

Developing an Effective Criminal Justice Response to Human Trafficking

Lessons From the Front Line

Anne Gallagher

Independent Scholar and Legal Adviser

Paul Holmes

Independent Law Enforcement Consultant

Trafficking in persons now affects all regions and most countries of the world. Over the past decade, there has been increasing acceptance of the need for an effective, internationally coordinated response. However, the practical difficulties in realizing this goal are considerable. No country can yet lay claim to genuine, extensive experience in dealing with trafficking as a criminal phenomenon. Most are developing and adapting their responses on the run, often under strong political pressure, and principally through trial and error. While communication between national agencies on this issue is improving, there is still very little cooperation or cross-fertilization of ideas across national borders. The authors draw on emerging international rules as well as their experience of working with States and intergovernmental organizations on this issue to propose eight elements of an effective national criminal justice response to human trafficking. Each is described in detail, justified with reference to relevant international standards, and illustrated with examples from current professional practice.

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In December 2000, representatives from more than 80 countries met at Palermo, Italy, to adopt a new international legal framework to fight transnational organized crime. One of the key platforms of that regime was a detailed agreement on tackling trafficking in persons. In the 8 years since the adoption of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (United Nations Trafficking Protocol, 2000), the legal and political landscape around this previously marginal issue has been radically transformed. More than a 100 states have formally signed on to this treaty thereby accepting to be bound to a comprehensive set of obligations (United Nations Office on Drugs and Crime [UNODC], 2007). The UN Trafficking Protocol (2000) has been supplemented by a number of regional legal and policy instruments that, in some

Authors' Note: The opinions expressed in this article are those of the authors and should not taken to represent, in whole or in part, the views of the organizations with whom the authors are or have been associated. Correspondence concerning this article should be addressed to Anne Gallagher, e-mail: atgallagher@equityinternational.org.

cases, impose an even higher standard on States Parties. These include the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* developed by the United Nations in 2002 (United Nations Trafficking Principles and Guidelines, 2002) and the Council of Europe *Convention on Action against Trafficking* adopted in 2005 (European Trafficking Convention, 2005). Many countries have enacted their own specialist trafficking laws and established new institutions and processes to ensure their effective implementation (United States Department of State [USDOS], 2008; UNODC, 2006a). Some have gone even further, placing trafficking firmly on their foreign policy agenda. The U.S. Government, for example, has developed an annual Trafficking in Persons report that identifies those countries deemed to be experiencing a significant trafficking problem, more than 150 at last count (USDOS, 2008) and assessing their response. Failure of any country to live up to the standard set out in U.S. legislation can lead to the imposition of sanctions and U.S. interference in that country's relationship with the major international banks and financial institutions (Victims of Trafficking and Violence Protection Act [VTVPA], 2000, § 110). Although this unilateral monitoring regime has been criticized as unscientific, inconsistent, and incomplete (Chuang, 2006; Gallagher, 2006a, 2006b; the United States Government Accountability Office [USGAO], 2006), and even dismissed as little more than a moral crusade against prostitution (Weitzer, 2007), the considerable influence it wields over national antitrafficking responses is indisputable.

One tangible result of the recent wave of law and policy around trafficking has been the emergence of an international legal consensus on the nature of the "trafficking problem." The significance of this single development cannot be overstated. For many years, there was no internationally accepted definition of trafficking and the trade in human beings—as both a political issue and a practical problem—was lumped together with other unfortunate migration processes and outcomes including illegal migration and migrant smuggling. The lack of an agreed definition led to misaligned or even contradictory national responses that rendered impossible or ineffective any kind of cross-border cooperation. Thanks to the developments outlined above, we now know that migrant smuggling is, simply, the unlawful movement of people across national borders for profit (United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000, Art. 2). Trafficking, on the other hand, is the much more sinister buying, selling, and movement of persons within or between countries, through, in the case of adults, a range of means such as coercion and deception, for the express purpose of exploiting them (UN Trafficking Protocol, 2000, Art. 2). We now know that the end purposes of trafficking are not limited to sexual exploitation but are as varied as the potential for profit; that women, men, and children are trafficked; and that no region of the world has been left untouched (UNODC, 2006a; USDOS, 2008). Despite vigorous claims to the contrary, we do not know precise numbers.¹ Nevertheless, there are compelling indications that trafficking in persons is increasing, becoming more organized and more profitable, and steadily being integrated into the fabric of the new global economy (Belser, 2005; Chang, 2000; Ehrenreich & Hochschild, 2003; European Police Office [Europol], 2006; International Organization of Migration [IOM], 2005a; UNODC, 2006a).

There is also an emerging consensus, at least among the more influential countries of destination, as to how trafficking can best be addressed. The key elements of this consensus,

captured in the international agreements referred to above, are that trafficking in all its forms should be criminalized; that traffickers should be prosecuted and punished; that there should be a strengthening of national border controls to fight trafficking; and, in cases of cross-border trafficking, that cross-border collaboration should aim to ensure that there are no safe havens for traffickers. Somewhat more reluctantly, states have moved beyond a straightforward prohibitionist approach to also accept minimal rights for victims. Trafficked persons should, it is agreed, be protected and provided basic support because of their status as victims of crime, because they are especially vulnerable to reprisals, and because their cooperation is usually essential for prosecutions. Still more fragile is the emerging, in-principle affirmation that victims should not be prosecuted for status-related offences and should be repatriated with due regard to their safety and well-being.

The securing of general agreement on the nature of the problem and the direction and scope of required solutions is widely lauded as evidence of real and tangible progress. However, significant practical obstacles remain. It is one thing to present a list of obligations to states and quite another to translate those obligations into specific, measurable actions that will actually make a difference on the ground. Despite its links to the long and ignoble history of slavery and slave trading (Nadelmann, 1990), human trafficking is, from the perspective of national criminal justice agencies, essentially a new crime—often involving new and untested laws. Even in the most responsive countries, the number of investigations and prosecutions, although increasing, is still very low relative to the agreed size of the problem (UNODC, 2006a, p. 36; USDOS, 2008).

After more than half a decade of intensive action, it is timely to survey and analyze the relevant international legal and policy framework around trafficking in persons in light of limited but growing criminal justice experience. The purpose of such an exercise should be twofold: first, to establish what is actually required of states in terms of laws, structures, and processes; and second, to identify potentially promising approaches. Such information is vital to the effective implementation of the laws and policies that seek to strengthen national criminal justice responses to trafficking. It should also serve to promote consensus on the best way forward thereby assisting in the development of common approaches within and between countries.

The authors have responded to the above challenge by proposing, for consideration and debate, eight essential elements of an effective national criminal justice response to human trafficking. Each of the identified elements is described in detail, justified with reference to the relevant international standards, and illustrated with examples from current professional practice. The practical insights and examples are largely drawn from the authors' experiences since 1998 of working with policy makers, victim support agencies, law enforcement, prosecutorial and judicial authorities in more than 40 countries in North and South America, Africa, Southeast, Central, Western, and Eastern Europe, the Middle East, Central, Southeast, and Far Eastern Asia, and Oceania. The analysis accompanying each proposed element also reflects lessons that have been learned by and through the trafficking-related work of the major international governmental organizations with which the authors have been associated, including the United Nations, the Council of Europe, the European Union, the Association of Southeast Asian Nations, and the International Organization for Migration. Where possible, personal observations on optimal professional practice are backed up by references to additional source materials that confirm or provide supplementary authority for any inferences or conclusions drawn from these observations.

