
REPORTS OF THE SEMINAR

GROUP 1

EFFECTIVE DETECTION, INVESTIGATION AND PROSECUTION OF TRAFFICKING IN PERSONS WITH SPECIAL FOCUS ON INTERNATIONAL COOPERATION

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I. INTRODUCTION

All the participants are in agreement that trafficking in persons is a serious problem affecting both the domestic and global community and that each country can be a source, transit, or a destination country, or all of the foregoing. Except for the participant from Papua New Guinea, all the participants considered their countries to be source, transit, and destination countries. The participant from Papua New Guinea mentioned that his country is a transit and destination country, while the Bangladeshi participant stated that his country is a source and transit country.

Under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, trafficking in persons has three forms of exploitation: sexual exploitation, forced labour or slavery, and organ removal. Although not all countries have criminalised all three forms of exploitation (sexual, labour, and organ trafficking), each country has its own domestic laws to counter some forms of human trafficking. In Papua New Guinea, basic criminal and labour laws are applied to human-trafficking cases. Despite the endeavours and continuous efforts of different countries in combating human-trafficking, there are still many obstacles preventing each country from effectively addressing this global menace.

The Group identified, among others, the push and pull factors common to all countries: economic reasons; lack of employment opportunities; family disintegration; weak or no law criminalising human trafficking; corruption and lack of exemplary punishment; vulnerability of victims due to calamities; limited or no access to social services or information; regulation imbalance; and presence of organized crime groups.

This report embodies the views and experiences of the participants in combating human trafficking, the obstacles encountered in detection, investigation, and prosecution of trafficking in persons (TIP) cases, as well as the available measures in their respective countries. Considering that TIP is a transnational crime, the Group agreed that to be able to effectively address TIP, effective measures in detection, investigation and prosecution must be recommended, focusing specially on international cooperation among participants' respective countries.

II. MODUS OPERANDI

Being an organized transnational crime, the TIP common process involves recruiting victims, transferring or transporting such victims to the destination, and exercising control over victims to make them subservient to the human traffickers' demands.

At the recruitment stage, the Group identified several modi operandi. Human traffickers employ

fraudulent schemes or deceptive means such as giving false promises, advance payment or salary, job offering, internet communication, and advertisement in newspapers. A participant from Japan gave an example of human traffickers luring Filipina women with Japanese fathers to Japan by assuring them of the grant of citizenship, only for them to suffer sexual or labour exploitation upon arrival in Japan.

Victims of human traffickers are usually transported illegally to the transit/destination countries – legal ports are not often used; if exit or entry is through legal ports, fake travel documents are used. Fake marriages are likewise employed to gain entry to another country. Human trafficking occurs by air, land and sea, depending on the strategic location of each country. A participant from Honduras gave an example of victims who were transported on top of a cargo train from Mexico to the United States of America. If by sea, in the case of the Philippines, some victims are hidden in the engine room of the vessel for more than twelve hours. To other countries, like Japan, transportation of victims is mostly by air. As to the exercise of control by the human trafficker, it may occur during the transfer or at the start of the exploitation in the destination country.

III. OBSTACLES

A. Detection

Persons vulnerable to trafficking are those who, in addition to those referred to by the UNODC documents, are in the following situations: homeless; young women or children; from poor families; of unusual appearance or circumstance, such as unusual scars or visible injuries; new to urban areas; illegal migrants housed in common locations or regions.

As far as the victim is concerned, obstacles identified by the Group are the following:

- (1) victims sometimes do not realise that they are victims, or the possibility that they can become victims of trafficking, thus they are unable to identify themselves as such;
- (2) many victims are uneducated and/or have difficulty in communicating because of language barriers;
- (3) TIP victims who are found to have entered the country of destination illegally, or who are overstaying, or who have been involved in criminal activities such as prostitution, working without permits, or using fake travel documents, often refuse to cooperate with law enforcement agents for fear of punishment as well as fear of retaliation by human traffickers;
- (4) in most cases, victims are found to have no or limited freedom or movement due to either physical (locked inside the room or house) or mental (unpaid debts) control;
- (5) the geographical distance between the victims' place of origin and the place of exploitation increases the vulnerability of victim as well as their difficulty in escaping and seeking assistance from authorities.

The Group also identified two common obstacles in the community or the public. First is their lack of awareness of trafficking in persons, making them unable to identify if such crimes are being committed in their community. Second, they may be aware, but fear of harm or retaliation prevents them from assisting the victim or reporting the incident to the authorities. As to law enforcers, most of the participants identified the following obstacles as very common: lack of personnel, tools, devices, equipment, office supplies, and gasoline; and voluminous workloads and budget constraints. Moreover, law enforcers' lack of knowledge and skill in detecting witnesses and investigating human-trafficking cases, as well as corruption, are also obstacles in most countries.

