

20th Alliance

against Trafficking in Persons

Ending Impunity:
Delivering Justice through
Prosecuting Trafficking in Human Beings

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OSCE



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#cthb20

#AskOSCEAlliance

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- Slavery is not legal **anywhere** in the world, but it's occurring **everywhere** in the world, victimizing more than 40 million people. It is a phenomenon where the world's worst people are profiting from the world's most vulnerable.
 - The global average cost to buy a human being for forced labor or sex trafficking is estimated by Free the Slaves to be US \$90 (higher in North America and Europe, lower in Africa and Asia).
- For those who are not persuaded by the moral imperative to end slavery—if you're driven purely by the economics of the issue—trafficking is economically inefficient; it is a significant drag on economies and capital markets.
 - Recent research estimates GBP 328,700 annual cost to the government *per case* (law enforcement, medical and social services, etc.); lost productivity and diminished economic multiplier effects as a result of locking up human and financial capital.

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- Trafficking is a lucrative business, generating more than US \$150 billion each year.
- Financial sector is affected by the criminal business of trafficking, and has a unique role to play in disrupting and ending it. Finance is a lever by which the entire global economy can be moved.
- I've been asked to speak today from the perspective of someone who has held senior positions in the financial industry and who has also been a prosecutor.
 - Specifically, I've been asked to speak about **opportunities to make criminal prosecutions of traffickers more effective through the use of financial investigations and financial data**, and about opportunities to better link these criminal prosecutions to victim protection.

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- As a starting point, let me share my view that **using financial data and financial records to prosecute human trafficking cases is an effective tool in the fight to end trafficking.**
- Using financial data and financial records has been effective in **identifying victims and perpetrators**, in **proving coercion**—a required element in a criminal charge—in **corroborating witness testimony** (or supporting allegations when a witness does not recall specific dates or transactions), and in **serving as the basis for asset forfeitures** (that is, seizing the properties—the expensive homes and cars and other assets—of the traffickers).

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- Using financial data and financial records also provides opportunities to prosecute traffickers for other crimes often related to the trafficking (when a trafficking charge is hard to pursue because witnesses are reluctant to testify).
 - Serious crimes such as money laundering, tax evasion, bank fraud, kidnapping, extortion, identity theft and immigration fraud, all of which can also form the basis for asset forfeitures.
 - Property subject to asset forfeiture can include real property (houses, restaurants, stores, hotels, farms, and office parks); tangible personal property (cash, jewelry, art, boats, airplanes, and cars); and intangible personal property (professional licenses like medical, pharmacy and liquor licenses), bank and investment accounts, business entities and business permits, website domain names, stocks, lien interests, and virtual currency.

Asset forfeiture is a powerful disruptor of the traffickers' business model

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- In bringing criminal prosecutions, the government can use the narratives in Suspicious Activity Reports to highlight the traffickers' motives or to demonstrate the traffickers' knowledge of the initial illegal activity and their consciousness of guilt. The reports can also **identify co-conspirators** (by showing where and to whom the money was transferred) and can also **identify additional victims**.
- And, as noted, if witnesses are reluctant to testify—because of a threat of violence against them or family members, or the risk of being deported, or even because of the fear of being prosecuted themselves—the reports and the underlying financial records can be used to **pursue other criminal charges that may not require testimony**.
 - For example, prosecutors may bring a case against a trafficker for tax evasion, structuring and money laundering, where the trafficker's tax returns report minimal income and assets, yet the financial records refute those tax returns by illustrating a lavish lifestyle. Those financial records are compelling evidence for the jury.

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- From the perspective of financial monitoring and criminal prosecution of traffickers, I would offer the following 8 suggestions for your consideration:
- **One:** Make greater use of the asset forfeiture laws. If that requires legislative or regulatory changes, those should be evaluated and discussed.
 - Explain the difference between the criminal and civil asset forfeiture paths. The former requires a prior conviction of the trafficker, while the latter does not. Note the current Jeffrey Epstein case, where US authorities are seeking to seize many of his assets, even without a conviction.