A number of personal convictions have informed this analysis and therefore deserve to be identified at the outset. Foremost of these is the authors' understanding of human trafficking as not simply a special kind of organized criminal behavior but rather the predictable outcome of certain global political and economic realities. These include migration regimes that restrict the ability of individuals to secure legal access to preferred destinations; international and domestic trade policies that liberalize the movement of money, goods, and services but not labor; and the internationalization, diversification, and explosive growth of the global sex industry. These essentially economic determinants are reinforced by powerful social structures that create vulnerabilities among particular groups including women, children, and migrants and that nurture demand for the main products of trafficking. National criminal justice agencies must, in our view, understand the limits of their own influence and not be tricked into believing that they alone have the power to curb or even substantially disrupt this trade.

Acknowledging the limits of a purely prohibitionist approach to human trafficking does not necessarily translate into an absolute rejection of a strong, or even aggressive, criminal justice response. States should of course be encouraged, at every point, to openly and honestly address the factors that create and sustain human exploitation including through trafficking. At the same time, a criminal justice response that seeks to both end impunity for traffickers and secure justice for victims deserves to take its rightful place as a critical component of any lasting solution. The twin goals of ending impunity and securing justice are intrinsically linked and each one facilitates the attainment of the other. A national strategy that aims to achieve only one of these goals, particularly at the expense of the other is, in the view of the authors, doomed to irrelevance and failure.

The authors' experiences have also strengthened their conviction that the relatively wealthier countries of destination (a group that includes North America, Western Europe, and Australasia as well as certain countries of the Middle East and Asia) bear the greatest legal and moral responsibility for responding to trafficking because it is in these countries that the real profits are made and the real exploitation takes place. This latter factor means that the evidence of exploitation, critical to any trafficking prosecution, will generally only be available in countries of destination. In short, it will always be much harder for a poor country of origin to do much more than investigate and prosecute low-level brokers and transporters. Although this does not absolve them from taking all necessary action, a failure on the part of countries of destination to develop effective criminal justice responses will inevitably have a greater negative effect on global efforts to end impunity and secure justice. As explained further below, the special situation of countries of destination also means that they have a relatively more important role to play in the identification, protection, and support of victims and victim witnesses.

The eight essential elements of an effective national criminal justice system response to human trafficking are, in our view, as follows.

1. A Comprehensive Legal Framework, in Compliance With International Standards

A strong national legal framework around trafficking is widely recognized as the foundation and scaffolding of an adequate and appropriate criminal justice response (International

Centre for Migration Policy Development [ICMPD], 2006, p. 47; International Criminal Police Organization [Interpol], 2007, chapter 1; UNODC, 2006b, p. 31). Full and effective criminalization of trafficking is the central element of the required legal framework (European Trafficking Convention, 2005, Art. 18; UNODC, 2004, p. 269; UN Trafficking Protocol, 2000, Art. 5). Criminalization can be achieved through the passing of a special antitrafficking law (e.g., Bolivia, Indonesia, Mexico, Nigeria, Senegal, the United Kingdom [USDOS, 2008], the United States of America [VTVPA, 2000]) or amendment to existing laws, most usually the penal code (e.g., Australia, Ukraine, Belarus [USDOS, 2008], Brazil, Germany, Moldova, Ukraine). In either case, an important criterion for judging the legal framework's effectiveness is whether the national penal code criminalizes all aspects of trafficking as this crime has been defined by the international community.² As noted in the introduction, the agreed definition recognizes that trafficking takes place for a wide range of purposes. It also acknowledges that women, men, and children are trafficked. Accordingly, a law that criminalizes only trafficking for sexual exploitation or only trafficking in women and children (e.g., Brazil, China, Luxembourg, Nicaragua, Rwanda, Saudi Arabia, [USDOS, 2008] and, until very recently, both Cambodia and Thailand (USDOS, 2008, Gallagher, 2006a) is insufficient and will inevitably compromise the ability of national criminal justice agencies to deal with trafficking.

A strong legal framework must go beyond the crime of trafficking to ensure that related crimes are also adequately criminalized. Related crimes include forced labor, child labor, sexual exploitation, forced marriage, illegal recruitment, debt bondage, exploitation of labor, involvement in organized crime and money laundering, and the commission of more "traditional" forms of grave human abuses that are characteristic of the modus operandi of traffickers, such as serious physical, sexual, and psychological harm and deprivation of liberty. Personal experience in a number of criminal jurisdictions has indicated to the present authors that it is often easier to investigate and prosecute these more established and better-understood offences rather than the complex and resource-intensive crime of trafficking. This finding is confirmed by the major intergovernmental organizations working in this field—all of which encourage states to use related offences to secure convictions against traffickers (e.g., ICMPD, 2007, p. 18; International Labour Organization [ILO], 2005; UNODC, 2006b, pp. 34-40).

International law mandates that in relation to penalties for trafficking there must be provision for sanctions that take account of and are proportionate to the gravity of the offence (*Convention Against Transnational Organized Crime*; United Nations Organized Crime Convention, 2000, Art. 11.1). The States of the European Union are moving toward even higher standards that require penalties that are "effective, proportionate, and dissuasive" including custodial sentences that give rise to extradition (European Trafficking Convention, 2005, Art. 23.1). Many countries are still working out what "effective, proportionate, and dissuasive" actually means in practice. Complaints of light sentencing relative to other serious crimes are common (USDOS, 2008), and it has been noted that lack of adequate sanctions can impair the effectiveness of international cooperation procedures, such as extradition, which are triggered by a severity test linked to the gravity of sanctions (ICMPD, 2006, p. 115). Conversely, some countries have sought to demonstrate their countertrafficking credentials by setting and imposing extremely severe custodial sentences (e.g., the U.S. Women's Committee for Refugee Women and Children [WCRWC], 2007), Thailand

[Gallagher, 2006a], the Philippines [USDOS, 2008]), and even the death penalty (e.g., China, Lao PDR [USDOS, 2008], Gallagher, 2006b). Whereas international law is silent on the point of determinant sentencing models and does not yet categorically reject the death penalty (Nowak, 2005, pp. 133-153; Schabas, 1997), it is unlikely that mandatory minimum custodial terms or provision for capital punishment meet the standard of “effective, proportionate, and dissuasive” in all cases given the complexity of the trafficking crime, inevitable investigatory difficulties, and highly variable levels of complicity among offenders.

Finally, the national legislative framework must ensure that there are no safe havens for traffickers or their assets by (a) enabling the state to either extradite or prosecute; (b) providing for the effective investigation, sequestration, and confiscation of the proceeds of trafficking; and (c) mandating effective international investigative and judicial cooperation. The legal framework should also guarantee immediate protection and support to all victims of trafficking including the right to a remedy as well as enhanced protections for victim witnesses. These aspects are discussed in detail below under their respective headings.

Effective and enforceable legal frameworks remain the exception rather than the rule. States can respond to the dangers of ambiguity inherent in a phenomenon as complex as trafficking in persons by developing laws that are as precise and clear as possible. While incorporating internationally agreed standards including the accepted definitions, such laws should reflect the realities of the criminal justice system and not simply copy an externally generated model.³ It is especially important to ensure trafficking laws are not widened unnecessarily to include or otherwise used to deal with related but ultimately separate issues such as prostitution, migrant smuggling, or illegal migration. The international legislative standards referred to above provide a useful structure for avoiding such pitfalls with the added advantage of promoting common understandings and approaches between countries and thereby a strong foundation for cooperation across national borders.

