

The Procedural and Substantive Elements of Prosecuting Cases of Trafficking in Persons: Comparative Models and International Standards

Presentations' Synopsis

OPENING REMARKS: DR. MOHAMED MATTAR, SENIOR RESEARCH PROFESSOR OF INTERNATIONAL LAW, EXECUTIVE DIRECTOR, THE PROTECTION PROJECT AT THE JOHNS HOPKINS UNIVERSITY, SCHOOL OF ADVANCED INTERNATIONAL STUDIES (SAIS)

Prosecuting human trafficking cases is a difficult endeavor for many reasons. Today, we will hear individuals involved in all parts of these prosecutions discuss its multi-faceted challenges. Their perspectives will be especially valuable in answering five key questions.

1. *Why is there such a large discrepancy between the number of cases prosecuted and the number of cases resulting in conviction?*

The 2011 Trafficking in Persons report indicates that approximately half of the 7909 domestically prosecuted cases resulted in convictions; this proportion was roughly the same in Cambodia (62 convictions out of 102 prosecutions) and India (125 convictions out of 242 sex trafficking prosecutions). Only about one-sixth of cases prosecuted in Thailand resulted in conviction (12 out of 67).

2. *Why is there a disproportionate emphasis on sex trafficking, as compared to labor trafficking?*

Only 450 of the 7909 domestic prosecutions were for labor trafficking; this same trend is apparent in the cases listed in the UNODC human trafficking case law database, which records 557 sex trafficking cases and only 131 labor. Notably, a relatively large proportion of the UNODC's labor cases were for trafficking of domestic workers (54 out of 131). One way to address this kind of abuse would be to approach

countries about ratifying the International Labour Organization's Domestic Workers Convention of 2011 (No. 189).

- 3. Are we doing enough to prosecute corrupt public officials who facilitate trafficking schemes?*

Government complicity in human trafficking is common; even if government officials are not directly involved in trafficking, they must be held accountable for their silence.

- 4. Are we doing enough to hold corporations liable for their involvement in human trafficking?*

Article 10 of the United Nations Convention against Transnational Organized Crime holds "legal persons" accountable for their involvement in trafficking schemes. This includes corporations, including labor recruiting, matchmaking, and adoption agencies.

- 5. How can we enhance enforcement mechanisms?*

All countries face limited resources when it comes to trafficking prosecutions, and many prioritize other kinds of cases. Changing governments' perceptions will require education, and will require them to engage in clever planning to put limited resources to their best use. Several institutional changes may aid the fight against human trafficking. First, establishing special police units for human trafficking will increase apprehension of criminals, and giving more support to NGOs will increase victim assistance and representation. Second, the expulsion of foreign diplomats who exploit domestic workers will deter individuals who are otherwise not accountable to local law. Third, enhancing the penalty in cases involving vulnerable individuals who have little choice but to submit would offset the ease with which such victims are trafficked. Fourth, ensuring that victims of trafficking get damages, including

restitution, will improve victims' lives and further the ultimate goal of anti-trafficking enforcement: to protect the victims.

KEYNOTE SPEECH: DR. BANDAR BIN MOHAMMED AL-AIBAN, PRESIDENT, HUMAN RIGHTS COMMISSION, KINGDOM OF SAUDI ARABIA

Human trafficking is a \$32 billion international industry, and international cooperation is critical to its eradication. Saudi Arabia is participating in both international and regional methods of combating trafficking. Several features characterize its legislative protocol. First, it takes no account of the victim's possible consent - criminal liability is borne by perpetrators regardless of the victim's willingness or complicity. Also, it doesn't discriminate by method of trafficking. It also identifies and protects new kinds of victims, namely, those used in medical experiments, and those who are exploited for begging. The latter group is especially prevalent in countries that are rich but that adjoin poor countries - traffickers will force children to go beg in an organized manner. This is of particular concern in southern Saudi Arabia, where a strong economy and development contrast harshly with the surrounding areas. The protocol also applies to corporate bodies and companies, who now face up to 3 million dollar fines and dissolution if convicted of trafficking. Additionally, Saudi Arabia established a national anti-corruption commission to combat corruption and facilitate the prosecution of public officials who profit from human trafficking.

