

United Kingdom

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1. What Constitutes Trafficking in the United Kingdom

The issue of trafficking has acquired a significant place in the political agenda of the United Kingdom (UK) in the past five years. Important changes in legislation and policy during this period indicate a heightened interest in the issue. Apart from new legislation, measures have been put in place to provide assistance to women trafficked for sexual exploitation and specific new police bodies have been established and given responsibility for dealing with trafficking.

UK legislation covers the crime of trafficking as required by the UN Trafficking Protocol. However, when it comes to the issue of sexual exploitation, it does not correspond to the definition, as it makes it a crime to procure people for sex work who take on such work voluntarily, where no force or coercion is present. It goes further than the UN Protocol, however, in defining more precisely what constitutes exploitation. The *Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004*, which covers trafficking for labour exploitation, defines 'exploitation' as slavery or forced labour, the use of threats, force or deception to obtain a service; or a request or inducement to get someone to undertake an activity that someone who was not young, disabled or a family member would be likely to refuse.

Trafficking occurs in the UK in various forms. The Home Office's new policy document, the *UK Action Plan on Tackling Human Trafficking*, introduced in March 2007, mentions trafficking for sexual exploitation, forced labour, child trafficking, and internal trafficking. The government describes trafficking as "movement of a person by coercion or deception into a situation of exploitation".¹ Similarly, the Home Office's *Trafficking in Persons Crime Reduction Toolkit* also talks about exploitation of women, children and men by applying force, coercion, threats, and deception.²

In practice, however, the issue of exploitation is not considered the major determinant in identifying trafficking cases in the UK. Trafficking has, in general, been perceived as a problem of organised immigration crime. Consequently, offences involving illegal immigration receive the greatest attention. This has precipitated problems when it comes to identifying trafficked persons and protecting their human rights. Practitioners (such as social workers, NGOs, or police) often do not imagine that people legally entitled to be in the UK could possibly have been trafficked. Furthermore, too strong a focus on the immigration status of trafficked persons has created tension between those responsible for enforcing immigration law and police investigations into trafficking crimes. It also overshadows the complex nature of trafficking and the need for a holistic approach.

The proposal for a UK Action Plan on combating trafficking in human beings, published for the purposes of public consultation in January 2006, made a clear distinction between trafficking and people smuggling and

stressed that the two should not be confused. The practice shows, however, in dealing with concrete cases, confusion continues to exist. The focus on trafficking as an organised immigration crime serves here as a catalyst. One of the principal criticisms of the text of the proposed Action Plan was that it put the emphasis on techniques to tackle crimes against the state (immigration offences), rather than on crimes committed against the person, i.e. the exploitation to which trafficked persons are subjected.³ In March 2007, the government published the definitive version of its Action Plan. This is the first policy document that deals solely with combating trafficking in human beings in the UK. The text of the document demonstrates a key shift away from seeing trafficking as an immigration offence towards defining trafficking as a violation of human rights.

Those working in the field with trafficked persons suggest that the legal framework regarding trafficking in human beings in the UK is sufficient in theory, but its implementation is far from adequate. Since 2004, there has been a new law punishing trafficking for labour exploitation. However, the provisions of the 2004 Act have been used only rarely to prosecute trafficking cases and by mid-2007 there had not been a single conviction under these provisions. For example, in cases of child trafficking, according to ECPAT UK records, the UK's Crown Prosecution Service does not use anti-trafficking legislation, but instead applies provisions of the law concerning facilitation of illegal entry, which automatically confuses offences involving people smuggling with trafficking.

The current situation in the UK can be described from the policy-making perspective as one of transition, halfway towards a coherent policy response. Some academics describe the current policy and practice with regard to trafficking as one that serves only to encourage the division of migrants who have experienced human rights violations into two groups: an extremely small number of deserving 'victims' (of traffickers) who are entitled to various (limited) forms of protection and assistance, and a vastly bigger group of people who are considered to be 'undeserving' and who are not provided with any protection or assistance to enable them to exercise their rights.⁴

The next sections describe the *status quo* and the gaps and flaws in UK government policy and practice concerning protection of the human rights of trafficked persons. Apart from the strong focus on immigration offences already mentioned, state agencies take a case-by-case approach to protection and there appears to be no connection between responses to trafficking and other policy areas that have a major impact on the protection of the rights of trafficked persons. The formal legislative framework provides a basis for dealing with the issue. Its implementation has so far been inadequate with regard to upholding the human rights of victims, because more priority has been given to criminal justice strategies. The Parliamentary Joint Committee on Human Rights⁵ pointed out in 2006 that the UK's anti-trafficking legislation lacked a human rights approach that would help reinforce and promote the rights of victims. In this respect, many have said that the greatest challenge in the UK is to change the mindsets, attitudes and behaviour of those who shape policy and those who implement it on the ground.

This report was finalised only a few weeks after the introduction of the UK Action Plan. The text describes the way that policy in force up to early 2007 had an impact on the human rights of trafficked persons. The new policy promises to bring about changes and improve the situation of trafficked persons. This report, delineating the situation before the Action Plan was implemented, may be helpful in the future when it comes to monitoring improvements under the new anti-trafficking policy.

2. Current Legal Framework on Trafficking

The UK has come a long way over the past few years in introducing new legislation on trafficking in human beings. Until recently, there was no specific legal provision on trafficking in the UK. Those committing trafficking

UNITED KINGDOM

offences were punished via a range of other laws relating to pimping and immigration offences.⁶ The lack of specific laws on trafficking in human beings posed a major obstacle to the prosecution of traffickers, and it is hard to assess how many of the cases that were prosecuted as pimping or immigration offences actually involved trafficking. In 2002, an offence of trafficking was introduced in the UK for the first time in the *Nationality, Immigration and Asylum Act, 2002*. The offence covered only trafficking for the purposes of prostitution and was foreseen as a stopgap measure before comprehensive legislation was introduced. The *Sexual Offences Act, 2003* incorporated trafficking for sexual exploitation but did not require those committing the offence to use coercion, deception or force in the process of recruitment, as laid down in the UN Trafficking Protocol. In that sense, it also covers the offence of procuring of those who engage in sex work with consent. The same Act made the commercial sexual exploitation of children (persons under 18 years of age) an offence. The Act provides for penalties of up to 14 years' imprisonment. There have been 30 convictions in trafficking for sexual exploitation under the *Sexual Offences Act, 2003*. The prison sentences imposed in these cases for the specific counts of trafficking ranged from two to nine years, although convictions for separate counts have resulted in higher overall sentences being awarded of up to 21 years.⁷

In 2004, a law covering trafficking for labour exploitation was introduced in the *The Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004*. This law covers all forms of trafficking, or rather all the different purposes for which people might be trafficked. It also mentions the means used to induce a person (by the use of force, threats or deception) to provide services or acquire benefits for another person.⁸ Exploitation is defined as slavery or forced labour, the use of threats or deception to obtain a service, or a request or inducement to get someone to undertake an activity that someone who was not young, disabled or a family member would be likely to refuse. The law does not make any specific reference to the recruitment, transportation and receipt of persons. The maximum penalty under this Act is 14 years imprisonment. By the end of 2006, there had been no convictions in trafficking for labour exploitation under this law. The guidance on its interpretation is still very limited and hence it is unclear how it will be interpreted in practice.

The legislation making trafficking an offence does not mention any specific measures to be taken to protect the rights of trafficked persons or to provide assistance to them. The failure of the law to mention any specific measures, such as residence permits, access to statutory services, and support to be provided to trafficking victims in the UK, means that the protection afforded by the *Convention relating to the Status of Refugees (1951)* and the UK's *Human Rights Act, 1998* is currently the only means by which trafficked women (or men) can ensure that they will not be returned to their country of origin once any police proceedings against their traffickers come to an end.⁹

As a member of the European Union and the Council of Europe, the UK is obliged to harmonise its legislation with European legal standards. Some of the standards are supposed to be reflected in their entirety in national legislation, while other standards allow exceptions. The UK's approach in viewing trafficking as a problem of organised immigration crime has been visible in its reluctance to submit to some European legislation aimed at combating trafficking by making better protection available to trafficked persons. The EU Council Directive 2004/81/EC obliges all EU member states to issue residence permits to third country nationals who are victims of trafficking (or who have been the subject of an action that facilitates illegal migration) and who cooperate with the competent authorities. The UK is one of the only three EU countries opting not to implement this Directive.