2. A Specialist Law Enforcement Capacity to Investigate Human Trafficking

Law enforcement agencies should be organized, empowered, and funded in a manner that enables them to respond appropriately to the crime of trafficking. The law enforcement response should take account of the complexity of the trafficking phenomenon and the considerable challenges of successful investigation. International law, policy, and practice is beginning to confirm that a dedicated, specialized antitrafficking capacity is essential to an effective investigative response (Asia Regional Cooperation to Prevent People Trafficking [ARCPPT], 2004; Association of South East Asian Nations [ASEAN], 2007b, Guideline B.1; European Trafficking Convention, 2005, Art. 29; Interpol, 2007, chapters 2/7; UN Trafficking Principles and Guidelines, 2002, Guideline 5.4). Over the past several years, specialist trafficking units have been established in the national police forces of many countries, including Australia, Belarus, Belgium, Canada, Cambodia, France, Indonesia, Italy, Jamaica, Lao PDR, Moldova, Myanmar, Nigeria, Romania, Thailand, Ukraine, the United Kingdom (ASEAN, 2007a; USDOS, 2008) and, in a slightly different form, in the United States (United States Department of Justice [USDOJ], 2007; USGAO, 2007a). In the authors' experience of working directly with all of these units in a range of capacity development, training, and advisory roles, the most promising examples display certain common characteristics. First, they confirm the mandate of the unit as the principal law enforcement

investigative response to trafficking with power to supervise and/or advise on all trafficking investigations undertaken within the country. Second, the unit is granted and enjoys the legal and procedural powers required to conduct trafficking investigations using the full range of available reactive, proactive, and disruptive investigative techniques as discussed further below. This degree of mandate and empowerment is essential to guarantee that the national law enforcement trafficking response is centralized—or at least organized—around one point of expertise that can ensure investigations are conducted to the highest standards utilizing all necessary and available legal powers. Specialization of the law enforcement response may also help to address public sector complicity in trafficking, an ongoing problem in many countries of the world (ARCPPT, 2004; Council of Europe, 2002; USDOS, 2008). Equally, unless proper controls are put in place, unregulated specialized units may exploit rather than confront corrupt opportunities and/or conceal due process abuses. Proper management of these risks would include the creation of clear policy directives as to roles and responsibilities, transparent standard operating procedures and, most critically, independent monitoring of performance.

In operational terms, it is also essential that the unit is able to provide an adequate nationwide specialist investigative response, either by undertaking all trafficking investigations or by acting as a coordination point and/or supervisory and advisory centre for other law enforcement colleagues. This is particularly important in decentralized law enforcement structures where the need for a strong centralized structure must be balanced against the realities of a more devolved system. In such situations, a key objective of the national-level response should be to ensure that central, regional/provincial, and local needs are recognized and catered for through a process of regular consultation. Useful insights on this point can be found in the recent experiences of several countries. In Ukraine, for example, (home to one of the largest specialist law enforcement responses in the world), unit policy and responsibilities are decided and managed at the national level, and the daily performance within these parameters is supervised at the local level. In the United Kingdom, the newly formed multiagency U.K. Human Trafficking Centre holds the national lead on the subject of trafficking and is mandated to consult with multidisciplinary city and provincial practitioners to ensure a coordinated approach to the challenges (U.K. Parliament, 2007, p. 38). In Australia, the authors have been involved, since 2004, in the delivery of a joint training program aimed at strengthening links between the members of the small federal-level specialist unit and their state colleagues. In the United States, a recent report by the Government Accountability Office details successes and challenges in federal efforts to coordinate investigations and prosecutions of trafficking crimes including through support to federally funded state and local human-trafficking task forces (USGAO, 2007a).

Specialization is not without its drawbacks. Such an approach can lead to the establishment of unhelpful monopolies that fail to take advantage of external skills and resources. It can also encourage destructive turf wars, particularly if the area of specialization has previously fallen (or would naturally fall) under another their jurisdiction or authority. Specialist trafficking units must demonstrate a willingness and ability to work closely and effectively with other components of the national trafficking response. Their relationship with generalist, frontline police is particularly sensitive and important and subject to detailed consideration in the following section. The link with prosecutorial bodies is discussed further below. Another important connection is with victim-support agencies—both governmental and nongovernmental.

In many countries, this relationship is a fragile one, marked by mutual misunderstanding and a lack of trust. Specialist units need to work hard to establish a connection with those who care for their most precious investigatory resource. The involvement of specialist criminal justice officials in outreach activities aimed at informing victims about their entitlements to legal and social support is one of a number of ways in which this important collaboration can be strengthened (UNODC & the Government of India, 2007).

Adequate and ongoing funding is another essential element of a properly functioning specialist response. Although a few states, such as Australia, have made specific and time-bound financial commitments to their newly established specialist units (Australian Government Attorney-General's Department, 2007), it would be naive to imagine that new funds will be routinely made available. Diversion of resources from other areas of law enforcement is a potential problem, particularly in cases where the decision to establish a special unit is motivated by external political pressures rather than an internally identified need. The authors have observed that external pressure on states seen to be doing something about trafficking can also lead to the establishment of weak or cosmetic institutions that lack the basic requirements to meet their caseload. In some cases, units have been established on a temporary basis and without being integrated into the general law enforcement structure. The funding, staffing, and future of such fragile structures is usually extremely tenuous. Lower-quality investigation outcomes are an inevitable consequence of the lack of capacity and morale problems that accompany an improperly recognized, resourced, and rewarded specialist response.

The complexity of trafficking investigations means that highly sensitive issues, for example, victim protection and the use of intrusive proactive investigative techniques, arise in the majority of investigations (ICMPD, 2006, 2007; Interpol, 2007, chapters 4, 6; UNODC, 2006b). It is, therefore, essential that specialist investigators operate under and strictly comply with legally and procedurally compliant standard operating procedures regulating their investigative activity. Moreover, as further acknowledgment of the sensitivity of their work, it is also vital that these procedures and records of their application are available for judicial scrutiny at all stages. Unfortunately, the criminal justice systems of many of the worst-affected countries (and thereby their specialist antitrafficking institutions) do not yet appear to meet minimum standards in this regard.

The wide range of complex investigative issues that are characteristic of trafficking investigations dictates that the national specialist capacity includes the technical ability to implement the required investigatory techniques. Specifically, specialist personnel must be trained in reactive investigation including victim identification, management of trauma and cultural challenges, specialized video-recorded interview techniques for adult and child victims, collection of corroborative evidence, witness protection and witness management, and international cooperation (ARCPPT, 2004; Interpol, 2007, chapters 3, 4, 5, 8). The specialist unit should also possess a comprehensive capacity to undertake proactive investigation, including intelligence gathering and management, human and technical surveillance, undercover operations, controlled deliveries, and parallel financial and money-laundering investigations (ARCPPT, 2004; Interpol, 2007, chapter 6). The critical importance of specialist investigation techniques, and of training for law enforcement in their correct application, is recognized in all relevant international legal and policy instruments (ASEAN, 2007c; UN Organized Crime Convention, 2000, Art. 20; UNODC, 2004, pp. 384-393; UN

Trafficking Principles and Guidelines, 2002, Principle 5; UN Trafficking Protocol, 2000, Art. 10.2). Increasingly, states are recognizing the value of cross-border or regional training of specialist unit personnel as a means of promoting common standards as well as of improving cooperation and collaboration in operational cases (ASEAN, 2007b, section 2.A.3.). This element is discussed further at section 7 below.

3. A General Law Enforcement Capacity to Respond Effectively to Trafficking Cases

As with the investigation of any other serious crime, the capacity for specialists to do their job is directly related to the level of support they receive from nonspecialist colleagues. In the case of trafficking, the need for a strong general or frontline response cannot be underestimated. Opportunities to identify victims are often not exploited because frontline officials, whether from police, labor inspectorates, immigration, or border-control agencies, lack the knowledge or skills to recognize victims and remove them from harm (ICMPD, 2007, p. 6; ILO, 2005; Interpol, 2007, chapter 3). In most situations, suspected cases of trafficking will be brought to the attention of frontline officials and not their specialist colleagues. It is these same officials who, therefore, bear responsibility for managing the first crucial hours of any trafficking investigation until specialist investigators are in a position to take over the case. This means that frontline officials will often be responsible for critical tasks such as victim safety, evidence preservation, and detention of suspects. Frontline law enforcement agencies require strong and consistent support, including resources, training, and direction to do this job properly. Their ability to contribute effectively to an effective criminal justice response to trafficking will also depend on the extent to which the frontline relationship with the specialist response unit is clarified, understood, and accepted. Of course, the specialist–generalist approach being promoted in this article is not a new idea, and there are instructive examples of how it can be successfully managed in a way that avoids problems of monopolization and turf warfare referred to above. In several countries including the United States, and the United Kingdom, centralized or federal specialist law enforcement agencies are already familiar with providing investigatory and prosecutorial support to state and local jurisdictions for the investigation and prosecution of priority or complex crimes such as hate crimes (Local Law Enforcement Hate Crimes Prevention Act, 2007; Wessler, 2000) and, more recently, human trafficking (USGAO, 2007a).