Anti-trafficking efforts must not be confined to mere textual provisions. Prevention is always better than cure, and comprehensive eradication can only take place when the social motivations for trafficking are understood and confronted. Countries that export trafficked labor typically face significant poverty, and improving conditions in these countries will go a long way towards eliminating trafficking.

It is also important for these countries to communicate to their citizens that illegally immigrating to Saudi Arabia exposes them to significant risks. Indeed, those who come to Saudi Arabia illegally are particularly vulnerable to exploitation. Companies may acquire visas on false pretenses and then sell them on the black market. The buyers enter the country unaware of their rights and legal recourses, and may be manipulated or held captive by those who sold them the visas. Additionally, millions of pilgrims enter Saudi Arabia each year to visit Mecca, and some attempt to stay behind and coordinate begging networks. Technological advances aimed at systematizing the Hajj protect people from exploitation that may result from staying, undocumented, in Saudi Arabia.

Domestically, Saudi Arabia has increased the stringency of labor codes and anti-corruption measures. In 2006, Saudi Arabia promulgated a labor law that prohibits the withholding of workers' wages without judicial authorization, and that requires that workers be respected. The Ministry of Labor is also working to apprise workers of their rights and to ensure that individuals coming to work are compensated under clear contractual agreements that protect their rights. The Ministry restructured the relationship between the employer and employee, prohibiting the sequestration of workers' passports and eliminating the term "sponsor," because of its connotations of power.

In short, the Ministry seeks to increase parity between employers and employees. To this end, it is attempting to establish state recruitment agencies that will support the rights of both workers and employers. Though employees are usually in a more vulnerable position, employers face risks as well: employees may take advantage of employers who pay for their tickets and overhead costs. The agency will be a guarantor of both parties' rights.

The most important tool against human trafficking is education. Saudi Arabia is a very religious country, and tying anti-exploitation efforts to religious values increases

their perceived importance. Appealing to religious values is an effective way to affect issues beyond human trafficking as well – domestic violence, for example, may be lessened when efforts are made to demonstrate that it contravenes religious values. Indeed, Saudi Arabia’s dedication to the preservation of human dignity is grounded in the Quran, which states that “we have honored the sons of Adam.” This sentiment is echoed in all sane religions and societies.

It is also critical to remember that anti-trafficking efforts are ultimately in service of victims. Assisting victims requires special care and attention. The National Standing Committee to combat Crimes in Trafficking in Persons in Saudi Arabia is responsible for finding and monitoring victims. The mission is even more complex than it sounds: many victims don’t identify as such (they think their treatment is par for the course) or, even if they recognize the harm in what they have endured, are reluctant to speak openly about the circumstances of their exploitation. Therefore, authorities need to be trained not only to find victims but to know what constitutes a victim, the issues the victim is likely to face, and how to best care for him or her. Ways of helping victims include placement in shelters or medical facilities, getting them psychological help or social rehabilitation when warranted, informing them of their rights in their own languages, and ensuring that they are comfortable. In the end, victims usually respond positively by helping law enforcement convict the perpetrators. However, this requires that they be treated with diligent care and support.

Every law enforcement official should be made aware of the unique characteristics of human trafficking. This calls for workshops that specially train prosecutors, police officers, and even judges. Judges in particular often fail to appreciate the gravity of the crimes; it is important that they be encouraged to give harsher punishments within the bounds of the law. (Saudi law permits up to 15 years of imprisonment a fine not to exceed \$300,000.)

Human trafficking is structurally different from all other crimes, in its breadth (which often spans countries), complexity, and the identity of the actors. The fight against human trafficking cannot be won solely by government officials: it requires the cooperation of everyone ranging from religious leaders to family members to victims themselves, whose circumstances may force them to endure exploitation. Causing people to recognize that human degradation and exploitation is unacceptable – specifically, but not exclusively, from a religious standpoint – is the key to eradicating trafficking.

SESSION I: PROSECUTION OF TRAFFICKING IN THE UNITED STATES: THE POLITICAL CHALLENGES AND THE INNOVATIONS

MR. STEPHEN ADAWAY, UNIT CHIEF, HUMAN SMUGGLING AND TRAFFICKING UNIT, ICE, HOMELAND SECURITY INVESTIGATIONS

A human trafficking investigation requires immense cooperation: organizations ranging from victims' services to local and federal law enforcement have to work together. There is a lot of excitement about anti-trafficking work, but the law is only 12 years old, and, faced with limited prosecutorial resources, other, simpler crimes often take precedence.

