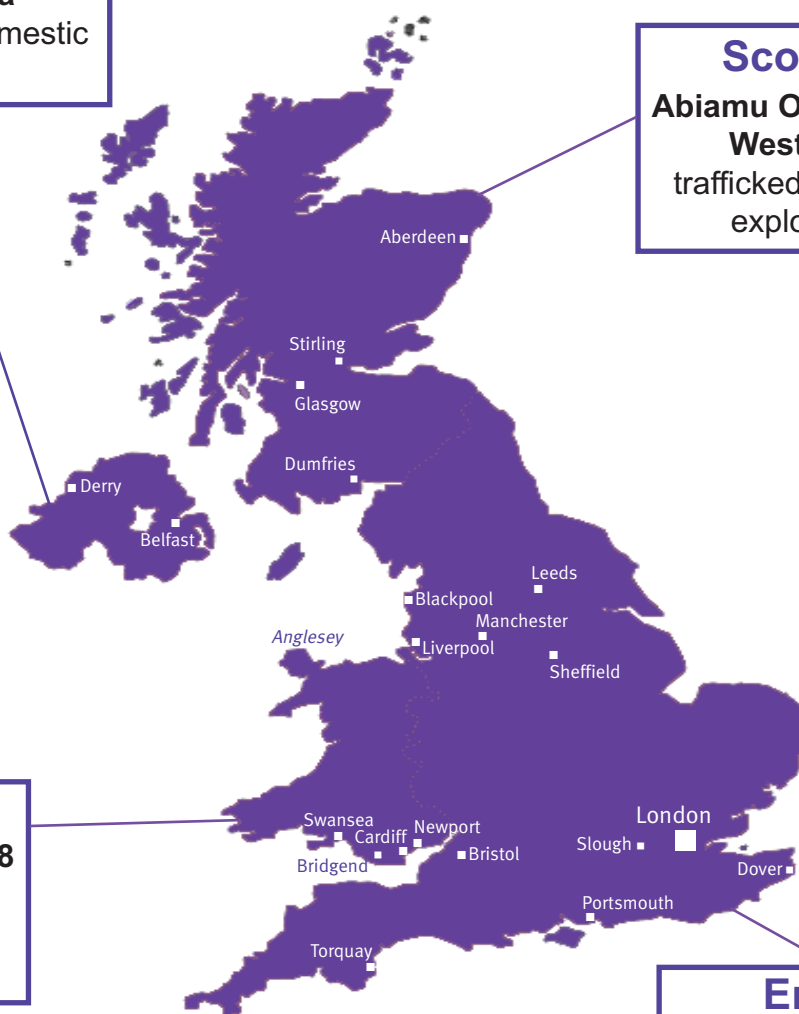


The Anti Trafficking Monitoring Group

Northern Ireland
Supriya Begum, 45
South Asia
trafficked for domestic servitude

Scotland
Abiamu Omotoso, 20
West Africa
trafficked for sexual exploitation



Wales
Mikelis Āīģle, 38
Latvia
trafficked for forced labour

England
Tuan Minh Sangree, 16
Vietnam
trafficked for forced labour in cannabis farms

Wrong kind of victim?

One year on: an analysis of UK measures to protect trafficked persons.
Summary report

Introduction

In December 2008 the UK ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention is the first international treaty obliging states to adopt minimum standards to assist trafficked persons and protect their rights.

The Convention came into force in the UK in April 2009 but without an accompanying formal monitoring mechanism. In its absence, in May 2009 a group of nine UK-based organisations¹ set up the Anti-Trafficking Monitoring Group to monitor the implementation and to share the information they were able to gather about the UK's compliance with the Convention.

This report is a summary of the full report², presenting the result of the group's research to examine how the UK and its devolved administrations are meeting their obligations under the Convention. It finds that the UK Government's anti-trafficking practice is not compliant with the Council of Europe Convention on Action Against Trafficking in Human Beings and, where it relates to children, is not compliant with other aspects of UK law or best practice.