The role and potential of frontline law enforcement in intelligence gathering is also being recognized in the trafficking context (ICMPD, 2007, pp. 67-77; UNODC, 2006b, pp. 81-83). Many forms of exploitation associated with trafficking such as exploitative prostitution and forced labor in the agricultural, catering, and construction sectors occur within the public domain and are, therefore, visible to frontline law enforcement officers provided that they have the knowledge, skills, and commitment to recognize a trafficking situation when they see one. It is the authors' experience, gained through training of frontline officials in many countries, that these individuals are an underutilized resource—often in possession of good quality trafficking-related intelligence without being fully aware of the importance and potential value of this information nor to whom it should be passed. The value of local insight was recently highlighted in the United Kingdom through Operation Pentameter, a proactive countertrafficking policing operation involving 55 local forces that resulted in more than 230 arrests and the rescue, from brothels, and massage parlors, of 84

confirmed victims of trafficking (United Kingdom Human Trafficking Centre [UKHTC], 2007).

In recognition of the importance of the frontline response to trafficking, it is essential that measures be taken to develop and fully exploit their potential. Training is an obvious starting point and should aim to improve awareness of the crime of trafficking as well as of the law enforcement role (Clawson, Dutch, & Cummings, 2006). More specifically, it should cover those topics within which these generalist officers are able to make an impact: intelligence gathering, victim identification, planning and executing victim rescue and suspect-arrest operations, and the securing and preservation of trafficking-related evidence. Such measures have already been undertaken in a number of countries: for example, in Southeastern Europe, the Balkan States have participated in the development of joint training programs for frontline officials that have then been delivered at the regional and national levels (ICMPD, 2003, 2007; Stability Pact for South East Europe Task Force on Trafficking in Human Beings, n.d.; see also EC CARDS Regional Police Project, 2006). In Southeast Asia, ASEAN has recently endorsed a proposal for development of a region-wide frontline training course that will be tailored to the particular needs of each of its 10 Member Countries (ASEAN, 2007c). Pilot courses already conducted under this initiative have involved the national specialist trafficking units in both development and delivery of the training (ASEAN, 2007a). This strategy seeks to strengthen relations between the specialist and frontline responses thereby contributing to a coherent and unified national law enforcement response.

4. Strong and Well-Informed Prosecutorial and Judicial Support

Although law enforcement agencies, both specialist and frontline, have primary responsibility for initial investigation of trafficking cases, national prosecutorial authorities and the judiciary are essential to ensuring that the work done by law enforcement is not compromised or wasted. In many countries, corruption within prosecutorial and judicial agencies, underdeveloped systems, and resistance to the integration of international criminal justice standards present seemingly insurmountable barriers (Council of Europe, 2002; USDOS, 2008). However, lack of knowledge and commitment at this level can be equally fatal—leading to poorly prepared and presented prosecutorial briefs, failure to adequately utilize and protect witnesses, failure to apply trial procedures properly, and inappropriate sentencing. Witness confidence and law enforcement morale (and thereby the quality of future investigations) suffer when strong cases are lost or badly dealt with because of prosecutorial and judicial weaknesses.

It is not uncommon for national criminal justice agencies to be placed under intense political pressure to find and punish traffickers. In some cases, such pressures can lead to overenforcement, shortcuts, and unacceptable trade-offs. For example, in May 2004, Thailand's Prime Minister declared a "war on trafficking." Coming on the heels of a similar "war on drugs" that resulted in thousands of extrajudicial killings (Human Rights Watch, 2004), the declaration was widely interpreted as providing criminal justice officials with implicit authority to use any means possible to secure arrests and convictions. The pursuit of traffickers should never be at the expense of international rules governing the administration of justice. These rules, enshrined in international treaties voluntarily accepted by the vast majority of states, guarantee, to all persons, the right to receive a fair and public

hearing by a competent, independent, and impartial tribunal established by law.⁴ Procedural guarantees for a fair trial are well known and accepted, at least in principle, by all countries and must be applied in all trafficking cases. States that fail to observe these standards risk compromising the integrity and reputation of their national criminal justice systems. Such failures can also lead to an erosion of community support for the investigation and prosecution of traffickers. Whereas the responsibility for ensuring conformity with criminal justice standards rests with national governments, a country such as the United States that has made trafficking such an explicit and formal part of its foreign policy agenda needs to ensure that its influence is brought to bear in a manner that encourages respect for due process and the rule of law.

In terms of avoiding problems at the prosecutorial and adjudication stages, international practice has confirmed the value of ensuring that judges, prosecutors, and central authority lawyers receive awareness training on trafficking that focuses on the applicable legal framework, identifies their particular role and responsibilities, and highlights emerging good practices (ASEAN, 2007b, section 1.B; ICMPD, 2006; Rijken, 2005). Prosecutors and the judiciary have not, to date, been priority targets for training efforts. However, this is changing rapidly as states and intergovernmental organizations begin to acknowledge their importance in strengthening the criminal justice response to trafficking. Regional training programs for this group are currently being rolled out in both Europe (ICMPD, 2006; Rijken, 2005) and Asia (ASEAN, 2007a, 2007c).

An emerging trend that parallels developments in law enforcement is toward the establishment of a small, centralized group of specialist prosecutors to handle trafficking cases and to provide technical support to colleagues as needed. The deployment of teams of well-trained, committed prosecutors may contribute to higher level of competency in the prosecutorial response and could serve to discourage corruption by encouraging professionalism and enabling performance to be more easily monitored and assessed. Specialized prosecutorial responses may also be an important tool in strengthening cross-border legal cooperation by, for example, providing a readily identifiable focal point for contact and collaboration. Honduras, Paraguay (USDOS, 2008), the United States (USDOJ, 2007), and the 10 Member Countries of the Association of South East Asian Nations (ASEAN, 2007b, section 1.B.2.) are among the increasing number of countries that have adopted or endorsed this approach. Eurojust, discussed later in section 7, has also recently appointed a prosecutorial delegate for trafficking related matters (Wolstad, 2007). Of course, the dangers of specialization referred to above in reference to law enforcement units apply equally in this context; precise and transparent direction and effective monitoring are essential to ensure that specialization of the prosecutorial function does not provide increased opportunities for corruption. The risk of overenforcement, particularly through the setting of unrealistic targets, must also be acknowledged and proactively managed.

5. Quick and Accurate Identification of Victims Along With Immediate Protection and Support

States have a legal obligation to actively and accurately identify victims of trafficking (European Trafficking Convention, 2005, Art. 10; UN Trafficking Principles and Guidelines, 2002, Guideline 2), and there is a growing understanding of the importance of victim

identification to every aspect of the national response. The European Trafficking Convention, for example, explicitly acknowledges that correct identification of victims is essential to the provision of protection and assistance and that failure to correctly identify a victim will likely lead to a denial of that person's rights as well as problems in the prosecution process (European Trafficking Convention Explanatory Report, 2005, para. 127). The fact that investigations or prosecutions rarely proceed without victim cooperation (USGAO, 2007a, p. 2) is another, practical reason to prioritize quick and accurate identification.

