

## POLICY ESSAY

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### IDENTIFYING HUMAN TRAFFICKING VICTIMS

# Building the infrastructure of anti-trafficking: Information, funding, responses<sup>1</sup>

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Reliable estimates of the incidence of “trafficking in persons” in individual communities and countries do not exist yet. In my view, even with the best efforts of truly gifted statisticians (e.g., U.S. Government Accountability Office [GAO], 2007: Appendix III), it is inevitable that, as a relatively new crime type, our knowledge of the nature and extent of this crime will continue to grow only as our responses to this crime evolve and improve. As Farrell, McDevitt, and Fahy (2010, this issue) noted in their article, reported incidences of relatively new forms of crime, such as hate crime and domestic violence, increased only after the “symbolic” laws were given operational effect through the removal of the ambiguity of key terms, the introduction of targeted training on new laws, and the development of protocols to aid in the identification of these new forms of crime. The same logic applies to the crime of trafficking in persons. This trend certainly has been my experience as a researcher working on “trafficking in persons” in Australia for approximately 10 years.

In a report prepared in 1999 but published in 2000, I noted the following:

In Australia, as in other countries of the world, limited evidence is available about the nature and incidence of human trafficking. There is some anecdotal evidence of trafficking activity occurring in various industries, including hospitality, manufacturing, and agriculture. The sector that has received the most media attention,

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1. The title of this essay is derived from a comment by Maggy Lee in Lee, Maggy (ed). 2007. *Human Trafficking*. Willan Publishing.

however, is the sex industry. It appears from academic reports that most female undocumented workers working in the sex industry have entered that industry voluntarily, having come to Australia for that purpose. These reports suggest that the issue of deception or coercion is most likely to occur in relation to working conditions, including the repayment of debts to organisers, rather than the nature of the work involved (David, 1999: v–vi).

At the time this report was prepared, there was no agreed international definition of “trafficking in persons,” as the United Nations Trafficking Protocol was still being negotiated. Few countries, including Australia, had laws that addressed this issue, let alone a dedicated antitrafficking response or community of non-government organizations (NGOs) working actively on these issues. Debates centered on issues such as the difference between people smuggling and people trafficking as well as controversies surrounding issues such as “mail-order brides” and migration for sex work. It was recognized that trafficking in persons was a difficult crime to quantify because it was conduct perpetrated behind closed doors with trafficked persons deliberately restrained from access to the outside world. Few (if any) researchers had the answer for how to overcome this seemingly intractable research difficulty.

In the intervening years, much has changed, but some things remain the same. The antitrafficking response now is guided by a common international definition of the term “trafficking in persons.” According to Article 3 of the United Nations Protocol against Trafficking in Persons:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

For ease of reference, this definition frequently is broken down into its constituent elements. That is, trafficking in persons is a process that requires the following three elements:

1. An *action* by the trafficker in the form of recruitment, transportation, transfer, harboring, or receipt of persons;
2. Undertaken by one of the following *means*: force or threat of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, giving or receiving payments to achieve the consent of a person having control over another person;

3. For the *purpose* of “exploitation,” a concept, which includes “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and removal of organs.”

As noted in Article 3(c) of the Protocol, where the victim is a child (that is, younger than 18 years of age), only two elements are required: the *action*, which must be for the *purpose* of exploitation. As noted in Article 3(b) of the Protocol, in all cases, the “consent” of a victim of trafficking in persons to the intended exploitation is irrelevant in which deception, fraud, and so on have been used.

