www.thediliweekly.com
- <https://indonesia.iom.int/id/aktivitas-kami/pemberantasan-perdagangan-manusia>.
- <https://www.republika.co.id/berita/nasional/daerah/17/01/17/ojwuq2365-imigrasi-mataram-akan->

- deportasi-lima-wna-timor-leste.
<http://rttlep.tl/pt/radio-news/read/20190115/074724/51134/mnec-mendeportasi-16-orang-warga-tl.html>