B. Investigation

Law enforcers face several obstacles in investigating human trafficking cases, and foremost is the language barrier between the victims and the authorities, more specially, if it involves a foreign victim or minor. Victims' refusal to cooperate or to tell the truth are due to some factors such as trauma, fear of authority or being charged for illegal activities, fear of retaliation by human traffickers, a feeling of loyalty to the human traffickers, and fear of being labeled a prostitute. Some victims do cooperate but exaggerate what they experienced to make themselves appear more believable. In the case of Thailand, the long waiting period for trial to begin also discourages victim cooperation, and they would rather lie about the exploitation, accept punishment for criminal activities and be deported than wait for the prosecution of the case. As far

as investigating the suspect is concerned, language difference is likewise an obstacle, as well as bribery and corruption. Other obstacles are that suspects use various techniques to delay the criminal procedure; do not admit their guilt; and operate with an organized crime group. The presence of layers of actors complicates and sometimes prevents the police and prosecutors from identifying and tracing the suspects. Police investigators themselves face several obstacles such as their lack of knowledge of TIP and weak investigative skills, lack of internal and external police cooperation, frequent rotation of police officers, and lack of forensic or scientific equipment.

C. Prosecution

As in investigation, the prosecution faces similar obstacles. However, in addition thereto, the prosecution faces the following obstacles:

- (1) Absence of witnesses at the trial or in court testimony;
- (2) Hostile witnesses;
- (3) Lack of cooperation by the witness;
- (4) Long duration of trial;
- (5) Lack of knowledge in handling human trafficking cases; and
- (6) The frequent rotation of prosecutors.

However, a participant from Japan disagreed that frequent fast-turnover of police and prosecutors was an obstacle, and viewed it instead as an effective measure to fight corruption as well as an opportunity to enhance the capability of other police or prosecutors by sharing knowledge, experiences, and expertise regarding human trafficking.

IV. EFFECTIVE MEASURES IN DETECTION, INVESTIGATION, AND PROSECUTION

After a lengthy discussion, the Group recommended the following effective measures to secure the co-operation of victims and other witnesses:

- Presence of social workers at relevant stages of the process.¹
- Grant victims/witnesses immunity from suit, a work permit, extension of stay, or residency status.
- Financial assistance or an allowance for the cost of transportation, board, and lodging.
- Availability of interpreters at all stages of the investigation and prosecution.
- Provision of assistance such as appropriate shelter, medical/psychological care, and livelihood skills training/rehabilitation.
- Upholding the privacy/confidentiality of victims' identity and personal circumstances at all stages and closed-door investigation, and prosecution/trial (where possible).²
- Pre-requisite testimony of victim before prosecutor, defender, and the judge.
- Offer of plea bargain to an accomplice-turned-witness.

Recommended effective measures to get useful information from suspects are the following:

- Availability of interpreters.
- Surveillance of the activities of the suspect and the organized crime group.
- Wiretapping.³
- Tracing of financial or paper flows.
- Undercover operation/sting operations.⁴
- Financial sanctions such as confiscation of criminal proceeds and devices.

¹ To gain the trust, knowledge, and understanding of the victim.

² In Japan, victim's name may not be divulged during trial.

³ Generally, in Japan, wiretapping for TIP cases is not allowed.

⁴ Entrapment operations are not allowed in Japan for TIP cases because in such operations, police officers in effect would be committing a crime, and no immunity can be granted to officer; further, it is considered that in Japan, this will erode public confidence in the police.

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Below are common effective measures identified by the Group:

- Full-blown campaigns against human trafficking, and advocacy and awareness-raising in relevant countries for all sectors of the community.
- Continuous training for police officers, prosecutors, and judges relative to capacity building, anti-trafficking and anti-corruption practices, cyber-crime detection, fraudulent document detection, and value formation.
- Monitoring in both source and destination countries by means of strict checking at ports of entry and exit; monitoring of transport agencies and recruitment service providers; compulsory/regular inspection of business establishments by government officials and internet surveillance.
- Increased police visibility, such as more community or home visits by police officers.
- Establish a system for handling human trafficking cases at the police and prosecution level to ensure a smooth turnover and continuance of the investigation and prosecution of TIP cases.
- Create a task force specializing in investigating and prosecuting TIP cases.
- Investigate and prosecute suspects in TIP cases who bribe government officials.
- Enroll victims in witness-protection programmes or engage the assistance of non-government agencies to assist in protecting the victims and their families.

V. INTERNATIONAL CO-OPERATION

Weak or absent international co-operation and links between and among relevant government and non-government offices at the regional and global levels are key factors in allowing a very low risk environment for human traffickers.

The Group identified two kinds of cooperation: formal and informal. Formal cooperation takes a longer time to process, especially in the absence of a bilateral treaty, extradition, or a central authority and where the diplomatic channel is the only means of cooperating. In informal cooperation, the process is easier and faster in facilitating communication and requests.

Thus the Group agreed upon the following effective measures in handling TIP cases involving foreigners:

- A. Create a joint task force on a case-by-case basis involving authorities from both countries.
- B. Secure technical assistance in international capacity-building training to equip or enhance existing capabilities of all countries in detecting, investigating, and prosecuting human-trafficking cases.
- C. Establish networks with international groups such as the UNODC, Interpol, foreign regional committees, and the like.
- D. Conduct regional meetings among countries to establish a good network and linkages.
- E. Attend international fora to widen the international network.

VI. CONCLUSION

In view of the complex nature of the crime of human trafficking, it is important that different countries strengthen their regional and international cooperation and networking, with mutual understanding of each countries' current situation and how to best address human trafficking in terms of detection, investigation and prosecution. It is of equal importance that joint efforts are sustained to be able to eradicate this global menace.