All states have human trafficking legislation except one; prosecutors therefore face the challenge of deciding which cases to prosecute federally and which should be addressed on a state level.

In most criminal cases, prosecutors focus on tangible contraband or evidence, but trafficking cases require a different mindset. The exploitation of a human being is much more complex. The victim is often the only piece of evidence in the case; he is also often traumatized. There are many moving pieces and uncertainty as to whether the victim will be able to hold up to the prosecution in court; accordingly, ensuring the victim's

stability, security and recovery are difficult and critical tasks. Defendants are aware of the difficulty of prosecuting these cases, and often take the chance of the victim failing on the witness stand.

Federal prosecutors are starting to look at labor cases to find trafficking elements – this increases the size of the conspiracy, exposes more violators, and increases the thoroughness of the investigation. Traffickers are increasingly able to stay insular and maintain small organizations. Their methods are constantly evolving, and prosecutorial teams have to stay vigilant.

It is a continuous challenge to distinguish between smuggling and trafficking. While bad things do happen in smuggling situations – sexual assaults, abandonment, drowning – violence doesn't substantiate a trafficking case unless it's exploitative. Smuggling and trafficking are not synonymous, and making this distinction is important to our education efforts.

DR. HILARY AXAM, DIRECTOR, HUMAN TRAFFICKING PROSECUTION UNIT, CRIMINAL SECTION, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

It can be hard to disaggregate victims' rights from prosecution efforts in human trafficking cases. Indeed, human trafficking crimes are different because they're about the rights and dignity of a human – but that human often holds all of the evidence. Prosecutors work closely with organizations that are responsible for stabilizing victims.

Victims of human trafficking may not identify as victims at all. Indeed, the prosecutor's job is to convey to a jury that under the standards and laws of our society, this is an intolerable way to treat a person – *even if that person doesn't think her rights have been violated*. It is hard to prove this beyond a reasonable doubt when there are built-in ambiguities and a spectrum of abuses. Juries may perceive the situation not as one of human trafficking, but instead as the unfortunate circumstances of a refugee pursuing dreams of a better life. It is not always clear where the line is between poverty,

exploitation, and human trafficking. Juries are composed of American citizens who often take for granted the ability to speak out for these rights.

Trafficking cases present many of the same psychological issues as domestic violence cases. Both types involve the complex psychological intersection of loyalty and fear. Traffickers are exceedingly good at selecting their victims; they choose vulnerable, abused people who are susceptible to trusting anyone who offers them protection. While many victims understand that their abusers are cruel, they still see them as the kindest people they've ever known. Traffickers often lure victims into romantic relationships; when called upon to testify, victims may still claim to love their abusers despite the fact that they realize the relationship was a ruse. It can be an emotional bond that is difficult to undo even with hindsight.

While experts can help victims recover psychologically, presenting expert testimony about victims' fractured emotional states is a precarious prosecutorial strategy. A battle of experts may distract the jury from the core of the case. So, if the victim can get her story out in a reasonable coherent manner - which isn't always the case - using expert witnesses is usually not advisable.

While prosecutors are often tasked with predicting defenses to a case, human trafficking cases call on prosecutors to find the case among the defenses, to figure out how to portray the trafficked individual as a victim even when she doesn't identify as such. The prosecution has to prove the whole mindset of a trafficker and victim to a jury: for instance, the fact that psychological domination can be as powerful as physical restraint.

Despite these challenges, there has been good progress recently, with more prosecutions and longer sentences. For example, a defendant who forced people to serve on cleaning crews, was physically and sexually violent, and threatened the victims' families, got life plus 20 years. More broadly, popular conceptions of trafficked

individuals are evolving, much as they have been for victims of sexual assault: victims of human trafficking are finally being recognized as truly vulnerable individuals.

There has also been improved coordination between governmental departments in dealing with trafficking victims. Bringing together the DOJ, the human trafficking prosecution unit, the FBI civil rights division, the Department of Labor, and the Office of the Inspector General – among others – has helped streamline the process for victims. Additionally, a new federal enforcement working group has teams out in the field in six pilot districts, and there has been increased coordination across international borders, especially with Mexico, which is a huge source of victims.