The existence of a legal definition of “trafficking in persons” was an important first step toward the development of more considered responses to this issue because advocates, researchers, law enforcement, and other interested parties finally could discuss the issues using a common language. The existence of this definition, however, did not resolve every issue relating to the scope of the “trafficking in persons” concept. Many of the terms used in the definition itself necessarily are open to interpretation. For example, what is the meaning of “coercion,” and does it include a situation of limited choice that results from poverty (International Labour Office [ILO], 2009: 5–6)? What is the meaning of “servitude,” and does this term have an absolute or relative meaning depending on the cultural context (e.g., Merry, 2006; 109 on the interpretation of cultural practices by national human rights institutions in Papua New Guinea)? What is “forced labor,” and how is that different to poor working conditions? Although debates around terminology are mostly of interest to academics and legal scholars, they have practical implications. Should law-enforcement officers focus their efforts only on those “trafficking in persons” cases in which it is actually possible to prove the elements of the crime by reference to objective, *external* factors, such as clear evidence of injuries inflicted by perpetrators on trafficked persons or photographs of bars on windows and locks on doors used to restrain trafficked persons? Although the appeal of such an approach is obvious, it would mean abandoning any focus on the (likely, far larger) number of cases in which “coercion” and control are achieved through subtle means, which are far harder to prove, such as escalating debts, false promises, isolation, and manipulation of a tenuous migration situation (David, 2008: 31–32, 39; ILO, 2009: 5–6).

As in 1999, in 2010, politicians continue to inquire (with little success) about the availability of robust statistics on the incidence of trafficking in persons in the community. However, in 2010, Australia has a dedicated antitrafficking response, underpinned by specific antitrafficking laws and implemented by a range of Federal Government agencies (e.g., Australian Government, 2009) and an active NGO sector (e.g., Anti-Slavery Project, 2009; Project Respect, 2009). With this ever-growing response comes ever-improving information about the nature and the extent of trafficking in persons in the Australian community. In a report published in 2008, it was possible to note the number of investigations and assessments undertaken by the Australian Federal Police since 2004 (more than 150), the number of people who had been

provided support by the federally funded victim support program (88), and the number of briefs of evidence referred to the Commonwealth prosecution service (29 briefs of evidence concerning 29 defendants; David, 2008: 6). Since that time, information has been updated on a regular basis in a variety of publications (e.g., Anti-Slavery Project, 2009: 7; Australian Government, 2009; 10, 22, 28, 30–31).

As the response to trafficking in persons generates new information about the size and nature of the problem, the Australian Government has had to abandon its own (early) estimates of the size of the trafficking problem in Australia. For example, in late 2003, the Australian Government launched its *Action Plan to Eradicate Trafficking in Persons* in an environment of intense lobbying by NGOs and media interest (e.g., Parliamentary Joint Committee of the Australian Crime Commission, 2004: 1; Project Respect, 2003). The action plan included the statement that “[t]he number of people trafficked into Australia is estimated to be well below 100” (Australian Government, 2004: 2). Five years later, the Australian Government issued the first report of activities of the “whole of government” response to trafficking in persons. This report no longer includes the (often-quoted) statistic of “less than 100 victims.” The report notes, among other things, that since its inception in 2004, 131 people have received assistance through the government’s own support program for trafficked persons (Australian Government, 2009: 30). This number does not include other trafficked persons who either simply might be surviving in the Australian community on their own resources or who might be receiving support from nongovernment organizations such as the Anti-Slavery Project, the Salvation Army, Project Respect, or through other community networks.

As the capacity of the NGO sector working on antitrafficking issues in Australia grows, it is likely that information will continue to improve on instances of trafficking in persons that are “detected” in some way but not necessarily are reported to, or are pursued by, law enforcement. For example, in June 2009, the Salvation Army reported that in a little more than 18 months of operating a dedicated shelter for victims of slavery/human trafficking in one major city (Sydney), it had provided services to 37 individuals. Out of this client base, only 11 of these individuals also were being supported by the federally funded victim-support program referred to earlier (Stanger, 2009: slides 4 and 5). This statistic confirms what was already self-evident to practitioners working in the community—that the number of (identified) trafficked persons is greater than the number of individuals receiving support from the federally funded support program.