The Convention defines trafficking as **acts** (such as recruitment, receipt, transportation) by **means** (such as threats, coercion, deception, abuse of position of vulnerability) for the purpose of **exploitation** (such as sexual exploitation, forced labour or slavery). Trafficking is defined as a crime and anyone who has been subject to the crime of trafficking should be recognised as a victim of trafficking.

The Monitoring Group identified, that in some parts of the UK, the implementation of the Convention has led to increased awareness about human trafficking³. Pockets of good practice seem to be developing in some areas, where stakeholders have begun to cooperate and coordinate in the absence of functioning central coordination. Such examples were seen in Bristol (where the Bristol Coalition on trafficking was created), and Wales (where a strategic lead for trafficking was created, operational points of contact were identified within the four Welsh Police forces and Gwent police convened its first consultation meeting with partner agencies including NGOs).

However in summary this report argues, based on our extensive research, that the UK is not yet meeting its obligations under the Convention. The key reasons are that, in implementing the Convention, the Government has:

- misunderstood key provisions of the Convention;
- not addressed the entirety of the Convention;
- delegated considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials;
- overlooked the necessary safeguards for child victims of trafficking in the implementation of the Convention.

The findings of this report suggest that anti-trafficking practice in the UK is not compliant with key concepts relating to the rule of law itself, specifically relating to the principle identified by Lord Bingham (2010)⁴ that "questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion". It is a finding of this research that this principle is routinely violated in the National Referral Mechanism (NRM), the identification procedure established as part of the implementation of the Convention to help identify the victims of trafficking.

These problems, discussed in greater detail below, profoundly hamper realisation of the UK's obligations in the areas of protection and prosecution. Furthermore, there has been little to no meaningful engagement in the area of prevention.

¹ The nine organisations belonging to the Monitoring Group are: Amnesty International UK, Anti-Slavery International, ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes), Helen Bamber Foundation, Immigration Law Practitioners' Association (ILPA), Kalayaan, POPPY Project (of Eaves), TARA (The Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services), UNICEF UK. In addition, the Monitoring Group works closely with the Anti-Trafficking Legal Project (ATLeP).

² The full report is available from: www.antislavery.org/anti-trafficking_monitoring_group/

³ Information from Northern Ireland, Scotland and Wales.

⁴ Bingham, T. (2010) *The Rule of Law*. London: Allen Lane.

The obligations for identification, protection, prosecution and prevention are closely intertwined. Consequently, responses also need to be linked, which implies the need for a national anti-trafficking watchdog to oversee matters. While this role is also suggested in the Convention, to date the UK Government has rejected it as unnecessary.

Methodology

The report focuses on the experience of people who have managed to escape from traffickers or who have been withdrawn from the control of others. In some cases, escape or recovery has allowed the individuals to improve their lives and heal from the trauma of trafficking. In others, the individuals who have been ill-treated by modern-day slave traders have been subject to further violations of their human rights and, in some cases, to treatment at the hands of the UK authorities which has impeded their recovery.

The report was compiled using information from public sources, from 90 interviews with professionals engaged in anti-trafficking work and by reviewing 390 individual cases. The information was obtained between September 2009 and April 2010.

Scope of trafficking in the UK

The UK Human Trafficking Centre (UKHTC) reported in its published statistics that between April and December 2009 the cases of 527 potential victims of trafficking were referred to the National Referral Mechanism (NRM).⁵ The figure was confirmed by the designated Home Office Minister during a debate in the House of Commons on 20 January 2010.⁶

Those individuals referred to the NRM came from a total of 61 countries. By far the largest source countries were Nigeria (89 people) and China (70 people). Also noticeable was Vietnam with 46 people; a significant proportion of whom are understood to have been children. The country with the next largest number of people referred was the UK itself with 37, while the next three countries (in terms of the numbers of people who were referred) were all EU countries. Out of the 527 people who were referred, 389 (74 per cent) were women or girls and 138 (26 per cent) were men or boys. Just over 140 were described as children (i.e. under 18) in the referral (26.7 per cent of the total.⁷) 195 adults (37.1 per cent) were referred as potentially trafficked for sexual exploitation and 33 per cent of total as potentially trafficked for forced labour (207).

