



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

“HUMAN TRAFFICKING IN FIJI”¹

An Address by the Director of Public Prosecutions, Mr Christopher Pryde, at the 16th Attorney-General’s Conference held at the Intercontinental Resort and Spa on the 5th and 6th December 2014

The Attorney-General and members of the Government;

The Chief Justice, The President of the Court of Appeal, Members of the Judiciary including the Chief Magistrate;

The Solicitor-General, Permanent Secretaries; Members of the Diplomatic Core, including the Chief Guest Mr Andrew Jacobs;

Fellow Panellists, Participants, Colleagues, Ladies and Gentlemen

Introduction

Human trafficking is a pernicious crime. It is a crime against an individual’s basic human rights and is an exploitation of some of the most vulnerable members of society. It is on the increase in the world and in Fiji. The United Nations Office on Drugs and Crime (UNODC) reports that child trafficking alone has increased 5% since 2010 with girls and women accounting for 70% of the victims worldwide. Since the Fijian government brought in

¹ The author wishes to acknowledge the contribution of Nazhat Shameem Khan in the preparation of this paper.

specific offences for human trafficking in 2010 we have had seven successful prosecutions in three cases, the most recent being in June this year which was a domestic human trafficking case and which was also Fiji's first slavery case. Heavy sentences have been handed down already as a deterrent, the most recent being a sentence of 16 years with a non-parole period of 14 years. In terms of sentencing for human trafficking offences, the courts have established clear tariffs for the offences and Fiji's approach to sentencing in this area is now a guide for other jurisdictions in the region.

There remain unique problems however in getting the matters to trial. I will speak about some of these matters from a prosecution perspective and propose some solutions.

History of Human Trafficking in Fiji

Fiji has a long history of trafficking. It has its origins in the black birding trade of the 1800's in which Pacific Islanders were taken by force or deceit from their home islands to work on cotton plantations for European planters. After the abolition of slavery, it became illegal to trade in slave labour without payment to the slaves and so a system of indentured trafficking evolved in its place. Although every indentured person was on an employment contract under this system thus preserving the veneer of respectability, in fact hundreds of Indian labourers were transported to Fiji in appalling conditions, and often by deceit and exploitation. This would clearly be categorised as human trafficking under Fiji's laws today and the people responsible would be likely to face gaol terms.

So, Fiji was built on the proceeds of human trafficking. When we walk the streets of Suva, or Lautoka or Levuka, we see around us the faces of the descendants of that old slavery.

Ultimately human trafficking is a modern term for slavery.

Fiji has not ratified the Trafficking in Persons Protocol however its laws in relation to trafficking, including deceptive recruiting, slavery, debt bondage and sexual servitude are identical to Australian law and are compatible with the Protocol.

Interestingly, according to the UNODC in its latest edition of the Global Report on Trafficking in persons although 154 countries have now ratified the Protocol, and although 83% of countries have laws which criminalise trafficking in accordance with the Protocol, conviction rates are still very low.

Between 2007 and 2010, for example, 16% of 128 reporting countries did not report a single conviction for trafficking. In fact our near neighbour New Zealand has only just this year concluded its first human trafficking case.

Fiji however, as mentioned, has now successfully prosecuted, convicted and sentenced 7 persons in three separate trials for human trafficking offences.

The first human trafficking prosecution was brought by the State in 2010, the same year that the Crimes Decree came into force and which introduced Fiji's anti-human trafficking laws. The second was brought in late 2012, and the third concluded in June this year. All cases were heard quickly by the courts after being made aware the victims were in Fiji waiting to give evidence while the case was pending. All resulted in convictions and robust sentences.

But these cases presented unique problems for the prosecution. How to persuade the victims to stay in Fiji to give evidence? There is no power given to the police to detain witnesses if they have committed no offence

and, although technically the victims may have committed an offence in entering Fiji by making a false declaration it would have been inappropriate to prosecute them for this offence merely to keep them in Fiji in order to give evidence in another case.

In each of these cases the ODPP, the Immigration Department and the Fiji Police Anti-Human Trafficking Taskforce worked together to provide in-house and cross-departmental victim support once the police had arrested the traffickers.

However, the issue of victims as witnesses in trials continues to cause difficulties for the prosecution particularly in human trafficking cases since the victims are usually from overseas and have no support base. It must also be remembered that victims may be psychologically or physically harmed, that they have experienced threats and violence, that they are suffering from post-traumatic stress disorder, and that they may prefer not to give evidence against the alleged traffickers. Children also require special consideration, not only because of their innate vulnerability, but also because their parents are often complicit in their trafficking and exploitation.

About one year prior to the **Phanat Laojindamane** case in 2012, we had four Chinese victims alleged to have been trafficked by one of the four people who were eventually convicted in the **Phanat Laojindamane** case.

The State's case was very strong and because the victims had difficulty speaking English, we had arranged for an interpreter to have their evidence taken during the court proceedings. Once again the Fiji Police Force and the ODPP worked hand in hand to provide what victim support we could. We had also made an application to the court for a Commission Hearing so that their evidence could be heard in advance of the trial thus allowing them to

return home earlier however the court rejected this application. Commission hearings are only permissible if all parties consent to it. Counsel for the Defence did not consent, as is their legal right, and unfortunately, the State's application for an early hearing date was also denied on the basis that it could not be accommodated within the Court's current diary for that month. The victims who had been working illegally in Fiji were now unable to do so and lacked funds or the ability to raise any money to support themselves. They had nowhere to stay so were housed at an Immigration Detention Centre. They were bored, had no money, no support network, no reason to want to stay and so, perhaps inevitably, they decided to return to their home country. They did so and without their evidence the case could not proceed and the State had no option but to file a nolle prosequi thereby preserving our position to reopen the prosecution in the unlikely event the victims would have been prepared to return to Fiji to give evidence. This has not happened and we have now lost all contact with them. This particular case will likely never come to trial.