In May 2005, the Council of Europe adopted the *European Convention on Action against Trafficking in*

Human Beings. The Convention goes beyond any other international instrument in addressing trafficking by seeking to balance a criminal justice approach with the protection of the rights of trafficked persons. The Convention obliges its signatory parties to guarantee minimum standards of protection to **all** trafficked persons. The protection includes measures such as a reflection period of at least 30 days and comprehensive assistance to victims to ensure their physical, psychological and social recovery.¹⁰ By the end of April 2007, the Convention had been signed by 29 States and ratified by seven.¹¹ The UK had been reluctant to sign this Convention initially, arguing: “We have a serious concern that implementing such provisions might act as a ‘pull’ factor to the UK. For example, they could be misused by individuals seeking to extend their stay in the UK, where they do not have a genuine claim as a victim of trafficking. Dealing with fraudulent applications will slow down our ability to respond to genuine claims.”¹² However, intensive lobbying by NGOs and other stakeholders, as well as political pressure from the opposition party led to the Prime Minister announcing in February 2007 the intention of the British government to sign the Convention. The Convention was finally signed on 23 March 2007. The signature coincided with the commemoration of the abolition of the Transatlantic slave trade by the UK 200 years earlier.

Apart from European legislation on trafficking, the UK is also bound by a number of international instruments on trafficking or related issues. The leading instrument is the UN Trafficking Protocol. The UK signed the *Convention against Transnational Organized Crime* and its Protocols in December 2000, but took a long time to ratify the Trafficking Protocol – it was ratified only in February 2006. Furthermore, the UK is bound by a number of other international instruments relevant to trafficking: the *International Covenant on Civil and Political Rights*; the *European Convention on Human Rights*; the *UN Slavery Convention*; the *ILO Conventions No. 29 and No. 105 on Forced Labour*; the *Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* and *ILO Convention No.182 on the Worst Forms of Child Labour*. Protection of trafficked persons is also supported by the *Human Rights Act, 1998*, which brings UK legislation in line with the standards laid out by the *European Convention on Human Rights (1950)*.¹³

Although not explicitly focusing on trafficking in human beings, the UK has a number of other legal standards connected to the regulation of employment and the workplace, which are being used to try and prevent trafficking, as well as numerous laws on immigration. These will be discussed in detail later.

Specific Policies on Trafficking

A distinct characteristic of the UK government’s policy on trafficking has been the lack of a comprehensive, holistic approach. The Home Office, the main policy-making actor in this area within the government, has undertaken several actions, although often in isolation and without coordination, allowing gaps which traffickers have found relatively easy to abuse. Positive changes have occurred over the past five years, especially the introduction of new laws and law enforcement structures, already mentioned. In light of evidence presented, the UK Parliament’s Joint Committee on Human Rights concluded in a report published in October 2006 that, although the government had started taking some significant steps to improve the protection of victims, the existing level of protection as a whole was still far from adequate.¹⁴ As will be described later, only a portion of women trafficked for sexual exploitation receive protection and assistance in the UK. Systems for protection of other groups are lacking.

A lot remains to be done. The government has recognised the “importance of having a comprehensive and effective strategy to combat this growing problem” (i.e. trafficking).¹⁵ Hence, in January 2006, it launched a consultation on the UK Action Plan on Tackling Human Trafficking. There were 206 submissions made to the

UNITED KINGDOM

consultation from various actors, agencies, and individuals. From the responses it became clear that, despite having an appropriate legal framework, there were shortcomings in practice, as well as misunderstandings about the very nature of human trafficking. The majority of respondents expressed concern that the draft Action Plan did not put sufficient emphasis on human rights and the protection of victims. They argued that the plan's scope should be altered to ensure the focus was as much on protecting victims as prosecuting traffickers.¹⁶

More than a year after the consultation, the first comprehensive policy in the form of a UK *Action Plan on Tackling Human Trafficking* was launched in March 2007. The Plan is expected to put in place some of the missing structures and systems. The Plan summarises activities that have been undertaken so far and proposes further action. It announces that a human rights approach will be applied and argues that "a strong enforcement arm is not effective unless the corollary victim protection and assistance is in place."¹⁷

The Action Plan addresses the issue of trafficking in four main areas: prevention, protection, prosecution and child trafficking. It lists a series of actions to tackle trafficking, suggesting the government is strongly committed to taking action. The time frame for the actions is rather ambitious and it will be difficult to achieve a shift in the practice on the ground in such a tight schedule. A major step forward is the aim to develop a national referral mechanism. This should ensure that systems that are lacking in coordination of responses of the various actors, and the missing formal procedures concerning protection and assistance will be put in place. Ensuring that victim protection is at the core of the referral mechanism will be the major challenge that needs to be dealt with for the UK to meet the minimum standards on protection specified in the Council of Europe Convention. It is difficult to depict how the actions tabled in the Plan will implement the human rights approach. Likewise, the assessment tool included at the end of the material does not include indicators to evaluate human rights impacts of the Plan.

One of the merits of the Plan's chapter on prosecution, investigation and law enforcement is the accent on including trafficking in the list of indicators by which police performance is measured. This should make a difference to the number of investigations into trafficking across the UK.

With regard to trafficking for labour exploitation, the Plan sees evidence on the incidence of forced labour as insufficient to conclude that this form of trafficking poses a significant problem in the UK, and suggests that more knowledge is needed in this area. It does, however, recommend the development of guidance for workplace inspectors to identify abuses. The guidance is intended to provide information on "when and how to share intelligence with colleagues in other government departments about these abuses".¹⁸ However, it falls short of making a connection with protection and assistance to trafficked persons. Similarly, the section of the Plan that concentrates on supporting victims through the criminal justice systems focuses predominantly on vulnerable and intimidated victims and the special measures they are eligible, along with witness protection. The chapter does not spell out how the new human rights approach will be implemented in law enforcement and prosecution responses to trafficking, nor does it foresee that applying this approach will be one of the criteria used to evaluate police performance on trafficking.

Access to redress and compensation is another issue vital to the human rights approach. Securing realistic access to compensations has not been an item in anti-trafficking policy in the UK. Despite the £5.5 million¹⁹ (approximately US\$11 million) seized from organised crime in 2005, some of which came from trafficking, trafficked persons have not been able to benefit from this money. No trafficked person has ever obtained compensation as a part of criminal proceedings against traffickers. Similarly, no compensation has been obtained through civil claims. In

COLLATERAL DAMAGE

one instance, a trafficked woman, assisted by the Poppy Project, an NGO providing support to trafficked persons, received compensation through the Criminal Injuries Compensation Scheme. Unfortunately, even the new policy document does not suggest it is necessary to evaluate whether trafficked persons have, in practice, access to compensation via the routes available in the UK.

Victim protection has not been considered an essential element in practical law enforcement responses to date. Prosecution of perpetrators and enforcement of immigration regulations have been the priorities, often to the prejudice of the protection of the rights of those who have been trafficked. In 2006, the Metropolitan Police (the police service for London), in cooperation with all police forces across the UK, implemented Operation Pentameter, the first coordinated operation to enforce the law prohibiting trafficking. This focused on trafficking for sexual exploitation and, for the first time, victim protection. A victim-centred approach was proclaimed as one of the key elements of this operation. NGOs were involved in the preparation and conduct of the operation, which led to the identification of 84 trafficked women. Despite the victim-centred approach, in comparison to the operational side, the coordination on referrals was weak, probably due to the lack of general guidelines and training within the police force on referral procedures and knowledge of what action was appropriate to protect trafficked persons. Hence, there were significant differences in handling cases in different regions, as the command over individual operations lay with regional police heads. Information was made available regarding the number of arrests and of suspected traffickers who were charged, but no concrete information was made public to indicate how many trafficked women were provided with assistance. Some of them were reported as being in the care of NGOs or faith-based organisations, but overall it was not known what happened to them afterwards, either in terms of protection and assistance provided, or access to justice. After Operation Pentameter, the support centres reported that there was virtually no other police activity on trafficking.

