

# Summary of the Society's recent advocacy activities

- Press Release – Change The Record Campaign
- Celebrated the Society's Volunteers: Give Happy – Live Happy event
- Meeting with Attorney-General
- Hosted Law Week Lunch
- Hosted President's XI Cricket
- National Reconciliation Week Competition
- Attended consultation with Department of Attorney-General and Justice regarding Summary Procedure amendments
- Attended Northern Territory Legal Assistance Forum
- Prepared draft alcohol policy
- Submission to Law Council of Australia on Senate Inquiry into Violence, Abuse and Neglect against people with a Disability
- Hosted National Reconciliation Week morning tea
- Communications with Lynne Walker
- Radio Interview *Lawrie v Lawler*
- Presentation of Reconciliation Action Plan
- Media Interview – youth offenders
- Letter to Attorney-General regarding identification of youth offenders
- Letter to Information Commissioner – identification of youth offenders
- Memo to Law Council of Australia – *Serious Crime Control Act*
- Memo to Law Council of Australia – *Bail Act*
- Media Interview – Review of Judicial Appointments
- Letter to Property Law Reform Alliance regarding *Uniform Torrens Title Act*
- Media comment – Foundation 51 investigation

## Admissions to the Supreme Court of the Northern Territory



Amy Rachel Dargan	Stewart Richard Bryson
Bahareh Jaber	Bronwen Anne McLauchlan
Clarissa Mavis Eileen Phillips	Caitlin Lucie Weatherby-Fell
Bernadette Raumteen	Anne Michaela Davis
David Paul Cleary	Tahlia Joanne Zerafa
Nicole Renae Festing	Krista Mikaila Bridgman
Shannon Pia Coetzee	

# Treating drug traffickers as human trafficked victims

The 20 days to try and save Mary Jane Veloso<sup>1</sup>

Human trafficking is a highly lucrative industry that extends to all corners of the globe. The phrases 'human trafficking', 'slavery' and 'forced labour' are used interchangeably but essentially amount to exploitation for profit and power. Developed countries have become the destination for slaves plucked from source countries and people are trafficked within their own states. These are generally the impoverished, the un-empowered, the uneducated and the dispossessed and largely women and girls, particularly in the context of sexual exploitation. The transnational nature of human exploitation makes cooperation between nations imperative.

The potential profits from human exploitation are huge. In a 2012 survey by the International Labour Office it was estimated that 20.9 million men, women and children are in forced labour globally, trafficked for labour and sexual exploitation or held in slavery like conditions:

- Of the total, an estimated 9.1 million people (44%) moved either internally or internationally.

- The Asia-Pacific region has the largest number of forced labourers, at almost 12 million (56% of the global total and 89% of those in bonded labour and debt bondage).
- Women and girls make up about 55% of all forced labour victims, they represent the vast majority of victims exploited for commercial sex work.
- The estimated total profits made by forced labour each year worldwide was estimated in 2012 at US\$150.2 billion per year with profits highest in Asia (US\$51.8 billion).
- Sexual exploitation makes up two-thirds of these profits at an estimated \$105 billion a year.
- Annual profits made per victim range from \$4100 to \$37 100. This includes construction, manufacture, mining and utilities, agriculture, fishing and domestic work. Profits are highest in forced sexual exploitation.

The plight of Mary Jane Veloso, who faced the death penalty in Indonesia, exposes the need to accept that some alleged criminals are human trafficked victims. Ms Veloso is a 30-year-old Filipino migrant worker. She was

arrested at Adisucipto International Airport in April 2010 for attempting to smuggle 2.6 kilograms of heroin into Indonesia from Malaysia. She was sentenced to death by Sleman District Court in October 2010.

She was in Malaysia having been recruited to work as a domestic helper and was given two suitcases to carry to Indonesia. Concealed inside the suitcases were packs of heroin wrapped in aluminium foil. Ms Veloso maintains that she did not know the suitcases contained heroin and that she was the victim of deception and abuse of trust and abuse of vulnerability—a human trafficking victim. The classic exploited overseas worker.

On 7 April 2015, Ms Veloso's family appointed the National Union of Peoples' Lawyers (NUPL) in the Philippines as their new legal team led by Edre Olalia. The NUPL consulted me on 9 April and over the next few days I supplied material on how to invoke human trafficking referral mechanisms. Complaints were filed against the recruiters in the Philippines by the NUPL on 16 of April. This triggered an investigation as to how she was recruited in the

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Philippines. An amicus curiae brief was prepared by myself taken from a partly prepared paper by myself and Neil Boister, Professor of Law, University of Waikato, New Zealand and Julia Muraszkievicz, a PhD Candidate, Faculty of Law, Vrije Universiteit Brussels Nathalina Naibaho, University of Indonesia, Jakarta, with additional research and contributions by a PhD student in Australia. This was requested by Edre Olalia on 24 of April 2015 as the 72-hour countdown to execution began and he was taking a plane to Indonesia. It was provided on 27 of April and set out the law. Just a few hours before the executions on 29 April 2015, Ms Veloso was granted a temporary stay. After a sustained campaign by Migrante International, protests by the Philippine people and a conversation between the Philippine and Indonesian presidents, the Indonesian President agreed to allow the reprieve in order that the trafficking claims be properly investigated. The reprieve was implemented 30 minutes before the proposed execution. It took 20 days to reprieve Mary Jane: Ms Veloso's legal teams in Indonesia and the Philippines are still working to make the stay permanent. I continue to assist remotely. The Indonesian Consul in Darwin sent a copy of the Amicus Curiae brief to Jakarta and we are hopeful that the law will be applied.

The Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings (2013) has made it plain that "Trafficked Persons have been victims of one or more serious criminal offences. States have obligations to assist such persons, and not treat them as criminals." The practical issues are complex as referral mechanisms are different in every country. In transnational cases they need to be invoked in every country where investigation is required. There is a real need for uniformity



here. The legal issues are relatively simple: It is vital that we identify victims of coercion, manipulation and deception and protect them. Efforts must be focussed on identifying suspects as victims and diverting them out of the criminal justice system. This includes non-prosecution and non-punishment of those victims in criminal justice systems.

Identification of a victim starts with Article 3 of the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly Women and Children (Supplementing the UN Convention Against Transnational Organised Crime) ('the Trafficking Protocol') which defines trafficking as follows:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.

# Treating drug traffickers as human trafficked victims

The definition is deliberately wide in order to try and cover the many and various ways people are exploited. In some cases there will be an overlap with forced labour and other abuse. The guiding principles on non-prosecution and non-punishment are set out in Article 26 of the Trafficking Protocol. The current approach is to focus on the alleged criminal offence, such as attempted drug importation and not the evidence of human trafficking. The consequence is that people, particularly women like Mary Jane Veloso, become victims of both the recruiter and the system. A person who is tricked or coerced into trafficking drugs fits the definition of a human trafficking victim perfectly. Drug-trafficking organisers who in terms of the definition in Article 3 'recruit' a person 'through the threat or use of force or other form of coercion' or of 'fraud' or of deception' 'for the purpose of exploiting the person' are clearly traffickers and it is they who should be targeted, not those they exploit.

In England, the Modern Slavery Act 2015 creates a defence for slavery or trafficking victims who commit an offence. There is an EU Directive 2012/29/EU which establishes minimum standards on the rights, support and protection of victims of crime and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings.

There is also now the Istanbul Convention dealing with violence against women and girls that any State can sign and ratify. Before the Modern Slavery Act, The English Court of Appeal quashed convictions of trafficked victims convicted in the criminal justice system. In *R v N; R v LE*, [2012] EWCA Crim 189, the UK Court of Appeal considered four unconnected appeals involving offenders who, at different stages after conviction, had been found to be victims of trafficking in human beings and to have been coerced into committing the offences which were integrally related to their exploitation.

In giving judgement, the Court of Appeal gave guidance on how the interests of those who were or might be victims of human trafficking and who became enmeshed in criminal activities in consequence, in particular child victims, should be approached after proceedings had begun. The court had the advantage of European Directive 2011/36 and

previous decisions. The court noted that the reasoning for what is effectively immunity from prosecution is that "the culpability of the victims might be significantly diminished, and sometimes effectively extinguished, not merely because of age, but because no realistic alternative was available to them but to comply with those controlling them." The court went on to state that "where a court considered issues relevant to age, trafficking and exploitation, the prosecution would be stayed if the court disagreed with the decision to prosecute." The Court made clear that the international frameworks did not prohibit the prosecution or punishment of victims of trafficking per se, but did require the Prosecutor to give careful consideration as to whether public policy calls for a prosecution at all. The court quashed the convictions of more than one of the Appellants effectively on the basis that the whole process had been an abuse of process.

Abuse of process is not a novel concept in Australia but there is scope for it to be used in a novel way if trafficked victims in prison are to be properly assisted. More importantly, prosecutors should apply the public interest test so that exploited people are not prosecuted at all.

In Australia, there are currently no figures available for how many human trafficked victims are caught in the criminal justice system in Australia and no clear mechanisms available to allow victims to be diverted away from prosecution or for those who have been prosecuted for criminal offending to successfully appeal. Logically this must mean that some victims will be in prison as a result of their status as trafficked victims as they are not being picked up during the criminal justice process. Locking up victims including victims of abuse and exploitation is not what any criminal justice system is for.

Indonesia has led the way, together with other ASEAN nations on legislating to protect human trafficking victims. It has mandatory protection for human trafficked victims via its law 21 of 2007. The Philippines have had similar since 2003, updated 2012. It is in the context of mandatory drug laws that Mary Jane Veloso was apprehended and the human trafficking protection was not applied, at least, not before 29 April this year.

