

Human Trafficking of an innocent child

Firstly let us define exactly what the authors mean by human trafficking. It can be clearly defined under Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)

Exploitation it covers forced labour, and all forms of advantage of any kind, slavery or similar procedures, subjection and at the most extreme form can include removal of organs (<http://www.ipu.org/PDF/publications/traffickingp-e.pdf>). It also covers the prostitution of others, including all methods of sexual exploitation. Often the exploitation takes the form of slavery-like practices, and is in fact considered to be modern day slavery (HC Deb 9 May 2011, vol 527, col 993) Members of the Council of Europe are required under ECHR, art 4 to impose criminal sanctions upon slavery and servitude (Siliadin v France (2006) 43 EHRR 16, paras 144 to 149).

This article looks at how the UK conforms to art 4 in the particular context of child victims. This is nothing less than pure criminality fuelled not only by organised criminal gangs, but by opportunistic individuals, the community, but by far the hardest one to detect, family members.

You may be asking yourself, why would this kind of behaviour from one human being to another take place in the 21st century? Reasons include, poverty and lack of education, discrimination, cultural attitudes and beliefs and because of the inadequate local laws and infrastructure.

The Council of Europe's commitment to combat human trafficking resulted in the adoption of the Convention on Action against Trafficking in Human Beings, which entered into force in 1 February 2008. The Convention takes a victim-oriented perspective to anti-trafficking action and provides for a series of measures to protect and assist victims. Thus Article 5(3) includes the obligation for parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent human trafficking. The Convention also places obligations on States to prevent human trafficking, prosecute and punish traffickers, and engage in international co-operation. 37 European countries are already bound by the Convention (including the UK) and by doing so have committed themselves to upholding the standards set by the Convention. It is widely believed (wrongly) that trafficking only takes place amongst adults and teenagers. According to UNICEF the United Nations estimates that some there are some 1.2m children that are trafficked across the world each year (http://www.unicef.org/protection/57929_58005.html)

Persons who have been trafficked are prevented from returning to their country of origin as the traffickers withhold their passports and documents, often under the proviso that they will be returned to them when they have paid off their (supposed) debt.

In the landmark judgment in the case of *Rantsev v. Cyprus and Russia* (*Rantsev v. Cyprus and Russia*, no. 25965/04, paragraph 282, ECHR 2010), and also confirmed by the European Court of Human Rights, the Court concluded that trafficking in human beings within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Council of Europe Anti-trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights

(which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 includes a positive obligation to protect victims, or potential victims, as well as a procedural obligation to investigate trafficking. The UK complies with this obligation with the Human Trafficking Centre (UKHTC) which is a multi-agency organisation led by the Serious Organised Crime Agency (SOCA). Its role is to provide a central point of expertise and coordination in relation to the UK's response to the trafficking of human beings.

It strives to enable a co-ordinated and collaborative way of operating within the UK and worldwide. Its effort is to battle against human trafficking and offer victim-centric support. (<http://www.soca.gov.uk/about-soca/about-the-ukhtc>)

In October 2012 the Home Office published its first annual Inter-departmental Ministerial Group Report, which is an assessment of human trafficking in the UK to thwart people from becoming victims of this terrible crime. (<http://www.official-documents.gov.uk/document/cm84/8421/8421.pdf>)

As the public become increasingly concerned about child trafficking (Sunday Times 20.01.13) and the government tries to address the issue both from an immigration point of view and from a child protection one (Report on the Internal Review of Human Trafficking Legislation 2012) it is clear that this creates a disturbing legal conflict that does not necessarily serve child victims well.