When a similar situation began to evolve in the **Phanat Laojindamane** case, it was decided to utilise the Office of the Director of Public Prosecutions (ODPP) witness allowance budget in order to host the victims at a local motel with assistance from the Immigration Department and provide them with a daily allowance for food and other necessities. We even provided them with local mobile telephones and were in the process of arranging for English language lessons when the matter was set down for trial. We ensured that we maintained contact with them and updated them on the proceedings as they evolved.

Thankfully, the courts in Fiji have for the most part understood the unique difficulties cases of human trafficking pose for the prosecution. This case

went to trial quickly, the victims gave their evidence and convictions resulted. If the courts had not been so accommodating in ensuring that the case was brought before it in good time, it would have caused great difficulties for the State to continue to look after these victims and we would have faced a similar situation as before when the victims opted to return home without giving their evidence.

This case highlights the difficulties the State faces when victims are required to give evidence in court and a court date may be some time in the future. Whilst the problem is particularly acute in human trafficking cases since the victims are usually from overseas, the problem exists more generally as well. Often criminal cases in Fiji do not proceed because the victims lose interest in the case or move on with their lives and, understandably, do not want to relive the experience. Others receive pressure not to attend court and give evidence. The result often is that the matter does not proceed and people who are responsible for criminal acts are not prosecuted. In rare cases, warrants of arrest have been issued by the court compelling witnesses to attend but this is a last resort. The central problem is that victims tend to drop off the radar until the matter comes before the court which may be years after the offence took place.

Conducting a prosecution with witnesses who are victims of human trafficking, who speak no English, who have no home here and have to be kept in safe houses, and with witnesses, who have to admit to working as sex workers, adds a further complication for prosecutors.

What more must be done? Currently, victims do not have legal rights. Victims do receive support from the Government in the form of counselling or medical treatment or certain other support. The ODPP for example has a policy requiring the officers in carriage of a case to continually update

victims on the progress of the case. We also as a matter of policy consider requests for name suppression or withdrawal of a case in appropriate circumstances. We regularly publish information pamphlets informing victims of what to expect when they encounter the criminal justice system. There is also good support for victims from a number of non-governmental organisations working in this area and the ODPP hopes to increase co-operation with some of these NGOs such as the Fiji Women's Crisis Centre in the New Year.

Victim support however remains piecemeal and, importantly, is not based on any legal right the victim has to receive these services.

Victims of crime should not be dependent on the generosity of NGOs, or on the vagaries of government departments with the attendant risk that these policies may change over time. Perhaps it is time that a Victim's Charter is introduced into law that would for the first time in Fiji give formal legal recognition to the victim in the criminal justice system.

A law such as New Zealand's Victims' Rights Act would not only formally recognise the place of the victim in the criminal justice system but impose upon the State a positive duty to offer support to the victim of a criminal offence in such areas as medical treatment or counselling, accessing any financial assistance that may be available, receiving updates on the progress of any investigation including any charges laid, and the date and time and place of all court appearances and hearings, amongst other things. The victim would also have a right to be heard on matters in court such as at sentencing on how the offence has affected the victim.

As mentioned, a number of these areas are already attended to by the State, by the courts, and through non-governmental organisations. The Courts under the Sentencing and Penalties Decree at section 4, "Guidelines for

Sentencing” for example, must have “regard” to the impact of the offence on any victim. There is not however any law dedicated to the issue of victims’ rights and nor is there any central agency that ensures that these services are delivered in a uniform and consistent manner to all victims of crime.

The experience of the ODPP in terms of victims of human trafficking and other victims of crime is that much more needs to be done in terms of support for the victim in the criminal justice system.

Next year, the ODPP intends to establish a new position; that of Victim Support Officer. This Officer would be the direct contact between the victim and the various Governmental and Non-Governmental agencies in Fiji and the ODPP. This person would be responsible for keeping contact with the victim on a regular basis and advising the victim of court dates and the various counselling or medical or financial assistance that may be available to them.

It is hoped that this newly established position will go some way to address concerns from victims that their legitimate interests in the prosecution of a crime are being served and that they remain on the radar until the conclusion of the case.

Conclusion

There is nothing new about slavery or trafficking in human beings or exploiting human beings by forcing them to work in degrading conditions. Trafficking is as old as slavery, black birding and the girit.

What is new is that there are now global initiatives to identify trafficking as a criminal act and to attempt some sort of uniformity of approach to such cases around the world. These initiatives have experienced some success,

even where specific domestic laws are not compatible with international law or with the laws of other countries.

There is a judicial recognition in most countries of the world that trafficking is a serious offence, that it feeds off human vulnerability, and that it requires a systematic approach to sentencing.

Trafficking law is essentially a human rights issue, a justice issue. It requires a committed prosecutorial response, a commitment to the victims, and an appropriate judicial response on the conviction of offenders.

Fiji has made a positive start to the implementation of laws related to trafficking. However more needs to be done in terms of placing the victim's interest at the heart of the prosecution.

An Act to cater for Victims' Rights would be a step in the right direction.

I thank you for listening to me and I wish you all the very best for the remainder of the Conference.

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