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Trafficking for Forced Criminal Activities and Begging in Europe

Exploratory Study and Good Practice Examples

September 2014

RACE in Europe Project Partners



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RACE in Europe project partner profiles

UK

Anti-Slavery International: Anti-Slavery International is the oldest human rights organisation in the world. The NGO works at the local, regional and international level to eliminate all forms of slavery around the world.

www.antislavery.org

ECPAT UK: ECPAT's activities involve research, campaigning and lobbying government to prevent child exploitation and protect children in tourism and child victims of trafficking.

www.ecpat.org.uk

Specialist Policing Consultancy: Specialist Policing Consultancy provides expertise in combatting organised crime at an international level.

www.specialist-policing.co.uk

Vietnamese Mental Health Association: Vietnamese Mental Health Services aims to preserve and protect the mental health of persons from Vietnam and their dependents; and to promote quality and culturally sensitive mental health services to people from Vietnam in the UK.

<http://www.vmhs.org.uk>

Ireland

Migrant Rights Centre Ireland (MRCI): MRCI is a national organisation working to promote justice, empowerment and equality for migrants and their families.

www.mrci.ie

Czech Republic

La Strada Czech Republic: La Strada Czech Republic is an NGO working to prevent human trafficking and commercial exploitation.

www.strada.cz

Multicultural Centre Prague: The Multicultural Centre Prague is an NGO working on issues relating to the coexistence of different cultures in the Czech Republic and abroad.

www.mkc.cz

The Netherlands

Dutch Police Academy: The Police Academy is the national institute for the recruitment, selection and training of police officers in the Netherlands.

www.politieacademie.nl

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List of acronyms

United Kingdom

UKHTC – United Kingdom Human Trafficking Centre
NRM – National Referral Mechanism
UKBA – United Kingdom Border Agency
GLA – Gangmasters Licensing Authority
NGO – Non-Governmental Authority
CEOP – Child Exploitation and Online Protection
FOI – Freedom of Information
JIT – Joint Investigation Team
MPS – Metropolitan Police Service
RNP – Romanian National Police
OCN – Organised Crime Network
GRETA – Group of Experts on Action against Trafficking in Human Beings
ERRC – European Roma Rights Centre
CPS – Crown Prosecution Service
ACPO – Association of Chief Police Officers
YOI – Young Offenders Institutes
NSPCC – National Society for the Prevention of Cruelty to Children
ATMG – Anti-Trafficking Monitoring Group

Ireland

GNIB – Garda National Immigration Bureau
ILO – International Labour Organisation
DPP – Director of Public Prosecutions
AHTU – Anti Human Trafficking Unit
IRP – Immigration, Residency and Protection (Bill)
EU - European Union
HSE – Health Service Executive

The Netherlands

CoMensha – Coordination Centre for Human Trafficking
PPS – Public Prosecution Service
DT&V – Return and Departure Service

The Czech Republic

CR – Czech Republic
OSPOD - The Department for the Social and Legal Protection of Children

The Rest of Europe

UNODC - United Nations Office on Drugs and Crime
CBSS - Council of the Baltic Sea States
ANITP - National Agency against Trafficking in Persons
EGCC - Expert Group for Cooperation on Children at risk

Executive Summary

'Trafficked Persons have been victims of one or more serious criminal offences. States have obligations to assist such persons, and not treat them as criminals.'

Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013).

Trafficking in human beings for the purpose of forced criminal exploitation is an increasingly significant phenomenon in the European Union. Adults and children are trafficked and forced to commit crimes such as cannabis cultivation, ATM theft and benefit fraud or forced to beg. In recognition of its increasing incidence and reports by frontline professionals, EU Directive (2011/36) (hereafter known as the EU Directive) includes a wider definition of trafficking to cover trafficking for forced criminal activities and forced begging. This inclusion highlighted the need for Member States to take action to address this form of trafficking.

Despite the entry into force of the EU Directive there is a dearth of research and awareness about this type of exploitation with very few cases reported in official statistics and many victims misidentified as offenders. This report aims to go some way to address this and provide a baseline assessment of the issue, exploring the situation in the project partner countries (Ireland, the UK, the Czech Republic, and the Netherlands) and provide an overview of the rest of Europe. The findings show that the issue is more widespread than previously reported, with victims being exploited through a variety of criminal activities.

United Kingdom

In the UK there have been reports of children and adults being forced to undertake a variety of criminal activities. Out of the 2,255 potential victims of trafficking identified in the 2012 baseline assessment undertaken by the UK Human Trafficking Centre, 362 (16%) were victims of forced criminality. The two most common activities for which victims were exploited was forced labour in cannabis cultivation, petty crime and begging.

Of the potential trafficking victims forced to cultivate cannabis identified between 2011 and 2012, 96% were from Vietnam, 81% of which were children. The research also raised significant concerns that these trafficking victims are being convicted for drug offences, in contravention of the non-punishment provisions enshrined in Article 8 of the EU Trafficking Directive. RACE Project media analysis uncovered 159 cases of Vietnamese individuals prosecuted for cannabis cultivation since 2011, despite significant trafficking indicators being present.

The majority of persons trafficked to the UK for petty crimes, such as pickpocketing and the sale of counterfeit goods, as well as for forced begging are from Central and Eastern Europe. Most are of Roma origin, and a high proportion are children. A host of socio-economic factors, such as high levels of poverty and discrimination in their countries of origin make Roma groups particularly vulnerable to trafficking. As with those arrested for cannabis cultivation, there is a significant discrepancy between the number of children identified by the authorities as being trafficked for petty crimes and the number who have been charged for these offences, thus suggesting that victims are not being identified as such and are instead being treated as criminals.

RACE research has also identified cases of trafficking for other offences in the UK such as sham marriage, drug trafficking, illegal charity bag collections, benefit fraud and the sale of counterfeit goods.

Ireland

There is a dearth of official information regarding this issue in Ireland. National legislation has recently criminalised this type of exploitation through the Criminal Law (Human Trafficking) (Amendment) Act, 2013 and as such no cases have yet been recorded in official statistics. However, NGO and media reports identify cases of forced labour in cannabis cultivation involving Vietnamese and Chinese nationals. As in the UK there are well-founded concerns that those trafficked and forced to work in cannabis farms are not being recognised as victims.

Data compiled by the news wire found that Asian immigrants, mainly Chinese and Vietnamese nationals who claimed exploitation or maltreatment make up 75 % of those going to prison for large scale cannabis cultivation in Ireland. In the first half of 2014 alone, the Migrant Rights Centre Ireland identified 23 cases of potential victims trafficked for forced labour in cannabis cultivation.

This suggests that An Garda Síochána (Ireland's National Police Force), appear to be unable to identify those who have been trafficked despite having a dedicated human trafficking unit. Protection measures for victims are not included in the Criminal Law Act 2013 but there is a commitment to introduce protections in the forthcoming Immigration, Residency and Protection Bill. Further research is necessary to assess whether trafficking victims are being exploited through additional criminal activities in Ireland.

The Netherlands

A growing proportion of trafficking victims identified in the Netherlands are identified as being exploited outside of the sex industry, including in criminal activities. Cases of exploitation through shoplifting, cannabis cultivation, pickpocketing, benefit fraud, drug trafficking and forced begging have recently been reported. However, municipalities continue to view activities such as begging and stealing as a public order issue, viewing those they encounter as perpetrators rather than as potential victims. It was suggested that police display a certain reluctance in dealing with cases of Roma children who are potentially being criminally exploited due to the complex problems these communities face.

The Netherlands has a higher conviction rate for human trafficking offences than other European countries and in 2009, following the introduction of legislation in 2005 to cover all forms of trafficking, the first conviction for human trafficking for the purposes of criminal exploitation was secured. However, research undertaken in prisons by the NGO, Fair Work, suggests that victims are often being incarcerated rather than their traffickers. The research included those who had been forced to commit thefts, traffic drugs and cultivate cannabis.

The Czech Republic

No cases of trafficking for forced criminal exploitation have been reported in official statistics in the Czech Republic yet research undertaken by NGOs and found in media sources suggest that such exploitation is occurring. Like in other countries, the two common forms of exploitation are in cannabis cultivation and through forced begging. Additional trafficking victims have been found

to be exploited working in illegal cigarette production lines and in ‘meth labs’ (illegally producing methamphetamines).

The Anti-drug Directorate of the Czech Police noted a 20 percent increase in the number of commercial cannabis farms identified in 2012 compared to 2011, a market consistently dominated by Vietnamese criminal gangs. Cases of exploitation and forced labour of those working within these farms are being reported by NGOs and in media articles, yet the police have not identified any trafficking cases. NGOs have identified that a recurring problem is a lack of understanding of the definition of trafficking for forced labour by Czech Law Enforcement agencies, and an unwillingness by some state attorneys to take on trafficking cases. Interestingly, a number of victims identified in cannabis farms in the UK and Ireland have either transited through the Czech Republic or have been previously exploited there.

The number of children forced to beg fell dramatically in 2009 following definitive action by the Ministry of Justice to prevent the release of children from institutional accommodation into the care of anyone other than their parents. This safeguarded the trafficked children from being returned to their traffickers, and prevented the criminal gangs operating such organised begging in the Czech Republic. However, this reduction coincided with an increase in the number of cases of forced child begging in neighbouring countries, highlighting that such problems will be merely displaced if traffickers are not identified and brought to justice. Although fewer in number, children (particularly of Roma origin), often playing musical instruments, can still be seen begging in subways and train stations.

Rest of Europe

Although acknowledged as a significant issue at the highest level, data collection systems in place are inadequate both nationally and internationally to provide a complete and accurate picture of the true nature of this type of trafficking across Europe. Existing reports and first-hand research by the *Race in Europe* project found that trafficked people are exploited for a wide range of activities including illegal charity bag collections, sham marriage, illegal adoption, and metal theft. The exact form the exploitation takes varies between countries depending on the social and legal landscape of different jurisdictions. Traffickers also adapt their activities in response to counter-trafficking initiatives and thus trafficking trends are seen to vary over time. Certain groups, such as those of Roma origin, are particularly vulnerable to this form of exploitation. In order to tackle this issue long-term these vulnerability factors must be addressed.

Conclusion

RACE in Europe is one of the few projects specifically focusing on increasing knowledge and improving response to trafficking for forced criminal activities and begging in Europe.

This report offers an insight into the problem. It finds that the types of criminal activities through which victims are exploited differs across European countries as traffickers tailor their criminal operations to the social and legal landscape of each country and thereby circumvent anti-trafficking initiatives. However, there are links between countries in terms of the routes through which victims are trafficked. Hence, coordinated action across Europe is needed to tackle this problem.

There are tools that can be used to achieve this. The EU Directive (2011/36), which incorporates a wider definition of trafficking to include trafficking for criminal activities and forced begging should lead to the harmonisation of legislation across the EU. However, some countries are further ahead than others in recognising this form of exploitation and taking steps to address it. As a consequence, this type of trafficking is under-reported. Our research found that the issue is more widespread than is currently reported, even in those countries, such as the UK, where this form of trafficking is acknowledged in national statistics. In countries where this type of trafficking has not been formally identified, NGOs and other frontline professionals are nevertheless identifying victims.

The key conclusion from the research and the learning seminars conducted by the *RACE in Europe Project* is that tools that exist at the EU level, in the form of legislation, as well as law enforcement tools offered by Eurojust and Europol are crucial in combatting trafficking for forced criminal activity. At present these are underused, but it is hoped that the findings of this research and the guidance issued by the *RACE in Europe Project* will assist Member States in making better use of these tools and improving their implementation of the EU Directive.

Recommendations for Member States

- Transpose fully the EU Directive (2011/36), with particular attention to Art. 8 (non-punishment provision) and reflect its provisions in national action plans to tackle trafficking.
- Deliver regular training to frontline professionals who may encounter persons trafficked for forced criminality and begging.
- Put in place data collection systems that take account of this form of trafficking.
- Improve intelligence-sharing and collaborative working through submissions to Europol and Eurojust.
- Make full use of tools available under Europol and Eurojust such as Joint Investigation Teams.
- Ensure that trafficking victims are protected and their full rights are respected.
- Guarantee safe accommodation to child victims of trafficking to protect them from going missing and being re-trafficked.
- Adopt a system of legal guardianship for child victims of trafficking in accordance with EU Directive (2011/36) provisions.
- Put in place an independent National Rapporteur to monitor and report on the implementation of anti-trafficking legislation and policies.

Introduction

This report presents findings on trafficking for forced criminal activities and begging in the European Union and offers practical guidance on identifying and addressing this form of trafficking.

Part I includes findings from an exploratory study conducted in 2013 and 2014 by Anti-Slavery International, ECPAT UK, The Specialist Policing Consultancy, the Migrant Rights Centre Ireland and La Strada Czech Republic. The project undertook to set a baseline for identifying and understanding the scope and scale of trafficking for forced criminal activities and begging, areas that have so far been little researched. The key findings of the research show that these forms of trafficking are more prevalent than has so far been identified and that many of those who are in prisons across the EU are in fact victims of trafficking who should have never been prosecuted.

Part II is a good practice guide. It is intended for use mainly by front line professionals, such as police, lawyers, NGOs, prosecutors and social workers, who may come into contact with victims of trafficking for forced criminal exploitation and forced begging. This guide offers tools to identify victims, information about their rights and guidelines to help identify the crimes committed and prosecute those responsible. The guidance also contains case examples and good practice models.

Background and Legislation

Forcing others to undertake criminal activities is a lucrative and a low-risk enterprise. If discovered it will most likely be the victim, rather than the trafficker, who is punished for the criminal act. Because of the fear instilled in them by their trafficker about the potential repercussions to them or their family, often coupled with a fear of the authorities, a trafficked person is often reluctant to speak out about those who forced them to commit crime. Child victims of trafficking are recognised as being ‘particularly vulnerable’, as these factors are compounded by their age and exacerbated by the control methods employed by their adult traffickers

The study in Part I of this publication is one of the products of a two-year project funded by the European Commission to respond to trafficking for forced criminality and begging in Europe. Despite its inclusion in the definition of trafficking contained in the EU Trafficking Directive 2011/36², those trafficked for forced criminal activities and begging are often not identified, but rather prosecuted as criminals. For example, victims trafficked for forced labour in cannabis cultivation commonly find themselves prosecuted and imprisoned. What was found is that government policies, such as those relating to the “war on drugs”, may be unwittingly perpetuating the problem.

The research also confirmed that trafficked persons can be subjected to multiple types of exploitation,

¹Directive 2011/36/EU of the European Parliament and of the Council of 5th April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing *Council Framework Decision 2002/629/JHA*

²EU Directive 2011/36, *supra* note 1

with one of the most common combinations being labour exploitation and criminal exploitation³. Victims are increasingly being criminally exploited in more than one way, for instance, being forced to commit petty crime whilst benefit payments are fraudulently being claimed in their name. Trafficking for human beings is a criminal offence in all EU member states. The EU Directive (2011/36) entered into force on 5th April 2013⁴. The Directive adopts ‘a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation.’ It specifically includes exploitation for the purpose of committing criminal activities. The Recital to the Trafficking Directive (para 11) explains that the exploitation of criminal activities should be understood as ‘*the exploitation of a person to commit, inter alia pick- pocketing, shoplifting, drug trafficking and other similar activities which are subject to penalties and imply a financial gain...*’

With reference to forced begging, EU Directive (2011/36) states that:

“Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour.”

Although forced criminality and forced begging are accepted forms of trafficking, the research identified that most victims are not identified and many are in fact prosecuted. This is despite provisions in European legislation indicating that victims should not be punished or prosecuted for crimes that they were compelled to commit as a direct consequence of their trafficking. These provisions reflect an international recognition that victims of trafficking may be forced to commit crimes as a result of their trafficking, and that ensuring they are not punished for these crimes is an ‘essential element of a human rights approach’⁵. Hence, Article 26 of the 2005 Trafficking Convention states that parties shall ‘provide for the possibility of **not imposing penalties** on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so’. Article 8 of the EU Directive (2011/36) goes further stating that;

*‘Each Party shall take the necessary measures to ensure that competent national authorities are entitled **not to prosecute or impose penalties**⁶ on victims of trafficking in human beings for their involvement in criminal activities... [which are committed as a result of their trafficking].*

³SOCA, 2013. UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2012 [Online]. Available at: www.soca.gov.uk/news/462-human-trafficking-assessment-published [last accessed September 2013]. p. 19

⁴In all Member States except Denmark who opted out

⁵Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013) Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking’, p. 13

⁶Council of Europe Convention on Action against Trafficking in Human Beings 2005. Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> [last accessed 18th August 2014]

⁷EU Directive 2011/36, supra note 1

⁸This differentiation ensures that the victim, as well as not being prosecuted, should not be subject to administrative penalties, such as financial penalties.

Background: Risk factors

The *RACE Project* research identified that those who are most commonly trafficked for forced criminality and begging come from South-East Europe (many of them of Roma origin) and from South-East Asia (Vietnam and China). Prior to examining the nature and scale of this exploitation it is necessary to understand what particular factors make certain communities vulnerable to trafficking.

Trafficking risk factors in Vietnam

To better understand why the Vietnamese in particular are being targeted, it is necessary to examine the situation in the country of origin and to ascertain the possible push and pull factors that lead to their trafficking and subsequent exploitation.

Traffickers in Vietnam tend to recruit extensively in rural areas. Despite Vietnam’s recent rapid economic growth, the distribution of this wealth has been skewed towards urban areas. This has resulted in rising unemployment in rural areas. Attempts by the Vietnamese Government to address rural unemployment have resulted in people being encouraged to seek employment in overseas labour schemes. While these can bring great benefits to individuals and the Vietnamese economy, they are often poorly regulated and can create an opportunity for organised criminal networks to traffic individuals. Poor access to education is also a contributing factor; with 40-50% of rural children not continuing education beyond the age of 14 . Save the Children found that 93.5% of returned child victims of trafficking had a low education levels . Rural areas also have comparatively large ethnic minorities, who are often vulnerable to discrimination and generally fare badly in a variety of social welfare indicators, including impoverishment and access to education. This further exacerbates their vulnerability to human traffickers.

In recognition of the large number of people being trafficked from and within Vietnam (over 40,000 women and children were recorded as being missing and unaccounted for between 2005 and

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⁹CEOP, in association with the British Embassy, Hanoi, 2011, ‘The trafficking of women and children from Vietnam’. Available at http://ceop.police.uk/Documents/ceopdocs/NPM_CEOP_FCO_report_-_trafficking_of_Vietnamese_women_and_children.pdf [last accessed 22nd July 2013]

¹⁰CEOP 2011, supra note 9, p.13

2009), the Vietnamese Government introduced a cross-cutting anti-trafficking initiative called Programme 130. However, the reach of such initiatives is limited in those remote and rural areas in which children are most vulnerable¹¹. Furthermore, it should be noted that preventative efforts in Vietnam have traditionally focused on women and girls. This leaves boys vulnerable, and is an issue that has to be tackled since the available data shows that the majority of Vietnamese children being trafficked into countries such as the UK are male¹².

Trafficking of people of Roma origin

Membership of a particular ethnic group has been identified as one of the vulnerabilities exploited by traffickers. In relation to the forms of trafficking under our examination, Roma communities were flagged as particularly vulnerable to trafficking for the purposes of street crime and begging. While the research found that there are no significant differences between generally understood vulnerability factors and the vulnerability factors present in Roma communities, they are disproportionately represented because these vulnerability factors are significantly exacerbated by the discrimination they face in their home country. This discrimination creates barriers preventing Roma from accessing public services such as schools, health and social services and employment opportunities which would reduce their vulnerability to trafficking.

It is therefore important to explore how people of Roma origin may be more vulnerable to trafficking, in particular taking into account the socio-economic and historical context in particular countries. Roma communities in countries such as Romania, Slovakia and Bulgaria suffer particularly high levels of poverty, unemployment and discrimination . It is well known that these factors significantly increase vulnerability to trafficking. For instance, the 2011 report on Bulgaria by the Group of Experts on Action against Trafficking in Human Beings (GRETA) recorded that NGO data indicates that over 50% of trafficking victims were from the Roma community, and according to police officers who were interviewed for the report, the Roma community accounted for over 80% of trafficking victims .

The historical exclusion, marginalisation and discrimination experienced by the Roma across Europe has led to low levels of education and high unemployment. The subsequent economic exclusion of the Roma mean they're susceptible to debt and vulnerable to exploitation by traffickers.

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¹¹CEOP 2011, *supra* note 9, p.5
¹²CEOP 2011, *supra* note 9, p. 11
¹³See European Roma Rights Centre and People in Need (ERRC), 'Breaking the Silence. Trafficking in Roma Communities', March 2011, *pp.* 43-56
¹⁴Group of Experts on Action against Trafficking in Human Beings (GRETA), 2011 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria, para. 100. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_19_FGR_BGR_en.pdf [Last accessed 18th May 2014]

Debt bondage is cited as a major driver of trafficking¹⁵. While some Roma communities will rely on neighbours (both Roma and non-Roma) for support, ‘their survival strategies are often for them to resort to informal money lenders (known as ‘kamatari’, essentially loan sharks), who charge exorbitant interest rates and use repressive measures to ensure payment’¹⁶. These measures can include forcing them to undertake criminal acts such as begging and pickpocketing, or to traffic their own children for the same purpose, in order to clear debts they may have accumulated.

In some child trafficking cases, families may believe that sending their children overseas is the only way to give them a better life, or even their only chance for survival. They may or may not be aware that their children will be involved in criminal activities. However, some children may be accompanied by their parents or family members, who may force them to beg and steal. Complex grooming and behaviour patterns keep them locked into a cycle of exploitation and they feel obliged to commit criminal activity ‘for the good of the family’¹⁷. They may experience a sense of protection and positive feelings of belonging, usefulness and power by providing income needed by the family, which children forced to beg or steal by strangers do not.

Methodology and Scope

The data for this study was collected through mixed qualitative methods, including interviews, questionnaires, media analysis and focus groups. However, elements of quantitative analysis were also employed when analysing the statistical data gathered from Freedom of Information requests and government statistics. Wherever possible, case studies have been used to illustrate both the complexity of the crime, as well as the experience of the victims. The study examines in detail the UK, Ireland, the Czech Republic and the Netherlands and looks briefly at the situation across the European Union.