Following Operation Pentameter, a new multi-agency anti-trafficking police-based centre, the UK Human Trafficking Centre (UKHTC), was launched in October 2006. It was presented as the first institution of its kind, with a national remit to address trafficking from a broader perspective. The authorities claim the centre has the potential to harmonise and systematise UK law enforcement responses to all forms of trafficking, while consulting and utilising input from various other stakeholders, including NGOs. One of its assets appears to be its multi-agency nature, incorporating specialist personnel from a range of law enforcement agencies, including the Immigration Service and prosecutors. Such an arrangement is a step forward in overcoming the recent lack of overall coordination and unified command of police in combating trafficking. Lack of clarity in the division of responsibilities, particularly responsibility for taking a lead, among the various law enforcement bodies has repeatedly been brought up as a problematic issue by many stakeholders. In its initial public announcements, the UKHTC said it was aiming to develop and promote a victim-centred human rights approach. This statement of intention is a positive step forward. By the end of April 2007, it was too early to assess the impacts of the work of the UKHTC in changing attitudes and ensuring better coordination of the various stakeholders.

The UK Action Plan contains a separate chapter on child trafficking. While a strong focus is given to the identification of trafficked children, it is not evident from the document how the government intends to ensure the application of the human rights approach and give priority to the best interests of the child in protection, assistance and investigation procedures. According to international law, children under 18 are a specific category among trafficked persons and are entitled to additional protection and assistance. The leading NGO dealing with child trafficking in the UK, ECPAT UK, disagreed with the government's approach in dealing with child trafficking as a form of organised immigration crime. ECPAT said, by treating child trafficking within the paradigm of immigration crime, the British

UNITED KINGDOM

government was undermining the principles of non-discrimination and the best interests of the child. They were also concerned that the government's approach risked ignoring situations where children have been trafficked within the European Union (so no immigration crime is committed) or within the borders of the UK (internal trafficking). ECPAT UK considered the proposals in the draft Action Plan inadequate with regard to identification and protection of trafficked children, as the proposed measures were inconsistent with existing policy and legislation for safeguarding children.²⁰ The final Action Plan deals with child trafficking in a separate section and recognises that trafficked children have specific needs.

The director of ECPAT UK, Christine Beddoe, explained that it was common for people in the UK to consider that trafficking in human beings, when it did not involve sexual exploitation, inevitably involved the trafficked person in criminal activity. In a recent case of Vietnamese children trafficked for forced labour in cannabis factories in the UK, the child victims were detained, charged and no official advocacy was conducted on their behalf. Currently, there is no single agency responsible for the welfare of trafficked children. Specific support services for children who have been trafficked are also lacking. Some voluntary agencies have adapted existing programmes, but this has been more a reactive process. No safe house model is available either. Although the best possible care for children is available within the British social care system, this is often inaccessible for child victims of trafficking as immigration policy takes precedence.²¹

Deep concerns have been expressed by the charities dealing with children, such as ECPAT, about the government's recent policy (enforced by the Home Office Immigration and Nationality Directorate) to implement a special programme called 'Enforced Returns of Failed Unaccompanied Asylum Seeking Children'. They raised concerns that this programme could increase the risk of re-trafficking and endanger children. Children's organisations have criticised the government's approach for prioritising immigration concerns rather than child protection. The UK has a reservation on the *Convention on the Rights of the Child* (CRC). Consequently, rights laid down in the Convention are restricted for children under control of the immigration service, including those who have been trafficked.

In January 2007, ECPAT UK published the results of research on child trafficking, a report entitled *Missing Out*. The findings revealed that many children trafficked to the UK go missing from the social services centre where they have been placed and are never found. The research concluded that factors contributing to this situation include the limited resources available to local authorities, lack of expertise, and the uncertain immigration status of these children. In late 2006, a national Child Exploitation and On-Line Protection Centre (CEOP) was established within the British police. The centre's aim is to create a mechanism for centralised intelligence support, as well as guidance and training for law enforcement. The other current problem, which is the lack of identification of trafficked children, could potentially be tackled through this body, provided that appropriate training and cooperation with other relevant stakeholders is undertaken.

Recently, other steps have been taken to address the lack of systematic protection for trafficked children. The Home Office undertook to match the funding provided by a charity, Comic Relief, to start the operation of a Child Trafficking Advice and Information Line in 2007. The hotline will provide advice and guidance to help practitioners. The line will be run by NSPCC (National Society for the Prevention of Cruelty to Children) in partnership with ECPAT UK and CEOP.

Notwithstanding the separate section of the Action Plan dealing with child trafficking, it does not distinctly talk about how the human rights of trafficked children and their best interests will be mainstreamed in the individual

action. Nor has the UK government suggested it intends to withdraw its reservations to the *Convention on the Rights of the Child*.

Tragedies Shaping Policy

A particular phenomenon can be seen in the way policy debates have developed and changes have subsequently occurred in the UK. It seems to be the function of tragedies to bring the subject into the public eye. These tragedies appear to make it politically unacceptable for the government not to act. An example of this was the deaths of Chinese cockle-pickers who were being subjected to forced labour. This resulted in the passing of the Gangmaster Licensing legislation and prompted the subsequent discussion on a UK Action Plan. The most recent example in 2006 concerns a series of murders of sex workers that have once again opened public debate regarding whether prostitution should be decriminalised or regulated to decrease the risks connected with it.

In the past five years, concerns have emerged over the exploitation by ‘rough gangmasters’ (a term used in the UK to describe labour providers in some sectors of the economy, such as agriculture or food processing) of migrant workers performing temporary and casual labour. In 2002, the Ethical Trading Initiative (ETI), an organisation established by business, trade unions and NGOs, established the Temporary Labour Working Group (TLWG) to look into this issue in areas supplying the UK’s imports, even though the ETI’s focus was principally on labour rights and working conditions overseas. Based on evidence gathered, the TLWG began a campaign to introduce a licensing and registration scheme to regulate the operation of gangmasters and to protect workers (mainly migrant workers) from exploitation.

The plight of Chinese cockle-pickers

In February 2004, a group of at least 21 Chinese workers drowned in rising tides while collecting cockles at Morecambe Bay on the north-west coast of England. The workers were victims of forced labour, exploited by gangmasters. The public was shocked by this incident, as it lifted the veil on exploitation practices and shed light on the plight of migrant workers whose services and products were being consumed by large parts of the UK population. As a result of the tragedy, high priority on the political agenda was accorded to the proposal for legislation to regulate gangmasters. The *Gangmaster Licensing Act* was adopted on 8 July 2004 and the associated *Gangmaster (Licensing Authority) Regulations* in 2005. This was welcomed by many trade unions. Without the Morecambe Bay tragedy, it seems unlikely that the Act would have been adopted.

As a nation we were appalled by the tragedy at Morecambe Bay and collectively vowed ‘never again’. The days of illegal gangmasters, who profit from the misery of thousands of workers, defraud the state and drive good businesses to the wall, are numbered. With effective enforcement we can banish this modern-day slavery for good. Government has demonstrated the political will to end this outrageous exploitation; we now need them to ensure sufficient resources are allocated so that registration can flourish. This is a victory for trade union political action and I would like to thank Jim Sheridan MP for his hard work.²² (Tony Woodley, General Secretary of the Transport and General Workers’ Union, which led the campaign for legislation. Jim Sheridan was the Member of Parliament who introduced the Bill.)

The original government proposal on the scope of the Act was very limited in terms of the industries be covered. It had not included shellfish-gathering and/or the associated shellfish processing industry. Many agencies were

UNITED KINGDOM

appalled by this shortcoming, reckoning that the new law would not prevent such tragedies from recurring and suggesting that it paid no attention to public opinion.