Apprehending traffickers also requires cooperation. Traffickers are constantly evolving. They read articles and learn from one another's strategies. They adapt their M.O.'s accordingly, changing how explicit their ads are, how they reach their customer populations, and how much they concentrate their victims. Intelligence sharing and technical prowess are key to evolving alongside traffickers.

The law gives the US broad extraterritorial jurisdiction over human trafficking violations; domestic prosecutors can reach any trafficking crime involving a US contractor, sub-contractor, or other employee, or service member abroad. The 2008 reauthorization of the TVPA extended jurisdiction over all trafficking offenses that involve any person found in the US. Theoretically, this means that a third-country trafficker of a fourth-country national in a fifth country could be prosecuted if found in the US. As a practical matter, this isn't done; it is too fraught with international relations issues. There needs to be a real US nexus to a case for the US to prosecute it. However, prosecutors can and do work collaboratively with trusted law enforcement in different countries. The type and extent of the collaboration varies by country – it needs to be a trusted country and not one that's going to tip off the traffickers. Prosecutors have been able to refer complaints to other countries, and have worked with other countries' law enforcement to ensure the safety of family members of victims who are abroad.

MS. STACA SHEHAN, DIRECTOR, CASE ANALYSIS DIVISION, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

The National Center for Missing and Exploited Children provides technical assistance, analysis, and support to the FBI and DOJ. The Center offers 19 services, including a 24 hour call center, which has fielded 3.5 million calls, and is the primary source of information on missing children in the US. Most of the children reported missing are runaways, and the Center is able to identify the most endangered individuals through questions about drugs, pregnancy, gangs, and previous victimization. The Center also provides case management services as it helps law enforcement.

The Center also manages the Cyber TIP line, which has yielded 1.5 million reports. The TIP line focuses on children exploited online. The line is especially helpful in criminal prosecutions, where victims' statements can be unclear or inconsistent. Through the information gathered online, the Center can help corroborate victims' testimonies and substantiate timelines with concrete evidence. The Center's priority is locating missing children.

SESSION II: THE IDENTIFICATION AND INVESTIGATION OF TRAFFICKING CASES: STATE VERSUS CRIMINAL OR STATE VERSUS VICTIM?

MR. ZACHARY TERWILLIGER, ASSISTANT UNITED STATES ATTORNEY, U.S. ATTORNEY'S OFFICE, EASTERN DISTRICT OF VIRGINIA

There has been a recent uptick in juvenile sex trafficking in Northern Virginia. These crimes don't just happen in bad neighborhoods; they are also prevalent in affluent areas. A recent case involved a girl in McClean, Virginia - home to many

Supreme Court justices politicians, and lawyers – who ran to a park after fighting with her mom. She was approached by a pimp; several hours later, she participated in an orgy, which was videotaped and used a blackmail to force her into prostitution. Finding sex trafficking victims requires a team approach – everyone from school resource officers, local police, to civilians who notice man buying ten packs of condoms with a young girl in tow all play a role.

Recruiting sex trafficking victims is extremely simple. Much of it occurs online, through common social networking sites. Two types of recruitment are most common: a “Romeo pimp” will lure a victim through affection and promises of friendship, eventually causing her to feel indebted to him. A “guerilla pimp”, in contrast, will use intimidation and violence to force a victim into prostitution. These relationships often begin with gang rape. After a victim is recruited, she is forced to have sex with as many clients as possible; the business is set up to promote speed, efficiency, and lack of pregnancy. The trafficker often maintains influence over her by providing narcotics, threatening violence and rape, preying on her fear of returning home, and threatening to expose her as a prostitute. Clients typically pay \$20-\$80 for 15 minutes of sex, which usually occurs in motel rooms or a rented house. There is very little startup cost to pimps; unlike selling narcotics, selling sex does not involve product quality issues, hand to hand transactions with risks of undercover police, or dealings with suppliers.

MS-13 is an organized crime syndicate that formed in Los Angeles in response to victimization of El Salvadorian immigrants by preexisting LA crime syndicates after the civil war in El Salvador. Its members are responsible for a large proportion of sex trafficking in the DC area. A recent prosecution resulted in significant sentences for several of its members, but it was an exceedingly hard case to try.