Outline of the report

So far we have contextualised this study by exploring issue identification and the legal landscape across Europe. The following chapters look in depth at country specific issues. Chapter 1 describes the situation in the UK, chapter 2, the situation in Ireland, chapter 3, the situation in the Czech Republic and chapter 4 the situation in the Netherlands. Each country-specific chapter documents the current picture on the ground, the laws and policies in place which address it and the experience of victims. Chapter 5 provides a snapshot of the problem across the European Union. Finally, Chapter 6 concludes the report by arguing that trafficking for criminal exploitation and forced begging is more widespread than is currently reported, with victims being forced to undertake a variety of criminal activities. The types of exploitation are continually evolving and new trends are emerging. States often fail to recognise this type of trafficking and protect its victims, instead punishing them for the acts that they are being forced to commit by their traffickers.

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¹⁵ERRC 2011, *supra* note 13, p.41

¹⁶ERRC 2011, *supra* note 13, p.53

¹⁷ECPAT, 2010. Discussion Paper: Child Trafficking for Forced Criminality. Available at: http://www.ecpat.org.uk/sites/default/files/child_trafficking_for_forced_criminality.pdf [last accessed 15 December 2013]

United Kingdom

Introduction

Trafficking for forced criminality and forced begging is increasingly recognised as an issue of concern in the UK¹⁸. Cases have been reported of trafficked persons, both children and adults, forced to undertake a range of criminal activities, including ATM theft, pickpocketing, bag-snatching, counterfeit DVD selling, cannabis cultivation, metal theft, benefit fraud, forced sham marriage, as well as being forced to beg.

This chapter provides an overview of the nature and scope of this form of trafficking the UK. It focuses in-depth on the two most common types of criminal exploitation: forced labour in cannabis cultivation, and in petty crime and begging and briefly explores other forms. An overview of the relevant UK legislation and policy and the important non-punishment provisions to prevent the criminalisation of trafficking victims, as well as a brief discussion of victim experiences are also included.

Nature and Scope of Trafficking for Forced Criminal Exploitation and Begging

A baseline assessment by the UK Human Trafficking Centre (UKHTC) in 2012¹⁹ identified 2,255 potential victims of trafficking, a nine per cent increase from the previous year. This figure includes those who were identified through the National Referral Mechanism (NRM)²⁰ as well as those identified through responses to law enforcement agencies, local authorities and NGOs who work with victims of trafficking²¹. Of the 2,255 individuals, 362 (16%) were identified as having been trafficked for the purposes of criminal exploitation, including benefit fraud.

The UKHTC baseline assessment highlighted trafficking for a range of criminal activities including cannabis cultivation, theft (including pickpocketing and ATM theft), drug trafficking, forced sham marriages, selling counterfeit DVDs and smuggling cigarettes, and forced begging. Of the 362 potential victims identified who had been trafficked for criminal exploitation, 58% (209) were

¹⁸SOCA, 2013. UKHTC *supra note 3*

¹⁹SOCA, UK Human Trafficking Centre, NRM statistics for 2012 [Online]. Available at <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics> [last accessed July 2013] NB, These were the latest statistics available on persons trafficked for criminal exploitation at the time of writing.

²⁰Established as part of the UK governments obligations under Article 10 of the Council of Europe Convention on Action Against Trafficking in Human Beings (2005) (Available at <http://www.conventions.coe.int/Treaty/EN/treaties/Html/197.htm>) to identify victims of trafficking.

²¹Despite this, the research figures shown are still likely to significantly underestimate the scale of human trafficking across the UK. There remain issues with the NRM as a system of identification for trafficking victims (see The Anti-Trafficking Monitoring Group (ATMG) report (2010), *Wrong Kind Of Victim?*), including the fact that some victims may not self-identify as victims or refuse to be entered into the NRM. This is coupled with the fact that the UKHTC's request for data for the assessment was not sent to local authorities and was only answered by half of the UK's police forces.

exploited through benefit fraud; being made to apply for benefits on their arrival into the UK but being unable to access the bank account into which they were paid. These victims mainly originated from Poland and Slovakia²².

In 2013²³ the NRM received 1746 referrals of potential victims of trafficking, representing a 47% increase on the 2012 referral totals²⁴; and an 89% increase in the number of adults trafficked for labour exploitation, a category which includes criminal exploitation through activities such as theft, shoplifting, drugs production and benefit fraud. Given the flaws in the NRM as an identification tool and concerns over decision-making in the system²⁵, it is acknowledged that there could be “significantly more victims of criminal exploitation...particularly the number of children forced into criminality such as street begging”²⁶.

Although trafficked persons are exploited in the UK for a range of criminal activities, it was found that the most common forms include forced labour in cannabis farms and street criminality, such as pickpocketing and ATM theft.

Trafficking for forced labour in cannabis cultivation

The journey

In most cases, trafficking happens because of a person’s need to migrate for work, either within a country or abroad. Traffickers make promises of a better life, which for those from poor backgrounds or under pressure from impoverished and/or indebted families, might be the only opportunity to make a living. Traffickers are often more educated and articulate than those they recruit, reinforcing the idea that the victim may be able to share in the perceived success of the trafficker.

The most common journey for victims from Vietnam who were found in cannabis factories is via China on surface and then by flight to Russia. From there they are transported in lorries to Poland, the Czech Republic, Germany, France and finally the UK²⁷ and Ireland. Vietnamese trafficking networks use other criminal organisations in transit countries to facilitate the trafficking of

²²The 2012 baseline assessment provides a comprehensive breakdown of referrals and outlines that the top five most frequently recorded countries of origin are Romania 272 (12%), Poland 240 (11%), Nigeria 209 (9%), Vietnam 133 (6%), and Hungary 125 (6%). This differs slightly for the 549 identified child victims of trafficking (almost a quarter of the total number of referrals), where the most significant source countries were Vietnam, Nigeria, Slovakia, Romania and the UK.

²³UK Human Trafficking Centre, National referral Mechanism Statistics 2013. 20th January 2014. Available at <http://www.nationalcrimeagency.gov.uk/publications/139-national-referral-mechanism-statistics-2013/file> [Last accessed on 23rd June 2014]

²⁴UK Human Trafficking Centre, NRM provisional statistics for 2012 [Online]. Available at <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics> [last accessed July 2013]

²⁵See, for instance, ATMG, June, 2010. ‘*Wrong Kind of Victim?*’ pp. 29-43. Available at: http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf [Last accessed 31st August 2013] and http://www.ecpat.org.uk/sites/default/files/ecpat_uk_briefing_on_the_nrm_for_children.pdf [Last accessed 14th October 2013]

²⁶Secretary of State for the Home Department (IDMG), (October 2012), ‘First annual report of the Inter-Departmental Ministerial Group on Human Trafficking’, p. 5

²⁷CEOP, 2010, Strategic Threat Assessment: Child Trafficking in the UK. Available at: http://ceop.police.uk/Documents/ceopdocs/Child_Trafficking_Strategic_Threat_Assessment_2010_NPM_Final.pdf [Last accessed 30th July 2013]

Vietnamese nationals throughout Europe. In a number of cases, the Czech Republic was a key transition point for the UK, before entering (often clandestinely) through seaports. These lengthy and traumatic journeys, often punctuated by periods of exploitation, can disorientate victims and impair an individual's ability to recall details of their routes²⁸ and their entry into the country²⁹.

Once in the UK, victims are either handed over directly to another person who is part of the trafficking chain that transports the victim to a cannabis farm, or they're instructed to make contact with a middleman. In most cases, the victims were promised a completely different job, often in a restaurant or at a market, but are subsequently coerced into work at a cannabis farm. Once in cannabis farms they are made to work as 'gardeners', tending to and watering the plants. Their position is at the bottom of the criminal enterprise. Victims are often isolated, locked in the property and forced to sleep on floors and in cupboards. Those that are allowed to venture outside will be accompanied by a member of the criminal network or controlled by mobile phones. The traffickers often use emotional and/or physical abuse to ensure compliance with their instructions. Debt bondage is a common means of controlling trafficking victims from Vietnam. They are told that they have developed significant debts as a result of being transported to the UK, which they must pay off through work in a cannabis farms. The debts are often set at an inflated rate, in recorded cases the level of debt was £17,000 and £20,000³⁰, and may take several years to work off. Responsibility for a proportion of the debt may also be placed on their family. Unable to borrow money from banks, they may turn to money lenders who are often connected to the trafficking networks. This provides an extra mechanism to control and subsequently exploit a vulnerable victim and their family.

The conditions within the cannabis farms are often hazardous: the gardener can be exposed to constant heat and light, noxious fumes and the risk of fire. There is also the risk of electrocution due to the illegal rewiring of the electricity supply, and harm from the traps that some gangs lay to deter rivals from attacking their premises. Health and safety guidance issued by the police for officers entering a cannabis farm lists in detail the hazards that those working within them may face. ECPAT UK is aware of one case where a Vietnamese national died when falling from the roof of a cannabis factory whilst trying to escape after an attack by rival gangs³².

²⁸See ATMG, 2013. 'In the Dock' p.83. Available at http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf [last accessed 18th August 2014]

²⁹CEOP, 2011. Child Trafficking Update, p.14. Available at: http://ceop.police.uk/Documents/ceopdocs/child_trafficking_update_2011.pdf [Last accessed 30th July 2013]

³⁰CEOP, 2011 *supra note* 9, p. 17

³¹See for example, guidance issued by Kent police. Available at: http://www.kent.police.uk/about_us/policies/m/m134.html [Last accessed 27th Sept 2013]

³²BBC, 10th January 2011, *Essex cannabis factory death man was Vietnamese farmer* <http://www.bbc.co.uk/news/uk-england-esssex-12152249> [Last accessed 27th October 2013]

If found working in cannabis factories Vietnamese trafficking victims often appear extremely wary of authorities and communicate little about their experience or their captors. This may be born out of fear that harm will be done to their families, and a degree of mistrust of authorities stemming from their perceptions of law enforcement in Vietnam and/or what their traffickers have told them to expect of officials in the UK³³.

Case Study 1: Trafficking for forced labour in cannabis cultivation

Fifteen-year-old Hai* grew up in a village in Vietnam and did not go to school. When his father died, Hai tried to make a living in the capital selling plastic bottles for recycling. A man approached him and said he could earn lots of money in Europe. Hai would have to raise several thousand dollars for an agent to take him. His mother took out a loan against their house and an uncle raised the rest.

After 14 months of travelling, Hai was dumped at a service station in England. Here he was met by another Vietnamese man called Cuong who drove to a house in Scotland. Hai was told that he now owed more money for the trip, plus interest. He would have to water cannabis to pay off his debt and be able to send money to his mother and sisters. Hai asked why he could not work in a restaurant, as promised, but Cuong said this was his only option.

Cuong left Hai alone in the house with instructions and locked the doors from the outside. Cuong returned to the house every few days with bits of food and water. Hai asked Cuong if he could go home but Cuong hit him and said he must go nowhere or the police would arrest and beat him.

Three months later, the police raided the house. Hai was arrested and taken into custody. When asked questions, he was confused and too scared to tell them anything. A solicitor advised him to plead guilty. Hai was sentenced to 24 months in an adults’ prison and told he would be deported after he had served his sentence.

Scale of trafficking for forced labour in cannabis cultivation

The UKHTC in its baseline assessment report found that the number of potential victims trafficked for cannabis cultivation increased 130% between 2011 and 2012³⁴. Evidence shows that this is also the most prevalent form of child trafficking in the UK, and the NRM consistently shows that Vietnam is the single largest source country for child victims of trafficking. Furthermore, of all the potential

³³CEOP, 2011 *supra* note 9, p. 9

³⁴30 victims were identified in 2011 and 69 were identified in 2012. See SOCA 2013, *supra* note 3. P. 17. NB, these were the latest statistics available at the time of writing.

trafficking victims identified who were forced into cannabis cultivation, 96% were from Vietnam, 81% of whom were children³⁵.

The trend of trafficking of Vietnamese adults and children for forced ‘work’ in cannabis farms has existed for a number of years and has been identified by a number of organisations, for instance by ECPAT UK in 2007³⁶, the Child Exploitation and Online Protection (CEOP) Centre in 2007³⁷, and the Refugee Council in their 2009 report³⁸. Parallel to this, there has been a large rise in the number of cannabis farms being identified across the UK. In 2011-12 the police identified 7,865 cannabis farms, a sharp increase from 3,032 in 2007-8³⁹. Police intelligence⁴⁰ has shown that many of these farms were controlled by Vietnamese criminal gangs, who would traffic Vietnamese children and adults into the UK as ‘low-cost’ labour in the production process. Profits from this activity can be worth millions, and are often laundered through other businesses owned by the criminal organisation, such as nail bars, before being physically moved as cash back to Vietnam⁴¹. A police source⁴² noted the sudden recent increase in the number of nail bars⁴³, and that a number of Vietnamese children found within them had disclosed that they had been told that upon arrival in the UK they should find the nearest nail bar. The children would then either stay and work in the nail bar or be sent to tend to the crop at a cannabis farm. Research has also indicated that control of some of the UK’s cannabis production is shifting to white British⁴⁴ and Albanian⁴⁵ gangs, but that children from Vietnam continue to be trafficked to the UK to work as farmers.

Research in 2013 and 2014 by the *RACE in Europe* project supports existing intelligence regarding this trafficking trend. A recent⁴⁶ freedom of information (FOI) request to all police forces across the

³⁵SOCA, 2013, *supra note 3*, p.25

³⁶ECPAT, 2007, *Missing Out: a study of child trafficking in the North-West, North-East and West Midlands*.

³⁷CEOP, 2007 *A scoping report on child trafficking in the UK*.

³⁸Refugee Council Children’s Section, 2009. *Prosecuted or protect? The experience of children trafficked to the UK for cannabis cultivation*. The report detailed experiences of 18 Vietnamese children with whom they had come in to contact who had been trafficked to work in cannabis farms.

³⁹Association of Chief Police Officers (ACPO), 2012, UK National Problem Profile: Commercial Cultivation of Cannabis, p. 2

⁴⁰ACPO, 2010. ‘Findings from the UK National Problem Profile: Commercial Cultivation of Cannabis. Three years on...’. Available at: <http://www.acpo.police.uk/documents/crime/2010/201008CRICCC01.pdf> [Last accessed 31st July 2013]

⁴¹CEOP, 2011. *Supra note 9*.

⁴²Interview with a police officer as part of RACE project research conducted on 21st August 2013

⁴³There was a 20% increase in the number of nail bars in Britain between August 2012 and August 2013. See The Sunday Times, 18th August 2013, *Beauty and the Beasts*. http://www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1302165.ece?CMP=OTH-gnws-standard-2013_08_17 [Last accessed 10th December 2013]

⁴⁴ACPO, 2010. *Supra note 40*

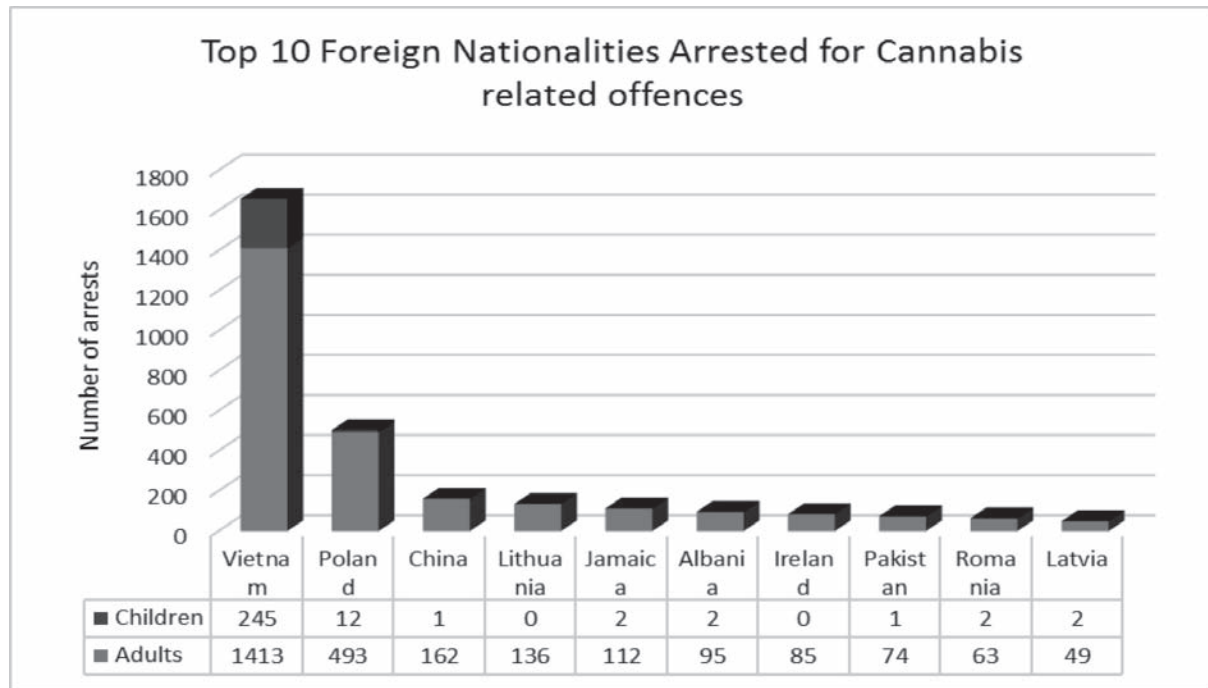
⁴⁵The RACE in Europe project held a roundtable in May 2013 in which this trend was reported by frontline professionals working in the South-West of England.

⁴⁶The FOI requests were sent initially in April 2013 and again in March 2014 and cover the period 1st January 2011 to 31st December 2014.

UK⁴⁷ found that in the period 1st January 2011 to 31st December 2013, there were 3,992 foreign nationals arrested for offences relating to the cultivation of cannabis under Section 4(2) and Section 6(2) of the Misuse of Drugs Act 1971⁴⁸. 1,658 (41%) of those were Vietnamese. The following highest numbers of arrests were of individuals from Poland (12.7%) and China (4.1%).

The graph below depicts the top ten countries of origin of those arrested for these offences.

Graph: Top ten countries of origin of foreign nationals arrested for cannabis cultivation; January 2011 to December 2013 from FOI requests submitted in March 2014

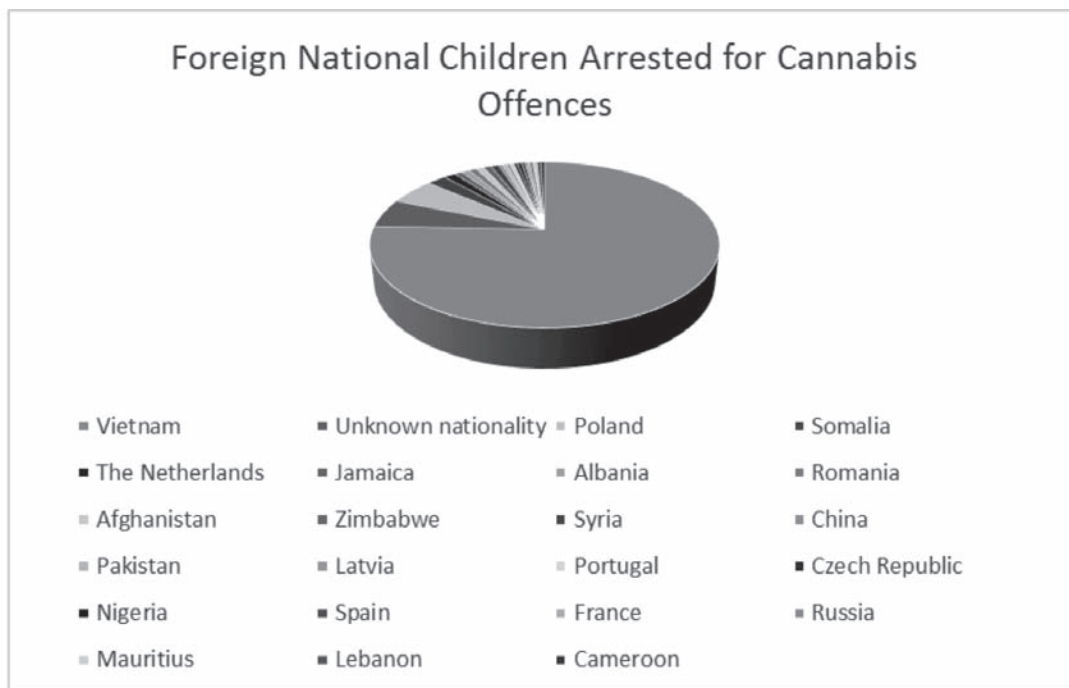


According to the data received, 308 children have been arrested for offences relating to the cultivation of cannabis since 2011, of whom, 245 were from Vietnam⁴⁹. Vietnamese nationals therefore represent 79.5% of the total number of foreign national children arrested for such offences.

⁴⁷Data was aggregated from 37 of 45 police forces across the UK. Several more responded but the data had to be omitted because adults and children were not separated and ethnicity as opposed to nationality was given. There is no obligation on police forces to record nationality or store information centrally, resulting in some police forces being unable to provide statistics because doing so would exceed the cost limit for an FOI request.

⁴⁸Misuse of Drugs Act (1971) Available at <http://www.legislation.gov.uk/ukpga/1971/38/section/5> [last accessed 10th December 2013]

⁴⁹The remaining children came from a total of 23 countries. 13 were of an unknown nationality, 12 were from Poland and the remaining 22 nationalities saw only 1 or 2 children arrested. See Annex for a complete table of all nationalities.



While it cannot be conclusively stated that all those arrested were trafficked into the UK for forced labour in cannabis farms, we know that being found in a cannabis farm is a very strong indicator of trafficking⁵⁰. Hence, the figures go some way to indicate the true scale of the problem.

Often one of the key difficulties for trafficking victims who are foreign nationals is the lack of any documents to ascertain identity and, importantly, age. In ECPAT UK's experience, many child victims are treated as adults when arrested as they have no documentation to prove their identity or age. This means that they are not given adequate protection as children and can end up in adult prisons without appropriate safeguarding mechanisms in place.