The numbers of children being internally trafficked is on the increase (Barnodo's 2013) the number of sexually exploited children known to the charity rose by 225 to 1,452 in the UK last year. At the same time as this internal trafficking is going on, the UK is a destination country for international trafficking with CEOPC identifying 202 victims from 36 countries between January to September 2011 (Child Exploitation and Online Protection Center 2011) (http://ceop.police.uk/Documents/ceopdocs/child_trafficking_update_2011.pdf)

at the same time as noting that this 'snap shot in time' was likely to be a significant underestimation of the actual numbers of victims and were likely to be the 'tip of the iceberg'. This article principally looks at trafficking into the UK, part two will look at the internal trafficking of children. The Government's strategy is to focus on prevention and strong borders alongside improved care and identification of child victims (Human Trafficking Government's Strategy 2011)

The National Referral Mechanism is the official body that identifies and looks after victims using the first responder assessments. Research shows that trafficking offences of children are mainly taking place between girls aged 12-17, although little research has been conducted about boys.
(http://www.antislavery.org/includes/documents/cm_docs/2012/a/1_atmg_all_change_prevention_smaller_2.pdf)

The present criminal offences are spread across three main pieces of legislation: the Sexual Offences Act 2003, the Asylum and Immigration (Treatment of Claimants) Act 2004 and once a trafficked child is in the care ambit of a Local Authority they will work within the child protection provision of the Children Act 1989. This is complicated by a further 25 different pieces of legislation dealing with different aspects of trafficking. (Jones J. *Human Trafficking in the UK: a Focus on Children* CFLQ vol24, no1, p77- 80 2012) The Human Trafficking Government Strategies Report (2011) introduced by Home Secretary Theresa May (see above) is clear that the CPS see no value in the introduction of specific bespoke Human Trafficking legislation so it must be assumed that victims will need to be supported and protected within the existing legal regime. The way forward is to ensure that these victims, against whom prosecution would not be in the public interest, are identified rapidly and effectively. It appears that this approach has so far had little success (HC Deb, 12 October 2010, Vol 516, Col 32.) as is evidenced by cases such as *R. v LM* (*R. v LM* [2010] EWCA Crim 2327

Child victims and their exploitation are a very diverse group, child trafficking, operating both into this country, and internally for many different exploitative

purposes both sexual and non-sexual. While the sexual exploitation of children speaks for its self, some of the other reasons children are trafficked are more complex and less easy to identify. Children are trafficked into this country as slave labour in particular cannabis cultivation, for begging and for benefit fraud, these areas of offence can loosely be seen as economic exploitation, but of course often children are both economically and sexually exploited. With regards to domestic slavery the children are often working in domestic households and being forced to carry out all of the household chores and care for the children of the family (without any training or guidance), they are removed from all education and thwarted from developing at the rate a child should, in a loving and caring environment. These children are often suffering either physical, sexual or emotional abuse, or a combination of all three. This forced labour can be taken to another level when they are also forced to go out to work, especially when these children are made to work long hours in extremely poor conditions, often without adequate nourishment and sleep, forced to stay in poor and cramped living conditions and in dangerous environments (without adequate training and support) like restaurants, waste, agricultural and construction sites.

On the increase in the United Kingdom is the use of children for criminal purposes or acts like ATM theft, the selling of copy DVD's or music on the street, Shop-lifting, pick-pocketing and cannabis cultivation, where the children are often locked in homes 24 hours a day, for weeks on end in very dangerous conditions, often around unprotected, high voltage electrical supplies. Fraud too is on the rise, especially benefit fraud, where the children are being passed around or involved in informal 'fostering' arrangements.

Finally children are trafficked for forced marriage (Tapp, D. and Jenkinson, S. (2012) Forced Marriage – Culture or Crime? Part I & II. *Criminal Law and Justice Weekly*), which is mainly girls, trafficked into or out of the United Kingdom. They are often forced to marry older men or to assist in helping others gain UK citizenship status.

The victims become trapped by fear and debt bondage, the traffickers use emotional, physical and sexual mistreatment, social isolation, dependency and in some cases strong traditional beliefs like voodoo, often there is the very real fear of retribution against them or their families or close friends. These forms of coercion are particularly significant when dealing with susceptible child victims.

