



Wilton Park



Image: Crews

Report

Stepping up the level of prosecution for people trafficking, modern slavery, organised immigration crime and forced labour across Europe

An International Summit for Prosecutors General hosted by the Director of Public Prosecutions for England and Wales

Wednesday 21 – Friday 23 February 2018 | WP1590

In association with:





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Context

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“There is a need to exchange evidence, intelligence and other assistance between countries at speed”

1. Prosecuting human trafficking, modern slavery, organised immigration crime (OIC), forced labour and related conduct requires prosecutors to work with police and other actors, such as NGOs, from the outset of criminal investigations, shaping the gathering of evidence in complex cases where there may be many victims and many perpetrators with different roles. It is a complex crime which involves a multi-agency response.
2. Victims and witnesses are often vulnerable, traumatised or in fear – for themselves or for their families. They may face immigration or other action which means that they may be reluctant to give evidence or fear being removed to another country before they can do so, they may also be at risk of further exploitation. It may take time for them to disclose what has happened to them.
3. Whilst this type of conduct can happen within borders, by its nature it is often international. Perpetrators may come from another country and may have committed criminal acts in other countries as part of their criminal enterprise. There is a need to exchange evidence, intelligence and other assistance between countries at speed, both to pursue investigations and to enable trials to take place. Countries want to use powers to contain the risk of future exploitation and prevent crime, but this conduct may take place beyond territorial borders.
4. Where investigations are running in parallel in different countries it is important to co-ordinate actions, set an agreed investigative strategy, decide what evidence is required and how best to gather it and eventually determine which country or countries are best placed to pursue prosecutions.
5. Despite the prevalence of this type of exploitation and the profit motive that drives it, comparatively small amounts of money and assets which are the proceeds of crime are restrained or confiscated. There may be reasons for this, but profits are being made and there needs to be improvement in the ability to trace and confiscate.
6. Against this backdrop, the Director of Public Prosecutions (DPP) for England and Wales held a summit, bringing together the DPP for Northern Ireland and the Lord Advocate for Scotland, along with Prosecutors General and senior expert prosecutors from countries in Europe, Africa and Argentina; international law enforcement organisations such as Eurojust, Interpol and Europol; and the UK’s National Crime Agency and UK policing. The objectives were to:
 - Step up the level of activity across countries to trace, restrain and confiscate the proceeds of crime acquired through the criminal exploitation of others.

- Identify ways to provide better support and protection to victims and witnesses to secure their evidence - especially where they return to their home country - and prevent further crime against those victims or others.
- Learn how to use vital tools and resources such as Eurojust, Joint Investigation Teams (JITs), Europol and Interpol to the maximum to help pursue and prosecute a higher number of offenders more effectively.
- Set the agenda for continuing bilateral and multi-lateral dialogue aimed at removing blockages, gaps and obstacles to effective international co-operation between countries, reflecting the high level of priority attached to prosecuting modern slavery and people trafficking.
- Establish a strong and active international network of expert prosecutors tackling people trafficking, exploitation and forced labour, recognising their vital role in bringing offenders to justice, working in close partnership with law enforcement

7. As a result of the discussions held at the summit, summarised below, a number of key points emerged for further exploration in each country and for future collective dialogue:

Tools and resources

- Explore the feasibility of joint training programmes for operational prosecutors in source, transit and destination countries;
- Use and strengthen the contribution of existing prosecutor networks to achieve successful outcomes in human trafficking and organised immigration crime cases, such as the Eurojust and International Association of Prosecutors' Networks.
- Encourage regular meetings on shared human trafficking and organised immigration crime issues between prosecuting authorities of different countries which may be bilateral, regional or wider depending on the trafficking and modern slavery casework that they are working on together.
- Consider holding annual conferences for prosecuting authorities working in the field of human trafficking, organised immigration crime and modern slavery to share best practice and the latest developments.
- Look into the feasibility of prosecutor exchanges between countries to facilitate deeper joint working.
- Step up the level of publicity given to prosecutions to increase public awareness.

Supporting victims

- Share investigative approaches which may reduce the necessity of relying wholly on the evidence of a victim as the cornerstone of a prosecution case.
- Share best practice to define what a good quality first response to a victim should consist of.
- Explore the feasibility of improving the pool of interpreters that can be made available in destination and transit countries to ensure that witness testimony is elicited and recorded accurately.
- Share guidelines on the care and support given to victims to encourage improvements.
- Explore the application of the principle of non-punishment in practice towards potential agreement of general principles around implementation.
- Work with source countries to identify ways in which to ensure support for victims is tailored and culturally sensitive.

“Use and strengthen the contribution of existing prosecutor networks to achieve successful outcomes in human trafficking and organised immigration crime cases”

“Share investigative approaches which may reduce the necessity of relying wholly on the evidence of a victim”

“Attack all weaknesses in the business model as part of the investigative strategy”

- Encourage the use of Joint Investigation Teams (JITs), including with non-EU Member States such as source countries.