The *RACE in Europe* project also submitted FOI requests to all local authorities⁵¹ in the UK to ascertain the number of foreign national children arrested for such offences who were in local authority care. Unlike the data received from Police Forces, it was not possible to aggregate data nationally for a number of reasons, mainly the result of the way in which data is stored and returned.⁵² However, the

⁵⁰This has been highlighted not only by NGOs but also in guidance issued by the Association of Chief Police Officers (ACPO) of England, Wales and Northern Ireland entitled 'Position from ACPO Lead's on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farms'. Available at: http://ceop.police.uk/Documents/ceopdocs/externaldocs/160810_ACPO_lead's_position_on_CYP_recovered_from_cannabis_farms_FINAL.pdf [Last accessed 17th August 2013]

⁵¹106 local authorities provided data in response to our FOI request. Many more responded but data could not be used due to inaccuracies with understanding the request or because retrieving the data would exceed the cost allocation for FOI requests.

⁵²For example, nationalities are sometimes not recorded, or only done so for asylum seeking children. Forces also frequently cite 'less than 5' and are unable to give exact numbers due to a risk of identification. Some data listed the number of children in care 'at' a given time as opposed to over the time-frame. There is no obligation to store data centrally or in a systematised manner.

data received from individual authorities' show that worryingly few children are in local authority care. Over 40 local authorities recorded between 0 and 5 foreign national children in their care. The West-Midlands police, for example, made 75 arrests of Vietnamese children for cannabis cultivation yet two of the local authorities covering this area, namely Solihull Metropolitan Borough and Dudley Council recorded just 1 Vietnamese child in care over the same period. The low numbers of foreign national and criminalised children in local authority care indicate that many children go missing or are being re-trafficked.

The FOI requests to local authorities highlight major issues in the way in which data is recorded and stored. There is no obligation to centralise or systematise information nationally making it extremely difficult to ascertain the level and type of care that potential child victims of trafficking are receiving.

Trafficking for exploitation in street crime and begging

A further form of trafficking into and within the UK is for forced criminality including counterfeit DVD production and selling, bag-snatching, ATM theft, pickpocketing and forced begging, particularly for children from Central and Eastern Europe (most commonly from Roma communities).

Petty street crime, due to its highly visible nature as a public order issue, has been regularly reported in the UK media⁵³. Support service providers such as the Poppy Project⁵⁴ have also reported cases of trafficking victims being forced to beg and commit petty crime. It was highlighted as a significant criminal threat by Operation Golf, which took place between 2007 and 2010, and consisted of a Joint Investigation Team (JIT)⁵⁵ between the Metropolitan Police Service and the Romanian National Police to tackle a specific Romanian organised crime network that was trafficking and exploiting children from the Roma community. Over 1,000 children from one Romanian town were found to be trafficked to Western Europe for forced labour and sexual exploitation. The exploitation of the children in the UK was largely connected to 'street crime' offences such as pickpocketing, bag-snatching, shoplifting and ATM and distraction thefts, as well as through forced begging (see Case Study: 2 overleaf for further details on Operation Golf.).

⁵³See, for instance, *The Sunday Times*, 21st July 2013, Gangs enslave disabled Romanians as street beggars http://www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1290531.ece; Scottish Express, 23rd April 2013, 'Romanian gypsy children sent to loot in UK' July 31st 2010 <http://www.express.co.uk/news/uk/190247/Romanian-gypsy-children-sent-to-loot-UK>

⁵⁴More information on the Poppy Project can be found: <http://www.eavesforwomen.org.uk/about-eaves/our-projects/the-poppy-project>

⁵⁵Under Article 13 of the European Convention on Mutual Legal Assistance in Criminal Matters of 29th May 2000 (Council of Europe, 2000) and/or the Council Framework Decision of 13th June 2002 (Council of Europe, 2002), a JIT can be created by two or more members states, which allows the authorities in these two states to formally collaborate on the investigations of trans-national crimes.

Individuals are forced to beg and steal because of the large amounts of income that they can generate for their traffickers. Evidence suggests that trafficking gangs also operate and move all around Europe. Operation Golf (see case study below) found that a child in the UK can earn as much as £100,000 a year. In addition, children below the age of criminal responsibility (ten years old in England, Wales and Northern Ireland, and eight years in Scotland⁵⁶) cannot be prosecuted, therefore this form of exploitation is seen by traffickers as high-profit and low-risk.

Case Study 2: Operation Golf

Operation Golf consisted of a Joint Investigation Team (JIT) between the Metropolitan Police Service (MPS) and the Romanian National Police (RNP) to tackle a specific Romanian Roma Organised Crime Network (OCN) that was trafficking and exploiting children from the Romanian Roma community. The Operation, which ran between 2008 and 2010, was established after a huge increase in thefts and petty crime in Central London. The crimes were being committed by Romanian nationals, and particularly by Romanian children.

Intelligence showed that one OCN was responsible for the trafficking of over 1,000 children from one town in Romania, who, upon arrival into the UK, were being forced to pickpocket and commit other theft offences. The Operation was established to not only dismantle this OCN but to identify and safeguard those being exploited. It adopted a ‘root and branch’ approach to dismantling the whole trafficking network. Whilst the MPS focused on lower level network members operating in the UK, the RNP tackled the main traffickers who were resident in their jurisdiction. Operation Golf led to the arrest of 126 individuals for a number of offences including trafficking in human beings (including internal trafficking in the UK), money laundering, benefit fraud, child neglect, perverting the course of justice, theft and the handling of stolen goods. Seventy-one convictions were gained in total, with 52 individuals gaining custodial sentences amounting to a total custodial time of 59 years. The prosecution of the Romanian-based criminal members is ongoing. The decision to prosecute them in Romania, rather than extraditing them to the UK was a strategic one as the maximum sentence for trafficking is higher in Romania (20 years’ imprisonment), and the Romanian CJS is known to impose harsher sentences than the UK. 29 of the trafficked Romanian children were located and safeguarded.

The operational success of Golf in disrupting the OCN and confiscating their assets showed that JIT legislation is a vital tool in tackling transnational crime.

Scale of trafficking for exploitation for street crime and begging

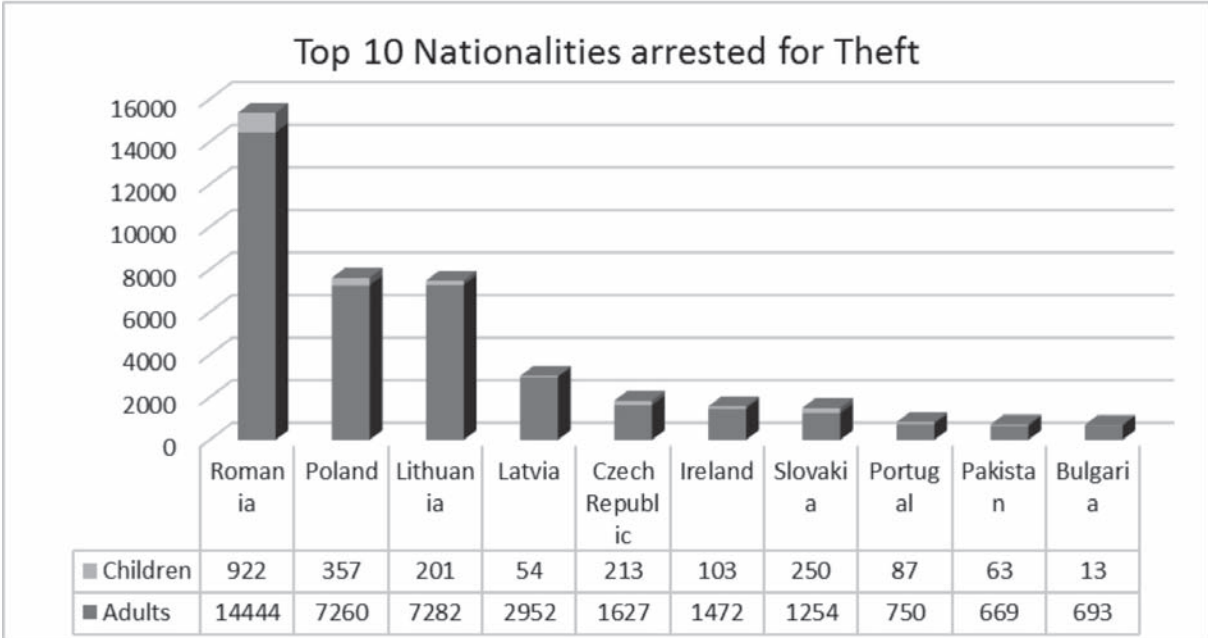
According to the available national data, the trafficking of Romanian nationals for criminality is still occurring on a large scale in the UK. In 2012⁵⁷, the most common country of origin for potential victims of trafficking was Romania (12%) and of these victims, 24% were criminally exploited.

⁵⁶The Scottish Government raised the age of criminal prosecution in 2010 to 12 years of age but did not raise the age of criminal responsibility, meaning that although children will not be prosecuted they can still get a criminal record.

⁵⁷SOCA, 2013 *supra* note 3. (These were the latest statistics available at the time of writing).

The *RACE in Europe* project has gathered further data through FOI requests to UK police forces to establish the number and nationality of foreign nationals arrested for theft offences under Section 1 of the 1968 Theft Act⁵⁸ over the period 1st January 2011 to 31st December 2013. The graph below shows the top ten nationalities of those arrested for these offences.

Graph: Top ten countries of origin of foreign nationals arrested for theft offences since January 2011.

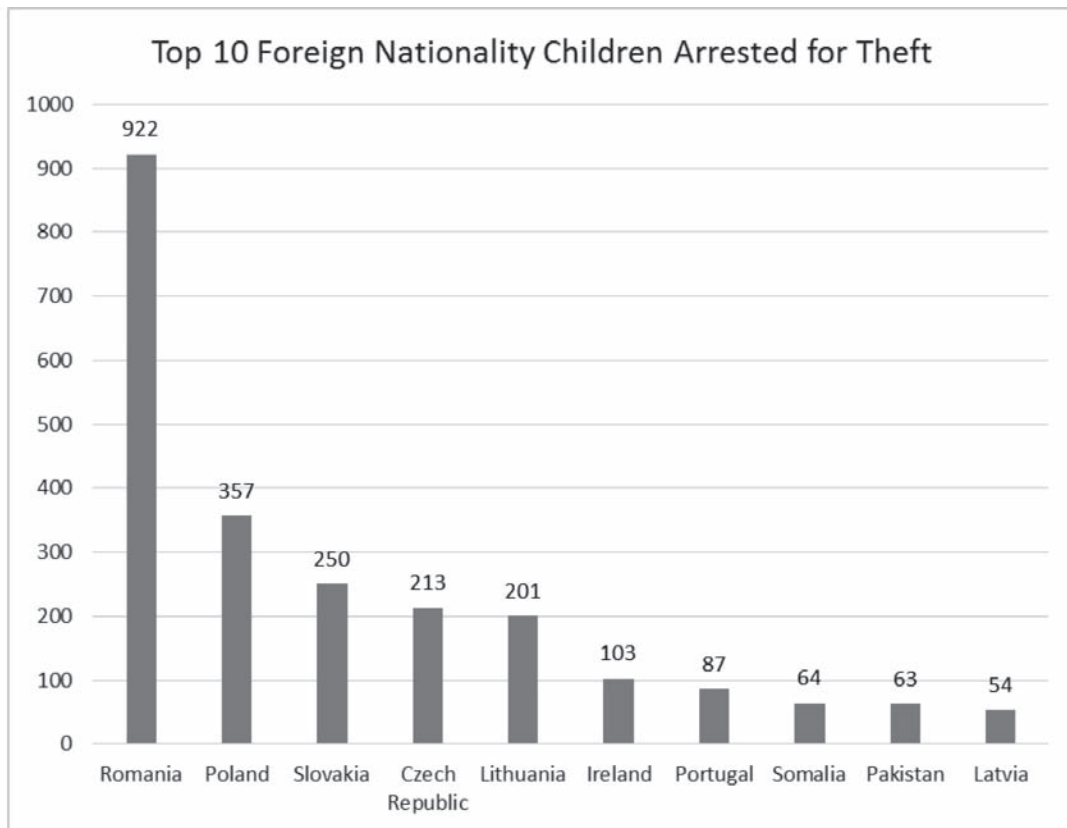


From the FOI responses received⁵⁹, there were a total of 53,110 foreign national arrests made, and Romanians nationals accounted for 28.9%. As can be seen by the above graph, the top 5 foreign nationalities arrested for theft were Romania, Poland (14.34%), Lithuania (14.09%), Latvia (5.66%) and the Czech Republic (3.46%). For both children and adults, Central and Eastern Europe are the dominant source regions for those arrested in the UK for these crimes.

⁵⁸The Theft Act (1968) Available at <http://www.legislation.gov.uk/ukpga/1968/60/contents> [last accessed 10th December 2013]

⁵⁹33 police forces supplied data in response to FOI requests. As with the requests for arrests for cannabis cultivation, there were issues with the way in which data is recorded which meant that some police forces could not be included in the study.

Graph: Top 10 Foreign Nationality Children Arrested for Theft Offences since January 2011.



There were 3,318 children arrested for theft offences in the UK since 2011, 28% of those came from Romania, followed by Poland (10.8%), Slovakia (7.5%), the Czech Republic (6.4%) and Lithuania (6%).

As with those arrested for cannabis cultivation, there is a significant discrepancy between the number of children arrested for theft and the number who then enter local authority care. Data received from local authorities through FOI requests show that there are frequently so few children in care in a given authority that the exact number (less than 5) cannot be given through risk of identification. Bedfordshire police for example made 281 arrests of children for theft since January 2011, yet the Central Bedfordshire Council had no foreign national children who had been arrested for theft in their care. Police and local authority jurisdictions do not correspond exactly but comparisons can still be made. It can thus be argued that there are far fewer child victims of trafficking for criminal purposes in care than there should be.

As with the Vietnamese children arrested for cannabis cultivation, we cannot claim that all those foreign national children arrested were trafficked to commit crime. However, existing evidence suggests that there is a strong likelihood that those children arrested for such crimes in the UK are being exploited through criminal activities. Data collected through FOI responses suggests that such exploitation, recognised as an issue of concern in the UK for a number of years, is continuing (see for instance case study 2: Operation Golf). Further research is needed to understand why this is the case and how best it can be tackled.

Case Study 3: Child Trafficking for Theft & Begging

Maria*, a 13 year old girl from Romania, was trafficked into the UK in 2008. Her father paid €200 to an organised criminal network to arrange her travel into the country. Once in the UK, Maria was placed with a family in Slough who were part of this criminal network. She was exploited in domestic servitude, having to do the household chores and care for the children. She was made to sleep on the floor and was fed only scraps.

Every day Maria was driven to Surrey and forced to beg, steal and to sell the 'Big Issue' magazine illegally. After working for 12 hours each day she would be collected, searched and beaten by her traffickers. She was never allowed to keep any of her earnings. Although forced to work on the streets throughout the winter months she was never provided with a coat to wear or anything to eat or drink.

Following an in-depth police investigation as part of Operation Golf in 2008, the house where Maria was living was raided. Four adults, including Maria's father, were convicted of trafficking. Maria was repatriated to Romania and passed into the care of Romanian Social Services.

**The victim's name has been changed to protect their identity*

Other forms of trafficking for forced criminality

Trafficked persons can be exploited through a wide range of criminal activities as their traffickers identify new ways in which to exploit victims. Trafficked persons may also be exploited through multiple activities concurrently (which seems to be an increasing trend), such as through both begging and petty crime or combined with sexual exploitation (forced prostitution), domestic servitude or other forms of forced labour. In the UK we identified the following forms:

Sham marriage

This involves EU-national women trafficked into the UK and forced to marry a non-EU national in order for the latter to gain residency in the UK. The traffickers obtain payment for the marriage. For instance in the case of *HMA v Kulova and others*⁶⁰ in 2013, a Slovak female was trafficked together with her boyfriend to Scotland by three other Slovak nationals with the view to force her to marry another foreign national⁶¹. Another Slovak female was also trafficked for the purpose of sham marriage in a separate case in Burnley in October, 2013⁶².

⁶⁰*HMA v Kulova and others*, at Dundee Sheriff Court, 14 January 2013

⁶¹See BBC News, 12th December 2012, 'Three Slovaks found guilty of human trafficking'. Available at <http://www.bbc.co.uk/news/uk-scotland-tayside-central-20700438> [Last accessed 24th July 2013]

⁶²*Guardian*, 10th October 2013, 'Four jailed over woman's trafficking ordeal' <http://www.theguardian.com/uk-news/2013/oct/10/four-jailed-trafficking-bradford-burnley>

Drug transportation

Explicitly noted in the recent EU Directive (2011/36)⁶³, drug trafficking has been recognised as one of the key criminal activities through which someone can be exploited. Men and women are forced to become drug mules as a way of repaying the debts incurred. Women may be tricked or emotionally blackmailed by men posing as their boyfriends. Some may already be in a situation of exploitation (as a result of being trafficked) and are offered freedom for acting as a drug mule for the traffickers⁶⁴. Victim support providers, such as the Poppy Project, have reported encountering cases where victims were forced to act as drug mules, arrested on arrival into the UK, and subsequently convicted for drug trafficking offences.

Charity bag theft

Several cases of Lithuanian nationals being forced into crime by organised crime groups profiting from establishing fictitious charitable organisations have been reported in England⁶⁵, Scotland and Wales. Victims are made to participate in the theft of charity clothing bags (which contain unwanted clothes that members of donate into bags provided by charities and place on the streets) which are then transported back to Lithuania to be sold for a profit as second-hand goods.

Counterfeit goods

Reports have been made by the Metropolitan Police and some London boroughs, such as Tower Hamlets, about Chinese nationals being forced to sell counterfeit DVDs on the streets of London. The Metropolitan Police have also investigated cases where Chinese nationals were alleged to have been locked in warehouses and forced to produce these DVDs. ECPAT UK is also aware of cases involving children being forced to produce and sell illegal DVDs.

⁶³EU Directive 2011/36, supra note 1

⁶⁴Hales, L. & Gelsthorpe, L. *The Criminalisation of Migrant Women*, Institute of Criminology, University of Cambridge, UK, 2012. p. 38

⁶⁵See, for instance, Mancunian Matters, June 24th 2013, “Modern slavery’ in Manchester: Pair lured to Britain on promise of riches... but worked, beaten and starved’. Available at: <http://mancunianmatters.co.uk/content/240611197-modern-slavery-manchester-pair-lured-britain-promise-riches-worked-beaten-and-star> [Last accessed 30th July 2013]

UK Legislation

The UK has three separate jurisdictions – England and Wales, Scotland and Northern Ireland. While some issues can be legislated on only by the UK Parliament, others are in the competency of the individual countries. However, trafficking in human beings is a crime in the whole of the UK.

In England and Wales and Northern Ireland, the following laws are in place:

- **Sexual Offences Act 2003 (SOA)**⁶⁶, which makes it a criminal offence to traffic a person for the purposes of sexual exploitation.
- **Section 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004**⁶⁷, which criminalises trafficking for exploitation that is not necessarily sexual in nature. The act defines exploitation as behaviour that would fall under the definition of slavery or forced labour under Article 4 of the European Convention on Human Rights⁶⁸.
- **Section 71 of the Coroners and Justice Act 2009**⁶⁹, which introduced a new offence of ‘holding someone in slavery or servitude’, or ‘requiring another person to perform forced or compulsory labour’. This offence applies to all victims of forced labour, irrespective of whether they have been trafficked or their immigration status. Section 71 offence applies in England, Wales and Northern Ireland.

In Scotland, the legislative provisions to criminalise trafficking are:

- Section 22 of the Criminal Justice (Scotland) Act 2003 (trafficking for sexual exploitation)
- Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (slavery, servitude, forced and compulsory labour)
- Asylum and Immigration (Treatment of Claimants) Act 2004 (labour trafficking)

There is a range of policy and guidance in the UK to assist authorities in the investigation and prosecution of trafficking crimes. These include, but are not limited to:

⁶⁶UK Government, *Sexual Offences Act 2003* Available at: http://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf

⁶⁷UK Government, *Asylum and Immigration (Treatment of Claimants) Act 2004*. UK Government, 2004. Available at: http://www.legislation.gov.uk/ukpga/2004/19/pdfs/ukpga_20040019_en.pdf

⁶⁸Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5. Available at: <http://www.refworld.org/docid/3ae6b3b04.html> [Accessed 25 July 2013]

⁶⁹UK Government, *Coroners and Justice Act 2009*. Available at: http://www.legislation.gov.uk/ukpga/2009/25/pdfs/ukpga_20090025_en.pdf

- Crown Prosecution Service (CPS) guidance on ‘Human Trafficking and Smuggling’
- Scotland’s Prosecution Service (Crown Office and Procurator Fiscal Service) ‘Guidance on Prosecuting Trafficking Offences’⁷¹
- CPS guidance on ‘Slavery, Servitude and Forced or Compulsory Labour’⁷²
- CPS Policy for Prosecuting Cases of Human Trafficking⁷³
- Law Society Practice note on ‘Criminal prosecutions of victims of trafficking’⁷⁴

Despite extensive legislation and guidance, prosecution and conviction rates for trafficking crimes in the UK remain low. For instance, in 2011 only 8 people were successfully convicted where trafficking was the principal offence⁷⁵. Therefore not only are the traffickers enjoying impunity, but there is a deep concern that those trafficked are instead being punished for the crimes that their traffickers force them to commit.

At the time of writing the Modern Slavery Bill was being debated in the UK Parliament. The Bill consolidates existing anti-slavery and anti-trafficking measures (below) into one piece of legislation and aims to provide the tools to adequately prosecute perpetrators and protect victims. It is likely that the Bill will pass and become an Act of Parliament in 2015 and hence different legislation on trafficking will be in place thereafter. However, the UK will still be bound by the EU Directive and the Council of Europe Convention and the definitions of trafficking contained therein.