The average MS-13 sex trafficker is a Hispanic male, 20-25 years old, born in the US (which makes prosecution harder, as deportation is not an option), bilingual, unemployed, a high school dropout, residing in an urban area, with a history of sexual

relationships with juveniles. His average victim is a Hispanic female runaway, 14-17 years old, with low-self esteem, who is on probation, uses drugs and alcohol, and was a sexual assault victim and sexually active prior to prostitution. These victims are often unwilling to cooperate with law enforcement, for several reasons. First, MS-13 has a reputation for killing witnesses. In a legendary case, a woman named Brenda Poz cooperated with the government, went into witness protection, left witness protection, returned to gang life, and was then murdered. Female victims often refer to the Poz case as reasons for not cooperating with prosecutions.

Extenuating circumstances also come into play, almost by definition. In the recent prosecution, one victim was nine months pregnant at the time of the trial; another was a self-described sex addict who saw nothing wrong with her victimization. A third was living in a homeless shelter and prostituted herself to procure crack for her mother, who, without crack, would beat the girl's siblings. Another victim threatened suicide. Besides not wanting to testify for fear of getting killed, victims are often hesitant to talk about rape and sexual assault. They may feel loyal to their abusers, and, above all, they are untrusting of strangers.

Victim stabilization is critical for trying these cases, as it is almost impossible to get a conviction without the victims' testimonies. (There are exceptions; in one case, a parent's testimony that a victim returned home with a lot of money but no job was enough to secure a conviction.) Making sure interviews take place in safe spaces, such as victims' apartments, and gradually building trust are both important factors. Explaining the steps of the criminal process in palatable increments – while remaining honest about its difficulties – is also critical.

Because the justice system is slow, it is also critical to maintain an ongoing line of communication to make sure witnesses don't disappear. However, caring for victims and promoting justice can stand in tension. NGOs and victim advocacy organizations are at times unwilling to see past the immediate needs of the victim to the more abstract

concepts of justice and deterring future crimes. Situations in which a choice must be made between dropping a case and causing pain to a juvenile victim are tremendously difficult, but it is a prosecutor's job to keep an eye on the bigger picture.

In theory, conspirators or others involved with the perpetrator could help in the prosecution, but it is difficult to offer them sufficient incentive to testify. There are restrictions commensurate with the severity or depravity of the crime; for example, cooperating individuals may still have to register under SORNA. In short, giving some people shelter in the US is going to endanger others. Most people don't want to help people stay in the country whose hands are dirty. Like everything else, this is a balancing act.

Law enforcement is very aware of the fact that social media are being used in a whole host of ways. Seizing a trafficker's smart phone may provide a treasure trove of information - pictures of the victim, postings on websites, text messages, and client lists. Twitter, backpage.com, craigslist, and Facebook all contribute to the arsenal as well.

DR. KAYLA BAKSHI, UNITED NATIONS CONSULTANT ON TRAFFICKING IN PERSONS

Even in the best case scenario where prosecutors are well trained and well-intentioned, there are inherent tensions between prosecutions and victims' interests. The prosecutor's job is to identify, investigate, build cases against, and then convict traffickers. Enveloping the victim's interests is good practice, but conviction is the ultimate goal.

Victims' desires are more or less represented in Maslow's hierarchy of needs: first, they need survival and freedom (which includes food, shelter, clothing, sleep and possibly medical attention); second, they need safety (for themselves, children, and other family); third, they need socioeconomic stability (unpaid wages, restitution, the

opportunity to work in the US, help avoiding shame); finally, they need esteem and self-actualization. Only the third and fourth align closely with prosecutors' interests – gaining socioeconomic stability is often tantamount to punishing defendants, and gaining self-actualization amounts to victims' affirmative participation.

Several aspects of the US judicial system are shocking to foreign victims. First, having an open courtroom and media access to their names and pictures can feel invasive. Cross-examination may feel like sanctioned abuse, and the presumption of innocence may seem like a betrayal. Additionally, the diffusion of responsibility among professionals (social workers, prosecutors, private attorneys, immigration attorneys, and others) forces victims to be shuttled around and repeat their stories over and over. Moreover, there is tremendous turnover in the fields that touch trafficking victims, and lack of continuity can present a challenge.