While the data collected on the 'in' referrals to the NRM for the first time formally confirmed high proportions of presumed trafficked persons from West Africa and cases of labour trafficking, no details were published about the decisions made in response or the support offered to those found to have been trafficked. The information in this report was obtained as a result of Parliamentary Questions and Freedom of Information requests, interviews and case review. The responses to questions were essential to build up a picture of how the system was functioning.

The number of referrals is not a true reflection of the extent of trafficking in the UK or the number of individuals who have been victims of traffickers in the UK. This research collected information about **more than 130 individuals** who were identified by support organisations between 1 April 2009 and 1 April 2010 **whose cases were not referred to the system for a variety of reasons, but primarily because they did not see the benefit of being referred or were fearful of the consequences** of being brought to the attention of the authorities because of their immigration status – a paradoxical situation, as it concerns precisely the same fear that traffickers often use to control their victims.

These figures corroborate the initial concern that the nature of the NRM itself actually deters a significant proportion of the intended beneficiaries from using it; and therefore from accessing services and exercising their rights. This suggests the system is not fit for purpose.

⁵ By 18 January 2010, the number of referrals had risen to 557.

⁶ Alan Campbell MP, Parliamentary Under-Secretary of State for the Home Department, House of Commons debates, Hansard, 20 January 2010: Column 125WH, accessed on 3 March 2010 at www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100120/halltext/100120h0009.htm

⁷ This information has not been published by the UKHTC, it was obtained by the research through requests made under the Freedom of Information Act 2000 and analysed.

Flawed identification system

The principal response of the Government to their obligations as party to the Convention was the establishment of an identification system called the National Referral Mechanism (NRM). The OSCE suggest⁸ that NRMs should be a multi-agency coordination system and their every stage an opportunity to help trafficked persons. The system appears to be relying excessively on the discretion of officials who receive minimal training to staff a mechanism supported by flawed legal guidance relating to who should be identified as victims of trafficking, and without a formal appeals process. This fails to consistently identify and assist people who have been trafficked. Furthermore, the system appears to be putting more emphasis on the immigration status of the presumed trafficked persons, rather than the alleged crime committed against them. The UK citizens referred were speedily identified as having been trafficked with a rate of 76 per cent of cases positively identified as trafficking, in contrast with the rate of cases positively identified as trafficked as a whole of 19 per cent. The rate of nationals from other EU states identified as trafficked was 29.2 per cent, while that of nationals from countries outside the EU was only 11.9 per cent. The different rates of positive identification should not be interpreted as evidence per se of discrimination against people originating outside the EU. However, the difference in success is startling. On this basis alone, these figures merit further investigation by the Home Office, to check that individuals from outside the EU are not being subject to discrimination in the decision-making process.

This report argues that the term 'referral' into the NRM has been misused to refer narrowly to a procedure for vetting whether individuals meet a bureaucratic standard for having been trafficked. In practice this often fails to meet the needs of people who have suffered abuse and trauma at the hands of those who trafficked and exploited them. In effect, in the UK 'referral' means that the case of an individual is being submitted to a central government authority to decide on their status, not that they are being referred to a range of specialised services.

When victims are wrongly identified this has serious consequences for the person concerned: it risks compounding the already traumatic experience of having been trafficked by setting back their recovery and removing any faith individuals may have had in the authorities and their ability to offer protection and assistance; thus undermining prosecutions and causing further breaches of individual's human rights.

The UK authorities consequently seem to have misconstrued the concept of 'competent authorities' as understood under the Convention⁹ and restricted the role of identifying and referring presumed victims to a specific authority known as the Competent Authority. In the UK the Competent Authority role is fulfilled by designated officials from the UK Border Agency.

The research found that the system has not facilitated prosecutions as expected and in some instances the police were concerned that it even undermined prosecutions. No specific statistics on the total number of prosecutions or the number of successful prosecutions since April 2009 are available. In response to a Freedom of Information request¹⁰ in January 2010, the UKHTC reported that since April 2009 a total of 36 individuals, (17 of them women), who were arrested across England and Wales on trafficking offences, had cases against them heard in court.