⁷⁰Crown Prosecution Service, Legal Guidance: Human Trafficking and Smuggling. London: CPS, Undated. Available at: http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/ [Last accessed 25th July 2013]

⁷¹Crown Office and Procurator Fiscal Service, Guidance on Human Trafficking Offences. Edinburgh: COPFS, October 2010. Available at: http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Guidance%20on%20Human%20Trafficking%20Offences.pdf [Last accessed 25th July 2013]

⁷²Crown Prosecution Service, Legal Guidance: Slavery, Servitude and Forced or Compulsory Labour. London: CPS, April 2010. Available at: http://www.cps.gov.uk/legal/s_to_u/slavery_servitude_and_forced_or_compulsory_labour/ [Last accessed 25th July 2010]

⁷³Crown Prosecution Service, CPS Policy for Prosecuting Cases of Human Trafficking. London: CPS, May 2011. Available at: http://www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf [Last accessed 25th July 2013]. Following the recent Court of Appeal judgment on the non-criminalisation of trafficked victims (*R v L and Others* [2013] EWCA Crim 991 (Judgment of 21 June 2013) this guidance is currently being revised.

⁷⁴Available at: <http://www.lawsociety.org.uk/advice/practice-notes/victims-of-trafficking/> [Last accessed 25th July 2013]

⁷⁵See Secretary of State for the Home Department (IDMG) (October 2012), ‘First annual report of the Inter-Departmental Ministerial Group on Human Trafficking’ p.35. The UK Government argues that if traffickers are not prosecuted for trafficking offences they may instead be convicted for offences related to human trafficking.

Consequences of prosecuting victims of trafficking

Despite the existence of non-punishment provisions in EU law and policy, trafficking victims continue to be prosecuted for the crimes they are forced to commit . The case study below depicts the plight of one of the hundreds of victims trafficked in this way to the UK.

Case Study 4: Criminalisation of Victims of Trafficking

Son Van Trinh (39) and his family fell into financial hardship and were struggling to put food on the table. Along with his family he made the difficult decision to leave his native Vietnam in search of work and find a way to support his family. He paid £25,000 to be smuggled in the back of a lorry through Chechnya and into France before arriving in the UK. He was taken to a large house in Lancashire where he was told he would have to tend to 319 plants and was given only a mattress on the floor to sleep on and some food rations.

When the house was raided by the police he was found inside frightened and confused, he had no idea which country he was in. He was charged with drug offences and sentenced to 16 months in prison. The judge, when handing down his sentence said *‘You were engaged maybe by pressure and **coercion**, but it is probably right to say that you were involved through naivety and **exploitation**.’*

Source: Lancashire Evening Post, 18th December 2013, Cannabis Farmer gets Locked Up after Bust. Available at; <http://www.lep.co.uk/news/local/cannabis-farmer-gets-locked-up-after-bust-1-6323095> [Last Accessed 18th December 2013]

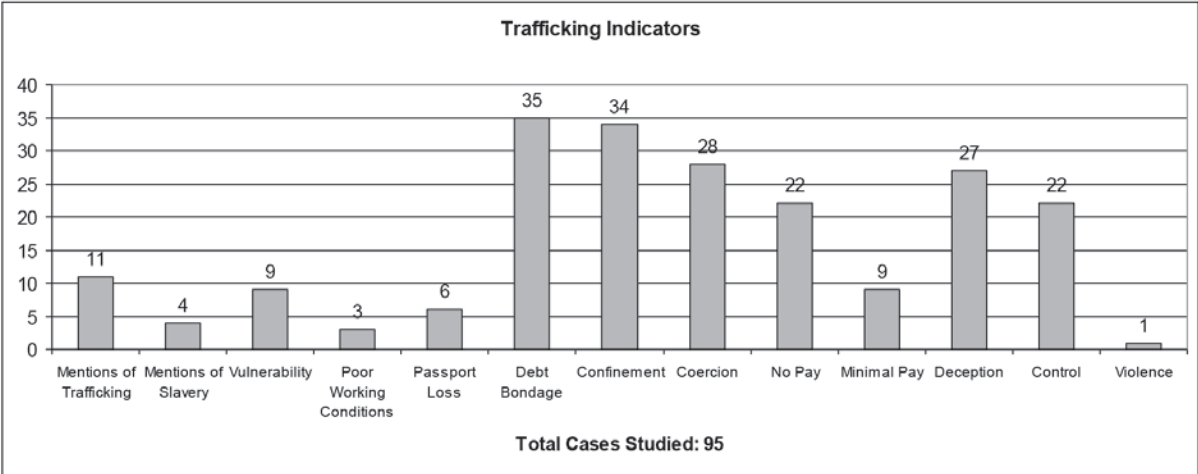
The *RACE in Europe* project, recently undertook a UK media search which identified 159 cases⁷⁷ of Vietnamese (two Chinese, one Albanian) nationals who had been prosecuted and convicted for cannabis cultivation since January 2011 where there were significant indicators (see graph below) present to suggest that they were in fact trafficking victims forced to undertake this criminal activity. It is important to note that this is not an extensive resource of cases as, in many instances, the case is not reported in the media at all or the details, such as nationality, outcome or potential indicators of trafficking, are not known or not recorded. This suggests those cases identified by the RACE in Europe project maybe just the ‘tip of the iceberg’.

⁷⁶This may include the use of a false instruments e.g. the appellant in R v O [2008] EWCA Crim 2835 was a young Nigerian female who had been trafficking to the United Kingdom for the purpose of sexual exploitation and was arrested trying to leave the country and travel to France (to escape her trafficker) using a false identity card.

⁷⁷Nine of whom were children at the time of their arrest.

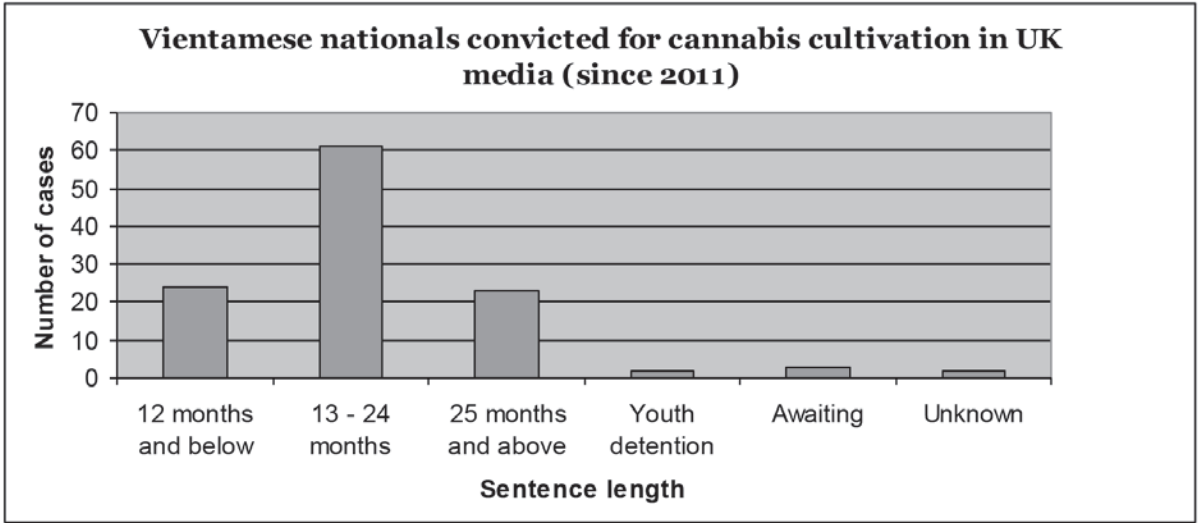
⁷⁸These were the reported details of the case which showed that the constituent elements of the trafficking definition, according to the United Nations Trafficking Protocol (2000), i.e. the ‘act’, ‘means’ and ‘purpose’, had been met.

Graph: Trafficking indicators present within media articles



The graph shows the breakdown of data identified in media analysis, such as the average length of custodial sentences reported and that 95% of those convicted were male with an average age of 31 years⁷⁹.

Graph: Custodial sentence length for Vietnamese nationals convicted for cannabis cultivation crimes.



Not only did the articles often highlight the exploitation that individuals were subjected to but, of greater concern, the judges in the cases also frequently acknowledged this exploitation, and in some cases even noted that the suspect had been trafficked⁸⁰. In a case heard in Portsmouth

⁷⁹Based on a study of 95 of the 159 cases cited in the media, often age or sentence length is not included in the article.
⁸⁰See for instance, ‘Man trafficked by ‘mafia’ to set up Bradford cannabis factory’, Telegraph & Argus, 8th November 2012. Available at: http://www.thetelegraphandargus.co.uk/news/10033060.Man_trafficked_by___mafia___to_set_up_Bradford_cannabis_factory/ [last accessed 26th July 2013]

Crown Court in March 2014, in which two Vietnamese men were charged with cultivating cannabis, the judge in his sentence said: *'You both knew that it was against the law but you are not entirely responsible for some of what has happened to you... I have no doubt you were brought here under false pretences... I have no doubt you were led into this slavery, for it is a form of slavery.'*⁸¹ The two men were sentenced to a year in prison followed by deportation.

These cases also suggest that a large number of trafficked Vietnamese nationals may be currently held within prisons and Young Offender Institutes (YOI) across the UK. Our findings support those from a recent study⁸² by the Cambridge Institute of Criminology of foreign women within the female prison estate. The research found that of the 103 migrant women within the study who were being detained for offences linked with trafficking (such as the use of false identity documents or the production of cannabis), 43 were victims of trafficking.

The Crown Prosecution Service provides legal guidance⁸³ to prosecutors in cases where the suspect is a potential victim of trafficking. In such cases, the prosecutor must make full enquiries as to the circumstances in which they were apprehended and whether they would support a defence of duress in law. If the requirements for a defence of duress cannot be met then it must be considered whether it is in the public interest to continue with the prosecution⁸⁴. However, as the data gathered by the RACE Project shows, this guidance is often not followed.

Similarly, in 2010, the Association of Chief Police Officers (ACPO) released guidance on 'children recovered in cannabis farms'⁸⁵ for police, advising that: 'Every individual identified as, or claiming to be, a child or young person in a cannabis farm should be assessed on a case by case basis to ascertain whether they may have been trafficked.' The Children's Commissioner for England has recommended that, since virtually all unaccompanied Vietnamese children in Kent go missing (and most of those recovered to date had been found in cannabis factories), "all unaccompanied Vietnamese children should be regarded, *prima facie*, as having being trafficked"⁸⁶.

⁸¹Judge says pair growing cannabis were like Slaves' The News Online. 28th March 2014. Available at <http://www.portsmouth.co.uk/news/local/judge-says-pair-growing-cannabis-were-like-slaves-1-5965790> [Last accessed 18th August 2014]

⁸²Cambridge: Institute of Criminology(2012) The criminalisation of migrant women. Available at: http://www.crim.cam.ac.uk/people/academic_research/loraine_gelsthorpe/criminalreport29july12.pdf [Last Accessed 31st July 2013]

⁸³See CPS, 2011 *Supra note 73*

⁸⁴See ATMG, 2013 *supra note 28*, pp.92-102, for further information on UK policy on non-punishment provisions.

⁸⁵Position from ACPO Lead's on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farms. http://www.ceop.police.uk/Documents/ceopdocs/externaldocs/160810_ACPO_lead%27s_position_on_CYP_recovered_from_cannabis_farms_FINAL.pdf [Last accessed 14 October 2013]

⁸⁶The APPG for Runaway and Missing Children and Adults and the APPG for Looked After

Children and Care Leavers, June 2012, 'Report from the Joint Inquiry into Children who go missing from care. Available at: http://www.childrenssociety.org.uk/sites/default/files/tcs/u32/joint_appg_inquiry_-_report...pdf [Last accessed 23rd October 2013]

It is an ongoing concern that a high proportion of child victims of trafficking who are removed from exploitative situations subsequently go missing from the accommodation in which they have been placed. A considerable number of the children affected by this are those who have been trafficked for forced criminality, particularly Vietnamese children. This is a problem across the EU, where some social services report 90% of children going missing from the accommodation in which they are housed⁸⁷. In the UK, it is reported that 60% of suspected child victims of trafficking go missing from local authority care⁸⁸. RACE in Europe research through FOI requests to local authorities support this trend highlighting worryingly few potential child victims of trafficking in local authority care.

The NSPCC’s Child Trafficking Advice Centre received 715 child referrals from 13th September 2007 to 19th April 2012. 161 of those referrals had been reported missing at some time. Of the children who went missing, 58% had been exploited for criminal activity (street-based crimes) and cannabis cultivation⁸⁹.

Children often remain in contact with and under the control of their traffickers, even if they have been removed from an exploitative situation, such as a cannabis farm. If sufficient measures are not put in place, there is a grave danger that contact between child and trafficker will remain, ultimately leading to the child being re-trafficked and placed in further harm. In the UK there are no commonly agreed safety and protection standards for the placement of children who are suspected or known to be trafficked. This has allowed safeguarding issues to be side-lined leading to further harm to the child. In an attempt to fill this information void, ECPAT UK has created a set of guiding principles⁹⁰ which should be implemented when looking to safely accommodate any child victim of trafficking. In the UK it would appear that there are pockets of good practice, for example near points of entry, but as of yet no comprehensive nationwide strategy. As Paul Hewitt, Head of Child Safeguarding at Hillingdon explains; ‘there has been some coordinated law enforcement activities and child welfare operations; but this has not been a part of a coherent strategy’⁹¹.

⁸⁷Council of the Baltic Sea States (CBSS), 2013, Children trafficked for exploitation in begging and criminality. Available at: http://www.childcentre.info/public/Childtrafficking_begging_crime.pdf [last accessed 1st August 2013]

⁸⁸ECPAT UK, 2007, supra note 36

⁸⁹NSPCC response to All Party Parliamentary Group on Runaway Missing Children and Adults, undated. Available at: http://www.nspcc.org.uk/Inform/research/ctail/response-missing-children_wdf89466.pdf [Last accessed 14th October 2013]

⁹⁰The principles are available at: <http://www.ecpat.org.uk/content/principles-safe-accommodation-child-victims-trafficking>

⁹¹Interview and questionnaire with RACE in Europe seminar participant. .November 2013 - May 2014.

Recent legal developments in relation to prosecution of victims of trafficking

In May 2013, the Court of Criminal Appeal of England and Wales heard four cases in which the non-punishment provision of trafficked persons was considered; three of the cases concerned children trafficked from Vietnam who were forced to work in cannabis farms and were convicted for cannabis cultivation. The fourth case concerned a Ugandan woman trafficked for sexual exploitation, who was prosecuted on the charge of using a false passport. The Court quashed all four convictions, recognising the importance of the non-punishment provisions enshrined in Article 8 of the EU Directive (2011/36). The judgment⁹² reiterated that in situations where the criminal offence with which the victim of trafficking is charged is a manifestation of their exploitation, then the prosecution should be stopped. Although the non-punishment provision should be applied by all law enforcement agencies, the judgment specifically noted that if a case reaches a criminal court, it is the Court's role to stand between the prosecution and trafficked person, that is to say that the prosecution will be stayed if the Court disagrees with the decision to prosecute⁹³. This landmark judgment sets an important precedent to ensure that trafficked persons are protected from criminalisation, and highlights the importance of investigating the traffickers in these cases. As a result of this judgment, the CPS is currently revising its guidance on prosecutions where the individual may be a victim of trafficking.

Conclusion

The research found that in the UK a significant number of trafficked persons are being punished and prosecuted for the crimes they have been compelled to commit as a consequence of being trafficked, while their traffickers enjoy impunity. The research highlighted two underlying reasons: a) a lack of awareness of trafficking indicators (such as the individual being deceived or coerced into undertaking the work, receiving little or no pay, or being unable to leave the situation) resulting in widespread failure to identify trafficking victims⁹⁴ b) lack of knowledge and failure to follow existing legislation and guidance.

⁹²*R v L and Others* [2013] EWCA Crim 991 (Judgment of 21 June 2013). Available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html> [Last accessed 30th August 2013]

⁹³See *supra* note 92, paragraph 17

⁹⁴The CPS has recently created the *Seven Stages of Intervention for a Victim of Trafficking who may be Criminalised* model which identifies at least seven opportunities within the CJS to raise the issue and stop criminalisation of trafficked persons.

The consequences of misidentification of victims as offenders and their punishment are significant. The individual may suffer secondary victimisation, have a criminal record and be vulnerable to going missing, deportation and re-trafficking⁹⁵. Treating victims of trafficking as criminals rather than protecting them, perpetuates the crime and guarantees impunity for traffickers. It also compounds any existing fear the victim may have of the authorities and reduces the likelihood that they will assist in further investigations.

The research established that trafficking for criminal exploitation and forced begging continues to be an issue of significant concern in the UK. Although national statistics have begun to acknowledge this, the findings from the RACE in Europe project research suggest that the true extent of this phenomenon has thus far been underestimated. There needs to be an increased awareness by frontline professionals that trafficked persons can, and are, being exploited through criminal activities, sometimes in multiple ways. In order to tackle this, there needs to be a shift in focus away from the criminalisation of victims and greater concentration on bringing traffickers to justice. To achieve this, the UK will need to examine other policies and areas of police priority, such as those aimed at combatting illegal drugs, and link their trafficking enforcement activities with them.

Despite the non-punishment provisions within European legislation, and national guidance, trafficked persons continue to be prosecuted for the petty crimes they have been forced to commit as a result of their trafficking, whilst their traffickers largely go unpunished. The impact that the recent Court of Criminal Appeal judgment (*R v L and Others* [2013]) is yet to be seen but it is hoped it will set a precedent to ensure that trafficked persons are no longer punished nor prosecuted, and instead receive the support and protection they are entitled to as victims of a crime. Their rapid identification as trafficked persons is imperative in this process, especially for child victims who are particularly vulnerable and at a high risk of being re-trafficked internally in the UK or internationally out of the UK.

⁹⁵See ECPAT UK, *Discussion Paper: Child Trafficking for Forced Criminality*, London, UK. 2010.

Ireland⁹⁶

Introduction

This chapter focuses on forced labour within cannabis production and is an initial exploration of this phenomenon in Ireland. The chapter examines the nature and scale of trafficking for cannabis production specifically, focusing on cases and reports where members of the Vietnamese or Chinese communities were involved. The reason for this focus was that a trend was identified by Anti-Slavery International of victims being trafficked from Vietnam to Ireland via the UK.

Nature and Scope of Trafficking for Forced Criminal Exploitation

Human trafficking for the purpose of criminal exploitation is a relatively new phenomenon in Ireland, compared with other types of exploitation. National legislation has only very recently recognised and criminalised this type of trafficking⁹⁷. As such, there is a shortage of data on this issue. Furthermore, national information on victims of trafficking for criminal activities, or perpetrators is not disaggregated by gender or nationality⁹⁸.

The 2013 European Union (EU) Drug Market Report⁹⁹ noted that Ireland has experienced an increase in the domestic cultivation of cannabis in the last five years. In 2012 there was substantial media coverage on raids of cannabis farms as part of Operation Nitrogen and Operation Wireless; intelligence-led operations targeting cannabis cultivation in Ireland.¹⁰⁰ As a result of these operations, both running for the past few years, a substantial number of cannabis farms across Ireland were identified and dismantled. During 2011 there were 500 growing houses located under the above-named operations resulting in over 26,000 cannabis plants, with an estimated value of €10.5m, being seized.¹⁰¹

⁹⁷Criminal Law (Human Trafficking) (Amendment) Act 2013

⁹⁸Written response from Garda National Immigration Bureau (GNIB) on 1st of July 2013.

⁹⁹EU Drug Market Report, A Strategic Analysis, 2013. European Monitoring Centre for Drugs and Drug Addiction and Europol, p. 64

¹⁰⁰Although Operation Nitrogen was established to specifically target cannabis cultivation, Operation Wireless, set up under the direction of the Garda Commissioner, has targeted a variety of organised criminal activities nationwide including cannabis farms.

¹⁰¹Department of Justice and Equality, Topical Issues Debate Response by Minister Alan Shatter - The law enforcement efforts being taken to prevent the cultivation of cannabis and the trading of prescription drugs, 18th October 2012. Available at: www.justice.ie/en/JELR/Pages/SP12000287 [Last accessed 20th August 2013]

An Garda Síochána (hereafter as the Irish Police) reported that the production of cannabis has become more sophisticated, with higher-yield and higher-potency crops being cultivated. Cannabis farms are also much more difficult to detect due to more ingenious and clandestine cultivation techniques. For instance, in April 2013 the Gardai discovered a sophisticated underground bunker constructed from two 40-foot long containers, with heating and lighting equipment, hidden beneath a caravan. This cannabis grow house was described as the most “ingenious and sophisticated” that the police had come across.¹⁰²

According to the 2013 EU Drug Market Report, as well as media reports, the commercial cannabis industry in Ireland has been controlled predominantly by Vietnamese and Chinese gangs, although the Police in Ireland have reported “an increase in the number of Irish and Eastern European gangs involved in the industry”¹⁰³. Articles detailing cannabis farm raids are regularly reported in the Irish media, often noting that the individuals found in them have been charged, and even convicted, for cannabis cultivation. For instance, it was reported that “54 foreigners were arrested in cannabis farm raids as part of Operation Wireless, with the majority of those in custody being Chinese and Vietnamese nationals”¹⁰⁴. Other articles have reported cases where Vietnamese or Chinese nationals have been found alone working as the “gardener” in residential or commercial properties which have been converted into cannabis factories.¹⁰⁵

¹⁰²*The Irish Times*, “Gardaí uncover underground cannabis growhouse in Cork”. 25th April 2013, Available at: <http://www.irishtimes.com/news/crime-and-law/gardai-uncover-underground-cannabis-growhouse-in-cork-1.1372389>, [Last accessed 20th August 2013]

¹⁰³*The Irish Times*, “Garda raid cannabis grow houses” 1st of June 2012

¹⁰⁴*Irish Herald*, “Triad gangs busted here in cannabis grow hose raids”. 21st November 2012 Available at: <http://www.herald.ie/news/triad-gangs-busted-here-in-cannabis-growhouse-raids-28907167.html> [Last accessed 18th August 2012]

¹⁰⁵*Evening Echo*, “Drug grower brought here from abroad”. 19th June 2013. Available at: <http://issuu.com/tcmeditorial/docs/01ee2013-06-19e0/1> [Last accessed 17th August 2013]

Treatment of victims trafficked for forced labour in cannabis cultivation

A CCC Nuacht¹⁰⁶ report illustrates that in 75% of cases involving Chinese and Vietnamese nationals, claims of exploitation or maltreatment were made. In such cases it was reported that the victims were not paid; they were not allowed to leave the cannabis grow houses; their passports and other documents were taken; the victims were forced to sleep on the mattresses on the floor and their working conditions were horrendous. 24 potential victims of human trafficking went to prison with an average sentence of three years.