### **The Creation of Policy in an Information Vacuum?**

To a certain extent, policy makers have to contend with the reality that although they need “evidence” of trafficking in persons to justify expenditure on anti-trafficking programs, improved evidence about the nature and extent of trafficking in persons will only emerge if funding is provided for appropriately targeted programs and responses. What should policy makers do in this situation? First, it is important for policy makers to recognize the value of different forms of “evidence.” Research agencies do not have the numbers and percentages that policy makers

are used to being able to access for other, more established, crime types such as homicide and burglary. In particular, statistics on *incidence* of “trafficking in persons” within our community simply are not available. This problem is significant because it limits our capacity to make truly informed decisions about the proportionality of responses and the impact and effectiveness of anti-trafficking efforts. However, research agencies, NGOs, and others involved in the anti-trafficking response have sought to document (primarily qualitative) data about known cases, which can be mined for valuable information about the nature of this crime in our communities, the offenders, and to a certain extent, the outcomes for trafficked persons. Although policy makers tend to value statistics over case studies, qualitative methods can make an important contribution to the evidence base. For example, a detailed case study has the capacity to give a human face to an otherwise foreign, or perhaps even unbelievable, experience while truly reflecting the complexity of the trafficking experience (e.g., Anti-Slavery Project, 2009; David, 2008, 44-47).

Policy makers also can choose to draw respectfully on the voices of experience. The antitrafficking response, in its current form, is now 10 years old. This age is young in policy terms, but it is a response that has had immense resources dedicated to it globally. A wealth of experience can be found within the antitrafficking response, which includes experienced law-enforcement practitioners, who have seen “what works” to increase detection first hand; sex-worker advocates, who have seen how poorly targeted antitrafficking interventions can harm the women they are supposed to protect; and social workers, who can describe to a person the value of telling their story and being believed. Ultimately, it is vital to have independent, robust, high-quality research to test and to validate the opinions of experts. The research of Farrell et al. (2010) is an excellent example of how research can validate experience. Experienced law-enforcement practitioners long have claimed that if we properly train and resource law-enforcement personnel to identify and investigate trafficking in persons cases, then the number of detections will increase significantly (e.g., Gallagher and Holmes, 2008, drawing on 10 years of experience with this issue). Prior to the research of Farrell et al., these claims were perhaps too easily dismissed as individual opinion. However, with the benefit of the careful research of Farrell et al., these practitioner “opinions” now can be shown as being supported by empirical evidence.

### **Policy Implications**

The policy implications of Farrell et al.’s (2010) research are clear. If policy makers want to give a practical effect to otherwise “symbolic” antitrafficking laws, then they need to move beyond mere law reform and focus on *funding* law enforcement to undertake the following steps:

1. Raising the awareness of senior law enforcement about trafficking in persons both as an issue and as a crime type in the local community. For maximum impact, this training likely needs to include the presentation of real case studies, either from within the local area or from areas with similar characteristics to with the local area. Perhaps in time this instruction even can include presentations by

trafficked persons, who have first-hand experience of this crime type and have stepped forward as advocates.

2. Engagement between law enforcement and local communities, so law enforcement can inform local networks about the criminality of “trafficking” conduct and increase their own prospects of accessing high-quality intelligence on this issue (Holmes, 2002).

3. Training in the detection and the appropriate response (referring or investigating) to trafficking in persons not only for federal law enforcement and central agencies but also for what Gallagher and Holmes (2008: 326–327) have called “front-line” law enforcement.

4. The development of protocols/standard operating procedures to guide law enforcement in the often complex and sensitive tasks of victim identification, interviews with trafficked persons, and interactions with external agencies including the NGO sector (David, 2008, 67–68).

Although the implications of the research conducted by Farrell et al. (2010) for law-enforcement agencies are clear, the implications for other agencies—namely labor inspectorates, occupational health and safety inspectorates, industrial relations tribunals, unions, and even employer groups—are perhaps less obvious. Trafficking in persons is a crime, so it is reasonable to focus on developing the capacity of the agencies most commonly tasked with responding to crime, including law enforcement agencies. However, the reality is that trafficking in persons crimes occur in a context, and that context is generally a workplace. As Farrell et al. noted, law-enforcement officers traditionally have left the regulation of work environments to a range of different agencies. Conduct in workplaces traditionally is “policed” by a range of organizations, which include labor and occupational health and safety (OHS) inspection agencies but also include a range of nongovernment organizations, particularly the unions. Of course, in the real world, instances of “trafficking in persons” do not appear only to law-enforcement officials. As a result of their activities in the community and in workplaces, labor inspectors, OHS inspectors, and union delegates, potentially might (and, indeed, have) come into contact with people in trafficking situations. When an individual officer from any of these agencies encounters a potential situation of trafficking in persons, it is vital that they both “recognize” what it is they are seeing and that they know what to do next.