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- **Two:** Consider expanding the ability of using forfeited assets to provide victim services and other appropriate remedies to survivors.
- **Three:** Expand the scope of prosecution to **facilitators**, that is:
 - people or businesses that assist, enable, aid or financially benefit from the trafficking (e.g., prosecute those who provide false documentation or identification **with the knowledge** that it will be used to further the trafficking).
- **Four:** Develop global standards for cryptocurrency and the “dark web”—
 - Cryptocurrency regulations around the world are inconsistent, creating opportunities for criminals to maintain anonymity and to evade monitoring. There is a need for global minimum standards. Related to the crypto payment issue, law enforcement should share appropriate information with the financial industry about use of the dark web to advertise persons for sale, especially when payments can be tracked on the blockchain.

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- **Five:** Always consider using expert witnesses in your case—psychologists, medical professionals, social workers, victim advocates—to explain to the judge and jury why victims might *recant* their testimony, minimize or change their story, omit or withhold information, and are reluctant to testify against their traffickers.
 - Use the experts to explain unfamiliar language and slang regarding the sex trade, especially in **electronic communications and text messages**. Communications between a trafficker and the victim may be primarily in text messages, and the content of those messages can be used to demonstrate to the jury that the traffickers controlled all aspects of the victim’s life—to **rebut the defense that the relationship was consensual**—for example, by showing texts in which the victim asks permission to eat, sleep, work, take bathroom breaks, etc.
- **Six:** Evaluate whether certain businesses that are higher risk for sex trafficking or labor trafficking should be required to post “hotline” signs—
 - hotels, agricultural labor contractors, adult entertainment services, airports, train stations and bus stations, hospitals and urgent care centers, rest areas and truck stops, and massage services are all examples of higher-risk businesses.

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- **Seven:** Encourage financial institutions to conduct a periodic **risk assessment to evaluate their exposure to human trafficking.**
 - Banks are already accustomed to assessing their financial crime risks (money laundering, corruption, sanctions evasion fraud, terror financing, etc.), but few banks evaluate the specific risk that their products and services will be utilized by traffickers.
 - These risk assessments should include evaluating the trafficking risk in client supply chains (sub-contractors) and should focus on high-risk industries such as extractive (oil and minerals), construction, etc. Should include the commercial, corporate, correspondent, and investment banking lines of business (i.e., expand beyond the traditional retail-oriented approach).

This could lead to the identification of additional controls which in turn might lead to better detection and more Suspicious Activity Reports being filed with the authorities, which in turn would mean that more actionable intelligence is being provided to law enforcement to initiate and pursue cases.

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Risk Assessments continued...

The financial industry and national governments must pay greater attention to the nexus between human trafficking and terror financing.

- As the Financial Action Task Force has pointed out, *the Islamic State* has conducted in-person slave auctions in areas that they control and through on-line slave auctions, as a fundraising mechanism; and *Boko Haram* has used kidnapping for ransom and enslavement to support their fighters. Surprisingly, very few national risk assessments consider human trafficking as a risk for terror funding. This should be re-examined.

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- **Eight**, provide immigration relief for confirmed victims whose immigration status creates a fear of deportation. This will encourage more victims to testify at trials, will enhance the relationships between victims and law enforcement, and is a more humane way to treat survivors.

It is also important to pursue capacity building through information sharing (e.g., public-private partnerships to share emerging typologies) and training (e.g., LE recognition of victims, interview techniques, foreign language capability). Build on lessons learned in Drug Treatment Courts, Domestic Violence Courts, and Mental Health Courts to bring “trauma-informed responses” to the unique needs of this vulnerable population (e.g., explore and develop more effective ways to disposition arrests for prostitution, especially when involving a minor).

Thank you

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