Asset recovery

- Make a financial investigation strategy an integral part of each JIT’s investigative approach, backed by an asset sharing agreement between the parties.
- Collaborate to improve the understanding of money flows across borders in human trafficking, organised immigration crime and modern slavery cases.
- Implement the forthcoming Financial Action Task Force (FATF) report in creating flags for the financial sector to help them spot the signs of trafficking and forced labour.
- Attack all weaknesses in the business model as part of the investigative strategy including the use of the internet to facilitate aspects of the model such as recruitment and enablers who may be on the periphery.

“There are estimated to be some 40 million victims of human trafficking and modern slavery worldwide”

Understanding the scope and scale of the crime

8. There are estimated to be some 40¹ million victims of human trafficking and modern slavery worldwide. But it is difficult to be sure of estimates of the scale and prevalence of the crimes associated with this phenomenon because it is often hidden and the identification of victims is limited by a number of factors including:
 - Low levels of reporting by victims themselves, who may be vulnerable, afraid of approaching the police due to experiences in their home country, or isolated. Some do not see themselves as victims of crime.
 - The lack of public awareness in society and among local authorities and first responders such as health services of the signs of trafficking, forced labour and modern slavery.
9. The development of a national and international intelligence picture and annual threat assessments are of vital importance in order to track the evolving nature and scale of these crimes and design a cohesive national and international law enforcement response. The current picture is a complex one.
10. There is a mixed economy among offenders including ad hoc groups, organised criminal groups and crime groups tied to particular nationalities who typically exploit their own people. Organised Immigration Crime and Modern Slavery/Human Trafficking is not the same thing, but they are linked. What starts as the smuggling of individuals across a border can rapidly develop into exploitation. It is also the case globally that a fairly high proportion of detected trafficking takes place within national borders and not solely across borders. Victims are increasingly men and boys as well as women and girls.
11. The extent of the harm done to victims, the many challenges associated with ensuring their protection and the need to encourage them to provide information and evidence so that perpetrators can be brought to justice, makes this a very different crime to investigate compared to more traditional cross-border offences such as drug trafficking.
12. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons was the first to attempt definitions of this conduct. It has been ratified by 179 countries, most of which have adopted legislation in line with the definitions in the Protocol.
13. Despite a common legal framework, the level of criminal convictions is relatively low. A number of factors can be relevant:

“a fairly high proportion of detected trafficking takes place within national borders and not solely across borders”

¹ Estimate from the latest ILO figures released in September 2017.

“Whilst many countries have relevant legislation, implementation of the legislation is inconsistent and may be inadequately resourced”

- Whilst many countries have relevant legislation, implementation of the legislation is inconsistent and may be inadequately resourced;
- The need to rely on some evidence from the victim, many of whom have complex problems and fears and who may lose confidence if the investigation is lengthy, or if they are not safeguarded, or face administrative action such as immigration controls.
- The need to build a complex case showing the knowledge and intention of potentially several intermediaries across different countries.
- Evidential weaknesses.

14. The common problems experienced in these cases highlight the need to share good practice in identifying lines of inquiry and proactive methods of investigation. This could improve the ability to build strong cases and, where possible, avoid having to rely wholly or unduly on the evidence of vulnerable or traumatised victims.

International prosecutions: opportunities and challenges; strengthening the prosecution process

“prosecutors and police alone do not have the remit, resources or expertise to provide protection and support for victims”

15. In the majority of cases some evidence is needed from the victim or victims. In these cases, there can be powerful forces inhibiting the victim from co-operating with law enforcement and prosecutors, especially when he or she is first rescued. However, when support is given to victims and sustained it was the general experience that this often increased the willingness of victims to co-operate with a criminal investigation and provide information or evidence on which a case could be built.

16. But prosecutors and police alone do not have the remit, resources or expertise to provide protection and support for victims, whether children or adults, especially those with complex social and other needs who are often at risk of being drawn back to the traffickers.

17. Prosecutors have a role to play in identifying the gaps in provision and challenging national or local authorities, and in some cases NGOs, to improve what is available in order to support victims through criminal justice processes. This is likely to include the need for sustained support and relevant measures to protect and assist victims immediately before and during court proceedings. Existing care structures need to be equipped to support children from challenging backgrounds and different cultures. It is essential to have the appropriate support for children or adults who are victims of exploitation.

“Human trafficking/modern slavery investigations are lengthy and resource intensive”

18. Human trafficking/modern slavery investigations are lengthy and resource intensive. Prosecutors are always seeking ways in which to speed up and streamline practice. Joint Investigation Teams and co-ordination meetings, facilitated and funded by Eurojust are highly effective when pursuing linked investigations across two or more EU Member States. Third countries which are not EU Member States can also be party to a JIT, and often should be in this context.

