



Assisting Victims of Human Trafficking: Best Practices in Legal Aid, Compensation and Resettlement



Workshop 4-6 November 2017 - This meeting is jointly organized by two professional associations, both of which are deeply concerned about the well-being of trafficked people. For victims to flourish as persons whose human dignity has been fully restored and who can play a full role in society (as citizens and workers enjoying a family life and being part of a community), much more is required than moral condemnation of this heinous practice. More is also needed than ratification of international agreements and national legislation for their implementation.

Ultimately, these pieces of paper change no-one's life unless coupled with two further steps: first, those that ensure victims legal representation in order to gain the Right to Remain and the Right to Work in their country of destination, if this is what they seek, plus the resources to make it possible. Second, good and readily available resettlement provisions are essential, covering housing, education and training, and, above all help towards social integration into local communities. These steps need to be taken together if we care sufficiently about the people involved who are human beings and not statistics, which is why PASS and GALA are working together (the original meaning of synergy).

The Pontifical Academy of Social Sciences (PASS) has been active in its opposition to Human Trafficking, as a Crime against Humanity, in response to Pope Francis's concern, expressed from the start of his Pontificate. We have held Workshops, Seminars and Plenary meetings since 2013, focussing on the different constituencies involved: Bishops, Chiefs of Police, INGOs, Religious Leaders, Youth, Mayors of big cities and Judges. We devoted our Plenary meeting of 2015 to *Human Trafficking: Issues beyond Criminalization* and established the website www.endslavery.va

The core of our Recommendations was *Resettlement not Repatriation*. Our greatest public success was the inclusion of the elimination of Human Trafficking in the UN Sustainable Development Goals (Target 8.7), and the official adoption of these goals came shortly after Pope Francis's speech to the General Assembly, on 25 September 2015.

The Global Alliance for Legal Aid (GALA) is an association of jurists which advocates improved access to justice for all. GALA uses legal aid and public interest advocacy to obtain improved access to justice as an essential component of democracy. GALA works with local partners who are attorneys and human rights advocates in developing countries. It has focused its efforts on the plight of the over-indebted; poverty is a key ingredient in human trafficking and the smuggling of persons seeking a better life. Thus, GALA is also committed to utilizing legal aid and public interest litigation for the benefit of the victims of human trafficking.

Towards Better Practices in Legal Aid & Advocacy for Victims of Human Trafficking

Human trafficking grosses an estimated \$150 billion dollars annually according to the ILO[1], which also estimated that there are approximately 21 million persons in conditions of forced labour.[2] To contextualize these figures, \$150 billion is greater than the gross domestic product (GDP) of 100 different developing countries, including that of Ecuador and the Ukraine.[3]

Trafficking is incredibly lucrative: the average annual earnings generated for each woman trafficked as a sex slave is \$100,000.[4] The *Organization for Security and Co-operation in Europe* estimates that returns on investment for criminals who engage in trafficking could be up to 1,000%.[5]

Yet, prosecutions for human trafficking are alarmingly low, and always have been. The US reports in its annual Trafficking in Persons Report that convictions were less than 10,000 total in those countries covered in the report.[6] Furthermore, a conviction of the criminal by the State does not necessarily result in compensation for the victims.

Considering this global estimate of 21 million potential cases, and the US statistic that there are only 10,000 successful prosecutions globally, then there is only about a 0.05% chance that a human trafficker will be convicted of his or her crime. Of course this is a very rough percentage to illustrate the point that even increasing prosecution rates so as to convict even 10% of the criminals is probably unrealistic in terms of most States' budgets. Moreover, prosecutions alone are unlikely to provide the victims with adequate redress, in terms of monetary compensation, sufficient for their resettlement on terms respecting their human dignity.

In the criminal justice system, making a victim *whole* again following repeated violence, trauma and torture is exceptionally difficult. Various nations do provide victims' compensation funds, which nominally supply a one-time payment to victims. For example, in wealthier states within the USA, such as New York, a crime victim or family members may receive up to \$30,000 in compensation for lost wages, in addition to other funds for medical services, including counselling and vocational counselling/training and relocation fees from the state crime victims' compensation fund.[7]

Also, various countries, at least on paper allocate small sums specifically to victims of human trafficking (e.g. in Italy 1,500 euros can be awarded[8]). Not only is this sum insufficient to rebuild a victim's life, but such funds are also difficult to obtain, in particular when a victim is unable to speak the local language and/or is in imminent danger of deportation.

