

PEOPLE SMUGGLING AND ILLEGAL IMMIGRANTS IN FIJI

by

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Introduction

Transnational organised crime is nothing new to the Pacific region. If recent news reports are anything to go by, transnational criminal activity is clearly on the rise in Fiji. Transnational organised groups are flexible and where there is a market involving a variety of commodities such as drugs, people, weapons, money laundering, fraudulent schemes or terrorist activities, these groups have the capability to diversify their activities in all these areas of illegal activity.

In combating these challenges, strong legislation, including effective subsidiary legislation, should be enacted and updated as a matter of urgency to give law enforcement officials the necessary means to respond to transnational organised crime, including acts of terrorism. Although the relatively small Pacific Island nations often face constraints of human, financial and technical resources, the threats posed by such organised crime in the Pacific regions are immense. Major vulnerabilities facing Fiji are the significant lack of resources in combating this crime of people smuggling and human trafficking especially the lack of trained staff and technology support for maritime and border patrol and surveillance capability and identification and detection systems for document fraud particularly passports at border crossings. Urgent attention is therefore required to address the legal and administrative deficiencies in order to provide the high level of assurance that is required in developing effective policing responses and strategies to ensure the safety, security, integrity and sovereignty of States, their borders and their people.

In this article, I will specifically look at the transnational organised crime of people smuggling and human trafficking in relation to Fiji. I will look at some of the emerging trends in this regard. I will also discuss the current legislation that deals with the problem of human trafficking and people smuggling in Fiji.

People Smuggling and Human Trafficking

In today's world, there are a range of organised criminal activities being perpetrated and aimed at

circumventing immigration controls. Experts estimate that approximately 100 million people are seeking to migrate to another country, and the International Organisation for Migration estimate that 4 million of those will attempt to migrate illegally. It is believed that this illegal activity is worth an estimated \$11 billion per year.¹ The Pacific Region is by no means immune from these offences. The large-scale unregulated movement of migrants generates global concern and in turn creates new security implications for the Pacific Region.²

Many illegal immigrants are initially economic migrants, attracted by a dream of a better life and frequently influenced by television and exaggerated accounts from family members or friends who are already abroad. On the other hand, many immigrants are taken from their homes and villages by force and deception. A large number of them are then exploited, either under the direct threat of violence or to pay their alleged debts for smuggling fees. Some are forced into prostitution; others work long hours in sweatshops or private homes, or are involved in an array of other forced activities.

Attempted clandestine travel is the best indicator of the level of people smuggling and trafficking we are experiencing in the Region. Those who attempt to enter or transit the Pacific using clandestine methods often do so with the assistance of a smuggler. This type of entry, attempted entry or travel includes those who use false or fraudulently altered entry visas or passports, those who arrive without passport or entry visa, and those who attempt to cross borders using someone else's documents, as well as those who omit or do not make accurate declarations, such as having a criminal conviction.

Human trafficking or trafficking in persons involves the transportation of people for sexual subjugation, coerced prostitution, domestic servitude, bonded sweatshop labour and other slavery like conditions or other illicit activities. This criminal offence is generally a low risk, high profit venture that requires little capital and as a result is one of the fastest growing and most lucrative criminal activities in the world. Some sources now believe that trafficking in persons is becoming the third

largest source of income for organised crime, behind narcotics and firearms. It has also become a source of funding for other criminal activities such as forgery, visa and permit fraud, money laundering, bribery, drugs and gambling.³

Immigration Crime in Fiji

From various news reports of police investigations and prosecutions, it is evident that a number of illegal immigrants are actively involved in criminal offending, some of which is organised and transnational in nature. These offences range from fraud, prostitution, people smuggling and people trafficking, to drug related crime, violent crime and extortion. In Fiji, it is recognised that there are a large number of immigration related criminal offences perpetrated at large. There have been instances of false identity documents, false or fraudulently altered passports and birth certificates, impostors using genuine documents, fake marriages and falsely claiming that individuals are family members or relatives. All of these instances of fraud expose Fiji's borders and put the region at risk. When this kind of fraud is successful, people of unknown origin and identity gain new identities and are able to enter our region anonymously.