For those on the front line, the science of locating and identifying trafficked persons is frustratingly complex and inexact. The covert nature of much trafficking activity, the high levels of trauma and intimidation with which it is generally associated, distrust of law enforcement, and a lack of awareness among many individuals who have been trafficked as to their legal rights and their status as victims are just a few of the factors that have been cited to explain universally low rates of victim identification (Clawson et al., 2006, p. 43; ICMPD, 2006, p. 92; ICMPD, 2007, p. 51; Interpol, 2007, chapter 3; UNODC, 2006b, pp. 137, 138; USDOJ, 2007, p. 12). It is also important to accept the practical reality that victim identification is almost always an *ex post facto* exercise. Put simply, the hallmarks of trafficking, those features that separate trafficking from, for example, illegal migration or migrant smuggling, will usually only be apparent once the exploitation has occurred. In addition to contributing to the problematic nature of victim identification, this feature also explains why the identification obligations should weigh more heavily on countries of destination than on countries of origin.

The experience of many countries confirms that identification of victims will never happen automatically—it will always require a significant level of activity and engagement on the part of the state and others, including proactive monitoring of visible and vulnerable sectors such as agricultural and construction workplaces and the sex industry. As a practical matter this will usually require the development of checklists, guidelines and procedures aimed at ensuring the rapid and accurate identification of trafficked persons (Clawson et al., 2006, pp. 56-57; ICMPD, 2007, pp. 48-54; United Nations Children's Fund [UNICEF], 2006a, 2006b, pp. 43-50, 115-116; UNODC, 2006b, pp. 106-112). The tools of identification must be developed and applied carefully. They should reflect an appreciation of potential conflicts of interest between various groups involved in victim identification such as law enforcement officials, immigration authorities, labor inspectorates, and victim support agencies. It will also be important to actively address the danger of net widening—manipulation or misuse of identification procedures in an attempt to capture and/or control larger disfavored groups such as sex workers and irregular migrants. The effective management of both these risks is likely to involve training of relevant officials in the appropriate use of identification tools as well as provision for regular review to ensure their currency, accuracy, and correct application. It does not appear to be a coincidence that the number of prosecutions built on the testimony of victims has increased in countries such as Italy and the United Kingdom (USDOS, 2008) where identification activities have been incorporated into frontline law enforcement training and complemented by comprehensive emergency assistance and support packages.

The identification difficulties cited above lend weight to the view that if there is reason to believe someone has been trafficked, then that person should be treated as a victim unless and until another determination is made. This is especially important in the case of children where identification provides the trigger for a wide range of assistance, support, and

protection obligations on the part of the state (UNICEF, 2006a, 2006b, p. 43). In the European Union, a presumption of victim status in the case of children has now been accepted. Under relevant best-practice guidance for law enforcement officials, “In any case where there are *any grounds* to suspect that a child is a victim of trafficking, that child *will be presumed* to be a trafficked victim and treated accordingly pending verification of the facts of the case” (European Commission DG JHA AGIS Programme 2003 & the International Organization for Migration, 2005, p. 30). There is some evidence that this presumption is emerging as an international standard (UNODC, 2004, p. 289).

The criminal justice response to trafficking should acknowledge that victims of trafficking have usually been through traumatic and often horrific experiences and that they have a right to be treated with humanity and dignity. Although there is some disagreement as to the exact nature of states’ legal obligations in this regard, there is a remarkable degree of consensus among policymakers and criminal justice practitioners on certain key points. It is widely accepted, for example, that the national legal framework should provide all victims, irrespective of their involvement in any legal process, with an enforceable right of immediate support and protection. In terms of minimum entitlements, victims should have the legal right to have their immediate physical safety ensured and to be protected, by the state, from further harm (ASEAN, 2007b, section 1.C.3; European Trafficking Convention, 2005, Arts. 10, 12; UNODC, 2004, p. 285; UN Organized Crime Convention, 2000, Art. 25; UN Trafficking Protocol, 2000, Arts. 6, 9). In most cases, this will require victim privacy to be respected in law and in fact (ASEAN, 2007b, section 1.C.6; UNODC, 2004, pp. 283-284; UN Trafficking Protocol, 2000, Art. 6.1). Victims should also be provided information and legal advice on the options that are available to them, including their rights and options as witnesses under the criminal justice system of the country in which they are currently located (European Trafficking Convention, 2005, Art. 12; UNODC, 2004, pp. 284, 285; UN Trafficking Protocol, 2000, Art. 6). To implement these obligations effectively, states will generally need to develop detailed procedures to ensure that individuals identified as (or suspected of) having been trafficked are able to access immediate help (Interpol, 2007, chapter 3; UNODC, 2006b, pp. 144-148). Although civil society organizations will often be important partners or intermediaries in the delivery of such support (UNODC, 2006b, pp. 98, 99), it is the state that is ultimately responsible for the well-being and safety of the victim. The challenge of meeting such a responsibility should not be underestimated. Victim protection and support is costly and difficult to organize. Even relatively wealthy states of destination are unlikely to underwrite such programs unless they see potential for real benefit in terms of increased opportunities for successful prosecutions as well as harm reduction for victims. For poorer countries, external donor support is usually the only way that services can be made available, a solution that is unlikely to be sustainable over time. An increasing number of countries including the United States (USDOJ, 2007), Germany and the Russian Federation (USDOS, 2008) have legislated to enable assets confiscated from convicted traffickers to be channeled into victim support programs. Such efforts, although laudable, suffer similar problems of sustainability and should only ever be considered an adjunct to an institutionalized, adequately funded victim support and protection program.

Victims of trafficking have often been exploited for little or no payment over long periods of time. They may have suffered injuries or contracted illnesses that require medical attention. They may have incurred debts as a result of their trafficking experiences.

International law confirms that victims of trafficking have a right of access to effective remedies (ASEAN, 2007b, section 1.A.6; European Trafficking Convention, 2005, Art. 15; UNODC, 2004, pp. 170-172, 285, 286; UN Organized Crime Convention, 2000, Art. 25.2; UN Trafficking Protocol, 2000, Art. 6). This means that in addition to making such remedies available under criminal or civil law, states should ensure that victims are provided with information and assistance that will enable them to actually secure the compensation or restitution to which they are entitled (European Trafficking Convention Explanatory Report, 2005, pp. 192-198; UNODC, 2004, pp. 285-286). Although remedies for trafficking are still very rare, there is a clear trend toward making this a legal and practical possibility. For example, the United States has expressly granted victims of trafficking the right to private action against their traffickers (Trafficking Victims Protection Reauthorization Act, 2003, § 4[1][4]), and has included mandatory restitution to trafficked persons as part of the criminal sentencing of traffickers (VTVPA, 2000, § 1593).⁵ In Nigeria, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2003 grants victims the right to bring civil action against their traffickers, regardless of immigration status (United Nations Population Fund [UNFPA], 2004; USDOS, 2008). Unfortunately, no such actions have been initiated since the passage of this legislation (Global Alliance Against Traffic in Women [GAATW], 2007). This implementation gap underscores the importance of nonlegal measures such as provision of information and practical support to ensure victims can in fact access the remedies to which they are entitled. Increasing attention to confiscation of assets in the context of trafficking in persons, considered further below, should also help to assist in the enforcement of criminal or civil compensation claims against their exploiters.