Victims often come from places where law enforcement is not to be trusted, so they may be reluctant to cooperate with the police. Additionally, Homeland Security agents have a dual role – they handle trafficking cases while at the same time prosecuting illegal immigration. They may encourage victims' participation in a trafficking case while simultaneously building an immigration case against them. Finally, cultural differences play a role in victims' relationship to our justice system. They may come from cultures in which standing up for oneself is discouraged if it ruffles feathers or destabilizes social hierarchies. Additionally, other cultures place emphasis on collective action; victims may be reluctant to cooperate because of possible repercussions for their families.

A 2007 case exemplifies many of these challenges. The defendant, a Filipina national, recruited people in the Philippines to work at a nursing home in Los Angeles. Once the workers arrived in the US, the defendant forced them to work long hours for virtually no pay, claimed they were indebted to her, and threatened them with

deportation if they ran away. (Notably, she was less abusive toward victims who occupied the same social class as she did.)

In order to gather enough evidence for the case, investigators temporarily left some of the victims in place in the trafficking situation. Though they presented this as an option – and not a demand – to the victims, the victims made the “choice” under an ambiguous threat of deportation. Leaving these victims in place proved effective – they got damning recordings of threats that eventually yielded a favorable plea agreement. However, the ethical dilemma as to when to pull people out remains complex. Had the victims been children, or victims of sexual abuse, the choice would have been unconscionable. In this intermediate zone, however, it was arguably in everyone’s interests to force them to delay their release to solidify the case and ultimately get justice.

Another facet of the case required a balancing of interests – the defendants agreed to plead guilty on the condition that they not pay restitution. Prosecutors had to decide whether to fight for money for the victims – which was what the victims wanted – or secure the plea, which arguably would have better served the broader interests of justice.

With respect to sex trafficking, several organizations have been taking initiative to end demand through John schools, including Shared Hope International and the Swanee Hunt Foundation. More and more states are passing new Safe Harbor laws, which shield children from prosecution for their own commercial sex acts.

MS. LAURIE BALL COOPER, SKADDEN FELLOW/ IMMIGRATION STAFF ATTORNEY, TAHIRIH JUSTICE CENTER

While there is indeed tension between trafficking victims and prosecutors, it is easy to underestimate the overlap between their interests. Additionally, the tension is

resolved in the victim's favor to the extent that she holds all the evidence - if the prosecutor doesn't acquiesce to her demands, there may be no case at all.

The first role of the survivor advocate is to provide the victim with accurate information. This usually involves fighting years of misinformation provided by the trafficker - especially misinformation that was designed to demonize law enforcement. Unfortunately, not all of the advocate's information is positive; for example, the advocate can't guarantee that the victim won't be deported. Particularly in DC, however, agencies are on good terms with one another and can usually work this out.

Sex trafficking victims usually find advocates after they've met with law enforcement; in contrast, victims of labor trafficking and domestic servitude usually find the advocates first. That means that part of the advocate's job is to convince labor and domestic servitude survivors to come forward, because there's no criminal case without their initiative. Ways to convince victims to cooperate include offering them the possibility of a T-visa. The civil attorney may be key in helping the victim secure a T-visa: she can gather and produce critical evidence, including victim statements and copies of emails arranging interviews. A condition of getting a T-visa is that the victim comply with "reasonable requests" from law enforcement (unless she qualifies for a trauma exemption). The T-visa is a path to permanent residence, but applying for it can be tricky: information disclosed in the application may be used against the victim in cross-examination. The advocate can help navigate this challenging terrain.

Advocates can also help survivors calculate how much they worked, which will in turn determine restitution payments. In the US, damages are based on the value of the labor to the trafficker (for sex trafficking, this means the amount received by the trafficker). However, the damages for wages lost - or for the value of the illegal services - are only part of the picture. Other monetary remedies may also be available, and civil attorneys can help secure them. Restitution orders are important because they allow the government to seize the traffickers' assets to ensure payment. Furthermore, most

restitution payments are no longer taxable. Advocates may also connect victims with survivor services or counselors, who will not only make the survivors better witness but will also help them avoid being re-trafficked.

Finally, advocates can coordinate efforts with other people involved in the victim's case. For example, the advocate can encourage prosecutors and investigators to apply for Continued Presence, which is a one-year work permit for victims. Continued Presence is threshold evidence of cooperation for purposes of a T-visa application. Advocates may also connect victims with pro bono attorneys who can help them get civil damages.