Where indicators of human trafficking are identified such cases should be investigated by the state for human trafficking. It is imperative that victims of human trafficking are not criminalised due to the criminal activities that they are forced to commit. In the light of the CCC Nuacht findings, it is important that the sentencing practices in such cases are examined to ensure that discriminatory practices are addressed.

The exploitative working conditions experienced by those working on cannabis farms have been reported in the media. In a case where 54 foreigners were arrested, it was reported that “although a number of the Chinese ‘Wo Shing Wo’ Triad gang were among the suspects, many arrested were unfortunate wretches who were being exploited by criminal gangs. Some of them were forced to live in terrible conditions with little food and under constant threat”.¹⁰⁷ In another recent article, reference was made to the living conditions of two Chinese nationals who were charged with cannabis cultivation. The men shared a mattress on the floor and had only a hand basin to wash themselves. Their living conditions were described as “horrendous”.¹⁰⁸ Another Chinese man was reported to be living in virtual slavery in a cannabis growing warehouse with the doors locked from the outside.¹⁰⁹

¹⁰⁶CCC Nuacht is an Irish court reporting agency.

¹⁰⁷*Irish Herald*, *supra* note 104

¹⁰⁸*Independent*, “Chinese farmers tricked into growing cannabis”. 11th December 2012, Available at: <http://www.independent.ie/irish-news/courts/chinese-farmers-tricked-into-growing-cannabis-28945889.html> [Last accessed 12th August 2013]

¹⁰⁹*Evening Echo*, “Drug grower brought here from abroad”. 19th June 2013. Available at: <http://issuu.com/tcmeditorial/docs/01ee2013-06-19e0/1> [Last accessed 17th August 2013]

Although the articles noted above did not explicitly include the term ‘trafficking’, the experiences and conditions described strongly indicate these individuals may have been trafficked for forced labour. However, in an article in 2011¹¹⁰ the term “trafficking” was used. That article stated that a Vietnamese woman, charged following a seizure of almost €1 million worth of cannabis “may have been trafficked to Ireland”. The woman’s defence solicitor stated that “she found herself in this jurisdiction and this may not have been of her own volition”.

Case Study 5: Exploitation in Cannabis Cultivation

In 2013 the MRCI was contacted by a criminal law solicitor regarding a case of a Vietnamese national (Mr B) arrested for cannabis cultivation. B, a middle aged man, was offered a job in Europe as a gardener by a wealthy friend. He accepted the job as he believed it would allow him to pay off his debts. He was introduced to a group of men who arranged for him to be smuggled out of Asia. After a long and difficult journey B arrived at a bleak industrial estate in rural Ireland and was taken to a barn. Inside the barn the heat was stifling. He saw hundreds of plants being fed and watered by hoses under artificial lights. He was shown how to control the hoses, the heaters and lights and was told that it would be his job to look after the plants. The men locked him in and threatened him that he would be very sorry if anything happened to them. He only had an old mattress to sleep on and was brought food once a week. B had no idea what country he was in, but he knew that he was trapped in a cannabis factory. When the police eventually discovered the barn, they found B still locked inside. With the assistance of an interpreter, he told them he had been kept as a slave, forced to tend to the plants, and had been threatened with violence. He told them that he had never received any money. B was charged with possession of the cannabis plants. He faces a mandatory minimum sentence of ten years in prison. Although there were strong indicators present within this case, the police did not identify the individual as a victim of trafficking. In this case the victim was charged and awaits trial for the unlawful production of cannabis.

Case Study 6: Exploitation in Cannabis Cultivation

Mr W, a middle-aged man, was brought to Ireland through the UK. In the UK, he worked in a few exploitative employments and was paid below minimum wage for a number of years. Through an acquaintance, he was offered the opportunity to move to Ireland to work in a Chinese restaurant as a porter. But on arrival in Ireland, he was taken to a small house in a rural location. He was told to water the plants in the house. He was also told by the recruiter that if he tried to escape, his boss, who was Irish, would kill him. W escaped from the house and contacted the police. W was hospitalised for a number of days suffering from exposure. He was then arrested and detained by the police on drug charges and later imprisoned. The MRCI was approached by the law firm representing the victim and the Courts requested the police to conduct an assessment of human trafficking. The arresting officer was in charge of making this assessment and human trafficking was not identified in the case.

¹¹⁰Irish Times, “Vietnamese Woman Charged over €1 m Seizure of Cannabis”. Available at: <http://www.irishtimes.com/news/vietnamese-woman-charged-over-1m-seizure-of-cannabis-1.555666> [Last accessed 17th August 2013]

It is clear from the case studies and media reports that potential victims of forced labour in cannabis production in Ireland are not being identified as such and are being prosecuted and imprisoned for crimes they may have been forced to commit.

Although trafficking indicators are present in the case studies and media articles noted above, out of all the Vietnamese nationals who have been arrested and charged with cannabis cultivation under the Misuse of Drugs Acts since 2010, no cases of trafficking for forced labour have been identified by the Irish Police¹¹¹.

It is of significant concern that where indicators of human trafficking are identified in cases before the courts that no consideration is being given to the possibility that the person is a victim of human trafficking. Due to this, potential victims are being prosecuted for drug offences. The Police in Ireland are the first contact for potential victims in these circumstances. It is critical that the Irish Police take an active role in ensuring that potential victims of human trafficking in such circumstances are identified.

The Irish Prison Service notes that the number of sentenced committals for controlled drug offences for 2012 was 922 out of a total sentenced committals of 13,526¹¹². The number of prisoners in custody under sentence for 2012 was 704 out of total number of 3,710¹¹³.

In 2013, the Irish Penal Reform Trust¹¹⁴ found that there were 80 persons of Asian origin in custody for drug related offences. The table gives a further breakdown as follows:

No of persons of Asian origin sentenced	46
No of Asians on trial / remand	34

50 persons are in custody for cannabis cultivation, of whom 35 have been sentenced. The remaining 15 are currently either on trial or on remand. The number in custody can be further broken down as follows:

No of persons of Asian origin	36
No of EU Nationals	7
No of Irish Nationals	5
No of UK Nationals	2

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¹¹¹Parliamentary Question No: 670, 11th June 2013. Available at <http://www.nascireland.org/parliamentary-questions/pq-crime-statistics-forced-labour/> [Last Accessed 23rd May 2014]
¹¹²Irish Prison Service, Offence Groups of Sentenced Committals by Year 2010 to 2012 and 2007 to 2009. Available at: <http://www.irishprisons.ie/images/pdf/yearlyoffence12.pdf> (last accessed 6th May 2014)
¹¹³Irish Prison Service, supra note 112
¹¹⁴Information received from Irish Penal Reform Trust on the 25th of November 2013

The MRCI have begun a programme of outreach to prisons in cooperation with legal firms to reach out to potential victims and provide expert advice and conduct assessments of human trafficking. Since the beginning of 2014, MRCI has assisted on 21 cases of potential human trafficking and conducted assessments of some of these cases.

Sentencing practices of courts in relation to persons of Asian origin, particularly to Vietnamese and Chinese nationals in cannabis production, has been highlighted as a key issue by CCC Nuacht (News Wire). The CCC Nuacht¹¹⁵ compiled data regarding the sentencing practices for cannabis cultivation within the Dublin area. They found Chinese and Vietnamese nationals who claimed exploitation or maltreatment make up 75 per cent of those going to prison for large-scale cannabis cultivation¹¹⁶. They recorded 51 convictions for cannabis cultivation over the period 2011 to July 2013 which is broken down as follows:

No of convicted Vietnamese Nationals	14
No of convicted Chinese Nationals	11
No of convicted Irish Nationals	18
No of convicted other EU Nationals	8

32 out of 51 were incarcerated for cannabis cultivation. This figure is broken down as follows:

No of incarcerated Vietnamese Nationals	13
No of incarcerated Chinese Nationals	11
No of incarcerated Irish Nationals	5
No of incarcerated other EU Nationals	3

It is evident from this data that almost all of those who were incarcerated were Chinese and Vietnamese nationals. This is in stark contrast to the treatment of Irish and other non-nationals.

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¹¹⁵Interview with the court reporter for CCC Nuacht (news wire) Conor Gallagher 25 October 2013
¹¹⁶*The Irish Times*. ‘Asian Migrants are 75% of those Jailed for Cannabis Cultivation.’ 3rd November 2013. Available at <http://www.irishtimes.com/news/crime-and-law/asian-migrants-75-of-those-jailed-for-cannabis-cultivation-1.1582467> [last accessed 5th November 2013]

Irish Legal and Policy Context

Several pieces of domestic legislation in Ireland deal with aspects of trafficking for forced labour¹¹⁷. These are:

The Illegal Immigrants (Trafficking) Act 2000 makes it an offence to organise or knowingly facilitate the entry into Ireland of another person who one knows or has reasonable cause to believe is an illegal immigrant.

The Employment Permits Act 2006 contains provisions which criminalise elements of a forced labour situation. For instance, Section 23 makes it an offence for an employer to retain their employees' passport, identity papers, and qualification documents, or to make deductions from their wages to pay for recruitment fees, travelling expenses or other fees related to obtaining a job in Ireland.

The Criminal Law (Human Trafficking) Act 2008 was the first comprehensive piece of anti-trafficking legislation in Ireland, incorporating a definition of trafficking modelled closely on the United Nation's Trafficking Protocol. The legislation created offences criminalising trafficking in persons for the purposes of sexual and labour exploitation (including subjecting a person to forced labour) or the removal of their organs. Under the Act, a person found guilty of the offence of trafficking in human beings is liable to a maximum penalty of life imprisonment and, at the discretion of the court, an unlimited fine.

In July 2013 the Criminal Law (Human Trafficking) (Amendment) Act 2013 transposed the criminal law provisions of EU Directive 2011/36, expanding the definition of human trafficking for the purposes of criminal activities and forced begging. The new definition of forced labour is based on the International Labour Organisation (ILO) Convention 29 of 1930 on Forced or Compulsory Labour where "forced labour" means a work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily¹¹⁸. This new law expands the definition of exploitation to include forcing a person to engage in an activity that constitutes an offence and as such acknowledges that victims may be exploited through criminal activities.¹¹⁹ The Act also defines forced begging as a form of labour exploitation.¹²⁰ These provisions are untested and as such it is unclear whether they represent a defence by prosecuted victims for the crimes they have been forced to commit.

¹¹⁷There are two main pieces of legislation in relation to begging. The Vagrancy (Ireland) Act 1947 prohibited begging in a public place. The Act provided for a maximum sentence of 1 month in prison for begging in a public place. This Act was subsequently replaced by The Criminal Justice (Public Order) Act 2011 which does not criminalise all forms of begging but only those forms which are accompanied by obstruction, harassment or intimidation. The Act specifies that a person who obstructs a person or premises while begging may have a fine of €500 imposed or a 1 month prison sentence

¹¹⁸Section 1(c) of the Criminal Law (Human Trafficking) (Amendment) Act 2013

¹¹⁹The Criminal Law (Human Trafficking) Amendment Act section 1 (a) (d) (i) expands the definition of exploitation to include forcing a person to engage in— an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain.

¹²⁰The Criminal Law (Human Trafficking) Amendment Act section 1 (b) (a) expands the definition of 'labour exploitation' as subjecting the person to forced labour (including forcing him or her to beg).

The Director of Public Prosecutors (DPP) has nominated particular prosecutors to deal with cases of human trafficking. There are general DPP Guidelines for Prosecutors (2010)¹²¹ which guide prosecutors on which factors should be considered in assessing whether to commence or continue with a prosecution. This includes a consideration as to whether it is in the public interest to prosecute a victim of human trafficking for offences they have been compelled to commit as a result of being trafficked. However, it does not detail the elements of what constitutes human trafficking or forced labour for criminal exploitation. In Ireland, prosecution is at the absolute discretion of the DPP, although an application can be made by way of judicial review to prohibit the trial of a victim as an abuse of process. Whether or not such an application would succeed depends on the level to which the commission of the offence was connected to the exploitation.

The Victims' Directive 2012/29/EU which is to be transposed by 2015, is an opportunity to address the rights of victims. The Directive gives minimum rights, outlines support services, and protection to all victims of crime. In particular it requires that certain information should be provided to victims on their first contact with the police. On request victims should also be provided with information and reasons as to why an investigation has been discontinued or why there was a decision not to prosecute. This will be an important development as currently victims are not provided with the reasons for the decision not to prosecute.

Anti-Trafficking Policy Provisions

An Anti-Human Trafficking Unit (AHTU) was set up in the Department of Justice and Equality in 2008 to coordinate the Irish Government's response to human trafficking. A National Action Plan (2009 - 2012) for the prevention and prosecution of human trafficking and the protection of victims was established in June 2009. This contains a range of measures designed to deal with individuals and gangs involved in trafficking in people as well as the development of awareness campaigns and the collection of up to date data on the nature and extent of trafficking. A second National Action Plan is currently being developed. The AHTU proposes to incorporate the expanded definition of forced labour into this plan and to develop safeguarding guidance material to reflect the complexities and subtleties of trafficking for criminal exploitation¹²².

¹²¹Guidelines for Prosecutors Director of Public Prosecutions, Nov 2010. Available at www.dppireland.ie/filestore/documents/Guidelines_-_Revised_Nov_2010_eng.pdf

¹²²Interview with AHTU staff member 15th May 2013

The Irish National Police established the Human Trafficking Investigation and Co-ordination Unit in 2009. The Unit oversees all investigations where there is an element of human trafficking and provides advice, guidance and operational support for investigations. In June 2008, the ‘Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking’ were introduced which provide for certain immigration-related protections for persons identified as suspected victims of human trafficking. The administrative arrangements provide for a period of recovery and reflection¹²³ and also, in certain circumstances, either a renewable temporary or permanent residence permit.

Protection measures for victims of trafficking are not included in the Criminal Law (Human Trafficking) Act 2008 or in the Criminal Law (Human Trafficking) (Amendment) Act 2013. However, there is a commitment to introduce protections in the forthcoming Immigration, Residency and Protection (IRP) Bill. There is no time frame for the legislation. The Administrative Immigration Arrangements constitute the interim protection measures for the victims of trafficking and will remain in place pending the enactment of the IRP Bill. These arrangements in effect create the National Referral Mechanism.

Recent legal developments in Ireland

In May 2014¹²⁴ a case was brought in the High Court against the Governor of the Clover Hill Prison, the Attorney General and the Director of Public Prosecutions for a failure to identify a victim of trafficking and for his unlawful detention. Mr Lin had been previously been charged under section 17 of the Misuse of Drugs Act 1977 having been discovered in November 2012 in a cannabis grow house. Mr Lin maintained that his detention was unlawful and that he ought not to be prosecuted as he was in fact a victim of trafficking. Prosecuting him would therefore be in breach Article 8 of Directive 2011/36/EU.

When Mr Lin’s father fell into debt and his family was threatened with violence by the money lenders, he was coerced into travelling from his home in China to Europe to work and pay off the debts of his father. Mr Lin left behind a child and wife and spent the following months traveling by planes and boats, suffering constant verbal and physical assaults. He arrived in Dublin and after a brief spell working as a waiter was forced to work tending to the plants in a number of cannabis factories until he was discovered by the police.

¹²³A person who has been identified by a member of the police, not below the rank of Superintendent in Garda National Immigration Bureau as a suspected victim of human trafficking, may be granted a permission to remain lawfully in the State for a period of 60 days (a “recovery and reflection period”). The purpose of this period is to allow the person time to recover from the alleged trafficking and to escape influences of the alleged perpetrators of the trafficking so that the person could make an informed decision as to whether to assist Gardaí or other relevant authorities in the investigation

¹²⁴Lin -v- Governor of Cloverhill Prison & Ors, [2014] IEHC 214 (2014)

Mr Lin's lawyers highlighted that there were several indicators of trafficking present, namely that Mr Lin was found locked into a building, living in squalor, he spoke no English and was confused about his location. He had never received any money nor was he in possession of his travel documents. These are internationally-agreed indicators of trafficking in human beings. The Judge, Mr Justice Hogan found that Mr Lin was exploited and that his incarceration in the grow house amounted to conditions of servitude (as it pertains to section 1 of the 2008 Act). However, he had not found that Mr Lin had been trafficked, arguing that *'key details in terms of identity, method of travel and dates of arrival had not been independently confirmed.'*

The argument that Mr Lin, at times, was free to move around and that he could not verify, through independent means, the dates at which he was trafficked demonstrates that the judge erred in his application of the definition of trafficking. Furthermore, the Judge placed the evidential burden on Mr Lin to prove that he was a victim. The case highlights serious issues in the states understanding of trafficking and serious gaps in its victim protection policies and procedures.

However, as a result of this test case that found that Mr Lin was in servitude, the Police have begun reviewing 70 similar cases of persons in prisons to ascertain whether human trafficking was present. Furthermore, the Migrant Rights Centre Ireland, who provided expert evidence in the case, have been approved for the Criminal Legal Aid Scheme to provide expert reports and are conducting assessments of 23 cases.

Conclusions

This exploratory research on the situation in Ireland demonstrates that there is a dearth of information and expertise in this area. Despite indicators of trafficking for forced labour presenting in cannabis production, few cases have been investigated and none have been identified as human trafficking. As a consequence of this, potential victims are being prosecuted, convicted and imprisoned for crimes they may have been forced to commit – while their traffickers enjoy impunity. It is evident that the Irish National Police are unable to identify victims in such circumstances. In this context there is an urgent need for the victims to be formally identified by an agency like the Health Service Executive (HSE) with the co-operation of MRCI so that victims receive the care and attention they require. This would enable the Police to carry out their investigation unfettered by concerns for victims' rights.

There is need for an independent rapporteur who could identify trends and lead out in addressing these issues in a coordinated and strategic way. The Irish authorities have been aware of this issue for over a year yet no one has acted to address this problem in a comprehensive way. New forms of trafficking are constantly emerging and it is necessary to have a key role in place to monitor, design responses and address the gaps in identification and prosecution.

Trafficking for forced labour in cannabis production in Ireland is a complex area and requires new expertise and guidelines. It is imperative that Department of Justice and Equality with its Anti-Human Trafficking Unit and the Office of the Director of Public Prosecutions in cooperation with stakeholders take a lead role in devising guidance for prosecutors, frontline police and legal professionals so that potential victims are identified and not criminalised by the State.

There is a real opportunity for Ireland to address this complex issue given that the legislation is now in place. The development of a new National Action Plan to combat human trafficking also provides

an opportunity to set out actions and targets that can sufficiently address the needs of victims subjected to forced labour in cannabis production. Within this context, the State should take a victim-centred approach in line with its EU obligations. This would involve ensuring that suspected victims have access to healthcare, appropriate safe accommodation, protection from prosecution, legal aid and legal status to respond to their needs.

The Czech Republic

Introduction

Trafficking for forced begging has been a recognised problem in the Czech Republic (CR) for several years. Increasingly, reports have also been appearing about trafficking for forced criminal activities indicating that this too should be recognised as an issue of concern in the CR. This chapter provides an overview of the nature and scope of trafficking for criminal exploitation and begging in the CR.

Nature and Scope of Trafficking for Forced Criminal Exploitation and Begging

Between 2008 and 2011, 54 trafficked persons entered the protection programme for victims of trafficking run by the Czech Ministry of Interior¹²⁵. In the same period, 118 persons were investigated and prosecuted for human trafficking crimes. However, no victims of trafficking for forced criminal activity or forced begging have been officially identified. Nor have there been any prosecutions for these forms of trafficking.

While the CR is principally a country of destination for victims from within the EU as well as outside of the EU, Czech citizens still become victims of trafficking elsewhere in Europe and beyond. RACE research found anecdotal evidence of Czech women being trafficked to the UK for the purposes of forcing them into sham marriage and prostitution. In 2009, two mentally handicapped women were physically and psychologically abused, forced into prostitution and domestic servitude. They were also forced to marry Vietnamese men in order for the men to obtain a residency permit. Like in many cases, the perpetrators were not convicted of trafficking in human beings but of other crimes such as abuse.¹²⁶

¹²⁵Security Policy Department, Prague. 2012. 'National Strategy to Combat Trafficking in Human Beings in the Czech Republic for the Period 2012 – 2015. Available at file:///C:/Users/v.brotherton/Downloads/National_strategy_to_combat_trafficking_in_human_beings2012-2015.pdf [last accessed 20th August 2014]

¹²⁶Stritecky, D. Topinka, D. et al. *Developments in Trafficking in Human Beings for the Purpose of Labour Exploitation and Forced Labour*. Institute of International Relations, Prague. 2013.

Despite the fact that so far there have been no prosecutions regarding forced criminal activities in the Czech Republic, there are several criminal offences which might be used, depending on the given situation. The first one is, naturally, the crime of trafficking in human beings (see Section 168 Subsection 1 and 2 et seq. of the Criminal Code); the Czech Criminal Code. Criminalization of forced criminal activities may thus most likely be applied upon the conditions of *abuse of error, distress or dependence for slavery or serfdom, or for other forms of exploitation*.

Application of a crime in relation to forced criminal activities will probably face, in addition to the big problems encountered by the current interpretation of this crime¹²⁷, some other problems. The CR, unlike for instance the Netherlands, unfortunately (almost) fails to integrate abuse of vulnerability into its understanding of exploitation¹²⁸. Despite the reasonable Czech criminal law definition of distress and dependence, the situations of dependence and distress are interpreted very rigidly. Furthermore, according to social workers and NGO staff many potential cases of human trafficking are not investigated as such because those investigating fail to recognise victims who have been forced into criminal activity.