In many countries of destination, victims of trafficking continue to be arrested, detained, charged, and even prosecuted for unlawful activities such as entering illegally, working illegally, holding false documentation, or engaging in illegal activities such as prostitution (GAATW, 2007; Haynes, 2004; UNODC, 2006b, p. 103; USDOS, 2008; WCRWC, 2007). In the authors' experience, criminalization of trafficked persons is commonplace, even where it would appear obvious that the victim was an unwilling participant in the illegal act. In addition to the denial of their rights, the routine detention and prosecution of trafficked persons will inevitably have an adverse effect on the ability of the state to investigate and prosecute traffickers. It is already a difficult task for law enforcement to persuade victims to cooperate because of trauma, fear of reprisals, and (an often well-founded) distrust of national law enforcement authorities (ICMPD, 2007, pp. 55, 56; UNODC, 2006b, p. 137). Their arrest and detention can only compound such difficulties. Over the past several years, international law, policy, and practice have begun to reject the arrest or prosecution of trafficked persons for offences committed as a direct consequence of the fact of their having been trafficked (ASEAN, 2007b, section 1.C.2; European Trafficking Convention, 2005, Art. 26; Resolution 55/67, 2001; Resolution S-23/3, 2000; UN Trafficking Principles and Guidelines, 2002, Principle 7). Of course, this principle is not intended to confer a blanket immunity on trafficked victims who may commit other, non-status-related crimes with the requisite level of criminal intent and, in such cases, prosecution must remain an option.

Victims should also not be detained longer than is necessary to take their details and obtain sufficient basic information to confirm their status as victims of trafficking.

Short-term “protective” detention of victims of trafficking, whether in a police lock-up, an immigration facility, or a welfare home needs to be carefully weighed against each country’s laws as well as international obligations relating to human rights and the administration of justice. In the authors’ experience, anything other than very short-term detention to ensure immediate safety and to establish victim status is rarely in the interest of the victim and usually operates to compound their isolation and powerlessness thereby causing further harm and diminishing the prospects of securing their cooperation.

Whereas child victims of trafficking are included in all the rules and principles outlined above, international law explicitly recognizes the vulnerable position of children and thereby accords them special rights. Most important, in dealing with victims of trafficking, the best interests of the child are to be at all times paramount, and this overriding principle should be formally integrated into the state’s procedures and guidelines for dealing with child victims (Convention on the Rights of the Child, 1990, Art. 3.2; European Trafficking Convention, 2005, Art. 28; UN Trafficking Principles and Guidelines, 2002, Principle 10). As noted above, there should be a presumption in favor of a child being a victim of trafficking pending formal confirmation of this fact. Special and enhanced measures should also be in place to provide safety, support, and assistance to child victims and to protect their privacy during their stay in the country of destination and throughout any repatriation (ASEAN, 2007b, section 1.D.1; UNICEF, 2006a, 2006b, pp. 51-54, 65-74; UN Trafficking Protocol, 2000, Art. 6.4). It is important that the repatriation of children should only take place after a most careful assessment of any potential risks the child may face on return home (UNICEF, 2006a, 2006b, p. 89; UNODC, 2004, pp. 290-291, 2006b, pp. 135-136; UN Trafficking Principles and Guidelines, 2002, Guideline 8). Child victims should *never* be criminalized for offences relating to the fact of their having been trafficked or detained except for their immediate protection and well-being and only then in full accordance with international rules and standards (UNICEF, 2006b, p. 65; UN Trafficking Principles and Guidelines, 2002, Guideline 8).

6. Special Support to Victims as Witnesses

Victims have a critical role to play in the criminal prosecution of traffickers and their accomplices. In fact, as noted above, investigations and prosecutions are usually difficult and sometimes impossible without the cooperation and testimony of victims. The heavy reliance on victims as witnesses has led to calls for greater use of proactive investigation techniques (Interpol, 2007, chapter 6; UN Trafficking Principles and Guidelines, 2002, Guideline 5.3). While acknowledging its potential, particularly in relation to pursuit of major players, it is also important to accept that an effective proactive investigation capacity remains outside the reach of many of the worst-affected countries. Even in countries where resources and skills permit an adequate proactive response, such techniques generally do not supply the evidence necessary to secure convictions of traffickers for the grave physical, sexual, and psychological abuses that they characteristically inflict on their victims. Accordingly, national criminal justice agencies should be working toward a situation whereby victims of trafficking are recognized as an essential resource and are provided with the protections and incentives they require to participate in the prosecution of their exploiters.

Criminal justice officials must deal with the fact that victims of trafficking are often unwilling to assist in criminal investigations for fear of harm to themselves or their families. In many cases, law enforcement officials cannot provide victims with the level of protection they may need or want, either through lack of mandate, resources, or both. It is essential that victims are made to understand the limits of protection and are not lured into cooperating with false or unrealistic promises regarding their safety and that of their families (UNODC, 2006b, pp. 87-88). At the same time, the state should do all within its power and resources to provide or otherwise ensure effective protection to victims who are cooperating in criminal investigations (European Trafficking Convention, 2005, Art. 28; UN Organized Crime Convention, 2000, Art. 24). Low-tech, low-cost measures undertaken in close cooperation and collaboration with victim support agencies may offer the most realistic chance of balancing the needs of victims with those of the criminal justice system. Lessons that have been learned in many countries with regard to the involvement of victims in prosecution of sexual assault and domestic violence would be especially useful in the trafficking context.

Victims should also be provided with adequate levels of support, assistance, and information for the duration of their involvement in criminal proceedings. They should not be repatriated—unless expressing a wish to return home in the intervening period—until after the completion of relevant legal proceedings and after they have been able to claim and receive compensation or other remedies (UNODC, 2006b, p. 125; UN Trafficking Protocol, 2000, Art. 8). Laws should be in place to protect the privacy of victim-witnesses and the confidentiality of their identities and to give them a right to information on their rights and legal processes in a language that they understand (European Trafficking Convention, 2005, Art. 12; UN Trafficking Principles and Guidelines, 2002, Guideline 6; UN Trafficking Protocol, 2000, Art. 6). Victims of trafficking should also have a legally enforceable right to be involved in court proceedings and to have their views made known in any case concerning them (UN Organized Crime Convention, 2000, Art. 25.3; UN Trafficking Protocol, 2000, Art. 6). There should be special legislative provisions governing the involvement of children in legal proceedings against traffickers, and these provisions should reflect the “best-interests” principle referred to in section 5 above (European Trafficking Convention, 2005, Art. 10; UNODC, 2004, p. 290).

Witness support and protection must extend to the trial process itself. Victims of trafficking will be understandably reluctant to give evidence if this means being identified by the media or standing up in a public courtroom, often in view of their exploiter and talking about traumatic personal experiences. They can also be at real risk of retaliation and intimidation (ICMPD, 2007, p. 101; UNODC, 2006b, p. 96). It is essential that national criminal justice systems find ways to assist victims of trafficking to participate, safely and meaningfully, in court processes. Once again, experiences in dealing with victims as witnesses of crimes such as domestic violence and sexual assault can be especially instructive. Potentially useful measures may include alternatives to direct testimony aimed at protecting the witness’s identity, privacy and dignity such as video, closed hearings, and witness concealment (ASEAN, 2007b, section 1.F.3; ICMPD, 2007, pp. 99-104; UNODC, 2006b, pp. 96-98); preliminary or accelerated hearings (ASEAN, 2007b, section 1.F.2); and the provision of free legal counsel (Interpol, 2007, chapter 4). In the authors’ experience, all of these recommended measures have the potential to increase the productive involvement of

victims in criminal prosecutions against traffickers. The use of children as witnesses must, of course, be subject to special measures aimed at ensuring their privacy, safety, and well-being (UNICEF, 2006a, 2006b, pp. 32-33; UN Trafficking Principles and Guidelines, 2002, Guideline 8.8). More generally, when developing systems and processes to encourage the participation of victims in court processes, it is essential to remain mindful of the rights of accused persons to a fair trial (ASEAN, 2007b, section 1.K.5; UNODC, 2006b, p. 96; UN Trafficking Principles and Guidelines, 2002, Guideline 6.6).