The entire food industry is alarmed that the Government is considering excluding the great majority of food processing and packing from the *Gangmaster (Licensing) Act*. The Act was agreed with full cross party support in both Houses under assurances from ministers that any room for exclusions and loopholes would be kept to an absolute minimum. Now, at the 11th hour, we face a real danger that the fastest growing sector of the industry – packing and processing – will be excluded from the Act. This will create huge loopholes and allow unscrupulous operators to continue to exploit vulnerable workers (ETI Director and Chair of the TLWG, Dan Rees).²³

However, as a result of pressure from various agencies pointing out the continuing exploitative practices in work done along Britain's shoreline, the scope was extended to include these too. The Gangmaster Licensing Authority began its registration work in 2006 and prosecutions under the Act consequently started before the end of 2006. Enforcement officers have the power to arrest for offences such as:

- operating without a licence;
- using an unlicensed gangmaster subject to reasonable steps;
- obtaining or possessing a false licence or false documentation which is likely to cause another person to believe that a person acting as a gangmaster is licensed; and
- obstruction of enforcement officers exercising their functions under the Act.

Offenders are liable to 12 months imprisonment if convicted of operating without a licence or possessing a false licence or documents. Repeat offenders will face up to 10 years imprisonment. Since the licensing regulations had been in effect for only a short time by early 2007, no information was available on their implementation. Nevertheless, critical voices from the field were already claiming that the industries covered by the licensing scheme (i.e. agriculture, shellfish-gathering, and associated processing and packaging) were not the only sectors where exploitation was occurring and that the legislation would have to be amended to include other industries in which use of labour providers was common practice, such as the construction industry.

The *Gangmaster Licensing Act* and the Licensing Authority is not explicitly intended to stop trafficking. Nevertheless, it represents one of a range of instruments that can be used to tackle the environment in which trafficking flourishes, targeting a specific form of exploitation. At the same time, it could help in identifying trafficked migrant workers. Yet, as neither this nor the UK's specific anti-trafficking legislation contains provisions that would guarantee protection of the rights of those who have been trafficked, it is hard to see how the Licensing Authority will contribute to the protection of trafficked persons and their rights. Hence, it is key to train and sensitise Licensing Authority staff about trafficking in persons and identification of such situations, so that trafficked migrant workers can be referred for appropriate assistance and protection:

...senior sources in the enforcement agencies doubt it will curb illegal activity and fear gangmasters will find ways around the legislation. The pattern that emerges from *The Guardian* investigation is that when one gangmaster operating unlawfully is closed down, another is alleged simply to take his place. Official investigation into allegations has been difficult because workers are frightened to talk and many fear deportation.²⁴

Murders of sex workers in England

In December 2006, several sex workers were found dead in the area around the town of Ipswich in eastern England. This series of murders precipitated a debate in the media over whether prostitution should be legalised. The UK's current legislative framework creates a situation of a legal vacuum, where sex work is neither legal (i.e. regulated or legalised), nor illegal. Similarly, as in other countries, it is an offence to solicit for prostitution. Paradoxically, it is impossible for women to sell sex without breaking a number of laws while working. For instance, street sex workers routinely commit the offence of 'soliciting' in public or quasi-public spaces (under the terms of the 1959 *Street Offences Act* and the 1982 *Civic Government (Scotland) Act*), while their clients may be arrested for kerb crawling (under the terms of the 1985 *Sexual Offences Act* and the 2001 *Criminal Justice and Police Act*). Yet, these laws are enforced selectively and inconsistently by the police, some of whom have favoured a form of regulation whereby sex work is informally tolerated within a limited, specific area, as long as public complaints or political priorities do not demand a zero tolerance crackdown.²⁵

In January 2006, the Home Office published a policy strategy on prostitution, *Paying the Price*, which was a conclusion of a public consultation and legislative review. The strategy focus is on prevention, tackling demand, developing routes out of prostitution (especially for drug-addicted sex workers), and tackling off-street prostitution. It did not support the creation of so-called managed areas or "zones of tolerance" where sex work could occur. The Home Secretary at the time was reportedly planning a public debate around the liberalisation of the law and the creation of managed areas. However, this debate never occurred in depth, as the minister in office who initiated the debate was replaced. The former special advisor to the Home Secretary at the time, Katharine Raymond, described the problems surrounding the strategy in her article for *The Observer*, 17 December 2006:

I helped prepare a government paper called 'Paying the Price' which described our laws as "outdated, confusing and ineffective", and called for people's views on legalised brothels, registration for prostitutes and local-authority sponsored red light zones. . . . only a handful of politicians wanted the report to see the light of day. . . . In January this year the government finally came up with a watered-down series of proposals that took a small step in the right direction. . . . Almost a year later, even these mild measures have not been enacted.

Katherine Raymond went on to say that the recent murders in December 2006 had opened the call for reforms once again and that the debate on the issue of decriminalising prostitution and giving women a safer place to work through licensed brothels should be brought into the public arena again. The new Action Plan takes this issue into account and recognises that ". . . the current definition of a brothel encourages women to work alone in order to avoid prosecution for keeping a brothel [*maximum penalty is seven years*]. This places them in significant danger and it is for this reason alone that the Government has proposed to amend that definition. . . ."²⁶

It can be assumed that in light of these events, the government, in the Action Plan, proposes an amendment to the present definition of a brothel: ". . . the maximum penalty for keeping a brothel was recently increased to 7 years. However, although the thrust of the strategy is to eliminate all forms of sexual exploitation, we recognise that, in the meantime, the current definition of a brothel, encourages women to work alone in order to avoid prosecution for keeping a brothel. This places them in significant danger and it is for this reason alone that the Government has proposed an amendment to that definition."²⁷

UNITED KINGDOM

The UK government's strategy on sex work scarcely addresses the issue of migrant sex workers and migrant women in the sex industry who might have been trafficked. Given the current legal environment, migrant women who decide for themselves to earn money from sex work cannot, theoretically, do so legally, as there is no provision that would entitle them to do so. Those who are in the country legally inevitably become a part of the present paradoxical situation. Migrant sex workers whose residence in the UK is illegal are likely to be treated as illegal immigrants, unless they have been in the sex industry without giving their own consent and hence are victims of trafficking. The Network of Sex Work Projects, an informal alliance of organisations as well as sex workers, provides services and promotes sexual health in the UK. The alliance unites a number of projects across the country, including those assisting migrant sex workers.²⁸

The government's strategy on prostitution is connected to its policy on combating trafficking. The UK Action Plan relates to the prostitution strategy in the section on demand reduction. In several places, the text makes links to sexual exploitation and prostitution. The overall policy seems to emphasise raising awareness about trafficking for sexual exploitation and the risks involved among potential consumers of sexual services in order to achieve change in the behaviour and attitudes of men. The police also acknowledge that, on many occasions, men paying for sex have provided valuable intelligence. In Scotland, however, a different approach to demand reduction has been applied since February 2007 with the passing of the *Prostitution (Public Places) (Scotland) Bill*, making it a statutory offence to purchase sex in public places. No information on the impact of this new law on trafficked women and their human rights was available by March 2007.

3. Impacts of Migration Policy on trafficked persons and others at risk of being trafficked

The impact of migration policy on trafficking and trafficked persons in the UK is two-fold. First, it shapes attitudes and behaviour towards trafficked persons and the way they are portrayed. Until the adoption of the Action Plan, trafficking was considered simply as organised immigration crime. This implied that immigration law is inevitably being violated in trafficking cases. Consequently, some trafficked persons who are not legally entitled to be in the UK (i.e. their status is irregular) are treated merely as illegal immigrants: they are detained and subsequently subject to arbitrary deportation, without having access to protection or justice. However, this approach fails to respond adequately to trafficking cases involving people who do have legal immigration status in the UK, as well as cases of internal trafficking. The Action Plan takes into account the lessons learnt during Operation Pentameter, when a number of identified victims had entered the UK legally. Internal trafficking is now also included in the scope of the policy, although, internal trafficking seems to be limited to looking at instances of "British girls who may have been lured into prostitution, but from which they cannot escape due to the use of violence or coercion" or "children involved in prostitution".²⁹ This approach misses out other forms of exploitation and the interpretation of what constitutes trafficking does not correspond with the definition in the UN Trafficking Protocol, and focuses narrowly on commercial sexual exploitation rather than trafficking.