Trafficking for forced labour in cannabis cultivation

Recent NGO and media reports show that trafficking for forced labour in cannabis factories may be a growing problem in the Czech Republic. In its 2012¹²⁹ annual report, the anti-drug directorate of the Czech Police notes a steady increase in cannabis cultivation, both in indoors and outdoors operations. In 2012, the Czech police identified 199 cannabis farms, an almost 20% increase on 2011. Cannabis growing operations in the CR have consistently been dominated by Vietnamese gangs. In 2012 alone 283 Vietnamese individuals were arrested for drug related offences. Neither the police nor other official reports contain information about instances of trafficking for forced labour in cannabis production. Nevertheless, given the reports by media and NGOs, and given the experience in other countries, there is a reasonable likelihood that also in the Czech Republic, cannabis operations are staffed by forced labourers.

¹²⁷For further details see Šmíd, M. *Comparative Analysis of European Sentences in the Area Of Trafficking in Persons for the Purposes of Labour Exploitation*. In: Strítecký, V., Topinka, D. et al. *Discovering Trafficking in Human Beings for the Purpose of Labour Exploitation and Forced Labour: European Perspective*. La Strada Česká republika, o.p.s., Praha 2013.

¹²⁸Grivna (Criminal Code II Commentary, p. 1522, according to Šmíd, p. 91, 2013)

¹²⁹Anti-Drug Directorate of the Czech Police, 2012 Report. Available at <http://www.policie.cz/clanek/vyrocnizpravy-annual-reports-jahresbericht.aspx> [last accessed 20th May 2014]

Between 2003 and 2011, 11 Vietnamese people were officially recognised as trafficked in the CR. This number includes men and women who were trafficked for sexual exploitation and/or labour trafficking. None of these cases had been reported to have involved forced labour in cannabis cultivation.

Case study 7: The ‘Bricked in’ Gardener

In June 2012, the Czech media¹ reported a case of a “Vietnamese gardener” who was found bricked in a growing house in the West of the Czech Republic. Police spoke about having to rescue the Vietnamese man who was bricked into the building and reported that the man said he was happy to have been discovered.

Despite the fact that the incarceration of the man is a strong indicator of a potential forced labour situation, he was charged with drug crimes along with the rest of the Czech-Vietnamese gang whose members were arrested at their homes.

RACE in Europe Research has been unable to ascertain the length of sentencing in this case, but in similar cases the ‘gardeners’ have been sentenced to between 3 and 6 years.

¹http://zpravy.idnes.cz/odhalena-pestirna-se-zazdenym-zahradnikem-fje-/krimi.aspx?c=A120621_093742_krimi_cen [Last Accessed 12th June 2014]

The above case study points to a problem that has been repeatedly identified by Czech NGOs; the lack of understanding of the definition of trafficking for forced labour by the Czech law enforcement:

“We discussed this case with the anti-drugs directorate of the police. They maintained that the “gardeners” are paid – sometimes even €1000 per month. But given their circumstances, I believe any payment is irrelevant. It is still a situation of an abuse of position of vulnerability when they are forced to do work that they did not want to do. And if they are bricked in, then it is even more irrelevant to discuss what would be an appropriate wage for an incarcerated worker.”

(La Strada employee interviewed by the Czech Radio).¹³⁰

¹³⁰http://www.rozhlas.cz/plus/cizinci/_zprava/konopny-byznys-a-nucena-kriminalita--1241677
[Last Accessed on 12th June 2014]

The Czech media has been paying increased attention to the issue. In summer 2013, the Czech Radio aired a 20 minute¹³¹ documentary on forced labour in cannabis factories in the CR. The programme also explored the links between the CR and the United Kingdom (UK). RACE in Europe research, as well as information from legal representatives', points to the fact that many of the Vietnamese children and adults that are found exploited in cannabis factories in the UK came via the Czech Republic. Some would only transit the CR for a short time, others were first exploited in forced labour or forced prostitution in the CR and subsequently brought to the UK.

The Czech Radio broadcast reported another case uncovered by the Czech police in July 2013 in the south-eastern part of the country. In a residential home, the police found 1,500 cannabis plants and arrested three men. A reliable source confirmed to the Czech Radio that the arrested men were Vietnamese and were locked in the house . Incarceration is a strong indicator of forced labour. However, the RACE in Europe project has been unable to ascertain whether any investigation into a potential trafficking situation has been conducted in this case.

RACE in Europe research has uncovered anecdotal evidence that the criminal networks that produce and distribute cannabis have begun incorporating the production of crystal meth into their operations. Crystal meth is widely used in the Czech Republic¹³³ and users account for between 20% and 60% of those seeking drug abuse treatments¹³⁴. The Czech Republic also produces and exports large quantities of crystal meth, exporting six tonnes in 2013¹³⁵. It's an extremely dangerous

¹³¹http://www.rozhlas.cz/plus/cizinci/_zprava/konopny-byznys-a-nucena-kriminalita--1241677 [Last Accessed on 12th June 2014]

¹³²http://www.rozhlas.cz/plus/cizinci/_zprava/konopny-byznys-a-nucena-kriminalita--1241677 [Last accessed on 12th June 2014]

¹³³In 2009 Police raided 340 crystal meth factories in the Czech Republic, the most ever discovered in the EU. <http://www.ceskenoviny.cz/domov/zpravy/policie-loni-v-cesku-nasla-340-varen-pervitinu-nejvice-v-evrope/446104> [Last accessed 12th June 2014]

¹³⁴The Foundation for a Drug Free World, Homepage. Available at <http://www.drugfreeworld.org/drugfacts/crystalmeth/a-worldwide-epidemic-of-addiction.html> [Last accessed on 12th July 2014]

¹³⁵P, Simek. 2014 *Indoor Cannabis Cultivation in the Czech Republic: Activities of Vietnamese Organised Crime Groups* PowerPoint Presentation. National Drug Headquarters – Criminal Police and Investigation Service. London, UK. 28th May 2014

drug to produce since the ‘cooking’ of crystal meth involves mixing explosive chemicals together and can cause severe burning and disfigurement. Due to the highly risky nature of producing crystal meth, it is likely that those who are forced to produce cannabis are also forced to ‘cook’ crystal meth. Given how dangerous crystal meth is if taken and the severity of its addictive properties, it is likely that law enforcement will pass high sentences¹³⁶ to anyone caught producing or distributing it. Because of such, there is concern amongst practitioners that police officers and prosecutors will be even less likely to consider and account for trafficking indicators when dealing with cases of crystal meth production than they are with the production of cannabis.

Trafficking from Vietnam to the Czech Republic

Vietnamese are the second largest group of foreign nationals living in the CR. This is due to historical ties between the then socialist Czechoslovakia and the Socialist Republic of Vietnam in the 1970’s. Currently, some 58,000¹³⁷ Vietnamese are officially registered in the CR. The presence of a large diaspora community, as well as the belief of many that the CR is a good place to find work in Europe have been described as some of the pull factors that contribute to the willingness of Vietnamese to travel to Europe. These are also the factors that are abused by the traffickers. The majority of the Vietnamese communities are situated in Prague or on the borders with Germany and Poland. Here they have set up large market halls offering a range of goods and services and from which organised criminal groups often operate.

The journey and recruitment process is similar to the one describe in the chapters on the UK and Ireland. However, as mentioned above, the CR often seems to be the first stop for Vietnamese destined for forced labour in other countries in Europe. Research participants from Nordic countries, such as Norway and Denmark confirmed that they too have come across Vietnamese workers in forced labour or severely exploitative labour conditions, who came through the CR. Europol data also confirms that Vietnamese organised criminal gangs linked to human trafficking have a strong presence in the CR. The National Drug Headquarters of the Criminal and Investigation Service of the Czech Police have reported that although the trafficking of Vietnamese into cannabis cultivation isn’t officially recognised, it does happen¹³⁸. The police are aware of the coercion and deception tactics used by traffickers, such as debt bondage, but find investigating trafficking problematic due to the victims’ lack of trust of the police and the difficulty of penetrating OCGs¹³⁹.

¹³⁶The production of crystal meth in the Czech Republic carries between a 5 and 10 year prison sentence.

¹³⁷Czech Statistical Office Yearbook 2013, Available at http://www.czso.cz/csu/2013edicniplan.nsf/engkapitola/0001-13-eng_r_2013-0400 [last accessed 20th May 2014]

¹³⁸P, Simek. 2014 *supra note* 135

¹³⁹P, Simek. 2014 *supra note* 135

Given these facts, the authorities both in the CR and in other European countries should consider a joint approach to tackling this form of trafficking that appears to be affecting an increasing number of people.

Trafficking for exploitation through begging and other forms of forced criminality

There is a dearth of official statistics on this form of trafficking in the CR. Hence, this section draws on research by the Multi-Cultural Centre in Prague that focused on Bulgarians and Romanians in the Czech Republic, because of previous concerns about their potential exploitation through criminal activities and forced begging. This can be to a certain extent corroborated by experience and findings in other European countries. It is also important to note that according to Eurostat¹⁴⁰, Bulgarians and Romanians are the most common nationalities of trafficking victims trafficked within the European Union. Furthermore, it is also interesting to note that the data of the Czech Statistical Office shows a steady increase of Bulgarians and Romanians in the Czech Republic.

Trends in Begging and Forced Begging

Begging is not a criminal offence in the CR. However, it is regulated by local by-laws, which differ in their definition and approach to regulation/prohibition of begging. Some permit it in certain areas and other authorities, like that of the Brno Municipality¹⁴¹ and the Prague Municipality¹⁴² prohibit it outright. However, the only situation in which begging is a criminal offence is when it constitutes forced begging. Forced begging in this instance falls under ‘other forms of exploitation’ under the offence of trafficking in persons, Section 168 of the Criminal Code.

Research¹⁴³ has shown that in the CR, like in other countries, some foreign children beg voluntarily to improve their economic situation. Nevertheless, experts consulted for the research agreed that many of these children are likely to have been sold by their parents. The underlying factors are well-known: poverty, social and economic discrimination and low levels of education. While some children may find this way of life to be a norm, it does not mean that the situation is not one of forced labour and abuse.

¹⁴⁰Eurostat European Commission, Trafficking in human beings 2013. Eurostat Methodologies and Working papers. Available at http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf [last accessed on 20th May 2014]

¹⁴¹Decree of Brno No. 6/2010

¹⁴²Decree of the Capital of Prague No. 14/2000

¹⁴³Mícková, M. Explorace jevu detského žebrání v Česku a na Slovensku (Exploration of the Phenomenon of Child Begging in the Czech Republic and in Slovakia – in Czech only). Univerzita Palackého v Olomouci Cyrilometodejská teologická fakulta. Diplomová práce (Diploma thesis). Olomouc, 2012.

When forced begging of foreign children occurs in the CR, it is most commonly Roma children from Romania or Bulgaria who, either individually or in groups of two or three, pass through subway carriages or trams, playing a musical instrument and collecting money. Children are also known to beg at railway stations.

Response to forced child begging

From 2006 to 2009, forced child begging became a major concern in the CR when groups of children from Romania and Bulgaria were being sent to beg in tourist areas, particularly in Prague. Having been noticed by the authorities, the children were taken into care by the child protection authority¹⁴⁴ and placed in specialized facilities. Shortly after they were collected from care, often by people producing statements claiming legal guardianship, as this was the only validation required at the time. In these cases, the children would then return to the streets begging. It was noticed that the same person would act as the legal guardian for multiple children and having recognised this trend, several judges began blocking the release of children, precipitating a change in the Ministry of Justice guidance. It issued a new interpretation deeming that parental responsibility is non-transferrable and that a child can only be released into the care of those who can prove that they are his/her parents. This prevented traffickers from collecting children from care. For a short period of time traffickers began transporting the children's parents to the CR and forcing them to collect their children from care. According to the Czech police however, this method proved too costly for the traffickers and incidences declined. As such, since 2009 there has been a marked reduction in the number of children forced to beg in the CR. Cases that are currently reported seem to be isolated individual cases rather than large organised operations.

The measures taken by the Czech authorities seem to have significantly reduced forced child begging in the country. However, cases of forced begging have subsequently mushroomed in neighbouring countries, such as Italy, indicating that the problem has been displaced rather than eradicated. This is further evidence that traffickers tailor their activities based on the social and legal landscape of the environment in which they operate, adapting to changes in legislation and efforts by the authorities. Addressing forced child begging requires not only a national level response but also a coordinated response across European borders.

The Czech government has (upon the initiative of NGOs dealing with this issue and in cooperation with the police) made considerable efforts to develop detailed instructions for a course of action to be followed by state administration in relation to forced child begging. The instructions are described in detail in a manual¹⁴⁵, which details procedures that all state authorities should follow when in contact with a child (especially a migrant child) found begging and recommends that it should be presumed that the child is a victim of trafficking, unless proven otherwise.

¹⁴⁴The full title is The Department for the Social and Legal Protection of Children. Czech acronym: OSPOD

¹⁴⁵Czech Ministry of the Interior, National Strategy to Combat Trafficking in Human Beings 2008 – 2011. Security Policy Department. Available online at http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F1725%2Ffile%2Fde364ed39728bc22fdc4ddc4d53.pdf&ei=ZMqZU6nOCYbA7AbU5IGoCQ&usg=AFQjCNFEbvQhGLYPPGZ4vXrR0i9L_VuIIA&sig2=L344Tg3VvESk-qLIKFOkDA&bvm=bv.68911936,d.ZGU [Last accessed 18th June 2014]

Other criminal exploitation: Illegal Cigarette production

Some information, such as from the customs, and cases reported in the media suggest that Bulgarian and to a lesser extent, Romanian, nationals were likely to have been victims of forced criminal activities in the CR through the illegal production of cigarettes (see Case Study 2: Illegal Cigarette Production, below).

However, more research is needed to identify whether other forms of criminal exploitation may be an issue in the Czech Republic.

Case Study 8: Illegal Cigarette Production

In 2012, the police discovered several illegal cigarette production lines in at least four locations in the Czech Republic. In several cases this activity was also connected with the illegal production of cannabis. According to the testimony of a customs official, the Bulgarians 'employed' had worked unbearably long working hours and obviously did not have control over their situation. Other media sources did not mention their working conditions, only stating that some Bulgarian workers were highly qualified and had previously worked in tobacco companies in Bulgaria that went bankrupt. It seems probable that the circumstances of individual Bulgarian workers may have varied. Some Bulgarian workers are known to have been deported, others faced charges for tax, fee and other mandatory payment evasion.

Source: The Multi-Cultural Centre, Prague.

Conclusion

The experiences of victims of forced criminality remains largely unknown in the CR because of the scant attention given to the issue so far. Cases are mostly known only from the media (such as the reports about illegal cigarette production lines or cannabis cultivation) or from the experience of NGOs. It is yet to be acknowledged in national trafficking statistics in the CR, that trafficking for forced criminal activities exists. *The RACE in Europe* project research suggests that the true extent of this phenomenon has been thus far underestimated.

While media reports often include indications of forced labour, the issue of the “offenders” being in fact victims of trafficking is not reported on. So far, it has mainly been the NGOs raising their voices to say that the extensively-reported cases of cannabis cultivation might be trafficking cases. Those who are likely to be victims are usually removed from the CR or are convicted of crimes themselves. With the entry into force of the EU trafficking directive (2011/36) with its non-punishment provision, the CR will need to find a way to resolve this issue and introduce national guidance to assist the law enforcements authorities in implementing this guidance.

There also needs to be an increased awareness by frontline professionals that trafficked persons can, and are, being exploited through criminal activities, sometimes in multiple ways. This would result in an increase in such victims being identified. As traffickers find new ways in which to exploit their victims in order to generate profit, this awareness should help the relevant authorities to remain alert to emerging trafficking trends.

Furthermore, the limited capacity of the specialised police unit designated to combat trafficking and the high turnover of staff leads to loss of knowledge and inability to address new and emerging trends.

The Netherlands

Introduction

The Netherlands is a source, destination, and transit country for trafficked persons. Trafficking for sexual exploitation continues to be the most prevalent type of exploitation in the Netherlands, although forced labour and ‘other forms of exploitation’ are gradually featuring more in trafficking statistics. This chapter considers the extent of trafficking for criminal exploitation and begging in the Netherlands and the current challenges in identifying victims. It will also examine the Dutch legislation to prosecute traffickers and discusses the measures in place to prevent the criminalisation of victims.

Nature and Scope of Trafficking for Forced Criminal Exploitation and Begging

As human trafficking has been increasingly prioritised in the Netherlands¹⁴⁶, the number of trafficking victims identified has also risen. Between 2007 and 2011 the number of identified trafficked persons rose by 77%, from 716 to 1,222¹⁴⁷, and the final figure for 2012 was above 1,700¹⁴⁸. A growing proportion of those identified over this period were men, and an increasing number were identified as being exploited outside of the sex industry (from 6% in 2007 to 20% in 2011), a category which includes forced labour, but also criminal activities such as drug trafficking¹⁴⁹.

The number of registered potential victims who have been trafficked for forced criminality in 2010 was six, and in 2011 it was eight. There were also nine victims trafficked for drug trafficking in 2010 and 13 in 2011. In 2012, five cases of human trafficking for criminal exploitation and one case of forced begging were reported to the Coordination Centre for Human Trafficking (CoMensha)¹⁵⁰. The table below provides further details of these cases¹⁵¹.

¹⁴⁶Trafficking in Human Beings: Visible and Invisible. *Statistics on the prosecution and trial of suspects 2008-2011*, p.1

¹⁴⁷Chapter 3, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, 2012. *Trafficking in Human Beings: Visible and Invisible. A quantitative report 2007-2011*. The Hague

¹⁴⁸CoMensha Annual Report 2012 Available at: <http://www.mensenhandel.nl/cms/docs/jaaroverzicht2012.pdf> [Last accessed 21st August 2012]

¹⁴⁹National Rapporteur, *supra note 147*, p.43

¹⁵⁰CoMensha is the central reporting agency of victims of human trafficking in the Netherlands, responsible for the national registration of reported cases for the purposes of the reporting to the National Rapporteur. At present, only the police, the Royal Netherlands Marechaussee and the Inspectorate of the Ministry of Social Affairs have a duty to report trafficking cases, although all relevant organisations should report if they encounter a victims of trafficking.

¹⁵¹Information provided by CoMensha via email on 10th September 2013.

Table: Cases of forced criminality and forced begging reported to CoMensha in 2012.

Number of people	Nationality	Gender	Exploitation type
1	Armenian	Male	Forced shoplifting
1	China	Female	Forced shoplifting
2	Mongolia	Female	Forced shoplifting
1	Netherlands	Female	Forced to buy telephone credits ¹⁵²
1	Bulgaria	Male	Forced begging

The forced begging case seen in 2012 was the first ever reported to CoMensha. However, the Office of the Dutch National Rapporteur on Trafficking noted that this may not be a true representation of those exploited¹⁵³. The Dutch National Rapporteur’s Office for example, registered 18 cases of trafficking for forced criminal exploitation in 2012¹⁵⁴.

Further criminal activities through which trafficked persons have been known to be exploited in the Netherlands have been formally reported through the Dutch National Rapporteur’s reports as well as reports by NGOs working on trafficking issues, such as Fair Work¹⁵⁵. In the 7th Report by the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children¹⁵⁶, cases of exploitation through drug-related offences, theft and fraud are documented. These cases include Bulgarian women forced to cultivate cannabis¹⁵⁷, victims of ‘lover boys’¹⁵⁸ forced to smuggle drugs, Roma minors¹⁵⁹ forced to beg and steal (as well as earn money through playing music and selling newspapers)¹⁶⁰, and trafficked persons forced to commit fraud offences including benefit fraud¹⁶¹. Furthermore, the Dutch Police Force has witnessed, amongst others, cases of Mongolian people forced to steal large quantities of expensive perfume and a case of a Lithuanian student forced to break into a car and steal a radio¹⁶².

The NGO Fair Work has undertaken work to identify and support trafficking victims within the prison estate in the Netherlands. The project began in 2004 and throughout its course identified trafficked persons who had been exploited through a range of criminal activities similar to the ones noted above. All had been convicted for the crimes they were forced to commit. Examples include young

¹⁵²Exploiters force vulnerable or mentally disabled people to take out phone contracts. The exploiters then run up extortionate bills whilst the victim gets into debt. There is debate around whether this constitutes forced criminal exploitation.

¹⁵³Email exchange with key staff member at the Office for the Dutch National Rapporteur in Human Beings and Sexual Violence against Children, 1st October 2013

¹⁵⁴Ableman, M. 2014. *The National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children: At a Glance* PowerPoint Presentation, the Netherlands, February 2014.

¹⁵⁵More information can be found on their website here: <http://www.fairwork.nu/>

¹⁵⁶Seventh Report of the Dutch National Rapporteur, 2009. Available at: <http://www.dutchrapporteur.nl/reports/seventh/> [Last accessed 22nd August 2013]

¹⁵⁷Dutch National Rapporteur, 2009 *supra note* 156, p.218

¹⁵⁸The ‘lover boy’ phenomenon is when a man or boy deceives a woman or girl into believing they are in a romantic relationship with them in order to exploit her. See Fifth Report of the Dutch National Rapporteur, 2007, p.67

¹⁵⁹A large number were under the Dutch age of criminal responsibility (12) so were not prosecuted for the offences.

¹⁶⁰Dutch National Rapporteur, *supra note* 156, p.221-222

¹⁶¹Dutch National Rapporteur, *supra note* 156, p.223. This issue was first discussed in the Dutch National Rapporteur’s 5th Report. Available at: <http://www.dutchrapporteur.nl/reports/fifth/> (see p. 162)

¹⁶²Interview and questionnaire with RACE in Europe seminar participant. May 2014.

North African men forced to smuggle drugs and young Romanian boys made to pickpocket¹⁶³.

Victim identification

It has been acknowledged that the number of formally-registered trafficking victims cannot be regarded as an accurate representation of the true number of trafficked persons within the Netherlands at a given time¹⁶⁴. For those who are criminally exploited, a number of reasons have been proposed as to why fewer numbers of victims are identified than exist in reality¹⁶⁵. For instance, it was proposed that due to its ‘relative unfamiliarity’, both socially and legally, this form of trafficking remains largely invisible¹⁶⁶. Certain criminal activities take place away from the public view, such as forced labour in cannabis cultivation, whilst others, such as pick-pocketing are much more visible. Often victims do not identify themselves as such. This is either through fear of their exploiters as a result of psychological and physical abuse, or as is often the case with children, that they do not realise that their situation amounts to trafficking. This is particularly problematic when providing after care and pursuing traffickers.