MR. GREG BRISTOL, BRISTOL PUBLIC SAFETY CONSULTANT AND FORMER FBI AGENT
SPECIALIZED IN INVESTIGATING TRAFFICKING CASES

Prosecuting trafficking cases is very low on the list of FBI priorities, and there is virtually no human trafficking training for law enforcement. Law enforcement needs to be made aware of simple patterns to look out for; for example, a massage parlor that remains open after 9pm is almost certainly a trafficking operation (or a labor violation at the very least). There is significant progress being made – the TVPA is promising; NGOs and US attorneys are doing a great job, and the DOJ recently instituted six anti-trafficking coordination teams – but we need much, much more.

Collaboration between state and federal law enforcement is critical. Local statutes can get perpetrators off the streets, but trial in federal court can win longer sentences. In any case, even in apparently local cases, it can be important to put some federal agents on the ground in case the case turns out to be interstate.

SESSION III: PROSECUTION OF TRAFFICKING AROUND THE WORLD: CONVERGENCES AND DIVERGENCES

DR. JANE SIGMON, SENIOR ADVISOR TO THE DIRECTOR, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEPARTMENT OF STATE

The US State Department's goal is to prosecute and protect; the office sees these as inextricably linked. Victims play a critical role in criminal prosecution. Therefore, victims' rights are bound up with successful prosecutions. The State Department's protections extend to victims around the world, and it bases its foreign assistance on the TIP report. In fact, the TIP report has sparked a tremendous amount of action from the government and civil society.

Progress has been made toward implementation of prosecution and prevention measures. 152 countries are parties to the Palermo Protocols; 144 countries criminalize all forms of trafficking. Other countries – specifically those in Africa – are making significant strides. In sub-Saharan Africa, 36 out of 39 countries have ratified the Palermo Protocol, and two others are taking steps toward ratification. However, a good trafficking law needs to attend to victims' needs by providing basic services, immigration relief, legal redress, and special protection for child victims, and, so far, only 80 countries offer protection to trafficking victims. Nearly one-third of countries criminalizing trafficking have in place a temporary immigration status for victims of trafficking; half of these link this status to cooperation with law enforcement. The European Convention goes beyond the Palermo Protocol in allowing reflection period for victims to decide if they want to participate.

Having a legislative framework is only a first step; implementation is critical. Assistance begins with recognizing victims, and this may require additional training for law enforcement officials. For example, male victims of human trafficking are often overlooked. Labor trafficking cases account for only 6% of prosecutions, in part because it is more difficult to recognize victims of forced labor than of sex trafficking. In all cases, cooperation between agencies is critical to fighting human trafficking. An exceptionally efficient model exists in Italy, where labor inspectors can make arrests

(because they are sworn officers). The fact that involving law enforcement is not an additional step consolidates and streamlines the process.

Other progress has manifested in different ways. For example, Argentina prosecuted 20 cases (after not prosecuting any the previous year) following the installation of a TIP prosecution unit. A case in Israel yielded a conviction in the absence of physical violence, showing a growing acknowledgment of more subtle forms of coercion.

CINDY DYER, VICE PRESIDENT, HUMAN RIGHTS, VITAL VOICES GLOBAL PARTNERSHIP

Getting victims to cooperate and testify is a critical challenge. They're likely terrified for themselves and for their families. Realistically, they will only cooperate if offered something: for example, the possibility of compensation, immigration relief, or shelter. But even if they have a good case, and are offered some measure of protection, it may be in victims' best interests to get out of dodge. This presents the hard question: when should a victim be forced to testify against her will, at risk of compromising the prosecutor's case? A similar difficulty arises in domestic violence and sexual assault cases. Compounding the problem is the fact that even a willing victim may not make a very credible witness – for example, many victims are forced to become addicted to drugs.

Other difficulties arise in different locations. In Africa, there is no access to DNA evidence, which makes it more difficult to prove sex trafficking. In South America, as well as in Africa, extremely limited resources make access to computers and vehicles difficult – in some cases, officials have even had to ask the victim's family for money to get gas to pursue investigations. The poverty also contributes to another problem – victims will accept money from traffickers to drop the case. Finally, in some countries, cultural practices, such as caring for other people's children, make it hard to identify who is a victim.