Given that many States' economies are in difficult straits, it is unlikely we will see an increase in State spending on compensation for victims of human trafficking in the immediate future.

Alternatively, where can funds be obtained to compensate victims, to provide job/skills training and employment creation programmes for decent work for the poor either in their countries of origin or for victims of trafficking wherever they may be?

What if, instead of obtaining a 0.05% conviction rate against human traffickers, more effort and attention were dedicated to preventing the crime which fuels human trafficking, namely that of money laundering? What if we could seize 0.05% of the \$150 billion profit and allocate those funds to assist the victims? What if we could also use the civil litigation systems, against labour law violations or tort claims in common law systems to obtain sizable monetary judgments against traffickers to benefit their victims?

The international banking and payment sectors are already monitoring financial transactions for suspicious patterns which could indicate the presence of money laundering linked to other criminal activities, such as human trafficking. In fact, a noted anti-money laundering compliance expert will explain at the conference how Canadian banks have been collaborating with the Canadian finance sector regulator and the police to identify and successfully prosecute human traffickers engaged in money laundering. What if financial institutions could also share (non-private) data with victims' rights advocates for use in civil litigation against traffickers?

Increased seizures of funds/assets and obtaining civil judgments for damages against traffickers would make the crime of human trafficking less lucrative and therefore less appealing to criminals.

Our objective is to identify new strategies, and to create new partnerships to afford better and more effective legal and other aid to victims of human trafficking. What has been tried to date, namely criminalization by increasing the prosecution rate of criminals, has neither led to justice nor to improvements in the human condition of victims of human trafficking.

Towards best practices in Resettlement

Overall, it is civil society that has born the burden of furnishing and funding resettlement schemes through the generous activities of voluntary associations. This personal dedication on the part of volunteer workers will always be needed because otherwise the victims of trafficking will be 'pathologized' as a homogeneous group

in need of professional and often psychiatric treatment. In itself this is a denial of the unique character of each and every human being and of the personal resilience shown by many of them. Some are indeed traumatized and brutalized to a degree that requires psychotherapy and satisfactory provisions should be made available to them. Others have more practical needs (accommodation, language learning, training, child-care and the legal aid and assistance already discussed). But all need befriending in and familiarization with their new social environments, if they choose to remain. Otherwise they will not only be 'strangers in strange lands' but may gravitate towards the sole familiar places and people they know – club-land and the drug-dealers.

However, there are three factors that militate against satisfaction of these needs. Some of these operate with blatant injustice, some are simply inadequate and nearly all effectively pass the bill for coping to the voluntary sector.

First, many countries operate Referral Mechanisms that provide short-stay hostel accommodation for the victims. In Britain today, following the Human Trafficking Act of 2015, it is the Salvation Army that generously plays this role, but one that is limited to 45 days for those appealing for the Right to Remain in the country. On Day 46, apart from reluctant repatriation, there are Voluntary Trusts and Charities alone to which victims are moved: a chaotic variety of provisions situated anywhere in the country. Conversely, people of goodwill from amongst the general public who offer accommodation and assistance have the greatest difficulties in realizing their good intentions, given the absence of a 'roadmap' showing whom to approach first, where they are to be found and how to make contact in order to offer 'second stage' care – often in their own homes.

Second, victims' applications for this Right to Remain frequently proscribe the Right to Work. In this case they become utterly dependent upon State benefits; in Britain again these are set at £55 per week for a mother with a child. Not only is the sum grossly inadequate, given the basic cost of living, but there is another bizarre iniquity encountered here. Were they to appeal successfully for the status of 'Asylum Seekers', they would be given a much longer time to Remain in the first instance (10 years as against 4) and a higher level of benefit payments. On pragmatic grounds, lawyers working *pro bono* usually recommend that trafficked clients take this latter route, which obviously reduces the number of prosecutions initiated against their traffickers.