Victims are also failing to be identified as such when encountered by the police, either because victims are scared to speak out¹⁶⁷ due to fear of being detained, are too ashamed, or are unaware that they are in fact victims of trafficking. Police are also failing to recognise trafficking indicators when presented with cases. Activities such as begging and stealing are currently considered to be a public order issue, rather than linked to human trafficking. As shown by the research by Fair Work, many trafficked persons are being convicted for the crimes they have been forced to commit. The case study below: Challenges with Victim Identification, highlights the difficulty of providing aftercare to victims when they fail to identify as such.

Case Study 9: Challenges with Victim Identification

Whilst conducting a raid on a cannabis farm, police discovered two Vietnamese children, Linh, a girl of 14 and Dung, and boy of 15. Neither had a passport or a residency permit. They didn’t have any family in the Netherlands and both denied any involvement in the cannabis farm. Dung said that Linh was already in the house when he arrived. Aid workers and the authorities suspected that they were being exploited and they were taken into care. It is thought that they were both forced to grow cannabis and were sexually exploited

Both refused to press charges or to apply for residency. Linh disappeared after 4 months in care and a week later D also disappeared. At the time of writing both are still missing and the police have closed the investigation.

Source: Jola Vollebregt, Project Coordinator of ECPAT Netherlands.

¹⁶³See Fair Work, Signaling Victims of Labor Exploitation and Criminal Exploitation in Alien Detention, 2011. Available at: <http://www.fairwork.nu/assets/structured-files/Publicaties/Rapporten/Rapportage%20VD%20arbeids-%20en%20criminele%20uitbuiting%20DEF%203007201.pdf> [Last accessed 22nd August 2013]

¹⁶⁴Dutch National Rapporteur, Trafficking in Human Beings: Visible and Invisible, A quantitative report, 2007-2011, page 108

¹⁶⁵See Fair Work, 2011, *supra note 163*

¹⁶⁶Fair Work, 2010, ‘Exploitation outside of the Sex Industry’. p.29

¹⁶⁷It was noted that those who experience ‘other forms of exploitation’ are less likely to speak out about their exploitation than those who are sexually exploited (see Dutch National Rapporteur, *supra note 14*).

However it is important to note that despite there being a trend of Vietnamese exploited in cannabis factories across Europe, in the Netherlands, there are far fewer cases. The regulation of cannabis cultivation in the Netherlands is given as the main reason for this¹⁶⁸. The most commonly recognised trend of trafficking for forced criminal exploitation and begging in the Netherlands as noted by practitioners is that of forced criminality of Roma, especially Roma children. A substantial increase in the number and size of Roma groups, which have been most commonly associated with trafficking for forced criminality and begging across Europe, has been noted in the Netherlands. Some of these groups have been present in the Netherlands for centuries whilst others have arrived more recently¹⁶⁹. The case study; Tackling forced criminality by families, briefly discusses the issues which have been seen in these communities and the actions recently taken to address them¹⁷⁰.

Case Study 10: Tackling forced criminality by families

In 2011, local officials from municipalities across the Netherlands requested the support of the Ministry of Security and Justice to deal with the high number and diversity of problems they were witnessing with families within Roma communities¹. These included housing issues, a high incidence of early arranged marriages, truancy and poor health and pre-natal care. Of significant concern was the high levels of anti-social behaviour and criminality undertaken by these families; children were becoming involved in criminal activities such as shoplifting and pick-pocketing from a young age. These criminal exploits were generating large profits for the family which could, in some cases, be then channelled abroad. Because the children were being enlisted to ‘work’ for their families, they were unable to attend school.

This request for support resulted in the establishment of a national programme on combating the exploitation of Roma children, involving both the Ministry of Social Affairs and Employment and the Ministry of Security and Justice, as well as actors such as the Youth Care Agency, the Child Care and Protection Board, the Police and different municipalities and their mayors.

In connection with this programme, acting at the behest of the Ministry of Security and Justice, the Police Academy of the Netherlands started the project called Knowledge Development Roma and created an informational document² on tackling the problems within Roma families, for use by social workers and law enforcement officials who encounter these families in their day-to-day work.

¹ These municipalities have come together to form the Platform Roma municipalities in the Netherlands to openly discuss and share best practice when dealing with problems related to Roma communities.

²Sollie et al., 2013, Dealing with Problem Families with a Roma background: an informational document for professionals (in Dutch). The Hague, Boom/Lemma.

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¹⁶⁸Interview and questionnaire with RACE in Europe seminar participant. May 2014.
¹⁶⁹For instance, in 1978, eleven municipalities admitted approximately 550 people of Roma heritage as part of a general amnesty requested by the Central Government. By 2013 this figure had grown to around 3,000.
¹⁷⁰Information provided by the Police Academy of the Netherlands, October 2013, as well as the Office of the Dutch National Rapporteur.

Prosecuting Traffickers

Until 2005, trafficking for the purposes of exploitation outside of the sex industry was not criminalised as it was unclear until this point whether there was a ‘genuine social need’ for such legislation¹⁷¹. Research showed¹⁷², however, that such exploitation was taking place in the Netherlands and, as a result, a new human trafficking provision, Article 273a (now renumbered as 273f) was brought into force¹⁷³ to cover all forms of trafficking.

The Public Prosecution Service (PPS) in the Netherlands deals with a relatively large number of human trafficking cases and, compared to other EU Member States, has a high conviction rate. The PPS has prosecuted an increasing number of traffickers over the last few years, recording 240 in 2010, 272 in 2011 and 327 in 2012¹⁷⁴. In 2009, the first conviction for human trafficking for the purposes of criminal exploitation was secured for the offence of drug smuggling¹⁷⁵. In July 2013 the district court of the Central Netherlands dealt with a case in which a 10 year old girl was forced by her grandfather to steal groceries from a supermarket. The grandfather was successfully convicted; the first conviction in a case of exploitation outside of the sex industry in which the victim was a minor¹⁷⁶.

In 2012 the PPS dealt with its highest ever number of trafficking cases, 311, and secured convictions in 71% of them¹⁷⁷. The majority of defendants were male, with one third (37%) being of Dutch nationality, followed by Bulgarian, Hungarian and Romanian nationality. However, there have been criticisms that the penalties traffickers receive are too low and result in the reappearance of the same offenders¹⁷⁸.

¹⁷¹Dutch National Rapporteur, 2010, ‘Trafficking in Human Beings: Ten years of independent monitoring’, p.25.

¹⁷²See Dutch National Rapporteur, supra note 156.

¹⁷³To replace the previous Article 250a of the Dutch Criminal Code

¹⁷⁴Interview and questionnaire with RACE in Europe seminar participant. May 2014.

¹⁷⁵Harlem District Court, 22nd April 2009, LJN: BI3519. (see Dutch National Rapporteur, supra note 156, p. 217)

¹⁷⁶Information provided via email by the Office of The Dutch National Rapporteur, 1st October 2013.

¹⁷⁷Dutch National Rapporteur, supra note 147, p.7

¹⁷⁸US, Trafficking in Persons report, p. 278

Non-criminalisation of trafficking victims

There is no specific non-punishment provision for victims of trafficking within the Dutch Criminal Code, however there are ‘general possibilities for declining to prosecute or punish victims’¹⁷⁹. As stated by the Dutch National Rapporteur in 2009:

“When in a situation of human trafficking it is assumed that the commission of an offence by a victim of trafficking was caused by the human trafficker, the human trafficker is punishable for it, whilst the victim (the perpetrator), is not liable for the punishment” (p.218, 7th Report).

This principle is in place so that victims are not unfairly convicted. A conviction may also negatively impact on a non-Dutch national’s immigration status and they may be at risk of deportation (see Case study 11). However, in practice, the non-punishment principle may be difficult to implement, particularly in cases where the victim is forced to commit a criminal offence¹⁸⁰. The victim must be identified as such and there must be the awareness by those who come into contact with the victim of the legal possibilities not to prosecute or to punish them.

Case study 11: Impact of criminalisation on victims

The B9 Regulation allows non-Dutch nationals who are victims, possible victims or witnesses of human trafficking a temporary residence permit to remain in the Netherlands if they choose to assist the police in their investigations. In certain cases, however, a B9 application may be denied. One of the grounds on which it can be rejected is due to the person’s criminal record. This may pose particular difficulties in cases where a person is trafficked and forced to undertake criminal activities.

Such a case was reported in the 7th Report of the Dutch National Rapporteur¹ in which a young Mongolian woman (D) was arrested for shoplifting. During questioning, D declared that she was forced to commit the theft but was unable to provide enough accurate information for the police to continue the investigation. She instead had to pay a fine for the offence. As she was living illegally in the country, plans were made for D to be repatriated. However during interviews with the Return and Departure Service (DT&V), trafficking indicators were found and it emerged D had been forced to work as a prostitute and commit thefts in the Netherlands. D was found to be a victim of trafficking and she was admitted to the B9 scheme. However, because of her conviction for shoplifting there were major concerns that she would not be granted continued residence.

The outcome of the case was not reported at the time that the report was published. However, the case highlights that there are very real concerns that victims may be further victimised after leaving their trafficking situation as a result of their exploitation.

¹Seventh Report of the Dutch National Rapporteur, 2009, p. 233-4

¹⁷⁹Dutch National Rapporteur, supra note 156, p.217

¹⁸⁰They may be coerced into committing an offence by their trafficker or they may voluntarily commit an offence as a potential means of escaping their trafficker.

As has been shown by the Fair Work research¹⁸¹ undertaken in prisons, victims of trafficking who have been criminally exploited have been, and are, incarcerated in prisons in the Netherlands. The research included cases of those who had been forced to cultivate cannabis, traffic drugs and commit thefts. As noted earlier, there is a host of reasons why victims of trafficking are not being recognised as such and are being criminalised for the crimes they committed as a result of their exploitation. Reasons include: victims being unwilling to disclose their experiences due to shame or fear, a failure by authorities to recognise trafficking indicators, and a lack of confidence by frontline staff in referring potential victims under the B9 regulation.

Fair Work suggest a number of ways in which the number of trafficked persons identified could be increased, such as incorporating human trafficking into the training programme for prison staff (this could perhaps be extended to other frontline services, such as police and healthcare professionals so that intervention occurs prior to them being imprisoned), having a trafficking specialist within detention institutions, or a cultural mediator who may be able to train staff on how best to support prisoners and encourage disclosure.

It has been noticed over the course of the RACE in Europe Project that pockets of best practice do exist in the Netherlands, arguably more so than in any other country examined through the projects research. All of the regional polices have units specialising in investigating human trafficking. 27 Public Prosecutors are specially trained in trafficking in human beings, especially in how to identify potential victims of trafficking. Internal guidelines on human trafficking for the police as well as the PPS exist and are widely used. These guidelines explain the different manifestations of trafficking and specifically address the issue of forced criminality and its forms. They also specifically pay attention to the concepts of non-prosecution and non-punishment, as well as best practice in dealing with child victims, providing links to further relevant guidance. NIDOS provide secure, specialist accommodation for child victims of trafficking and operate a ‘chain approach’ whereby information is shared between all practitioners who come into contact with the children.

Conclusion

Victims of trafficking who have been criminally exploited are acknowledged within formal trafficking statistics in the Netherlands, although these statistics are unlikely to capture the true extent of the number of victims. Although there appears to be a growing awareness of new forms of exploitation, such as criminal exploitation, as well as non-punishment and non-prosecution provisions, further work needs to be done with frontline professionals to increase their understanding.

Municipalities continue to view activities such as begging and stealing as a public order issue, viewing those they encounter as perpetrators rather than as potential victims. This coupled with the fact that victims may be unwilling to disclose their experiences or self-identify as a victim, is resulting in the prosecution of trafficked persons.

¹⁸¹Fair Work, 2011 supra note 163.

A certain reluctance has been shown by police in dealing with cases of Roma children who are potentially being criminally exploited due to the complex problems these communities face and pose. The multiagency work currently undertaken to gain more insight into some Roma communities in the Netherlands is necessary to understand better the complex issues at play and how best to tackle exploitation within these communities.

Rest of Europe

Introduction

The previous four chapters provide an in-depth look at trafficking for forced criminal exploitation and forced begging in the four project partner countries and regions¹⁸². This chapter offers an overview of the key trends in Europe and some country case studies.

Trafficking in human beings for the purposes of criminal exploitation and forced begging is not a particularly new phenomenon across Europe but has been identified as an increasing trend, particularly for child victims¹⁸³. Institutional and inter-governmental reports have regularly noted incidences of this type of trafficking. For instance, in 2012, a United Nations Office on Drugs and Crime (UNODC) paper¹⁸⁴ reported cases of trafficking for petty crime and begging in eight countries in Central and Western Europe. Such cases have also been recorded through regional research, such as by the Council of the Baltic Sea States (CBSS) 2013 report¹⁸⁵ on child trafficking.

¹⁸²The UK chapter also touched briefly on Scotland and Wales, although the partner organisations within the UK are all located in England.

¹⁸³See, for instance, Europol Knowledge Report, 2011, p. 8. Available at: https://www.europol.europa.eu/sites/default/files/publications/trafficking_in_human_beings_in_the_european_union_2011.pdf [Last accessed 13th August 2013]. See also Migration Policy Practice, July 2012, pp. 3-7. Available at: http://publications.iom.int/bookstore/free/MigrationPolicyPracticeJournal_10July2012.pdf [Last accessed 13th August 2013]

¹⁸⁴UNODC, 2012, Global Report on Trafficking in Persons (2012), pp.56-57. Available at: http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf [Last accessed 14th August 2013]

¹⁸⁵CBSS, 2013. Children Trafficked for Exploitation in Begging and Criminality

A challenge for law enforcement and child protection. Available at: http://www.childcentre.info/public/Childtrafficking_begging_crime.pdf [Last accessed 15th August 2014]

It is clear, however, that the levels of awareness and reporting of this issue differs significantly between countries. Data collection systems in place are inadequate to provide a complete and accurate picture of the true nature of this type of trafficking, as well as trafficking more generally. For instance, the European Roma Rights Centre (ERRC) report¹⁸⁶ on trafficking in Roma communities in 2011, noted that the five countries involved in the study (Bulgaria, Hungary, Romania, Slovakia, Norway and the Czech Republic) did not collect important information, such as the ethnicity of the traffickers or the victims of trafficking. Some individual countries disaggregate data according to type of exploitation and include forced begging and forced criminal exploitation. Serbia, for example, has recorded cases of trafficking for forced begging (41 between 2009 and 2012)¹⁸⁷ as well as trafficking for criminal offences (eight between 2009 and 2012)¹⁸⁸. The Slovenian law enforcements authorities, for example, have observed a trend of forced begging in every town in Slovenia but formal identification of potential victims is almost non-existent. The police recorded 499 cases of begging in 2010 but none of the 19 centres for social work have registered any cases of trafficking for begging between 2009 and 2011¹⁸⁹. Lack of data and comparable statistics makes it difficult to monitor and analyse trends.

Nature and scope of trafficking for criminal exploitation in Europe

Existing reports and research by the *RACE in Europe* project found that trafficked people are being exploited for the following criminal activities across Europe:

- Theft (including pick-pocketing, ATM theft and shop-lifting)
- Benefit fraud
- Cannabis cultivation
- Drug trafficking/smuggling
- Counterfeit goods production (such as DVDs and cigarettes)
- Illegal charity bag collection
- Begging (criminalised in certain jurisdictions such as Romania and Bulgaria¹⁹⁰)
- Sham marriage
- Illegal adoption¹⁹¹
- Metal theft¹⁹²
- Methamphetamine (Crystal meth) production

¹⁸⁶European Roma Rights Centre (ERRC), 2011. Breaking the Silence: Trafficking in Romani Communities. Available at: <http://www.errc.org/article/breaking-the-silence-trafficking-in-romani-communities/3846> [Last accessed 15th August 2013]

¹⁸⁷11 in 2009, 9 in 2010, 7 in 2011 and 14 in 2012. See Group of Experts on Action against Trafficking in Human Beings (GRETA), 2014 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria, p.11. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_19_FGR_SRB_public_en.pdf [Last accessed 20th May 2014]

¹⁸⁸2 in 2009, 1 in 2010, 2 in 2011 and 3 in 2012. GRETA Report on Bulgaria, 2014 *Supra note* 187, 2014, P11

¹⁸⁹GRETA, 2014 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, p.24 Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_20_FGR_SVN_public_en.pdf [Last accessed 20th May 2014]

NGOs, governments and intergovernmental organisations recognise that incidents of trafficking for forced criminal exploitation and begging across Europe are increasing¹⁹³. Traffickers, as highly adaptable criminals, exploit the opportunities presented in the social and legal landscape of each country, changing their activities to respond to new markets and counter-trafficking initiatives¹⁹⁴, as was highlighted in the study of forced child begging in the Czech Republic. Factors such as the transportation routes available between and within countries will also impact on the nature and extent of trafficking seen. Variations in the types of criminal activities through which trafficked persons are exploited, as well as in the profile of these victims and their traffickers, exist across different countries (see case study 12: Sweden). It is also known that traffickers will exploit their victims in a number of ways in efforts to maximise the profits they can make from each individual. For example, there are reports of women in Germany trafficked into prostitution who were forced to steal their client’s phones¹⁹⁵. Examples of multiple types of exploitation like this are common.

¹⁹⁰As per Article 326 of the Romania Penal Code and Articles 189, 328 and 329 of the Bulgarian Penal Code

¹⁹¹In so far as it fulfils the constitutive elements of trafficking

¹⁹²Molnar, A. 2014. *Forced Criminality Europol Perspective*. PowerPoint Presentation. Europol, London, UK. 28 May 2014

¹⁹³For example, GRETA in their country report on Serbia, states: *‘awareness raising should ... inform the general public of forms of THB which are on the rise, such as labour exploitation, forced begging, forced commission of criminal offences and trafficking within Serbia.’* See GRETA report on Serbia, 2014 p.32. Available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_19_FGR_SRB_public_en.pdf Furthermore, in Poland in 2012, there were 21 recorded cases of trafficking for the purpose of forced criminal activities and 5 for the purpose of forced begging. (GRETA report on Poland, page 10)

¹⁹⁴Europol, 2011, supra note 183, p. 6

¹⁹⁵Interview and questionnaire with RACE in Europe seminar participant. May 2014.

Case study 12: Child trafficking for forced criminality in Sweden

The number of officially identified victims of trafficking in Sweden is low, with only 170 recorded cases between 2006 and 2010. In 2012, in an attempt to map the true extent of child trafficking within Sweden, a survey¹ was undertaken using interview and questionnaire data from frontline staff that had come into contact with child victims. The survey identified 102 suspected child victims, aged between 3 and 17 years. Two-thirds of those identified were foreign nationals, many of whom originated from Romania and Bulgaria. 35 of those identified were Swedish, although the true figure is thought to be significantly higher as some municipalities did not recognise internal trafficking.

Both girls and boys were identified as having been criminally exploited for pick-pocketing and theft, as well as begging.

The survey's findings were corroborated by a Child Protection Specialist working within Stockholm², who further noted that initial concerns regarding this issue were raised in 2006-7 when boys, mainly from Belarus, Ukraine, Russia, Romania and Bulgaria, were observed taking part in organised petty crime and begging. More recently, the children observed have been of North African and Afghani origin.

In Sweden, there is a particularly high incidence of children going missing, often once they have entered the asylum system. Many of those identified were found to already have come into contact with social services and started the asylum process on a previous occasion. The need for improved communication between the police and social services within Sweden was highlighted as key to preventing vulnerable trafficked children who had been arrested for petty crime from being released early (and therefore placed at a risk of re-trafficking) by the police, before being assessed by social services.

¹The report summarising the survey's findings is available (in Swedish) at: http://www.lansstyrelsen.se/stockholm/SiteCollectionDocuments/Sv/publikationer/2012/Webbversion_Rapport_2012_27_Barn_utsatta_for_manniskohandel.pdf

²Telephone interview undertaken with the RACE project on 13th March 2013

Trafficking for forced begging

Cases of individuals being trafficked and forced to beg by criminal gangs or by family members, have been reported all across Europe for a number of years¹⁹⁶. GRETA country reports have made

¹⁹⁶See, for instance, Terre des Hommes, 2004, 'Lost kids, lost futures. The European Union's response to Child Trafficking', p.25.

references to incidences of forced begging in 22 out of the 28¹⁹⁷ countries that have so far been evaluated. Although research undertaken on this issue has primarily focused on child begging, adults are also known to be exploited through begging (see case study 13: Trafficking for Forced Begging from Slovakia to Italy, below).

Case study 13: Trafficking for Forced Begging from Slovakia to Italy

M had spent all of his adult life working in a factory in Slovakia, operating one of the specialist machines. When the factory closed, M along with many others lost his job. He was unable to find another and was struggling to make ends meet. An acquaintance of his called F suggested that he could arrange a job at a construction site for the two of them. Having no other option and no reason to doubt the offer, M agreed. They set off from Slovakia, travelling first to Austria. When they reached a major town not too far away from Italian borders, M’s acquaintance said that they had run out of money and would have to work to enable them to travel further. As they would be unable to find any other kind of work fast enough, F said they would have to beg for money. Although not happy to do so, M went along with it, in the hope that it would allow him to reach Italy and start the construction work.

In a couple of days, they had collected enough money to continue their journey to Italy but when they arrived, F took M to a spot under a motorway bridge close to a town and said that they would be staying there. He told M that there no construction work and that M would instead have to go to town every day to beg. M was shocked, but with no money and no local knowledge, he had no other choice. Every day he had to beg for money, all of which F kept. F threatened him, beat him and kept a watchful eye over him. This lasted several weeks. With very little to eat and no access to a toilet or shower, M felt frightened and deeply ashamed. One day, when he was washing in a stream that was running through the town, he had the courage to run away. He ran in the opposite direction from the motorway bridge and shouted to everyone he passed that he needed the police. Eventually, someone directed him to a police station, where he was referred to a service which provided him with support and helped him return to Slovakia.