In Fiji, the most prominent problem in relation to immigration is people entering into the country legally, who then tend to overstay and breach the conditions of the permits or visas, or leave on forged passports and visas. In my discussions with the Immigration Department, I was informed that some Asian nationals had entered legally with student visas but were later deported because they were working as prostitutes. Similarly, some who are brought to work as cooks are found to be working as prostitutes and were duly deported. Some of these young girls come into Fiji knowing that they will be working as prostitutes but others are forced into it by people who brought them in order to pay off the debt they have incurred in bringing them to Fiji. After paying off the cost of their travel, these girls have the option of returning. However most choose to stay and send home the money they earn. They do not report the matter as otherwise they would lose all their livelihood and work attained.

A recent example in Fiji on people smuggling was the case of *State v Sanjay Patel & Reginald Saverimuttu Constantine* (2005 Nadi Magistrates' Court), whereby a Sri Lankan person with an Australian passport in Fiji tried to assist an Indian national with Indian passport to travel to America. A false Bangkok passport was

obtained and they tried to bribe the Immigration officials to make arrangements for travel to America without a visa. Another example was *State v Jason Song & Others* (2004 Nadi Magistrates' Court), where two Hong Kong national women came to Fiji using their own passports and upon arrival in Fiji were issued with fake Hong Kong passports with a fake US visa by agents making arrangements for their travel. They were caught and deported by the Immigration officials.

Two ways in which illegal immigrants often stay in Fiji are overstaying after the expiry of visas, and where a person comes in with an invalid passport or invalid visa or invalid ticket. When false travel documents are used, they are normally detected on arrival and refused immigration clearance. Thus they are sent back on the same flight, or are detained and deported on the next available flight. There have been reported instances in Fiji where individuals have entered under a Chinese passport and attempted to leave under Japanese passport. Reports were then forwarded to the Japanese embassy, which led to these individuals being deported. Statistics obtained from the 2004 Fiji Immigration Department Annual Report showed that between 2003 and 2004, 414 people were refused immigration clearance, whilst 89 illegal immigrants were detained and deported. Consequently, they were all of Asian origin. The figures at June 2005 showed that 40 illegal immigrants were detected, 36 being Chinese nationals who have been deported back to their county. 33 were females who had breached their conditions of a visitors' permit. They came on study permits but were allegedly found to be working as prostitutes.

Upon checks at the Airport Departure area, it was found that 503 people had overstayed on their visitors permit. In 2005, Prohibited Immigrant Notices were given to 220 people who were disallowed from re-entering the country for 12 months. The Fiji Immigration department is currently working with the Internet Technology and Computing Services (ITC) to establish and update a Data Migration System to effectively monitor individuals who illegally stay in Fiji. The Immigration Department also has a watch list in their computer system listing all the individuals who have cases pending in Court and individuals who are wanted by police and Interpol. Their travel documents are stored in the data watch list which is checked at the airport. Also for individuals who want to leave Fiji, their records are checked in the watch list to see if they have any adverse police records or investigations pending against them.

Whilst immigration and foreign investment is critically

necessary for a small nation such as Fiji, there is a need to strike a balance between genuine immigrants and investors on the one hand, and illegal immigrants intending to engage in criminal activities on the other hand. According to the Director of Financial Investigation Unit, Mr. Razim Buksh, early symptoms have indicated that Asian nationals who come under the pretext of investing in Fiji show investment funds in their accounts, but upon successful granting of visas and permits, these funds are allegedly remitted back to where they originally came from. Striking a balance is not easy in Fiji as we attempt to facilitate economic development and deal with the use of illegal immigrants. The new Immigration Act should assist a lot as it creates offences not only for those who are illegally in Fiji but also for those who employ these illegal immigrants.

Fiji needs firm legislation to deal with people smuggling. Hopefully the new Immigration Act will achieve this. At present there are loopholes in the legislation in that there are inadequate checks at ports and airports. The authorities get their policing powers from legislation and policies which need to be strengthened in Fiji.

In response to the terrorist attacks of September 11, 2001, legislative changes in the U.S. made it mandatory for all commercial airlines on international flights to send their crew and passenger manifest data to the U.S. Customs for advance processing. The heightened concerns regarding border security threats have seen a number of other countries implement similar measures. Australia has implemented a system called Advanced Passenger Processing (APP) which requires all airlines and ships arriving in Australia to provide Advanced Passenger Information through the APP system. Fiji is taking this approach in that when an airline lands in Fiji, the customs will have a list of all people on board the airline. This is one of the safety measures Fiji has taken on board in dealing with the offence of people smuggling and people trafficking.