Third, those victims in need of basic skills such as language learning are at the mercy of a 'postal lottery', namely is there a Migrant/Refugee Centre offering such services in the vicinity to which they have moved – or not? For those with sufficient language skills, the same problem arises if they seek vocational training, except that this is redoubled by the fact that they are not eligible for grants to enter Adult Education unless they happen to fall into certain arbitrary age brackets. The fees are high, child-care is normally available but at a price and transport costs fall upon them to get to college. None of this helps them in their aspirations to become a normal working person; indeed it fuels the xenophobia that casts them in the position of those not wanting to work.

The voluntary provisions found in civil society take a variety of forms; for the practical purposes of this meeting they are divided into the 'Religious', 'the 'Big', the 'Medium' and the 'Small', although there is considerable overlap between these categories and diversity within them.

Some of the 'Religious' safe houses work at the 'sharp end', by approaching prostitutes on the street at night and offering secure accommodation away from their pimps, who may be collaborators of the traffickers. Others are more like show homes to demonstrate the concern of Diocesan Bishops. How the residents are acquired is difficult to tell. In the absence of survey statistics it is impossible to know which category of victims the 'Religious' houses serve. One impression gained from our 2015 PASS meeting, which may well stand in need of correction, was that they seem to prioritise women and girls over men and boys. Unless this is incorrect, its unintended consequence is to reinforce the Western feminist conviction that this is a universal characteristic of trafficking, one that does not hold in much of Asia and further East. Another impression gleaned from the same source is that 'Religious' provisions are most appreciated by victims when breaking away from their oppressors because of the security and care they provide, but are not seen as a long term solution as a base from which to conduct an ordinary life in the future. Is this interpretation erroneous?

'Big' voluntary associations may also be motivated by religious concerns but, especially when they work in a plurality of developing countries, seem to give more attention to the victims of Forced Labour and the need to equip them with a variety of skills leading to decent jobs. Is this perception, again coming from our 2015 meeting, wrong or at least exaggerated? Of particular interest is whether or not when running a multiplicity of projects those responsible can learn reflexively about 'best practices' from one project to another, despite the differences in their locations, local cultures and types of employment available?

'Medium'-sized initiatives is a label of convenience and most variation can be expected here. However, what their representatives can very helpfully reflect upon, if they started out as 'Small' ventures, is what factors enabled them to grow and whether they think that such factors can be generalized.

'Small' ventures – 'religious' or 'humanitarian' – are very much learn-as-you-go enterprises run on a finance-as-you-can basis. One difficulty they probably face in common is the 'passive' parish or local community. Public awareness about trafficking is still low and public confusion between trafficking, asylum seeking and desperate economic migrants is rife, thanks in part to public broadcasting, but they outweigh entrenched xenophobia. Potential volunteers are often deterred in the belief that they need special skills to be of assistance, when for many their own occupational careers are very fit-for-purpose as are their cars! Nevertheless, the financial barrier is hard to breach, though the neighbourhood can prove amazingly generous once they meet the victims as individual people.

Alongside the initiatives outlined above, one must also consider the role States play in eradicating modern slavery. For example the Nordic model, that for the first time in history penalises clients rather than the victims of prostitution, can be considered as a form of best practice. Although this law was introduced in Sweden over 20 years ago, today it has been adopted by the following countries: South Korea (2003), Norway and Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016) and the Republic of Ireland (February 2017). Ideally, this law should be progressively adopted by all countries worldwide.

Our Objective

This section of the meeting is for an honest and open exchange of views about what practices seem to each participant to work best and which initiatives, undertaken with the best of intentions, did not appear efficacious. Learning from our mistakes is necessary but slow; learning from one another is optional but quicker and all it costs is honesty and humility. This is why we have included our Commentators; certainly not as 'specimens' of our success or even of their resilience as past victims, but as mature and successful people who can pinpoint what we did that deterred their progress towards the life they sought and what we did – besides providing bed and board – that was experienced by them as life-enhancing.

Margaret S. Archer (PASS) and Jami Solli (GALA)

[1] http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm

[2] <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

[3] <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

[4] <http://www.humanrightsfirst.org/sites/default/files/TraffickingbytheNumbers.pdf>

[5] *Id.*

[6] <https://www.state.gov/documents/organization/271340.pdf>

[7] <https://ovs.ny.gov/sites/default/files/brochure/ovs-brochure-final-web.pdf>

[8] http://asgi.it/wp-content/uploads/2014/06/osservazioni-_DLgs24_14.pdf referencing Art. 6 of the legislative decree 24/14.