Even when assured of protection and support, many victims will be unwilling to cooperate in legal proceedings that are unlikely to benefit them in any meaningful way. States committed to strengthening their criminal justice response to trafficking should, therefore, consider providing genuine incentives for victims to cooperate over and above the mandated support and protection requirements set out above. Such incentives must, of course, be developed and implemented in a way that will not affect the credibility of the witness or otherwise compromise the integrity of the trial process. Some destination countries (including Australia, Belgium, Canada, Italy, the Netherlands, the United Kingdom [USDOS, 2008], and the United States [USDOJ, 2007]) now provide special visa arrangements for victim-witnesses. These arrangements usually include provision for victims to take some time, “a reflection period,” to think about whether or not they wish to be involved in criminal proceedings. The most generous schemes envisage, at the end of this reflection period, the granting of residence permits to victims of trafficking who choose to cooperate. This approach, pioneered by the European Union (Council Directive 2004/81/EC, 2004), has now been adopted as the European legal standard (European Trafficking Convention, 2005, Art. 13). State practice is beginning to demonstrate its value in providing victims with time, information and power to decide their future. The rate of convictions of traffickers based on victim-witness testimony has, according to the U.S. State Department, increased in all major destination countries cited above since these support measures were implemented (USDOS, 2008).

7. Systems and Processes That Enable Effective International Investigative and Judicial Cooperation in Trafficking Cases

The crime of trafficking is often transnational in both commission and effect. It is essential to ensure that the international mobility of offenders does not enable them to evade prosecution by taking refuge in other countries. Accordingly, extradition powers in relation to trafficking-related crimes should be specifically included in the national legal framework and within the terms of extradition treaties to which states are party. States are also required to establish their jurisdiction in such a way that they either extradite *or* prosecute for offences committed abroad (European Trafficking Convention, 2005, Art. 31; UNODC, 2004, pp. 103-110; UN Organized Crime Convention, 2000, Arts. 15, 16). In-principle agreement is, of course, only the first step. At present, there are very few instances of extradition requests being made or met in relation to trafficking in persons cases, and it is far from clear that this new commitment will provide sufficient momentum to overcome the numerous political and procedural obstacles traditionally associated with extradition.

The national legal framework should also permit and facilitate international legal cooperation in the moving of evidence across national borders through strong mutual legal assistance laws and procedures that fully incorporate trafficking-related crimes (ASEAN,

2007b, section 2.D; UN Organized Crime Convention, 2000, Art. 18; UN Trafficking Protocol, 2000, Art. 10). States are only now beginning to grapple with requests for mutual legal assistance in the context of trafficking cases, and it is generally acknowledged that more work needs to be done to address entrenched political and practical obstacles to effective legal cooperation and to identify ways of maximizing the practical utility and effectiveness of the major tools of cooperation (ICMPD, 2006, pp. 119-135; UNODC, 2006b, pp. 45-65). There is also growing recognition of the importance of well-developed bilateral and regional networks for prosecutors and central authority lawyers that are reinforced through regular meetings and exchanges of information, best-practice and case-based discussions (ASEAN, 2007b, section 2.E.). In the European Union, recent developments such as the establishment of a network of prosecutors through the Eurojust entity (Council Decision 2002/187/JHA, 2002), the creation of a Europe-wide arrest warrant, valid throughout the European Union and applicable to people trafficking cases, (Council Framework Decision 2002/584/JHA, 2002a; see further Blextoon & van Ballegooij, 2005; ICMPD, 2006, p. 131), and the abolition of the principle of dual criminality in relation to people trafficking offences (Council Framework Decision 2002/629/JHA, 2002b, Art. 2.2) have provided much-needed impetus to stronger and more effective legal cooperation in this area.

International cooperation, particularly with regard to trafficking investigations, does not always need to fall within formal mutual legal assistance arrangements. International law enforcement cooperation, including joint investigations, is mandated by the Organized Crime Convention and Trafficking Protocol (UN Organized Crime Convention, 2000, Arts. 19, 27, 28; UN Trafficking Protocol, 2000, Art. 10). In practice, such cooperation has generally been low level and sporadic. However, over the past several years, the authors have observed a marked improvement in this situation, particularly with regard to less formal prejudicial operational police assistance. Several recent developments illustrate both the importance of enhanced cooperation measures and the results that can be achieved through it.

The emergence of specialist people trafficking units within national police forces, detailed at section 2 earlier, has provided both a focal point and impetus for direct bilateral and multilateral contacts between investigators. In Southeast Asia, the heads of the specialist trafficking investigation units (or equivalent) of Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand, and Vietnam have been meeting regularly since 2004 to review and progress specific operational investigations and to share case-based intelligence (ASEAN, 2007a). With Interpol cooperation and support from the Australian government, unit heads have developed a common set of operational cooperation procedures and a direct unit-to-unit communications system. The system is not without its weaknesses. It lacks the robust institutional framework that would be provided by a strong tradition of cross-border cooperation. Language barriers create time delays as do differences in technical capacity. Some units have been quicker than others to grasp the system's potential and exploit it to their advantage. Despite such flaws, the authors can confirm, through direct observation, that this development has strengthened the capacity of the linked units to work together in identifying and effecting the rescue of previously unidentified victims; detaining suspects both in the country of origin and destination; and securing high-quality evidence relating to these crimes.

In Europe, there has been a noticeable increase in the number of simultaneous, proactive cross-border trafficking investigations coordinated by the Europol Agency between two or

more European Union States. Many of these investigations have led to the coordinated arrest of suspects as well as to simultaneous and coordinated financial investigations and sequestrations of identified assets derived from trafficking related exploitation (Wolstad, 2007). A human trafficking task force, established by the European Police Chiefs and currently involving 13 countries, is currently focusing on joint investigation of criminal organizations and associations operating from Romania (“Note from the Presidency,” 2007). Recently, calls have been made for increased deployment of coordinated specialist investigator–prosecutor investigation teams at the international level (ASEAN, 2007b, section 2.A.1.).

Finally, the goal of ensuring that there are no safe havens for traffickers must also be applied in respect of the assets they accrue through their exploitation of their victims. The comprehensive national legal framework around trafficking should therefore provide strong legislative powers to enable the effective investigation, sequestration and confiscation of the profits generated by trafficking networks—as individuals and as legal entities and at both the national and transnational level—to ensure effective targeting of their economic interests through the use of criminal, administrative, and civil sanctions (UNODC, 2004, pp. 137-161; UN Organized Crime Convention, 2000, Arts. 12-14). Law enforcement agencies in a number of countries, including the United Kingdom, have had considerable success in pursuing traffickers by following the money trail and by focusing on asset confiscation (London Metropolitan Police, 2006; UKHTC, 2007; UNODC, 2006b, p. 76).

8. Effective Coordination Among International Donors

Creating and sustaining an effective criminal justice response to trafficking requires high and continuing levels of political support, resources, and commitment. It is, therefore, an ongoing challenge for all countries. However many countries, including some of the worst affected, do not yet have the institutional structures, resources, or skills base to establish and maintain an effective criminal justice response to trafficking. For them, outside assistance and support is vital.

The emergence of human trafficking as a high-profile political and security issue has gone a long way to ensuring that such support has largely been forthcoming. Today, there are numerous intergovernmental and nongovernmental organizations as well as bilateral aid programs working in this field. These organizations and programs approach the issue from different perspectives depending on their own reading of the problem as well as areas of expertise, interest, or commitment. In general, donors have shown themselves to be most interested in funding the “softer” side of trafficking that is suited to the identification of tangible outputs, such as research, awareness-raising among vulnerable groups, support to shelters, and assistance in victim return and rehabilitation. The criminal justice aspect of trafficking has, at least until recently, been considered too difficult, too sensitive, and too expensive relative to projected returns to warrant much targeted intervention. That situation has changed over the past several years, a shift that the present authors attribute largely to the U.S. diplomatic offensive that emphasizes prosecutions as a principle measure of government commitment and more, not necessarily better quality prosecutions, as an indicator of progress. Today, donor interest in supporting stronger and more effective national criminal justice systems to investigate and prosecute trafficking is greater than it has ever been.