Given this crossover between “crime” and “work” in the antitrafficking context, it follows that Farrell et al.’s (2010) research findings are potentially equally applicable not only to law-enforcement agencies but also to labor inspectorates, OHS inspectorates, industrial relations tribunals, unions, and potentially even employer groups. For example, just as the perception of senior law-enforcement officials of the seriousness of the local “trafficking in persons” problem correlates to an increased detection of incidences, it is likely that increasing the awareness of senior leaders in labor inspection agencies similarly would increase levels of detections by officers from

within their ranks. Just as front-line law-enforcement officers are well placed to detect instances of trafficking in persons, so too are labor inspectors, OHS inspectors, and union organizers.

To date, the variety of agencies operating in the world of work seems to have received relatively little attention from policy makers with a focus on trafficking in persons. In Australia, \$58 million AUD (approximately \$56 million USD) has been allocated by the federal budget to anti-trafficking activities since October 2003. Previous budget statements on funding for the national anti-trafficking response have made no mention of specific funding allocations for either the department responsible for oversight of labor issues, the national labor inspection agency, or the various industrial commissions. Various community groups and advocates have lobbied for a greater focus on instances of trafficking in persons that occur in contexts other than the sex industry (e.g., Anti-Slavery Project, 2009; Cullen and McSherry, 2009; Global Alliance against Traffic in Women [GAATW], 2007; Segrave, 2009), and indications suggest that this focus is occurring. In 2009, the Australian Government indicated that “trafficking for labour exploitation” would be a priority in the year ahead, and foreshadowed enhanced engagement with peak employer and industry organizations and unions (Australian Government, 2009: 47). Ideally, this shift in focus will also result in the provision of funding support for the development of awareness-raising materials, training, and protocols for the various agencies involved in monitoring and regulating labor conditions in Australia.

Various organizations, including the International Labour Organisation and the International Confederation of Trade Unions, have developed materials for labor inspection agencies, unions, and employers on the key elements of a response to labor trafficking (e.g., Andrees, 2008; ILO, 2007, 2008; International Trade Unions Confederation, 2008). With regard to the role of labor inspectors, the ILO notes the importance of ensuring training and the development of operational guidelines for labor inspectors, the development of processes to ensure that cross-referrals can be made between law enforcement and labor inspectors, and ensuring a level of clarity around roles and responsibilities, which include where the work of labor inspectors ends and the work of police and other authorities begins (Andrees, 2008: 18). These elements are vital to any antitrafficking response that claims to treat “labor” trafficking as an issue of equal seriousness to “sex” trafficking.

### **Conclusion**

Farrell et al. (2010) made an important contribution to the research on responses to trafficking in persons by providing empirical evidence of the importance of awareness of trafficking in persons as an issue among senior law-enforcement personnel, training for front-line law-enforcement officers, the development of protocols to assist crime identification, and specialization of individual officers. The relevance of these findings should not be lost on those responsible for providing funding for law-enforcement agencies at both the state and national levels. The relevance of these findings also should be noted by those responsible for funding and managing agencies working in the world of work—labor inspectorates, OHS inspectorates, industrial relations tribunals, unions, and employer organizations. If the changes recommended by Farrell

et al. are implemented not only in law-enforcement agencies but also in the broader sector that regulates and monitors labor conditions, then it will lead to an increase in levels of detection of “trafficking in persons” cases along with an increased capacity to understand better the true size and nature of this problem within our communities.

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