Children are bought to this country from many destinations but criminal trafficking gangs in China, Nigeria, Vietnam Slovakia and Romania are believed to pose the greatest threat to the UK.(Report on the Internal Review of Human Trafficking Legislation 2012).

As well as assessing trends the report also provides an update on the government's human trafficking strategy as well as the UK's response to a range of reports on worldwide anti-trafficking efforts. A problem with the policy decisions being made by the UK Human Trafficking Centre is the immigration status of the potentially trafficked child is the focus for their investigation which can have an adverse effect on the child protection needs of a victim. This is particularly significant when a child's age is disputed (*R (CJ) v Cardiff County Council* [2011] EWHC 159)

The Inter Departmental Ministerial Group claims that more work than ever is being done to stop human trafficking and from next year it is envisaged that 'the National Crime Agency will build on existing work to combat trafficking' (p 2). However the organisation Anti-Slavery International (www.antislavery.org/English/) remains concerned that trafficking is still seen through the 'lens of immigration' meaning that children are not always treated as victims. In particular when the age of an individual child is challenged and people without documents are unable to establish their true age, Local Authorities are charged with making an age assessment which can be extremely challenging. As far as child victims are concerned the Home Office and Department of Education produce extensive practice guidance including guidance for professionals on how to identify potentially trafficked children. This guidance

makes it clear how difficult this identification can be, children are often unaware of the danger they find themselves in and they are likely to have been coached by the trafficker with a plausible story for the authorities, often having a strong sense of misplaced loyalty to their abusers.

The Children Acts of 1989 and 2004 place a statutory responsibility to protect and support children in a local authority's area who are in need (Children Act s17). When a potentially trafficked child is brought to their attention by referral from a front line professional it is recommended that the LA, as the competent authority, decide on a course of action swiftly and appoint a social worker who will become the key worker for an individual child.

The assessment needs to identify a child's level of need/ risk of harm (Home Office Safeguarding Children who may have been Trafficked 2011) London Safeguarding Children Board (www.londonscb.gov.uk/trafficking/) has developed the Trafficking Children Toolkit which is regarded as best practice and is the leading resource available to Local Authorities. It is clear the action may need to be taken immediately and a child removed to a safe place which sometimes requires an Emergency Protection Order. This needs to be followed by Children Act s47 enquiries and an initial assessment made on an individual basis.

When children have been placed in care, it is essential that they are safe and protected from their traffickers because sadly trafficked children sometimes go missing from care and become re-trafficked. Try to put yourself in the position of one of these vulnerable children, how must they feel when they are just a mere child and a vulnerable victim of trafficking, which is an abhorrent crime, (not only against the law, but also humanity), all alone in foreign land without support from trusted adults or family members, no one to provide support, guidance or take parental responsibility at a time when they are most desperate for help, often they are terrified of the authorities and believe the lies told by

their traffickers, making them fearful of authorities and desperate to get back to their exploiters.

Children are particularly vulnerable to re-trafficking, with a further danger that trafficked minors are at high risk of being re-trafficked as adults (The EU Strategy towards Eradication of Trafficking in Human Beings 2012-2016). It is therefore essential that local authorities maintain confidentiality of placements and restrict visits to children in their care from un-vetted individuals. Once a conclusive decision has been made as to a child's trafficking status Local Authority Social Care departments have a statutory duty under the Children Act to address the child's needs going forward.

It would seem that children being trafficked into the UK, once identified can receive the intervention and support they need, it is however at the point of entry that identification is essential, which can be made more difficult if immigration concerns are the focus of the front line professionals.

On Saturday 6th April 2013, at the Ashley Conference Centre, Leek Road, Stoke-on-Trent; Doctor Sue Jenkinson and Solicitor David Tapp will be presenting on this topic at Staffordshire University's 17th Annual Family Law Conference, the theme this year is Family Law and Politics
(http://www.staffs.ac.uk/academic_depts/law/events/familylaw/index.jsp)