The solutions to this problem require good legislation and implementation, and training all parts of society to put the laws into effect. Specialized divisions may be productive, as well as training foreigners who can in turn train their compatriots. Finally, it is critical to articulate to foreign officials why they should bother to prosecute cases at all.

MR. PATRICK BYRNE, EUROPOL SENIOR REPRESENTATIVE AND HEAD OF EUROPOL DELEGATION AT THE DELEGATION OF THE EUROPEAN UNION TO THE UNITED STATES

Five priorities should guide anti-trafficking efforts: 1) the protection of victims; 2) prevention; 3) increased prosecution; 4) coordination and cooperation between EU member states, independent private sector groups and NGOs, and 5) increased and effective response to emerging trends. Cooperation is also key; to this end, legislative practices should be streamlined. Cooperation between police is easier than cooperation between police and lawyers.

UK trafficking cases often include a misuse of the UK social benefit system and welfare fraud - social security is claimed on the behalf of victims. In the EU, victim support is prioritized over prosecuting perpetrators.

MS. SHERIZAN MINWALLA, DIRECTOR, OF LEGAL AND SOCIAL SERVICES, TAHIRIH JUSTICE CENTER

Iraq is a source and destination country of sex and labor trafficking. Anti-trafficking work in Iraq is particularly complicated because of the divided government. Iraq has legislation that applies to 15 governorates, but not to the Kurdish province in the North. Its anti-trafficking law provides medical examination, linguistic assistance, legal consultation, and protection to victims, but implementing is difficult.

There is a lot of pressure on women and girls to uphold the honor of their families - and possibly that of their whole tribe. Honor-based killings and forced

marriages are common. When women are faced with the possibility of honor-based violence or forced marriage, they often put themselves in vulnerable situations. In Iraq, there is no space for people to live outside of their families, so running away puts one at great risk of being trafficked.

Both formal and informal justice systems must be put to use to help victims. Informally, advocates may pair social workers with lawyers, get counseling for victims, and go to detention facilities to identify victims. Iraqi law allows for the arrest of prostitutes or pimps, but not johns, so many victims can be found in detention centers, where they are being held as criminal defendants. Formally, representing these victims is commonly done through a two-pronged approach. First, the fact that the victim received no money for sex demonstrates that the victim failed to meet one of the elements to prove prostitution. Second, coercion is an affirmative defense. However, it can be hard to prove, as the justice system is often hostile to trafficked women and women perceived as prostitutes.

That two-pronged approach was used in the following cases.

- 1) Shereen was 13 years old when she was lured by a police officer with false promises of marriage. Instead, she was taken to a brothel. Pregnant at trial, she successfully argued coercion as a legal defense. Her family made the decision to leave their home in order to allow her to return; she could not have otherwise returned home, due to honor codes.
- 2) Iman's father sent Iman to a shelter when she was 14 years old because her stepmother wanted to get rid of her when she found Iman's brother sexually abusing her. The night monitor at the shelter convinced her to run away with two men who raped her and dropped her off at a brothel. She was convicted under Article 4 of prostitution because the judge found that she had received compensation for her sexual services - in the form of food and clothing. She is now in the US with the help of UNHCR.

- 3) Safia married a man who she thought was religious; he used “Muta’a”, which is a temporary marriage in Islam. He forced her to have sex with other men, then accused her of adultery (which is a crime). Her lawyer, along with tribal leaders, pressured the husband to drop the adultery charges. Safia was not prosecuted and was eventually reintegrated.
- 4) Marwa was one of many women trafficked by her husband. She escaped when she heard her husband on the phone attempting to sell her. Because she was a virgin, it was relatively easy to repatriate her, and she was able to get a divorce.

In addition to sex trafficking, labor trafficking is an issue in Iraq. Thousands of workers are forced or tricked by recruitment agencies into going to Iraq, at which point their passports are taken away and they are forced to work. For example, Rose met a job recruiter in her home country in a shopping mall. After entering Iraq, she was forced to work as a domestic worker and was told she had to pay off a \$3000 debt. She eventually escaped to a local shelter, which attempted to find her another job; advocates had to explain to the shelter that the two-year contract was not valid and that Rose was therefore not required to complete it. Ethiopian women are sometimes detained for trying to leave Iraq without proper documentation under the Amended Foreigners Residence Law No. 118 (1978).