Second, migration policy has a major impact on the situation of trafficked persons in the UK. A policy paper, *Secure Borders, Safe Havens*, published in 2002 by the Home Office, has shaped the government's responses to trafficking. The aim of the policy paper was to promote integration and diversity in the UK. Trafficking was mentioned in a chapter entitled 'Tackling Fraud – People Trafficking, Illegal Entry and Illegal Working'. The pivotal point of this chapter was that a range of activities connected with trafficking should be made criminal

COLLATERAL DAMAGE

offences. Neither assistance nor protection of trafficked persons was mentioned. In dealing with illegal migrants and illegal working, the policy paper did not see the issue of exploitation as the cardinal problem, although it acknowledged the vulnerability of illegal workers to exploitation and suggested fining employers for employing illegal workers.

For the purposes of this White Paper the focus is on illegal migrant workers...targeting employers as well as individuals knowingly working illegally, recognising, of course, that some of these people are victims. Where workers have no right to be in the UK, they can expect to be removed.³⁰

The policy paper did not examine the migration-trafficking nexus, that is to say, the close relationship between trafficking and migration. However, it showed a shift in government thinking with regard to economic migration. Economic migration was now seen as contributing to the UK's economy and new schemes were supposed to respond to economic needs. Highly skilled migrants had been the favoured. Whereas the circumstances in which low-skilled, often temporary workers, in 'dirty and dangerous' jobs (for which there is a high demand) were allowed into the country were significantly restrictive. The policy failed to put in place safeguards to prevent migrant workers being exploited or trafficked. It did not consider the possibility of strengthening the penalties for employers who connived with traffickers or condoned exploitation.

The recent Parliamentary Joint Committee on Human Rights report assessing the policy on trafficking also called for a review of immigration laws and policies "in the context of their impact on the victims of trafficking". The Committee came to the conclusion that immigration legislation and policy were key obstacles to promoting a human rights approach. The complexities of the different regimes governing the entry of foreign nationals into the UK were identified as one of the factors that created an environment in which exploitation and trafficking could occur. The Action Plan mentions some of the issues surrounding migration policy, but on the whole it fails to lucidly identify points of friction between the two policy areas and ways to address them.

The *Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004* is of particular concern for victims who have violated immigration law. This legislation mentions both immigration offences and trafficking in human beings. Section 2 makes it an offence to enter the UK without a valid passport. Given the policy prioritising prosecution of immigration offences, the application of this provision is harmful for trafficked persons. Many trafficked persons use false documentation to enter the UK, often because they are already under the control of traffickers. Cases of women trafficked into the UK were brought to the attention of Anti-Slavery International by lawyers. In these cases, the women had been charged under section 2 and some served prison sentences lasting several months. The common denominator in these cases was the authorities' failure to identify the women as victims of a trafficking-related crime. In some instances, the women told the authorities that they had been trafficked, but this fact was disregarded when a decision to prosecute was taken, apparently because the women were not considered credible. In others, the women were too scared to speak with authorities about their experiences; the fact that they were actually victims of trafficking came out accidentally, often only when they spoke to solicitors (lawyers responsible for giving them legal advice).

One of the cases concerned an African woman who was trafficked to the UK under a promise of work. When she reached the country, her passport was taken away by the people who had organised her trip, and she was told she must work in prostitution to repay her supposed debt. She refused and managed to run away. Terrified of the traffickers, she escaped to London and worked illegally to earn money for her return to her home country.

UNITED KINGDOM

Unable to obtain a passport from her Embassy, she managed to obtain a fake one, but was intercepted at the time of leaving the UK. During the sentencing remarks at her trial, the judge stated that she struggled to accept the woman's story, but did accept that she had been asked to work as a prostitute. She also had difficulty in understanding why the woman had not approached authorities but commented that she was not going to punish her for that. The trafficked woman received a sentence of 12 months imprisonment.³¹

This case clearly demonstrates a failure to protect the rights of trafficked persons by criminalising a trafficked woman and even considering additional punishment for someone who failed to come forward and contact the police (which indicates a complete lack of understanding of the experience of being trafficked).

In another case, a woman was trafficked from an eastern European country to the UK several years ago. The police 'freed' her from the brothel by raiding the premises and she was deported to her country. There, the same gang of traffickers captured her again and brought her back to the UK on a false passport. After escaping the trafficking situation for a second time (this time by herself, rather than being 'freed' by the police), she was charged in the UK with using a false passport. In spring 2007, her lawyers were struggling to have the charge dropped. The credibility of her account of her experience was being called into question by the police, as well as the criminal justice system.

Both cases demonstrate how present practice favours the punishment of immigration offences over the protection of the human rights of victims of crime and even the investigation of trafficking offences. Cases where women have been brought to detention centres after police raids on brothels, without being given access to any assistance, may provide further evidence of this pattern. Several lawyers have expressed concerns that some women they have met in detention centres who have been charged with the use of false documents may have been trafficked. However, currently the authorities have no incentive to reassess cases that display certain characteristics of trafficking. The Action Plan does acknowledge that trafficked persons have been, in some instances, charged with immigration offences they committed while in a coerced situation and ascribe this to the lack of awareness and identification by officials. The Plan intends to deal with the situation by increasing awareness and giving training. This matter will require greater attention, as it is one of the requirements of the Council of Europe Convention not to punish victims for unlawful activities into which they were compelled. Additional systematic and structural changes will be needed to provide prosecutors with guidance on how to act in such cases and, especially, how to resolve a situation in which a victim has been convicted under section 2 of the above-mentioned legislation (entering the UK without a valid passport) and is serving a prison sentence.

So far the policy that has been implemented has created a tension between the enforcement of immigration legislation and police pursuit of traffickers. A paper evaluating the first three years of operation of a government-funded support for trafficked women, the Poppy Project, reported tensions among stakeholders involved in running the pilot. The most significant tension was reported between the Immigration Service and the Home Office Victims Unit (VU). The Immigration Service and the VU had taken different approaches to the government's strategy on trafficking (*Secure Borders, Safe Havens*). The Immigration Service, whilst acknowledging the victim status of the trafficked women, also viewed the women supported by the Poppy Project as immigration offenders and, as such, felt it was failing to meet government targets for dealing with irregular immigrants.³² Evidently it is the government's responsibility to manage conflicts such as these. However, the UK authorities have not appeared keen to do so and the pronouncements of senior government figures have regularly confirmed the importance of their targets concerning illegal immigrants. The government announces in its Action Plan significant

COLLATERAL DAMAGE

steps to bring on board the agency in charge of immigration, the Border and Immigration Agency. Nevertheless, it will need to address concrete contradictions that exist between migration and anti-trafficking policies that are an obstacle in promoting the human rights of trafficked persons and their referral to assistance.

In late 2006, the government announced that the number of deportations of irregular migrations was going to increase. According to a BBC report, 440 police officers were being seconded to help tackle illegal immigration, to be joined by newly recruited immigration officers. The government said that it was doubling the budget to pay for deportations to nearly £300 million (US\$580 million). By the end of 2007, 650 extra detention spaces were scheduled to be available to imprison irregular immigrants.³³ This can have even more negative implications on trafficked persons and pursuit of criminals.

When victims have irregular status in the country to which they have been trafficked (in this case, the UK), there is limited incentive for them to cooperate with the police. Under policies in force in early 2007, the police could not guarantee them protection, such as a 30-day reflection period, access to services or an opportunity to regularise their status. They could only try to negotiate protection for them with the Immigration Service. While this was happening in some instances, the Immigration Service often attempted to deport victims who the police regarded as witnesses and expected to be treated as victims of crime. The Immigration Service works on a quota system for deportations. So, for immigration officials, there is limited incentive to stop the deportation of victims of trafficking even if it assists police inquiries.³⁴ Trafficked persons, including those who have been subjected to slavery, are caught in a Catch-22 of the government's making.

Once the Council of Europe Convention comes into force, the UK will have to provide a reflection period to all trafficked persons. Consequently, the authorities should cease to regard granting a reflection period as a privilege. In the first half of 2007, granting a reflection period to a trafficked person was the exception rather than the rule. In order to ensure that trafficked persons can access their right to a reflection period, the UK authorities will have to set up a referral mechanism.