19. Partnership working in JITs highlights that there are differences between national laws and powers that prosecutors need if they are to bring perpetrators to justice. Several countries can put a lot of effort into an investigation as part of a JIT, but it is often most desirable and practical to bring the prosecution in one country with all co-defendants being tried and sentenced together by one court. This means that parties to JITs will sometimes be in the lead and on other occasions work to support a prosecution in another country.

20. Education, training and more and better contacts were seen to be vital to achieving material improvements, for example:

- A network of points of contact: the International Association of Prosecutors and Eurojust already have expert networks for modern slavery/human trafficking which could be built on or enhanced
- Regular face to face meetings with key countries, whether bilaterally, regionally or wider, to share experiences and maintain relationships
- Conferences and workshops to share best practice in international and national prosecutions
- Exchange programmes
- Liaison Prosecutors in-country
- Judicial training
- Joint and shared training for prosecutors and investigators. There should be consistent training nationally for police, prosecutors and the judiciary. But there is also an opportunity to set up shared training for operational prosecutors in different countries to enhance their awareness of how to approach cases and how to work together effectively. This would also naturally build stronger networks.
- An annual summit or conference aimed at front-line operational prosecutors and investigators could also be considered at either regional or global level.

21. These measures, in addition to the formal and informal methods of judicial co-operation, could have a sizeable impact on the ability to build strong cases and protect victims.
22. This enhanced level of co-operation should not be confined to EU or European countries but should extend to source and transit countries such as the Sudan and Nigeria, which experience high volumes of trafficking. More can be achieved by working together to prevent as well as to investigate and prosecute these crimes. Nigeria has already done a great deal to assist other countries to understand the impact of cultural practices such as Juju/Voodoo oaths on victims and, as one example of its assistance, has provided videos of ceremonies by priests lifting the oaths in order to free victims from their powerful psychological effects.
23. Proactive methods of investigation and intelligence-led investigations can be helpful in reaching higher up an organised crime group, but there can be limitations. Some of the methods used to investigate firearms or drug trafficking cases – such as following a lorry across a border – may be unacceptable where there is a real risk to human life.
24. The reliance by many traffickers on social media and internet platforms, for example for recruitment purposes, represents an opportunity to recover evidence. But many thousands of Internet Service Providers (ISPs) exist. Criminals wishing to use such a platform are likely to use the services of small ISPs in countries with low levels of controls. Such companies are not always equipped to respond to requests for assistance from law enforcement and there is a need to work with them, perhaps to standardise requests for assistance but certainly to raise awareness.
25. Equally, there is great appetite among some telecoms and software companies to develop software that can be used to help with detection and law enforcement, such as reporting lines.
26. The lack of well qualified interpreters to support investigations and prosecutions, especially for some minority languages or dialects, was a common experience for prosecutors and investigators. Without competent interpreters at every stage it is impossible to record accurately the evidence and information that victims, witnesses and suspects are providing to police and prosecutors and trials are jeopardised.

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More can be done, working across countries, to open up new sources of expert interpreters to assist.

“Intelligence has to be shared”

How best to support victims and witnesses?

27. Identifying and responding sensitively to victims were seen as vital to building better cases, but present complex challenges:

- Those policing borders need to be very aware of what to look out for in order to detect trafficking and Organised Immigration Crime (OIC) early. Compulsory training may be required.
- There is currently no shared definition of a good quality first response from border guards, immigration officials or police or what should be regarded as good practice in this regard.
- Intelligence has to be shared.
- Effective National Referral Mechanisms are needed to identify victims and provide adequate support to safeguard them against being re-trafficked and to help with rehabilitation.

“The protection of victims and ensuring their safety has to be seen as more important than the immediate pursuit of a criminal investigation”

28. The protection of victims and ensuring their safety has to be seen as more important than the immediate pursuit of a criminal investigation. In many cases victims need time to adjust to their new situation before they can talk about what has happened to them or give witness testimony:

- They are often very scared and need to build trust and confidence in the authorities before they will co-operate.
- Law enforcement and prosecutors may have limited idea of how to treat victims or how to question them because they do not understand the factors, cultural, social or economic that led to their being trafficked in the first place.
- Victims may be afraid of police and the authorities, which may explain some of their behaviour.
- Those repatriated to their home country often have not been told of their rights and have been treated as criminals.
- National arrangements vary. In one country victims can enter the witness protection programme. In another, the prosecutor has power to grant leave to remain for one year, or more in the case of a child.

29. Tailored and culturally sensitive packages of support are a high priority, as is the availability of expert advice to the investigation and prosecution team. These are vital measures that could be explored and improved with the help of experts and source countries.