In this way, passenger details will reach the officials before passengers land in Fiji. It is a bit difficult for this to apply to sea travellers, but awareness is being increased in Immigration and Customs Department about this.

Information about the nature of smuggling and/or trafficking indicates that Fiji is being used as both a transit and end destination point. Helpers or escorts are being used to facilitate the travel of illegal persons through the region, and there are possibilities that

there may already be safe houses for these criminal activities.

Of particular concern is the increasing number of Chinese nationals being smuggled into the region. There also appears to be a high rate of fraudulent activities linked to Chinese applications lodged off shore. There have been a lot of reports of boarding pass swaps implicating Chinese nationals, and reports of the use of fraud education letters to gain student permits. One of Fiji's concerns is the growing number of visa applications by young women seeking visitor visas or visas to explore business opportunities. Many of these individuals are reportedly working illegally in the sex industry.

The above indicates that people smuggling, human trafficking, and illegal migration continue to be a problem within Fiji. Whilst the numbers involved in these activities are small compared to the Northern Hemisphere, the problem becomes significant when you consider that we are predominantly island nations, with relatively small populations.

Porous borders place the entire region at risk of being exploited by organised criminal groups who specialise in people smuggling and trafficking. Illegal populations are costly to the economy, and the failure to identify and prosecute human trafficking and smuggling result in social and economic consequences. If Fiji fails to successfully detect and deter this type of organised criminal activity it may be perceived globally as a soft target for criminal syndicates. As a result we can become a safe haven for these activities and Fiji may also leave its borders open to be abused by terrorists.

Interpol provides member countries like Fiji with communications infrastructure, information sharing and data maintenance based on a rapid, reliable, secure and permanently available network. This network allows quick exchange of information and intelligence, the cornerstone of international police cooperation.

Legislation

Article 6 of the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*, supplementing the *United Nations Convention Against Transnational Organised Crime* criminalizes the offences of people smuggling and people trafficking. It clearly states that:

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as

criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

- (a) *the smuggling of migrants;*
- (b) *when committed for the purpose of enabling the smuggling of migrants:*
 - (i) *Producing a fraudulent travel or identity document;*
 - (ii) *Procuring, providing or possessing such a document;*
- (c) *enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State ...”*

It requires a State Party to adopt legislative and other necessary measures to establish a criminal offence. The protocol specifically requires the State parties to cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the International Law of the Sea. It also provides a State with powers where it has been suspected that a vessel has been engaged in people smuggling to suppress the use of the vessel. If the vessel is flying a flag of a particular State, that State may allow the suspecting State to search the vessel. The protocol also allows States to strengthen their border measures. The State parties have to ensure that under the Protocol, travel or identity documents issued by it are of such quality that they cannot be easily misused and cannot be readily falsified, or unlawfully altered, replicated or issued. States have to strengthen their technical and training skills in the area of Immigration and to also cooperate with each other and with competent international organisations. States have to strengthen their awareness programmes to educate the public of these organised crimes. Also the Protocol requires the illegal immigrant to be returned without undue or unreasonable delay to his/her country of origin.

Fiji's Immigration Act [Cap. 88], has been addressing the issue of people smuggling or human trafficking for years. However, Fiji has now enacted a new Immigration Act, and Part 5 of this Act deals with People Smuggling and Trafficking. Whilst this is encouraging, the development of supporting regulations has lagged behind. For legislative reform to be effective, there needs to have associated changes

to systems, procedures, forms, client services and training. Thus, preparation of the Regulations will need to be expedited if the new law is to effectively address this problem of human trafficking.

The Immigration Act 2003 makes provisions relating to immigration, to regulate and control trafficking and smuggling of persons, and to regulate determination of refugee status. The Act empowers immigration officers, who may enter and search any ship, aircraft, vehicle or premises without a search warrant. If the Immigration Officer has reasonable cause to suspect that any person is a prohibited or illegal immigrant, he or she may hand over the person to the master of the ship or commander of the aircraft to be kept in custody until the departure of the ship or aircraft.

The new Immigration Act states that any person who without lawful authority or reasonable excuse, enters or departs from the Fiji Islands, except at a declared port or an authorised airport commits an offence. This is new for Fiji as the previous Act did not acknowledge such offences.