Child victims of trafficking

Children comprised just under a third of the 527 individuals referred to the NRM in 2009. Of the 143 referred children, 85 were reported to be girls and 58 were boys; approximately half (69) were below the age of 16 and half (72) were aged 16 or 17. Of those, 45 girls and two boys were trafficked for sexual exploitation; 12 girls and seven boys were trafficked for domestic servitude; 34 boys and 13 girls were trafficked for forced labour; and in 30 cases (half boys and half girls) the form of exploitation was

⁸ Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, *National Referral Mechanisms. Joining Efforts to protect the Rights of Trafficked Persons. A Practical Handbook*, 2004, page 15, accessed on 2 March 2010 at www.osce.org/documents/odihr/2004/05/2903_en.pdf.

⁹ Under the Convention, 'competent authorities' are different authorities that come into contact with persons who might have been trafficked. The Convention places obligation on all these authorities.

¹⁰ *Freedom of Information* request 20090647 answered by UKHTC on 18 January 2010, accessed on 6 April 2010 and available at www.southyorks.police.uk/foi/disclosurelog/20090647-0.

not known. The question explored in the course of this research with regard to children is whether the procedures introduced in April 2009 have resulted in any improvement in comparison to pre-existing systems.

The research examines in some detail the impact of the implementation of the Convention on child victims of trafficking. A strong and mature framework exists in the UK to safeguard children and the government has clearly stated that it views child trafficking as a form of child abuse. However in setting up the NRM the UK in effect decided to bypass this existing system and not to task local authority children's services to act as the primary identifier in cases of children who may have been trafficked, despite their expertise in child protection and their statutory duty to safeguard children. Instead, they are required to refer the case for decision to the NRM, which is viewed by a number of research respondents as having insufficient expertise in relation to children. Several of those concerned about the cases of trafficked children expressed the view to the Monitoring Group that it was not appropriate for the Home Office to be the government department with lead responsibility concerning trafficked children and that its place should be taken by relevant government departments responsible for children. Children are not 'mini-adults' and attempting to fit them into the system for adults is inappropriate.

The special measures for children contained in the Convention provide its added value to UK law, policy and practice, and this is where the Convention could have made a significant difference to the treatment of child victims of trafficking; augmenting the rights and safeguards already in place for children. It contains various provisions which are specific to children and confirms that procedures concerning children (or young people who might be children) must be different to those that concern adults. These special measures include that a suspected child victim should be considered a child and given the benefit of the doubt that they are a child when their age is uncertain and requires that immediately after an unaccompanied child is identified as a victim, they shall be provided with a legal guardian, organisation or authority to act in the child's best interest, before being referred into the NRM.

There are a number of challenges to the successful identification and protection of child victims of trafficking in the UK discussed in detail in the full report. Of particular significance is the need for frontline service providers to be able to identify suspected child victims of trafficking at the earliest possible opportunity. This necessitates both understanding of trafficking on the part of those agencies likely to come across child victims of trafficking and an ability to recognise children as children. A crucial issue in terms of the UK authorities viewing children as victims of trafficking concerns the locations in which a suspected child victim may be found, such as in a brothel, cannabis factory or forced into petty street crimes such as ATM theft and pick-pocketing. The report details the problems when statutory agencies do not recognise situations of exploitation as potential trafficking cases and instead identify a young trafficked person as a criminal, rather than a victim of crime.

The assessment of the age of unaccompanied and separated children arriving in the UK is a controversial issue. Children who may have been trafficked are frequently found without identification documents or with false documents and additionally may have been instructed by their traffickers to lie about their age (as well as other matters), to appear either older or younger than their actual age. This situation is exacerbated when traffickers have provided children with forged passports or other identity documents that state they are adults. The research reveals concerns by child protection organisations that the UKBA and other statutory agencies do not give young people this "benefit of the doubt", as they are required to, including by their own policy guidance, in disputed cases. This is a significant problem.