Although the recent interest in criminal justice responses to trafficking in persons is a positive development, experience indicates a significant risk of overlaps, inconsistencies, and duplications in the provision of such support. The externally initiated and funded training of criminal justice officials provides an instructive example. Since 2002, detailed (and, in most cases, high-quality) training materials for frontline law enforcement officials and specialist investigators have been developed separately, and at significant cost, by the United Nations Office on Drugs and Crime (UNODC, 2006b), the United Nations Development Programme (UNDP, 2003), the International Labour Organization (ILO, 2005), the International Criminal Police Organization (Interpol, 2007), the International Organization for Migration (IOM, 2005b; IOM & the Austrian Federal Ministry of the Interior, 2006), and the International Centre for Migration Policy Development (ICMPD, 2006, 2007) as well as through projects supported by numerous bilateral donors and international nongovernmental organizations. Literally, hundreds of different courses have been delivered over the past several years, sometimes, it is rumored, to the same individuals. Although the very small pool of available expertise has ensured a measure of consistency in approach, at least at the intergovernmental level, such consistency is accidental and unlikely to persist as the playing field becomes even more crowded and competitive. Donors and the institutions they fund still need to be reminded that failure to coordinate their inputs will inevitably compromise the quality and impact of any support provided. Questions should also be asked about value for money in light of the high costs attached to the development and delivery of comprehensive training programs and such significant levels of duplication.

Another important aspect of donor support relates to monitoring and impact evaluation of interventions such as training and support for legal or institutional reform. Thus far, very little work has been done on developing effective indicators for measuring progress and change in this area. In short, both donors and recipients remain unclear as to what exactly they are striving for and why. This situation is beginning to worry some of the larger donors (USGAO, 2007b) but solutions are in short supply. The absence, in many client states, of verifiable data on key criminal justice indicators such as complaints, arrests, prosecutions, and sentencing, compounds the difficulties of measuring change. Developments in international law, policy, and practice are all helping to establish targets with respect to optimal criminal justice responses to trafficking, but much work remains to be done in clarifying goals and articulating the indicators of real and lasting change. The present attempt to identify critical success elements for an effective criminal justice response is one example of the kind of framework within which donor coordination could be strengthened and more tangible results achieved and measured. Donor-supported efforts to improve data collection and analysis would be another important step forward.

In this sector, as in all others, donors operate within a framework of anticipated access and influence. Funds and support are provided in the clear expectation that certain results will be pursued and achieved. Some donors are relatively passive, allowing national counterparts to decide on priorities and, within agreed constraints, on how funds are to be spent. Others are much less shy in linking their own views and priorities to the provision of money and services. The U.S. Government, for example, has established an unambiguous link between overseas funding of countertrafficking efforts and its broader international offensive against prostitution (Chuang, 2006; Weitzer, 2007). The European Commission is presently directing funds into strengthening the national criminal justice response to trafficking in the major source regions for its member countries (European Commission,

2007). It is not useful to deny the reality of donor influence—or the underlying reasonableness of seeking a measurable return on one’s investment. The real challenge lies in ensuring that such influence is transparent in its application and positive in its outcome. Progress in the development of agreed indicators for an effective criminal justice response to trafficking should provide important opportunities in this regard.

Finally, the risk of unintended consequences should also be addressed. Donors and their implementing partners need to be aware of the very real dangers associated with promoting stronger criminal justice responses to trafficking in persons in environments that do not offer structural, procedural, or legislative guarantees of due process and a fair trial. Efforts to strengthen criminal justice responses in this area must go hand in hand with broader reforms aimed at ensuring national capacity and willingness to deliver justice and protect rights.

Conclusion

The contributing factors to human trafficking are many and varied. However, underlying all such factors at every point in the trafficking cycle is a general culture of impunity for those involved in the exploitation of trafficking victims. Set in the context of the overall scale of the crime, traffickers are seldom arrested, investigated, prosecuted, or convicted. Victims of trafficking are rarely identified and too often criminalized. Despite being the key to successful prosecutions, victims are almost never brought into the criminal justice process as witnesses.

Changes in international law and policy have paved the way for coordinated improvements in national criminal justice responses to trafficking. There is now a growing acceptance among states of their legal and moral responsibility to end impunity for traffickers and to secure justice for victims. As national criminal agencies begin to act on this responsibility, a fragile consensus is emerging on the best way forward. However, much remains to be done. The next several years will be critical in terms of fleshing out the agreed elements of an effective response and confirming good evidence-based practices that can be used by all countries in their fight against trafficking and related exploitation.

Notes

1. Trafficking is a covert activity involving hidden populations and as such does not easily lend itself to standard methods of analysis and measurement. Much data around trafficking, particularly those which purport to support numerical estimates of victims, are unsupported and unverifiable. These include figures released by the United Nations and by the U.S. Department of State. See, for example, criticism of U.S. data collection and analysis methodology in USGAO (2006).

2. The UN Trafficking Protocol (2000) defines trafficking as:

(a) 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 purposes of exploitation.

Exploitation shall include, 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 or the removal of organs;

- (b) *The consent of a victim of trafficking to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- (c) *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- (d) *“Child” shall mean any person under 18 years of age.*

3. Model trafficking in persons laws have been developed by the U.S. Department of State for internal use (USDOS, 2003) and by the Department of Justice for other countries (USDOJ, n.d.). A joint model law was also developed by Australia and China under the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, curiously, before either country had itself enacted such a law (copy of law and explanatory notes on file with the authors). At the intergovernmental level, the United Nations Office on Drugs and Crime recently hosted an expert group meeting to help draft its own version of a model law.

4. The key instrument in this regard is the International Covenant on Civil and Political Rights (ICCPR, 1966), which has been ratified by over 160 countries. Article 14 of that instrument sets out the required procedural guarantees for both civil and criminal trials.

5. Financial restitution was paid to nine victims in eight cases during the 2006 fiscal year (USDOJ, 2007).

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Anne Gallagher, PhD, is an international lawyer specializing in human rights and criminal justice. She served as a career UN official from 1992 to 2003—for the last 4 years as Adviser on Human Trafficking to the United Nations High Commissioner for Human Rights. From 2003 to 2006, she led an intergovernmental initiative (ARCPPT) aimed at strengthening criminal justice responses to trafficking in countries of Southeast Asia and is currently technical director of the successor project (ARTIP). She is also head of operations for Equity International, a foundation established to promote ethical and lawful policing through the delivery of technical and tactical training and other forms of practical support to national police forces. She has taught at academic institutions throughout the world including the NATO Staff College, the European Institute for Human Rights and Universities in Australia, Finland, Switzerland, and Thailand and has published extensively in the areas of international law, human rights, and human trafficking.

Paul Holmes served as an operational officer and criminal investigator with the Metropolitan Police Service in London for 33 years and retired from operational duty in 2002 with the rank of detective inspector. For the last 7 years of his service, he was the operational head of the sex-trafficking squad of New Scotland Yard and conducted numerous successful internal and international trafficking investigations. Since 2002, he has provided strategic and tactical advice on countertrafficking measures to governments and international organizations including the UN, the EU, the Council of Europe and the International Organization for Migration and law enforcement training on the investigation of human trafficking crime to national police forces in Europe, North, Central and South America, Africa, the Middle East, Central and Southeast Asia, and Australia. He is the author of the *Interpol Manual for Investigators on Human Trafficking* (2008).