

The Importance of Strategic, Victim-Centred Human Trafficking Prosecutions

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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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Most nations have passed legislation criminalising offences included within the broad definition of human trafficking in the Trafficking Protocol.¹ Criminalising, while failing to prosecute trafficking offences, undermines the intent and language of the Trafficking Protocol and national laws reflecting its principles. Effective prosecution of traffickers, concomitant with protection and keen attention to protecting the victim, sends a powerful message to offenders that their criminal conduct has dire consequences. Safeguarding a person’s freedom through enforcement of laws prohibiting slavery, involuntary servitude, peonage, forced labour, slave-like conditions, and trafficking is intrinsic to a just society operating pursuant to the rule of law.

Although prosecution can aggravate victim traumatising, we know from personal experience with trafficking survivors that prosecution can help victims obtain judicial vindication that both the law and their rights were violated. Courts, impartial entities of the state, can affirm for victims that the law was violated. This recognition helps facilitate the healing process for a victim moving towards survivor status.

Civil litigation is an empowering legal option in the United States, and an important alternative when the government does not prosecute. While civil litigation may provide judicial vindication and monetary damages, it cannot protect the victim nor physically prevent the traffickers from victimising more persons. In civil cases, locating assets and collecting damages is challenging, while criminal restitution—which must be sought by prosecutors—can be collected using government agencies. Private litigants must rely on expensive private counsel or limited *pro bono* resources that lack access to criminal investigative tools.

Many countries spend resources aggressively prosecuting cases that may adversely affect unidentified trafficking victims or wrongly prosecuting trafficking victims themselves. Examples in the United States include the over-policing, prosecution, and deportation of sex workers and youth trafficked by gangs to facilitate human and drug smuggling.

Meaningful and successful prosecutions are the result of victim-centred investigations and prosecutions. Prosecuting trafficking cases is labour intensive and time consuming because the most important evidence is the traumatised victim witness, who must be stabilised. Victims must be credible and their story corroborated.

Cases of extreme violence and conscience-shocking behaviour should be prosecuted. But where resources are limited, governments should also prioritise cutting edge cases that advance or expand the application of the laws, and high impact cases that impact a large victim class—past, present, and future.

Prosecuting single-victim cases like *United States v. Calimlim*,² may provide precedent setting case law. The Filipina victim testified at trial for almost two days about her 19-years of isolation, constraining house rules, and constant threats of arrest, imprisonment, and deportation. Her testimony was corroborated by neighbours, the defendants’ closest friends, the victim’s parents, documents, and federal agents who videotaped the defendants’ house. No physical violence nor threats of violence were employed to coerce the victim to perform her duties and remain in the defendants’ residence. Yet, the traffickers were convicted and ordered to pay over USD 900,000 in restitution. The appellate decision affirmed that deportation and financial threats were used to facilitate forced labour. Cases like

¹ In full: UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime*, 15 November 2000.

² *United States v. Calimlim*, 538 F. 3d 706 (7th Cir. 2008). See also *United States v. Nnaji*, 47 Fed. Appx. 558 (5th Cir. 2011) (Nigerian domestic servitude case); *United States v. Dann*, 652 F. 3d 1160 (9th Cir. 2011) (Peruvian domestic servitude case).

Calimlim are frequently cited in non-violent coercion criminal and civil trafficking cases and support grassroots efforts to pass various US state Domestic Workers' Rights Bills.³

The impact of a large victim class case is obvious, but prosecution is challenging. Victims may have different recollections that may contradict each other. *United States v. Kil Soo Lee*, an American Samoa sweatshop slavery case, involved more than 200 Vietnamese and Chinese victims and numerous fact witnesses. All victims were interviewed, often several times, and 16 victims were brought back from Vietnam for trial. The case involved three dedicated prosecutors for two years, additional prosecutors, paralegals, and victim witness support, and over 30 federal agents. The trial lasted four months and featured over 16 victims' testimony, law enforcement and fact witnesses, physical evidence, and documents in five languages. The main defendant was convicted and sentenced to 40 years in prison. Over 200 victims remained in the United States, obtained immigration status, and reunited with their families.⁴ Although resource intensive, this case paved the way for criminal and civil cases against labour brokers and corporate entities systematically trafficking hundreds of workers in construction and hospitality industries.⁵

Trafficking prosecutions require dedication to understanding victim needs. In both cases above, significant resources were invested into working in a victim-centred, trauma-informed manner. Abandoning prosecution because the investigations and victims are 'too difficult', time consuming, and costly, for a cheaper and easier response abrogates the fundamental values established by the Trafficking Protocol. When resources are inadequate to investigate all reported and meritorious cases, strategic use of resources will result in more productive investigations and successful prosecutions.

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³ See: *David v. Signal Int'l*, No. 08-1220 (E.D. La. filed 2008) (hundreds Indian construction workers trafficked, yielding USD 14 million jury damages).

⁴ *United States v. Kil Soo Lee*, 472 F.3d 638 (9th Cir. 2006). See also *United States v. Ramos*, No. 07-11558, 2008 WL 5125992 (11th Cir. Dec. 8, 2008) (investigation revealing over 800 workers victimised in citrus fields).

⁵ See: *David* and *United States v. Askarkbodjaer*, No.09-00143 (W.D. Mo. filed 2009) (hundreds hospitality workers trafficked over 10 states).