It is also of great concern that no-one is required to represent the child's best interests, as required by the Convention, since in principle children, like adults, are only likely to want their case referred if it is in their best interests. One solution here would be to appoint a legal guardian at an early stage, before a child's case is referred to the NRM.

As well as the need for a guardian to be responsible for upholding the best interest for trafficked children, the research identifies the need for safe accommodation and other services such as adequate legal representation and interpreters which are not routinely available. The lack of suitable accommodation and adequately trained supervisors or foster parents has been highlighted by the on-going scandal of children going missing from care.

Failure to implement the entirety of the Convention

The 47 Articles of the Convention require a holistic approach to dealing with trafficking: namely that it requires states to take measures to protect victims, prevent trafficking, prosecute those responsible and ensure that states combat trafficking through international cooperation. However there is neither a national watchdog with the powers to ensure that this occurs, nor a National Victim Care Coordinator to ensure and monitor that all presumed trafficked persons can access their rights under Article 12 of the Convention.

As a result, access to services for identified victims of trafficking is usually patchy. Dedicated accommodation for trafficked women is, in theory, available in England, Wales, Northern Ireland, and Scotland. In practice, space in appropriate accommodation is not always available and some trafficked women have been housed in unsuitable places. Accommodation for male victims of trafficking is severely limited and NGOs often have to find resources to fund specialised services. In addition to accommodation, other services such as interpreters or legal representations are routinely not available.

Another key obligation that has not been met is in relation to access to compensation. The government is not providing information to all trafficked persons about what compensation they might be entitled to and preventing them from staying in the UK to pursue compensation.

The creation of a national anti-trafficking watchdog body with oversight of the implementation of the whole of the Convention could have prevented such gaps.

Misinterpretation of key provisions

The Monitoring Group found a few individual cases where the intervention of the police helped to uphold the “non-punishment clause” of the Convention. For example, in a case of an Eastern European woman, the police alerted a service provider to a woman being held in custody, after having been arrested for immigration offences and possession of stolen documents. Both the service provider and police were concerned that this woman had been trafficked. The police communicated their concerns to the court and the court decided to take no further action taken against her.

However such cases appear to be the exception rather than the rule. The analysis reveals that one of the key problems is the incorrect application of the trafficking definition when assessing who is a victim of trafficking. Too often the authorities fail to apply the Convention and do not define as victims all those who were subject to the crime of trafficking. Instead, the system creates a narrow, legally dubious, interpretation of a victim, and attaches conditions that have been proven to impede identification, and have also been found to undermine prosecution in some cases. For example, in numerous cases reviewed by the research, the authorities concluded that as the person concerned agreed to come to the UK for work, they could not have been trafficked despite the fact that the deception and abuse should, according to the Convention, render such consent irrelevant.

In recent years the police have discovered numerous cannabis farms in England, Scotland and Wales, many of them located in private houses.¹¹ Often the adults or children encountered by police during raids had recently arrived from other countries, notably Vietnam. There are good grounds for considering that some of these individuals were subjected to forced labour and had been trafficked. However, the prosecutions of these individuals that have resulted suggest that the UK authorities have great difficulty in identifying anyone arrested in a cannabis farm as a potential victim of trafficking.

In these cases and other similar ones, the UK authorities seem to have recognised that cannabis ‘gardeners’ have been subjected to pressure, but concluded that they were nevertheless responsible for their crime and should be punished. Further, the UK authorities have not protected the person concerned from the pressures exerted on them by their traffickers and/or exploiters. In other words, in a critical area the anti-trafficking system practiced in the UK does not seem to be

¹¹ For example, the *Daily Mail* reported on 10 March 2009 that, “Twenty-nine forces revealed that they had uncovered more of the drug being grown, including Gwent which detected no factories in 2004 but 151 last year. The largest force in the UK, London’s Metropolitan Police, reported an increase from 206 to 654, while West Midlands saw a rise from 174 to 672”. See, ‘Police raids on cannabis factories on the rise as UK drug cultivation soars’, *Daily Mail*, 10 March 2009, accessed on 25 March 2010 at www.dailymail.co.uk/news/article-1160845/Police-raids-cannabis-factories-rise-UK-drug-cultivation-soars.html.

ensuring non-punishment of victims of trafficking. Despite existing guidance from the Crown Prosecution Service, victims of trafficking are still routinely prosecuted for offences they committed when coerced. Victims are prosecuted, while the real criminals continue their profitable business.