Migration policy is due to see further changes in the UK in the next two years. A new system of managed migration has been proposed that is set to operate on a system involving points awarded to various categories of workers based on their skills. While one of the aims of the change is to simplify the current system (which is very complex, with a number of routes governing economic migration to the UK), it does not contain any assessment on whether these proposed changes will affect the existing environment that makes it easy for migrant workers to be exploited.

The case of migrant domestic workers in the UK illustrates clearly the authorities' failure to assess the possible repercussions of policy changes. Despite good intentions and plans to follow good practice, alterations can actually have the opposite effect, trapping people in slavery instead. Domestic workers were already coming into the UK with the families employing them in the 1970s. In the 1980s it became increasingly clear that many migrant domestics were experiencing the types of exploitation associated with trafficking: situations of forced labour or slavery from which the victims were unable to escape. Two support groups were formed, Kalayaan (the name derived from the Filipino word for freedom), which assisted those with regular status, and Waling-Waling (named after a type of orchid found in the Philippines), a self-support group uniting irregular domestic workers. Migrant domestic workers, supported by these groups, trade unions and the labour movement, campaigned and worked together with MPs in the areas where the groups were based, to lobby the opposition

UNITED KINGDOM

party (at that time the Labour Party, which has been the governing party since 1997) for a change in the law to allow migrant domestic workers to leave abusive employers without compromising their immigration status.

After 10 years of campaigning, the law was finally changed. In July 1998, the Home Office minister at that time, Mike O'Brien, announced the legislative changes in the immigration rules for migrant domestic workers, permitting them to change their employers within the same category of work. This measure was a progressive one, not only because it gave domestic workers an opportunity to protect themselves against abuse, but also in that it gave those who had been trafficked a chance to escape from their situation without facing the danger of being punished as immigration offenders.³⁵ Currently migrant domestic workers who enter the UK accompanying their employer can leave that employer if they are abused or exploited (as long as their employer is not a diplomat). This gives them vital protection against violence, mistreatment and exploitation. They receive basic protection under UK employment law and are entitled to the national minimum wage, statutory holiday pay and a notice period. Their visa as a worker is renewed annually and renewal is dependent on the migrant domestic worker being in fulltime employment as a domestic worker in a private household at the time of renewal. There is also the right to apply for settlement after four years, as well as the right to family reunification.³⁶

Although by no means all migrant domestic workers subjected to exploitation in the UK have been trafficked, according to the statistics compiled by Kalayaan, more than half of their clients have had their passports withheld, which is one of the constitutive elements of forced labour. Hence the rights granted to them in the UK at present are a positive measure in protection and provision of viable opportunities to trafficked migrant workers. The measure allowing migrant domestic workers to change employers within the same category of employment has been repeatedly praised by other European countries as an anti-trafficking measure that is an example of good practice. Also the British government cited the fact that domestic workers can change employers as an example of good practice in an ILO document.³⁷

Paradoxically, the same government that introduced this progressive measure was, at the end of 2006, about to revert it. The proposed points-based system on migration management does not retain the existing arrangements for migrant domestic workers. Under the new proposal, they would only be allowed to come to the UK for six months (although the employers who bring their domestic workers with them would not have such a time limit imposed on their stay) and would not be allowed to change employers. Given the experience from before 1998, this would mean that the government was *de facto* condoning a return to forced labour and slavery.

New duties for employers of migrant workers are scheduled to be imposed as a part of policy package on tackling illegal immigration and illegal employment. The new arrangements will oblige employers, for example, to check workers' documents to see that they are genuine and to report if migrant workers fail to take up their jobs. Voices from the unions as well as immigration lawyers have warned that this practice will not be effective in preventing the exploitation of workers. Cases have been reported in the past of irregular workers being exposed to the authorities by their employers in a deliberate attempt to avoid having to pay their salaries. The workers concerned were subsequently deported, without any investigation into their possible exploitation or forced labour.

The General Secretary of the UK's Trade Union Congress (TUC), Brendan Barber, has commented, "The Government's concern about the number of UK employers who employ undocumented workers shows that bosses at the low end of the labour market know that it is too easy to get away with ignoring employment rights. The best way to meet government concerns is to ensure that workers are not exploited in any workplace and that

existing protections are properly enforced. Requiring all employers to police immigration status would simply give good employers more red tape, while giving bad employers more power to exploit migrant workers. What the Government must do is crackdown on rough employers, full-stop.’³⁸

Steve Cohen, a former immigration lawyer, argues that the real targets of sanctions were never intended to be the employers, but rather undocumented migrants. Rather than actually criminalising employers, he maintains that the intent was to transform them into partners to be controlled through fear of criminalisation (*note: under the new proposed points system for migration management, employers will have more obligations regarding the control of immigration status and documents of their employees*). The statistics speak for themselves. In 2004, there were 1089 ‘successful operations’ (i.e. raids) by the Immigration Service, which resulted in the arrest of 3,332 workers. However, only eight employers were successfully prosecuted.³⁹

4. The Human Rights Impact of UK’s Policies

There are three distinct aspects of policy in the UK that determine how trafficked persons are treated and whether they are given protection or not. These affect individuals trafficked for sexual exploitation, those trafficked for labour exploitation as well as vulnerable migrant workers who are at risk of being trafficked and placed in forced labour.

- Policy in the UK interprets trafficking primarily as an immigration offence and one for which organised crime is chiefly responsible. This approach both affects the actions taken on the ground by the authorities and influences the attitudes and approaches of those encountering trafficked persons. Trafficking is hence reduced to an issue of crime at the expense of those whose human rights have been (and often go on being) violated. Although the new policy seems to have abandoned this perspective, changes on the ground will require investment in changing the mindsets and behaviour of those who deal with trafficked persons on a daily basis.
- Another feature of policy in the UK is reflected in the decision to provide protection and assistance to trafficked persons on a case-by-case basis (in practice, this provision is limited to women or children trafficked for sexual exploitation, as there is no mechanism for providing protection to people trafficked into forced labour). The criteria determined by the Home Office for providing assistance to trafficked women by a project that has official funding are very narrow. Furthermore, the right to remain in the UK on a temporary basis is almost always made conditional on the person in question cooperating with the authorities in the context of a prosecution. Connected to this is the emphasis put on trafficking for sexual exploitation to the detriment of other forms of trafficking. This practice should change with the development of the referral mechanism as announced in the Action Plan, but it is useful to describe the existing situation and ensure that this description is available when the impact of the new policy and improvements it brings about are evaluated in the future.
- The third characteristic of the UK approach has been to disconnect policy decisions concerning trafficking from other broader issues, such as migration and the protection of the labour rights of migrants. In particular, the authorities seemed to have failed to assess the implications that migration and labour market policies have for trafficking and on the vulnerability of certain groups to being trafficked.

Case-by-case approach to protection of trafficked persons

At present, there is no specific provision within immigration legislation to allow those who are identified as victims of trafficking to remain purely on the basis of their status as a victim. All cases are dealt with on their own individual merits and leave to remain may be granted in appropriate cases, irrespective of the willingness of the individual to cooperate with the authorities. Victims of trafficking are entitled to apply for asylum in the UK and these applications will be considered in line with normal policy and procedures.⁴⁰

In practice, the case-by-case approach means that there is no general guarantee that trafficked persons in the UK will be protected or assisted. If a person is identified or comes forward and says she (or he) has been trafficked, the case is first evaluated on its merits before the person concerned is given any assistance. It is important to point out once again that this process is applied only to women trafficked for sexual exploitation. People trafficked for other forms of forced labour do not have access to protection and assistance as no mechanism is in place to allow it. The manner in which cases of trafficked children are handled is described later in this section.

