

Investments in Human Trafficking Prosecutions are Indispensable

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Response to ATR Debate Proposition: ‘Prosecuting trafficking deflects attention from much more important responses and is anyway a waste of time and money’

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We reject the proposition that prosecuting human trafficking cases deflects attention from much more important responses and is anyway a waste of time and money. Reducing the vulnerability of potential victims, survivor care, and the prosecution of traffickers are all vitally important responses to trafficking. However, to abandon prosecution as a ‘waste of time and money’ is to allow traffickers to operate with impunity and ensure that the exploitation will continue.

Prosecution is Essential to Successfully Combating Human Trafficking

Effective prosecution of traffickers is a necessary component of any long-term effort to substantially reduce the prevalence of trafficking. While some may appropriately decry the way in which certain human trafficking prosecutions are carried out (e.g., how survivors are treated, whether criminal justice standards are appropriately respected, which traffickers or industries are prioritised), few argue that fair and efficient prosecutions of traffickers are a ‘waste of time and money’. Likewise, some might decry substandard efforts to reduce vulnerability or care for survivors, but the existence of ineffective programmes does not support the conclusion that all such endeavours are a waste of time and money. When faced with examples of weaknesses within the criminal justice response, the logical conclusion is to fund and support improvements to the system—not to abandon accountability efforts altogether.

Holding human traffickers accountable for their crimes is *essential* to changing their business model. Without a credible risk of criminal sanction, traffickers have every incentive to prefer forced labourers and higher profit margins to voluntary labourers, who have to receive sufficient wages and benefits to prevent them from working for a competitor. However, a credible risk of serious criminal sanction has the power to make the trafficker’s decision to use forced labourers rather than voluntary labourers too costly. Traffickers committed to the economic bottom line may give up forced labour if it means facing a serious risk of losing their entire business, forfeiting their ill-gotten gains, and sacrificing their freedom.

The fact that effective prosecutions are essential to reducing the prevalence of trafficking does not mean we should pursue less vulnerability reduction or survivor care. They also are essential—and when vulnerability reduction, survivor care, and prosecution are all done well, they are mutually complementary and reinforcing. But the indispensability of fair and effective prosecutions means that we will not see a significant decline in the prevalence of trafficking without them.

The Umbrella Effect—Neglecting meaningful investment in effective prosecution shelters traffickers’ ability to exploit with impunity

If effective prosecutions of human traffickers are a necessary component of any successful effort to substantially reduce the prevalence of trafficking, then we must meaningfully invest in them. A 2012 study by the International Labour Organization suggests that while approximately 7% of the world’s forced labour victims reside in developed economies and the European Union,¹ the vast majority is in developing countries. Yet, estimates suggest that only about 1% of aid

¹ ILO *Global Estimate of Forced Labour: Results and methodology*, International Labour Organisation, Geneva, 2012, pp. 15–16.

from institutions like USAID or the World Bank can even plausibly be described as targeting improvements in developing countries' criminal justice systems so that they better protect the poor from trafficking and other forms of criminal violence.² Serious and sustained investment in the prosecution project has not been tried and found impossible—it has been found hard and left largely untried.

It is notoriously difficult to determine exactly how counter-trafficking resources are directed, but it is safe to say that a substantial proportion focuses on interventions to reduce the vulnerability of potential trafficking victims and care for or provide benefits to survivors. These efforts are critically important, but in the absence of a reasonably functioning justice system to enforce a country's domestic laws against human trafficking, they do tragically little to change the trafficker's business model. Reducing the vulnerability of potential victims is important and empowering in its own right, but it often has little impact on the trafficker's incentives to find others to exploit. Similarly, it is essential to provide services and support for survivors, but caring for those who the trafficker is no longer exploiting has little impact on the trafficker's ability to profit off those the trafficker is currently exploiting. In the absence of effective prosecution, traffickers will continue to add to the number of individuals who will require services and care when they are ultimately free from the trafficker's control.

The fact that vulnerability reduction and survivor care have little impact on the trafficker's business model does not diminish their value. Indeed, the primary target of those interventions is not the trafficker, but potential victims and survivors, respectively. It is vital to continue to empower these groups. However, as far as the trafficker is concerned, pouring more resources into these categories of investments without also meaningfully investing in effective prosecutions can create a sort of *umbrella effect*—showering resources on those the traffickers have not yet exploited and those they are no longer exploiting while sheltering the traffickers and leaving those they are currently exploiting untouched.

Developing criminal justice systems that fairly and efficiently prosecute human trafficking is difficult and costly. They are not going to come from *ad hoc* investments over 24–36-month grant cycles, and we will not be ready to make the necessary investment of time and resources until we are convinced that we cannot succeed without them. But once we recognise that serious and sustained investment in effective prosecution is indispensable in the battle to substantially reduce the prevalence of trafficking, every critique of brokenness in a criminal justice system becomes not an argument to abandon the prosecution project, but an obligation to improve it.

Conclusion

Serious investment in developing the capacity of criminal justice systems to effectively prosecute trafficking is, therefore, an indispensable part of a victim-centred approach to stopping traffickers. The victims that traffickers are exploiting in mills, factories, farms, and brothels may need shelter and support services once their trafficker is no longer harming them. We must ensure those services are available. But in the absence of successful prosecutions, traffickers will remain at liberty to profit from the vulnerable by recruiting, grooming, coercing, and exploiting more victims, generating a constant need for more survivor services in the future. If we allow traffickers to operate with impunity, we put more victims at risk of criminal exploitation. Prosecuting traffickers can help prevent the exploitation of new victims, provide relief to those currently being exploited, and empower survivors to seek the services they need.

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² G Haugen and V Boutros, *The Locust Effect: Why the end of poverty requires the end of violence*, Oxford University Press, New York, 2014, p. 203.