

PART IX

Hard-to-Prove Criterion and a Slap on the Wrist

Throughout the world the severity of the crime of human trafficking is often undermined by a lack of government responsiveness to the issue—a lack of enforcement and minimal investigations. This pattern is exacerbated by the hard-to-prove trafficking criterion, which results in prosecutors' charging defendants with less directly related and less severe offenses that result in minimal or suspended sentences.

In Australia the number of criminal prosecutions and convictions remains low, and the average sentence is 7 years and 10 months. One hurdle that prosecutors face is a result of the anti-trafficking law itself, which exists in two discrete divisions, 270 and 271. Anti-trafficking experts maintain that the essential element in defining human trafficking is not the movement of persons but rather the exploitative purpose. The exploitative purpose of trafficking is addressed under Division 270, which prohibits slavery, sexual servitude, and deceptive recruiting. Division 271 focuses on the movement of victims. The problem is that, thus far, prosecutors in forced-labor cases have not used both divisions; they depend solely on Division 271, improperly placing the emphasis, and burden of proof, primarily on movement.

In the United Kingdom, prosecutors must prove intent both to transport and to exploit the victims. This double-intent criterion ignores the realities of internal trafficking of citizens and migrant workers. The Sexual Offences Act 2003 prohibits trafficking into, within, or out of the United Kingdom for sexual exploitation; the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 prohibits trafficking to, within, or out of the country for the purposes of

labor and other exploitation, including organ removal or benefit fraud (fraudulently attaining state benefits). The problem is that these acts place as much judicial focus on the movement of victims as on the exploitative purposes of the trafficking. The requirement that prosecutors demonstrate a trafficker's intent to arrange or facilitate travel, arrival, or departure to, from, or within the United Kingdom for the purpose of exploitation significantly weakens their ability to succeed. As a result, prosecutors often opt to use lesser offenses to prosecute traffickers. This strategy reduces both the severity of the sentence and the level of protection and support afforded to victims.

In some nations only sex trafficking is recognized under the law. Until March 2011 Chile criminalized only child prostitution and transnational trafficking for the purpose of sexual exploitation. The former law, Article 367 of the Penal Code, did not criminalize forced labor of children or adults or internal sex trafficking of adults. Because government statistics thus far reflect only offenses covered under the earlier law, it is impossible to determine to what extent other forms of human trafficking exist. For example, child labor is practiced widely in Chile. Experts estimate that 200,000 children between the ages of 5 and 17 work under unacceptable conditions, and the average age of child laborers is 12. But how many of these children are victims of forced labor is undetermined. Victims not covered by the earlier law were without legal remedy and comprehensive services and thus were vulnerable to repeat exploitation. The new law is comprehensive: it prohibits trafficking for the purpose of sexual exploitation, including pornography; forced labor or services; slavery or practices similar to slavery; or the removal of organs. This is a significant step, but effective implementation will require comprehensive training of police, social service providers, immigration officials, and judges on the new law and how to properly and proactively identify and investigate all forms of human trafficking. It will also require changing the practice, common among judges in Chile, of suspending sentences of less than five years.

In Germany the law adequately protects victims of all forms of human trafficking. It is in the implementation of the law that victims are not treated equally. The government focuses its anti-trafficking efforts primarily on sex trafficking and is just beginning to identify the issues of forced labor and severe labor exploitation. Male victims of human trafficking are particularly marginalized; most counseling centers that provide specialized services for trafficking victims support only women. And both labor traffickers and sex

traffickers are still apt to receive light or suspended sentences. For example, of the 135 sex traffickers convicted in 2009, 75.6 percent received nominal to no jail time. There were only 10 convictions of labor traffickers in 2009, and none of the offenders was sentenced to imprisonment. The result of these sentencing patterns is that the vast majority of traffickers go unpunished.

CHAPTER 17

Australia

She vomited into a bucket for 60-plus hours while at the detention center.

The coroner's shocking report on her death as well as the treatment she faced in the center made headlines throughout Sydney.

—LUIGI ACQUISTO, FILMMAKER

Australia's Pacific Solution of 2001–2007 is no longer in existence, but it is important to mention the measures the nation has taken to fulfill its immigration agenda. John Pace, Amnesty International delegate, said Australia's means of dealing with illegal immigrants during this time aided in the smuggling of human persons. "The policy has clearly failed to stop desperate asylum-seekers trying to reach Australia, and the people smuggling rings have not been broken," said Pace in an Amnesty International press release. "While the government has been creating a 'fortress Australia,' hundreds of men, women and children fleeing persecution and attempting to reach safety are being arbitrarily detained in camps and on boats, often in very poor conditions" (Amnesty International, 2001).

Under the Pacific Solution, asylum seekers were sent to detention camps located on two Pacific island nations—Papua New Guinea and Nauru. The intent was not only to create a solution for dealing with illegal immigrants but also to deter illegal immigrants from attempting to seek asylum in Australia. The incident that triggered the Pacific Solution was the August 2001 rescue of 400 migrants from a sinking boat by a Norwegian cargo ship named the *Tampa*. The migrants were predominantly Afghanis fleeing the Taliban and religious persecution, hoping to seek asylum in Australia. The asylum seekers had paid thousands of dollars to smugglers who ensured them of a new existence in Australia. Instead, the *Tampa* was refused entry to the mainland of Australia, and