The Home Office supplies funding for one project in the whole of the UK, the Poppy Project, which provides accommodation and support to women who had been trafficked for sexual exploitation. The Home Office's criteria meant that only a woman who had been forced to make money for others in prostitution in the UK in the previous 30 days and was willing to cooperate with the authorities was eligible for support. Since the Poppy Project started operating more than three years ago, various cases have been reported of women being refused support because they did not meet the Home Office's criteria. Between March 2003 and July 2004, when 169 cases were referred to the Poppy Project, the rate of eligibility of women went down. A total of 43 women were provided fully supported accommodation services, while 126 others were not. An evaluation of the Poppy Project showed that the main reason why women were ruled ineligible was that more than 30 days had elapsed since they had stopped having to prostitute themselves. Trafficked women who were identified at the point of entry into the UK were not to be denied a right to remain in the UK if they were willing to act as witnesses, but they would nevertheless not be eligible for support from the Poppy Project.⁴¹ Capacity reasons played their role as well. The capacity of the Poppy Project was increased along with the new funding received for the project in 2006. The criteria for eligibility were still in place at the end of April 2007. The Home Office, however, pledged to amend the eligibility requirements as a part of the Action Plan implementation.

Two cases illustrate how the Home Office criteria have resulted in a failure to protect the rights of trafficked women and left them in a very vulnerable situation. The first concerns a woman from South-East Europe, and the second, a woman from an East European country.

A. was recruited in her home country for a job in the entertainment industry. When she arrived in Italy along with her recruiters, she was passed on to another man who forced her into prostitution. After several months she was sold to another person and moved to France, where she was further exploited in forced prostitution. After several months, she understood that she was going to be sold further to Germany. With the help of one of the clients, she escaped and managed to move to the UK where she intended to apply for asylum. She was put in touch with the Poppy Project; however, since she had not been forced into prostitution in the UK and was very scared to talk to the police, it was not possible for her to enter the Poppy Project's assistance programme. She contacted a lawyer to help her with an asylum

COLLATERAL DAMAGE

claim, but was advised that it would be very unlikely for her to receive asylum as she had not been trafficked into the UK. She was advised to return and apply for asylum in one of the countries where she had been trafficked. Furthermore, as her home country was on a list of countries deemed “safe countries” by the UK authorities (concerning asylum claims), it would further decrease her chance of obtaining asylum.⁴²

R. was offered a bar job in the UK. Upon arrival, she was transferred to a city in the Midlands where, along with several other women from different countries, she was locked in an apartment. They were told that they would have to provide sexual services to men who would be brought to the apartment by the traffickers. All of the women initially refused. The traffickers told them that they had a day to rethink their decision and threatened them with violence. They were kept locked in the apartment, without water and food. R. and two other women eventually managed to break a window and escape, as the apartment was on the ground floor. They got on a train to London, went to a police station and recounted their story. Apparently, the police called the Home Office to ask what to do and were instructed that, because the women had not actually been forced into prostitution, there was nothing the police could do to assist them.⁴³

The facts of these two cases show that protection to trafficked persons in general is not a matter of principle in the current practice in the UK. Rather, it is on the merit of the individual case or its compliance with a ‘checklist’ that determines what decision will be taken about providing protection and assistance to a trafficked person. Practitioners all over the world agree that without proper protection, trafficked persons remain vulnerable to reprisals from traffickers and face the risk of being re-trafficked, let alone other implications such as social exclusion, discrimination and stigmatisation connected to revelation of the involvement in prostitution. Making assistance conditional on having been subjected to forced prostitution in the very recent past (30 days) is unprecedented elsewhere in Europe or elsewhere in the world. The message that this sends to trafficked women is, in effect, that if they are proactive and manage to escape before actual exploitation starts, they are making a mistake. If they stayed until they are raped or otherwise exploited, then they can claim assistance. Similarly, a woman who is too scared to come forward and talk about her ordeal (for reasons that have been well documented in other publications⁴⁴) within 30 days is then too late to qualify for assistance. Such criteria do not address the real nature of trafficking or the impact of the experience of being trafficked on the physical and psychological state of a trafficked woman. Furthermore, fears have been expressed that such narrow criteria may well become contributory factors to secondary victimisation and re-trafficking.

Another facet of the case-by-case approach is the practice of making temporary leave to remain and protection for trafficked women conditional on their cooperating with the authorities, both in the collection of evidence for prosecutions and beyond that. “In order to be eligible for temporary protection within the Poppy Project, victims of trafficking must be prepared to give evidence to the police. They are also required to fully cooperate with the immigration authorities, including cooperating with arrangements for their removal.”⁴⁵ This practice, although it is often described as a ‘reflection period’ (i.e. a period to ‘reflect’ on whether to cooperate with the authorities or not), does not correspond to the principle that a reflection period should not be conditional on any form of cooperation with the authorities, precisely so that during this period the person in question is able to acquire information, as well as receive urgently needed support to be able to make an informed choice about whether or

UNITED KINGDOM

not to cooperate with the authorities.⁴⁶ The obligations under the Council of Europe Convention will require the UK to change this practice and grant a reflection period to all trafficked persons on an unconditional basis.

After prosecution proceedings are completed, trafficked women are not entitled to any further protection and their only option for remaining in the UK, if they feel unable to return to their home countries (for example, because of fear of reprisals from their traffickers), is to apply for asylum. Most of the asylum claims of trafficked women have been refused in the first instance. The refusal letters sent by the Home Office to claimants who allege that they were trafficked often demonstrate no understanding of the issue of trafficking. Constraints faced by women who have been trafficked are demonstrated in cases documented in a report published by the Poppy Project.

S. was encouraged by a 'friend' to leave Nigeria for the UK, where she hoped to attend college. The friend later threatened to kill her if she did not repay £40,000 [US\$80,000], which was the cost of arranging her travel to the UK. S. was forced to sell sex but she eventually managed to escape after 18 months. She obtained legal advice, and the report of her trauma was submitted with her asylum claim. The Home Office refusal letter stated: It is noted that at your asylum interview you were very unsure of dates which, if your claim were true...should have been firmly impressed on your memory. Failure to collect dates integral to your asylum claim seriously undermine(s) the credibility and veracity of your account.⁴⁷

The Poppy Project's analysis shows other examples of the Home Office's refusal letters contradicting previous case law on the effects of trauma and also the Home Office's own Gender Guidelines on interviewing and credibility of asylum claimants. The woman whose case is described above was later granted her claim under both the UK's *Human Rights Act* and the UN Refugee Convention. Nevertheless, if she had not received assistance from the Poppy Project, the chances of her asylum claim being allowed would have been considerably lower.

Most of the asylum claims of trafficked women have been refused in the first instance. From the small sample that the Poppy Project has used in its analysis, 80 per cent of the cases were allowed on appeal. This is six times higher than the national average for all asylum claims in the UK during the period 2001–2004. The conclusion is that support from the Poppy Project may increase (enormously) the chances of a trafficked woman receiving asylum, or at least make it more likely that her claim will be considered credible.⁴⁸

Current policy does not provide people trafficked for other forms of exploitation with the possibility of exercising their rights, particularly their internationally-recognised right to protection. Trafficked people are left without viable options for help and protection. Either they remain in the situation of exploitation and hope that the conditions will eventually improve (as suggested in accounts by individuals who have suffered forced labour in the UK⁴⁹) or decide to be proactive and look for a way out and try and get help or turn to more desperate solutions. Recently, the media reported about *a case of a Latvian man who was trafficked and was exploited for labour in one region of England. In despair, not being able to obtain help anywhere, the man found a very precarious way to escape from his difficult situation. He committed a crime right in front of the police in order to get himself arrested and deported to his home country.*⁵⁰

The case-by-case approach should theoretically apply to cases of trafficking for forced labour as well. In practice, however, no assistance and protection has been afforded to persons trafficked for forced labour. Currently,

exploited and trafficked workers have “nowhere to turn”,⁵¹ with the single exception of an NGO, Kalayaan, that offers dedicated assistance to migrant domestic workers, some of whom have been subjected to such great levels of deception that they can be considered to have been trafficked. Despite the activities of various agencies, charities, individuals and trade unions, examples of good practice in assistance are developed in the UK at local level in an *ad hoc* manner and are not connected to any institutionalised system of referral and guaranteed protection and assistance. In the Action Plan, the government recognised the need to gather more information about trafficking for forced labour to ascertain whether this form of trafficking poses a serious problem. At the same time the government acknowledges the need to develop assistance to those trafficked for forced labour and plans to start a pilot project in this area in 2007.

Disconnection of the trafficking issue from the broader context of migration, labour rights and related policies

This section focuses on labour rights and policies connected to the labour market and their effects on the issue of trafficking and the situation of trafficked persons.