30. Protecting the human rights of victims is vital. Victims can sometimes become perpetrators, for example children or young people forced to commit crimes by their traffickers. Children in this situation can be arrested multiple times, their ages may be uncertain, they may use multiple identities, adults claiming to be their parents may not be their real parents and they may be sold to other families and re-victimised. Should these children be seen as criminals or victims? How far is it the responsibility of prosecutors to try to help them?

“A key principle in the UN Protocol is that of non-punishment”

31. A key principle in the UN Protocol is that of non-punishment, namely that a victim of trafficking who has been forced to commit crimes should not be punished for those crimes. There are different national approaches to how and when that principle is applied and there can be questions about its application in individual cases. This is an area which would benefit from collective consideration to see if some general principles can be identified.

“law enforcement needs to be able to keep track of victims who return home prior to trial”

“Trafficking and organised immigration crime (OIC) is a business and there are areas of weakness that can be attacked in order to disrupt and/or investigate”

“Not all countries have civil as well as criminal asset recovery mechanisms”

32. In some cases, victims are removed by administrative action or voluntarily return to their country of origin. In such cases there needs to be assurances that they will be protected in their home country. Some destination countries already have Memorandums of Understanding (MOUs) with countries of origin to ensure that advance notice is given and that there are assurances about the protection that will be provided. This approach could be explored further.
33. At a practical level law enforcement needs to be able to keep track of victims who return home prior to trial – for example by giving them a mobile phone to keep in touch with police in the run up to a trial in the destination country, coupled with regular visits from a team in the home country to check on their welfare. Victims and witnesses need not travel to the destination country to give evidence if their home country can allow evidence to be given via a live TV link.
34. There is potentially a key role for NGOs in assisting and protecting victims, and this could be explored further.
35. Those at the summit agreed to share their current guidelines to prosecutors on victim care to identify scope for improvement.

Disrupting the business model and maximising deterrence

36. There is no single business model driving this phenomenon, but trafficking and organised immigration crime (OIC) is a business and there are areas of weakness that can be attacked in order to disrupt and/or investigate, for example:
 - Use of social media to recruit
 - Use of adult websites to market (usually sexual) services of trafficked victims
 - Use of employment agencies to supply labour – the Gangmasters and Labour Abuse Authority have leaflets and a video to help employers spot signs of trafficking and forced labour
 - Methods of bringing people into the country – for example taxis or lorries. Very few lorry drivers are convicted but many more are believed to be complicit in the crime.
 - The accommodation typically used to house victims
 - The enablers such as middle-men, brokers, otherwise legitimate people on the periphery who may be facilitating money laundering but who may be encouraged to give information (such as car dealers).
 - Money flows and profits.
37. The aim is to increase the risk that the traffickers and those facilitating the crimes will be detected and prosecuted where appropriate.
38. While the track record in recovering illegal profits from drug trafficking is good, the same cannot be said for human trafficking and forced labour crimes where comparatively little has been recovered.
39. There is not yet a good international intelligence picture of money flows and there would be benefit from a collaborative approach to developing one. Europol and Interpol working with national authorities could be instrumental in achieving this. Much of the profit appears to be cash and uses informal routes such as Hawala and cash couriers.
40. There remain some differences in money laundering laws which hamper the ability to follow the money. Some countries require proof of a specific predicate offence while others do not. Not all countries have civil as well as criminal asset recovery mechanisms. Not all countries are able to place a burden on a suspect or defendant to demonstrate a legitimate source for their assets.

“A financial investigative strategy should be an integral part of the wider investigation from the outset”

41. In the context of asset recovery, it is clear that the limited numbers of expert financial investigators limits consistent pursuit of financial investigations. A number of strategies could help to improve the position overall:
- A financial investigative strategy should be an integral part of the wider investigation from the outset, rather than something that only starts after conviction.
 - Joint investigation teams could be used to identify where money is being put into the normal banking system or property upstream.
 - Working with the banking sector directly, or implementing the outcomes of the current project with the Financial Action Task Force to update the flags that help financial institutions to spot the signs of trafficking² - such as multiple flight bookings or salaries paid out of bank accounts on the same day that they are paid in.
 - Passenger analysis data can be used to identify networks of couriers.
 - Asset sharing agreements are useful in encouraging effective co-operation between countries, promoting trust that both sides will investigate potential assets within their jurisdiction.
 - There should be a focus on Money Service Bureaux and Bureaux de Change as obvious conduits.
42. Prevention work is vital. Transparency in supply chains legislation, raising the public's awareness of their role as consumers in perpetuating these crimes, educating children and vulnerable communities in source countries, giving out counter-messages to the traffickers, publicising prosecutions and encouraging Governments to treat this phenomenon as a priority area of crime were all highlighted as areas for more national and international work.

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Wilton Park | May 2018

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² UK Project due to report in June 2018