Section 6 of the Immigration Act 2003 deals with duties upon entry and departure from the Fiji Islands and subsection 5 provides that the master of the ship has to provide suitable facilities and assistance on board the ship for the proper performance by the Immigration Officer of his duties. The Act specifically refers to Trafficking and Smuggling of Persons Provisions under Part 5 of the Act. It creates as an offence the trafficking of persons, stating that any person who engages in trafficking knowing that the person's entry into the Fiji Islands or any other State was arranged by unlawful means, commits an offence. It creates offences for people who employ illegal immigrants knowingly. It creates an offence for smuggling of migrants knowingly or recklessly. It also has an aggravated offence of smuggling of migrants who would be subjected to exploitation, subjected to torture or any other inhumane treatment and where the migrant's life is endangered. Thus, this part of the Act makes detailed provisions for anyone who is engaged in people smuggling or human trafficking and making them criminally liable for their acts whether intentional or unintentional. The empowerment of Immigration Officials under the new Act is indeed welcomed.

Transnational Crime Units (TCUs)

The Australian Federal Police (AFP), through their Law Enforcement Cooperation Program (LECP),

has concentrated on the establishment of the Pacific Transnational Crime network. TCUs have been successfully established in Fiji (July 2002), Samoa (April 2003) and Tonga (September 2003).

While the TCU has an operational role in investigating transnational crime, they also possess a key law enforcement intelligence capacity and capability. To harness and enhance the law enforcement intelligence generated by the TCU network, the AFP has also established a Pacific Transnational Crime Coordination Centre (PTCCC) in Suva. The PTCCC acts as an intelligence clearing facility that has direct links to other law enforcement intelligence agencies in the region including the AFP's Transnational Crime Coordination Centre and the New Zealand Police (NZPOL) National Bureau of Criminal Intelligence (NBCI).⁴

The Transnational Crime Unit in Fiji consists of 7 Police Officers and 3 Customs Officers. It started its functions in 2002 and is based at the Customs Office. The establishment of the Transnational Crime Unit will no doubt assist in curbing this problem of human trafficking. However, the Unit should be strengthened with more resources and the Immigration Department should also be included as part of this Unit. Clearly, a more united effort is required to address this growing problem.

Conclusion

Fiji must have a "whole government approach" to border and migration management and establish mechanisms for achieving this with stakeholders. Border security from an immigration point of view is not achieved only by examination of people and documents at borders, but is supported through permit and visa processing, passport and citizenship processing, watch lists and compliance and investigation functions. A lack of policy direction and procedural guidelines in all of these areas appears to be a common problem not only for immigration officials but also for the public. The latter need to know and understand in a transparent fashion, the procedures to follow.

Most watch lists are only marginally effective due to a variety of factors including lack of support, and coordination by major stakeholder agencies such as Immigration, Customs and Police. Border management systems are old and partially functional. Cooperation between agencies is crucial to dealing with visa overstayers or persons who entered lawfully and engage in employment outside their visa status, or who enter with lawful authority but are later discovered to have furnished misleading information in order to gain an entry permit.

Fiji should realise the threat that fishing vessels pose and carry out assessments with other Pacific Island countries. Each port administration should tighten security regarding entry into port by fishing vessels, noting that port states have full sovereignty over their ports and have separate berths for fishing vessels.

Given the importance of tourism in Fiji and the need to stimulate investment, there needs to be a clear policy and operational move towards facilitating migration for bona fide travellers and business people. This however is not possible unless the safeguards mentioned above are not put in place. For example fast tracking of work permits needs to have a border management system that scrutinizes applications against a watch list. Tourism is a major foreign exchange earner for Fiji and increased tourism can provide a substantial increase in workload and revenue for immigration departments. Consideration should be given to reinvesting at least part of that revenue into a modern Immigration Department.

References

¹ Tony McNerny "People smuggling-an inhuman trade", AFP People Smuggling Team <http://www.afp.gov.au/raw/publications/platypus/sep00/1psmugl.htm>

² Graycar & Tailby "People Smuggling; National Security Implications" Australian Defence College, Canberra (14th August 2000)

³ Voice of the Asia-Pacific Human Rights Network: A joint initiative of SAHRDC and HRDC "HUMAN RIGHTS FEATURES" <http://www.hrhc.net/sahrhc/hefeatures/hrf24.htm>

⁴ Regional Perspective on Transnational Organised Crime; Pacific Specialised Law Enforcement Organisations, April 2005.