This research suggests that the UK is creating a 'hierarchy' of victims, and allows, intentionally or not, discrimination against certain categories of victims, such as those who were trafficked before the Convention came into force (but identified after), or those coming from particular countries or regions. The research indicates that the system fails to treat those who have been trafficked as victims of crime and places too much emphasis on judging them, rather than bringing traffickers to justice.

Conclusion

Based on the research undertaken as part of this project the Anti-Trafficking Monitoring Group argues that in practice the UK has not established a system led by the principle that a person who has been trafficked has experienced abuse and requires time to recover before being exposed to the rigours of an immigration system that is designed to identify and remove people without entitlement to remain in the UK. The existing system is neither satisfying the provisions of the Convention nor key principles of rule of law itself. Pockets of local good practice contrast with the centralised adversarial system that lacks any formal coordination and seems to be failing to refer trafficked persons to assistance and protection. The system has so far failed to contribute significantly to either an increase in prosecution or a wider knowledge on trafficking. Further, the structures in place for children do not seem to have added any value at all and have complicated matters unnecessarily, making it more difficult to protect child victims of trafficking.

Recommendations

The research identified a number of areas that need improvement to ensure that the UK meets its obligation under the Convention, in particular with the upcoming review of the UK by the GRETA, the formal monitoring body of the Convention. In particular, we believe that the Government should reform the current system to:

1. Restructure and reduce the administrative process of the National Referral Mechanism in order to:
 - act as a multi-agency identification and referral mechanism, increasing access to services for victims;
 - introduce the right to appeal into the identification process;
 - review the application of the definition of trafficking to ensure that it reflects the UK's obligations under the Convention and is consistently applied to all victims of trafficking;
 - in cases of children embed it into the child protection system and give the services responsible for child protection the authority to make decisions;
 - give guidance on cases where the age of a young person is disputed and strictly apply the requirement of the benefit of the doubt.
2. Bring the system of identification and referral closer to the victims, on a devolved, regional and local level, building on the existing good practice multi-agency model.
3. Introduce an independent and public review of all negative decisions made by the competent authority to ensure the accountability of decision-makers and the quality of decision-making.
4. Ensure that no victims of trafficking are prosecuted for crimes that they committed while under coercion. In particular, stop child victims of trafficking from being prosecuted.
5. Uphold the best interest of the child in all decisions and introduce a system of guardianship for children with explicit responsibility to represent the child's best interest.
6. Appoint an independent anti-trafficking watchdog, based on the model of the Dutch National Rapporteur on Trafficking in Human Beings, with statutory powers to request information from the police, the immigration authorities, social services and NGOs and to report to the Parliament.

Front Cover

The cases on the cover refer to real cases of trafficked persons identified in the course of the research for this report. The names were changed and ages approximated to protect the identity of these individuals.

The places indicated on the map are examples of some of the locations where cases of trafficking were identified in the course of the research for this report. This is by no means an exhaustive list.

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The Anti Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group was formed in May 2009 and works according to a human rights-based approach to protect the well-being and best interests of trafficked persons.

This report presents the results of research undertaken to monitor the first year of implementation across the United Kingdom of the Council of Europe's Convention on Action against Trafficking in Human Beings, from 1 April 2009 to 31 March 2010.

The Anti-Trafficking Monitoring Group's Members are:

Anti-Slavery International (host)
Amnesty International UK
ECPAT UK
Helen Bamber Foundation
Immigration Law Practitioners' Association
Kalayaan
POPPY project (of Eaves)
TARA (of Glasgow Community and Safety Services)
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