In a recent study about trafficking for forced labour,⁵² Anti-Slavery International identified the complex nature of migration and labour regulations as being one of the four main factors that affect the exploitation of migrant workers in workplaces in the UK and at the same time are underlying causes for forced labour as a result of trafficking. The complex web of regulations of entitlements to work for migrant workers and the rights as a result are also a function of their immigration status.

The system in the UK is very complex, with a great variety of visas and work permits for different categories of workers and countries of origin. Given the complexity of the labour inspection and the migration system, the wide range of departments and inspection agencies involved in different administrative procedures make it difficult for migrant workers to understand their entitlements, obligations and possibilities of help. With the addition of a language barrier, migrant workers are left to believe what dubious agents and intermediaries tell them about the rules in the country.⁵³

Lack of knowledge of their rights is, however, not the only aspect which prevents trafficked migrant workers in the UK from accessing their rights. Obstacles in the system and lack of guidance with respect to the detection of situations of exploitation in the workplace play a major role. The Institute of Employment Rights in London published in 2005 a book entitled *Labour Migration and Employment Rights*. In a review of this book,⁵⁴ Steve Cohen pointed out that this was the first publication in the UK to focus on the interaction between immigration status and employment rights. Similarly, there has been a lack of analysis and investigation into relationships between trafficking cases, policies combating trafficking and employment rights and immigration status.

Migrant workers who are legally in the UK are granted some of the employment rights of indigenous workers, depending on their immigration status or the form of visa they have. For example in a case of a Moroccan cook, who was in the UK with a legal work permit, his visa was tied to a specified employer. When his employer withheld his wages and his passport, he attempted to report his employer to the police but was, in turn, threatened with dismissal from his job and with being denounced afterwards to the authorities for remaining in the UK illegally. As he had heard about cases where irregular workers were intercepted and deported as a result of anonymous calls, he stayed in his job and put up with the violation of his human rights that his exploitation

UNITED KINGDOM

constituted. Furthermore, his immigration status prevented him from claiming some basic rights. “The undocumented cannot enforce their contracts of employment, secure payment of the minimum wage, claim unfair dismissal, and demand not to have unlawful deduction from wages, indeed claim to have wages at all.”⁵⁵

Even those migrant workers who have a legal status are often unable to access basic rights due to various obstacles in the system. “What ‘rights’ the documented – those migrants with permission to enter and work – possess are usually impossible to enforce. The ability to bring a case for unfair dismissal requires having been employed for a year – impossibility for short-term, temporary labour. The ‘right’ to a written statement of employment terms is pointless for those not literate in English.”⁵⁶ Added to this, as employment is often tied to accommodation, and eviction is the most common response after a worker has filed a complaint (but without being entitled to assistance such as housing, financial support, legal aid and representation and interpreting services), trafficked migrant workers have no realistic chance to exercise their employment rights.

Trafficking for forced labour also seems to be virtually invisible to those agencies that carry out various tasks of inspection at the workplace, for example concerning health and safety. Anti-Slavery International identified a number of cases of trafficking for forced labour in its recent research. However, none of these were identified as forced labour by the agencies that originally recorded the details. Hence, in instances where migrant workers had a chance to get in touch with an agency to deal with their problems connected to their exploitation (such as their wages being withheld), the agency did not investigate whether an offence linked to trafficking was occurring and the workers who had been abused remained without assistance and without having their rights protected or upheld.

Lack of coordination between agencies, along with the nature of the guidance on referral and dealing with suspected trafficking cases that is offered by central government, has led to inactivity and ignorance from the side of the various agencies that inspect workplaces. Many of them report noticing ‘suspicious things’. However, they have not been instructed to watch out for signs that would indicate the occurrence of trafficking or forced labour, nor are they encouraged to be alert to certain situations outside their specific remit. A social service employee who informed workers in a factory about national insurance numbers, noticed that the workers’ supervisor had many passports locked away in a drawer of his desk. The supervisor claimed that this was a safety precaution because there were cases of theft at the workplace. The social worker was very worried about the workers’ situation, but did not know what to do and was advised by her supervisor not to get involved in such issues.⁵⁷ The agencies concerned can thus countenance or close eyes from exploitation and slavery.

Trade unions, Citizens Advice Bureau (a non-governmental service with offices in over 3000 locations in the UK that provides free information and advice to help people resolve their legal, money and other problems) and other agencies that are in touch with migrant workers have begun to recognise the increase in the extent of exploitation and trafficking and ways to address them. However, these various agencies do not have a joint action plan. The Citizens Advice Bureau suggested the creation of a Fair Employment Commission,⁵⁸ a body that would monitor employment practices and working conditions and would link all the agencies carrying out various inspection tasks. It would establish a more coordinated system for investigation of complaints, inspections, advice, guidance and practical business support for small, low-profit employers, and pursue a proactive approach to secure compliance and, where necessary, enforcement of legal standards.

5. Conclusion

Insecurity and uncertainty are the realities of life for trafficked persons after they have escaped exploitation in the UK. The current system does not guarantee them protection, access to services, let alone justice. A legal framework exists to prosecute and punish those who traffic, but this framework does not offer protection to the victims, nor ensure that their human rights are respected. The implementation of the law in practice is often haphazard, as the anti-trafficking agenda has not been consistent with the government's priority to enforce immigration laws. The new UK *Action Plan on Tackling Human Trafficking* promises to shift this focus and introduce a human rights approach into anti-trafficking policy. In order to bring about a positive change, the challenge is to change the mindsets and behaviour of those who deal with trafficked persons on the ground, many of whom have not been seeing trafficked persons as victims of severe human rights violations. The perspective that sees trafficking as organised immigration crime has dominated in the UK. Translated into practice, an approach that involves protecting the rights of trafficked persons is *ad hoc*, often treating trafficked persons as criminals committing immigration offences rather than victims of serious crime. Interpreting trafficking as an issue of immigration crime fails to restore justice in their world or protect them from repeated exploitation.

The government has made positive alterations in the legal framework and some at the institutional level. Along with the police, it has encouraged publicity on subjects such as numbers of raids, people arrested and prosecuted. Very rarely, however, is the public offered information about victims, or what happened to them after they had been 'rescued' and what help the government offered them. It appears to be mirroring what it believes to be the public's mood, that is to say, opposed to immigration and not sympathetic to migrants. However, the outcomes of globalisation are evident in the UK. Migration flows are unprecedented from virtually all over the world, the economic benefits to the UK are clear and the labour market in many sectors has switched to outsourcing and subcontracting. It is not enough to recognise the economic benefits the UK gains from migrant workers (a portion of whom are victims of trafficking); it is also essential that the UK adopts measures to protect the rights of migrant workers and enable them to have access to remedies when their rights are violated. Trafficking does not happen in isolation. Its consequences and causes are connected to various areas of policy and social changes that are a function of economic policies and globalisation.

Supporting programmes in the countries from which people are trafficked into the UK (or subjected to forced labour) is important. Nevertheless, they are not the ultimate cure. More money and coordinated efforts have to be invested in dealing with the situation of trafficked persons. Looking at their circumstances from the human rights perspective, examining the causes and contributory factors as well as the feasibility of trafficked persons getting access to justice – this is a challenge requiring a unified, comprehensive strategy that would equally focus on prevention, prosecution and protection of the rights of trafficked persons. Such a system is still missing.

The launch of the UK Action Plan provides an opportunity to balance the hitherto unequal attention paid to enforcement and protection of trafficked persons. Rigorous application of the human rights approach to trafficked persons and prompt implementation of the Council of Europe's Convention are steps that should follow on the path opened up by the introduction of the UK anti-trafficking policy.

UNITED KINGDOM

ENDNOTES

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- ¹¹ Ten ratifications are necessary for the treaty to enter into force. For an updated list of signatures and ratifications, see <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=5/16/2007&CL=ENG>.
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- ¹⁹ Home Office. *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*. London, 2006.
- ²⁰ Response from ECPAT UK to the Home Office consultation on proposals for a UK Action Plan on tackling trafficking in human beings.
- ²¹ Interview with Christine Beddoe, Director of ECPAT UK, December 2006.
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