Source: IOM Slovakia

¹⁹⁷Countries where cases of forced begging have been noted are: Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, France, Luxembourg, Moldova, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden and the UK. The countries where forced begging was not recognised are: Cyprus, Denmark, Georgia, Ireland, Latvia and Malta

Those who are forced to beg are made to hand over their earnings to their exploiters and commonly suffer abuse if they fail to reach the monetary targets they have been set. Children forced to beg experience serious violations of their rights, and are often exposed to severe physical, psychological and emotional abuse¹⁹⁸. In some cases, the victims are deliberately maimed, or their clothes or shoes are taken away to attract more sympathy. Traffickers will deliberately target mothers with children or persons with visible disabilities¹⁹⁹.

Forcing others to beg (and undertake begging-related activities, such as selling small items in return for money that may have little to do with the value of the item²⁰⁰) can be an extremely lucrative business. Intelligence from Operation Golf (see Case study in UK Chapter) showed that children begging and pick-pocketing in central London could each generate £10,000 a year. Victims may be also concurrently exploited through other activities, such as petty crime or benefit fraud, to further increase the profits for their traffickers.

Begging is a complex issue, both legally and socially. Research on forced child begging, rather than voluntary child begging²⁰¹, shows that children may be trafficked and forced to beg by their parents and guardians or by third parties, such as organised criminal gangs. Cases have also come to light where whole families have been trafficked by criminal gangs and forced to beg as a family unit. A host of factors make certain individuals and ethnic groups particularly at risk of being exploited (see ‘Vulnerability Factors’ in the introduction).

¹⁹⁸Anti-Slavery International, 2009. Begging for Change: Research findings and recommendations on forced child begging in Albania/Greece, India and Senegal. Available at: http://www.antislavery.org/includes/documents/cm_docs/2009/b/beggingforchange09.pdf [last accessed 13th August 2013].

¹⁹⁹Molnar, 2014 *supra note* 192

²⁰⁰ILO, 2004. A rapid assessment of bonded labour in domestic work and begging in Pakistan, p.22

²⁰¹More information on child begging can be found in the Save the Children’s 2011 ‘Regional report on Child Begging’. Available at: <http://tdh-childprotection.org/documents/regional-report-on-child-begging> [last accessed 12th August 2013]

Case Study 14: Forced Begging in Romania

A recent study has recognised the severity and complexity of trafficking for forced begging in Romania. The Romanian National Agency against Trafficking in Persons (ANITP) carried out a study into the experiences of 191 men, women and children who had been subjected to this form of trafficking. Romania has specific domestic legislation criminalising trafficking for begging and victims are entitled to receive the same assistance as victims of other forms of trafficking. Despite this, forced begging is the third most prominent type of exploitation recorded by the authorities in Romania, making up 10% of those identified as being trafficked.

The study recognised differences in trends between those who were trafficked within Romania and those who were sent abroad. Those exploited domestically were usually disabled, children or homeless and most were already practicing begging. Domestic traffickers usually operate on their own or in small groups and many exploit their own children or family members .

The majority of victims (81%), however, were trafficked outside of the country. In most countries begging is not an offence. This reduces the risk to the trafficker. There is also often a higher living standard outside of Romania which increases profits and finally, because of the newness of this type of trafficking, authorities are unaware and have not yet developed strategies to combat it.

Most victims suffered physical abuse, emotional abuse and financial indebtedness.

'I was afraid all the time, at night I could not sleep, my heart was beating really fast, I did not know what to do. I had no money, they supervised us all day long. They were threatening to kill us all of the time¹.' (B, 22 years old)

As has been recognised in other studies, there is an over-representation of Roma as both victims and traffickers. Roma in Romania are at greater risk of trafficking because of a number of socio-economic factors such as poverty, social exclusion, discrimination, their lack of formal education and the inadequate social assistance systems.

The study made a number of observations and recommendations in reference to preventing trafficking for forced begging. Of particular note is the conclusion that the proper identification of victims and their referral to adequate assistance could 'break the chain of this particular type of trafficking.'

Source: ANTIP, October 2013. *Trafficking in Persons for Begging – Romania Study*

Trafficking of Roma

Research into trafficking within Roma communities estimated that 50-80% of the trafficked persons in Bulgaria are Roma. In the Czech Republic they make up 70% and in Slovakia, 60%, a large number of these being exploited through begging and petty crime²⁰². In May 2013, GRETA cited that in Bosnia and Herzegovina, indications of trafficking for forced begging and forced marriage ‘has taken worrying proportions over the last few years, especially in the Roma community²⁰³. Furthermore, NGOs and authorities have reported a resurgence in the trafficking of South-Eastern European children, often of Roma origin, for begging and theft in France²⁰⁴. This was illustrated by the disruption of a criminal network trafficking Roma children from Bosnia and Herzegovina to Paris to pickpocket in 2010²⁰⁵.

In some cases, entire families may be held under debt bondage by criminal gangs. If a trafficked child is removed from an exploitative situation by the authorities and is then returned to their home country, there may be a serious risk that they will be kept in a cycle of abuse and exploitation by their extended family. Therefore, this risk must be assessed prior to repatriation. Case study 15: below provides a snapshot of the trafficking of Roma within Bulgaria.

²⁰²ERRC, 2011 *supra note* 186, p.11

²⁰³Group of Experts on Action against Trafficking in Human Beings (GRETA), 2013 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina, p.10. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_7_FGR_BIH_with_cmnts_en.pdf [Last accessed 20th May 2014]

²⁰⁴Group of Experts on Action against Trafficking in Human Beings (GRETA), 2013 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France, p.16. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_16_FGR_FRA_publication_en.pdf [Last accessed 20th May 2014]

²⁰⁵GRETA report France, *supra note* 204, p.16

Case study 15: Trafficking of Bulgarian Roma

Ethnic Roma in Bulgaria are at particularly high risk of trafficking due to a host of socio-economic factors¹. Bulgarian Roma children are at particular risk of being forced into street begging and petty crime, especially between the ages of 5 and 11². They may also be vulnerable to multiple exploitation if they fail to earn enough through one particular activity, e.g. being forced into prostitution if they fail to make sufficient income through begging.

The disproportionate representation of Roma in trafficking statistics is due to the social exclusion and high level of poverty they experience³. Parents of Roma often participate in the trafficking of their children as a result of being extorted by Roma clan bosses or being caught in the trap of 'kamatari'⁴ (lending from Roma loan-sharks who charge exorbitant interest rates), and being forced to 'lend' their children as a way of paying off debts. However, whole family units may also be trafficked together and exploited by criminal gangs.

Trafficking of Bulgarian nationals for the purposes of exploitation through criminal activities and begging tends to happen internationally, rather than internally, due to the higher standards of wealth in the destination countries; countries such as the UK and Greece⁵. Although not yet part of the Schengen area, in which free movement across internal borders by member state citizens is allowed, Bulgaria's accession to the EU in 2007 has increased the ease of movement of Bulgarian nationals across Europe.

The Bulgarian government has taken action to increase its outreach to Roma communities, in an attempt to reduce the number of Roma falling prey to traffickers. However, as was noted in the 2011 GRETA⁶ report on Bulgaria, in order to truly tackle and prevent further trafficking in Roma communities "there is clearly a need for a comprehensive, co-ordinated and adapted approach ... [aimed] at improving their integration and access to education, health care and social assistance"⁷.

¹ERRC, 2011 supra note 186, pp. 41-56. See also Ahrin, 2012. Conceptualizing Child Labour Trafficking and Exploitation: The Case of Roma Children in Montenegro, p166-7

²Bulgaria, Novinar, 2012, Children at risk most often become victims of trafficking. Available at http://novinar.bg/news/detkata-v-risk-stavat-zhertva-na-trafik-naj-chesto_NDEoNDszNQ==.html [Last accessed 12th June 2013]

³ERRC, 2011 supra note 186, pp. 41-56.

⁴See Terres des homes, 'Romania: Networks exploit the poverty of the Roma'. Available at: <http://www.tdh.ch/en/news/romania-networks-exploit-the-poverty-of-the-roma> for further explanation of this exploitative lending system.

⁵Nasilie.eu, Undated. 'Trafficking and sexual exploitation of children'. Available at <http://nasilie.eu/?p=4046> [Last accessed 10th June 2013]

⁶Group of Experts on Action against Trafficking in Human Beings' is responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties

⁷GRETA, report on Bulgaria 2011. Supra note 187

Other forms of trafficking for criminal exploitation

People are being trafficked across Europe to commit an increasing variety of criminal activities. *RACE in Europe* research has collected anecdotal evidence of trafficking for the purpose of smuggling illicit drugs, often involving people from Northern and Western Africa. This trend was frequently cited in interviews and questionnaires with project participants who claimed that most victims end up being prosecuted for drug smuggling.

Case Study 16: Trafficking for Drug Smuggling

A, a Nigerian woman was trafficked to Denmark and forced to transport cocaine in a body belt on her person. She was caught by the authorities and arrested. HopeNow, a Danish NGO visited her in prison and identified her as being trafficked. HopeNow testified at her trial, stating that she was indeed a victim of trafficking and that her exploiters had threatened her with taking the life of her child, who had since been moved across Nigeria for their safety. Her trafficking claim was thrown out of court on a lack of evidence and A was sentenced to three years in prison.

Source: Hope Now, Denmark. (<http://hopenow.dk/en/>)

Increasingly, people are being trafficked for the purpose of state benefits being fraudulently claimed in their name²⁰⁶ and other types of fraud and deception²⁰⁷. In France, for example, there have been cases of people with mental disabilities being forced to claim social security benefits, for which the traffickers keep the proceeds²⁰⁸. The same victims are then often also exploited in domestic servitude.

There are increasing reports of cases of trafficking for sham marriages. While marriage of convenience in order to obtain status for third-country nationals in the EU has been occurring for decades, the trafficking of women to exploit them through sham marriage is a relatively new phenomenon. In these cases, a victim, usually female, is coerced, sometimes kidnapped or transported and forced to marry a third-country national for the purposes of obtaining status in the EU²⁰⁹. The key difference in these two situations is that the bride shifts from being a perpetrator of crime to a victim of crime. The trafficker, acting as the middle man, receives payment for making the arrangements. The victims, often Eastern European women and sometimes with mental disabilities or victims of

²⁰⁶Stritecky, D. Topinka, D. et al. *Developments in Trafficking in Human Beings for the Purpose of Labour Exploitation and Forced Labour*. Institute of International Relations, Prague. 2013. P30

²⁰⁷Molnar, 2014. *Supra note 192*

²⁰⁸Interview and questionnaire with RACE in Europe seminar participant. May 2014.

²⁰⁹Stritecky, D. Topinka, D. et al. 2013 supra note 206. P30

sexual exploitation, are kept under strong physical and psychological control²¹⁰. Once married, the victims are likely to be forced into domestic servitude and often suffer sexual assault. The third country nationals entering into the illegal marriage are often from India and Pakistan²¹¹. In response to a case in early 2013 in which Hungarian women were trafficked to the UK for sham marriages, Europol issued an Early Warning Notification²¹² explaining the link between sham marriages and trafficking and calling for frontline staff to be aware of the signs. The Early Warning Notification recognises the increased incidence of this crime across Europe and the need for coordinated cross border cooperation.

Case Study 17: Trafficking for Drug Dealing in Austria

A group of young Nigerian men were brought to Austria with the promise of a contract with a European football club. Instead, they were held in a flat in Vienna for three months and were taught how to sell drugs. When they were forced to sell drugs, one of the men managed to escape and contacted EXIT, a Vienna based organisation working to combat human trafficking, and Caritas, who were able to provide him with support.

Source: Case study taken from the Men’s Health Centre report, 2013, ‘Male victims of human trafficking in Austria’. Available at: <http://www.men-center.at/> [last accessed 16th June 2014]

Victims are also trafficked for metal theft. In January 2013 Europol conducted a two day law enforcement operation which spanned 17 European countries and targeted serious organised crime groups involved in stealing and transporting metal. It is likely that given the nature and scale of organised metal theft across Europe, vulnerable individuals are trafficked and coerced into carrying out a number of tasks. See Case Study 18: Trafficking for Metal Theft below.

Case Study 18 : Trafficking for metal theft

In March 2010, V, under threats of violence, was forced by his employer to travel from his home in Romania to North London in the UK. Here he was kept in a shed in the garden, which became his bed and toilet. He was beaten, raped and fed only scraps. He was forced to drive for his exploiters, carry out household chores and forced to steal metal. The stolen metal was sold illegally for a profit. After 6 months of continual abuse and exploitation he escaped and fled to a police station. He was housed at a safe location and an investigation ensued. In April 2012, Croydon Crown Court found all 4 of his exploiters guilty of Human Trafficking, False Imprisonment, Assault and Rape. They were sentenced to a total of 40 years imprisonment.

Source: DS John O’Brien, Metropolitan Police at RACE project training in London, May 2014.

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²¹⁰Molnar, 2014. Supra note 192

²¹¹Molnar, 2014. Supra note 192

²¹²EUROPOL. Early Warning Notification *Marriages of Convenience: A link between facilitation of illegal migration and THB*. March 2014. Available at https://www.europol.europa.eu/sites/default/files/publications/ewn_2014_8_public_fp_phoenix_fp_checkpoint_marriages_2.pdf [Last accessed on 18th June 2014]

As with other forms of trafficking, exploitation through forced criminality modifies its form across different landscapes and jurisdictions. In Norway, for example, there are cases of North African men and boys forced to smuggle and sell drugs and adult and child Roma forced to beg and sell fake gold jewellery. In Poland, NGOs have noted cases of Polish citizens forced to act as drug mules across Europe, forced to beg and sell fake perfumes, often under debt bondage. Many countries (such as Poland and Norway) have no official NRM making the identification of victims of trafficking problematic. Without a formal and centralised identification mechanism, understanding the type and scale of exploitation to which victims are subjected to is challenging, especially considering many are subjected to multiple types of criminal exploitation concurrently. It also means that victims rarely receive the support and justice that they're entitled to.

Response to trafficking for criminal exploitation and forced begging

The research found that the response to trafficking for forced criminal exploitation and forced begging varies across Europe, however, pockets of good practice are developing. For example, at the national level, 'ARSIS'²¹³ provides support to children and young people on the streets of cities within Greece, many of whom have or are being exploited through begging. It also carries out programmes working with particularly vulnerable groups, such as Roma, to prevent trafficking and exploitation. Internationally, the Council of the Baltic Sea States regularly brings together experts and practitioners from its member states to share information and best practice on the issue of trafficking, with its 'Expert Group for Cooperation on Children at risk' (EGCC) recently focusing heavily on child exploitation through criminal activities and begging²¹⁴.

²¹³More information on the organisation can be found on their website: <http://arsis.gr/pii-imaste/i-arsis/>

²¹⁴More information can be found at <http://www.childcentre.info/12497/>

In 2013 reports emerged of high incidences of trafficking of Roma for forced begging and petty crime. A number of steps were taken to tackle it, including the partnering of The Federal Prosecutors Office with the Romanian and Austrian governments on a project called ‘Stepping up action against forced begging: a multidisciplinary approach’ and backed by the European Commission²¹⁵. As well as this, the Network of Expertise on Trafficking in Human Beings has established a working group on begging with the aim of bringing together stakeholders who are in a position to prevent forced begging. However, these examples of best practice are isolated and few adequate, coordinated responses by States exist. The Belgian authorities for example, are still criticised by GRETA for failing to adequately deal with the forced begging, ‘*whether it be in the sphere of prevention and identification and protection of victims or in the area of prosecution of traffickers*’²¹⁶.

Case Study 19: Austrian Response to trafficking

Austria has a centralised police force under the Ministry of the Interior and all cases are linked to one human trafficking office. The police run a nationwide human trafficking hotline open 24 hours a day which any member of the public or police officer can use. Since the establishment of the Human Trafficking Office, Austria has secured three convictions of human trafficking without any testimonies from victims. In 2005 Austria implemented the Plume Treaty which gave executive powers to police officers from other jurisdictions, dramatically increasing the opportunity for cross border collaborative investigations into human trafficking. Police officers receive training in spotting trafficking indicators and only specially trained members of trafficking units are allowed to interview potential victims of trafficking.

Source: Col Tatzgern, G. 2014 *Human Trafficking Crime Austria; the Situation in Austria*. PowerPoint Presentation. Criminal Intelligence Service Austria. London, UK. 29th May 2014.

Various challenges in combatting trafficking for forced criminal exploitation and begging exist across Europe. EUROPOL note that human trafficking groups meet the EU criteria to be defined as organised crime groups (OCGs) but are most likely to be made up of small group²¹⁷ who tailor their activities in response to efforts from the state and civil society. The most challenging OCGs for law enforcement to penetrate are those with family allegiances or strong codes of conduct²¹⁸.

²¹⁵Group of Experts on Action against Trafficking in Human Beings (GRETA), 2013 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, p.24 Available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_14_FGR_BEL_with_comments_en.pdf [Last accessed 20th May 2014]

²¹⁶GRETA report Belgium, supra note 215, p.28

²¹⁷Molnar, 2014. Supra note 192

²¹⁸Molnar, 2014. Supra note 192

A challenge that transcends all types of criminal exploitation is victim identification. It can be argued that in many instances the obligation exists for the victim to self – identify in order to defend themselves and their actions. This obligation is not stipulated anywhere in legislation or policy, yet in practice it happens often. Victims are often unaware that they are indeed victims, they often do not understand or realise that they have been trafficked. In many cases interpretation of the word ‘trafficked’ is different in different languages and cultures. In Vietnam for example, many understand trafficking as being ‘sold’ and ‘taken’ and unless these elements of the trafficking process are made obvious to the victim, it is very unlikely that they will self-identify. This inability to express oneself as a victim is compounded by a high level of fear and mistrust of the authorities and of the police, both in victims home counties and in destination countries. Children especially, are groomed by their traffickers into telling a particular story and are fearful of the real or perceived threats to their families.

Non-punishment and non-prosecution of victims of trafficking

Research has shown that victims are widely and routinely punished for the crimes they are forced to commit. Practitioners from countries all across Europe attending RACE seminars cited the arrest and imprisonment of victims of trafficking as a serious issue. In 24 out of 28 Country Reports, GRETA calls for the adoption and full transposition of non-punishment provisions, or calls for further steps to be taken to ensure its full implementation²¹⁹. It is recognised that this secondary victimisation not only breaches rights as victims of a crime, but denies victims of their rights to assistance and aftercare. For example, in France it is highlighted that children who are forced to commit offences are *‘primarily regarded as petty offenders and therefore do not benefit from any assistance measures’*²²⁰. State responses which focus on arrest and prosecution of offenders of these types of crimes and which fail to recognise coercion, make trafficking for criminal exploitation a low risk and high profit venture for traffickers²²¹. Furthermore, having experienced secondary victimisation, victims are less likely to cooperate with law enforcement, making prosecution of traffickers even less likely²²².

²¹⁹For example, there is strong wording in GRETA’s country report on Malta which states that *‘GRETA is concerned by civil society reports that victims of trafficking have been punished for acts committed when they were under the control of their traffickers and/or deported without being identified as victims of’*. GRETA, 2013 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta, p.7 Available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_14_FGR_MLT_with_comments_en.pdf [Last accessed 20th May 2014]

²²⁰GRETA report France, *supra note* 204, p.42

²²¹Vit Stritecky, Daniel Topinka et al. ‘Developments in Trafficking in Human Beings for the Purpose of Labour Exploitation and Forced Labour.’ Institute of International Relations, Prague. 2013. p.29

²²²Molnar, 2014. *Supra note* 192

Investigation and prosecution of traffickers

As shown by the joint UK-Romania Operation Golf (for more see UK chapter), cross-border cooperation facilitated by the use of European tools such as Joint Investigation Teams (JITs) and Europol can result in the successful apprehension of traffickers. It could be argued however that such tools are being used too infrequently as prosecution rates for trafficking crimes across Europe remain low²²³. As we have seen throughout this study, there are pockets of good practice when it comes to prosecuting traffickers. For example, in Romania in 2004 a network of judges was created which specialises in hearing trafficking cases, this includes 56 judges from every court of appeal and tribunal throughout the country²²⁴. However, as with state responses to protecting victims, efforts to prosecute traffickers remain ad-hoc and inconsistent across Europe.

The UNODC²²⁵ provides a database of cases of prosecutions for trafficking crimes. Despite cases being categorised by the type of exploitation, trafficking for criminal or illicit activities is not one of them. Begging is included, and the database contains over 30 cases from across Europe where forced begging has been prosecuted. The database has a disproportionate number of sex trafficking cases, which likely reflects the prosecutorial priority which states and law enforcement give to this type of trafficking at the expense of other victims.

Conclusion

Trafficking for forced criminality and forced begging is taking place all across Europe, although the nature and extent to which it is taking place varies between countries. Traffickers respond to money-making opportunities, as well as to anti-trafficking measures and continually adapt and change the types of criminal activities through which their victims are exploited. States must therefore be alert to new trafficking trends. Training of front-line staff to recognise potential victims and the installation of effective data collection systems would significantly aid this monitoring process.

Certain individuals and groups across Europe are at particular risk of falling victim to trafficking and forced begging. As well as the need for support and protection systems for those who have been trafficked, preventative measures need to be put in place to tackle the root causes of their vulnerability if a significant long-term reduction in trafficking is to be seen.

The full transposition of the EU Directive 36/2011 will ensure that member states are providing the assistance and support trafficked persons are entitled to, and that they are protected from being punished for the criminal activities they have been forced to undertake. It will also assist authorities in implementing successful investigations into their traffickers. Collaboration between relevant agencies, at both the national and international level will be key to both identifying and supporting victims, and bringing traffickers to justice.

²²³The number of convictions for trafficking in human beings actually decreased by 13 % between 2008 and 2010, from 1,534 to 1,339 (see Eurostat, 2013, Trafficking in Human Beings. Available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf [Last accessed 12th September 2013])

²²⁴Interview and questionnaire with RACE in Europe Seminar participant. May 2014.

²²⁵UNODC Case Law Database. Available at http://www.unodc.org/cld/search.jsp?f=en%23tag_s%3ABegging [Last accessed 18th June 2014]

Conclusions and recommendations

RACE in Europe is one of the few projects specifically focussing on increasing knowledge about and improving responses to trafficking for forced criminal activities and begging in Europe.

This report offers an insight into the problem. It finds that types of criminal activities through which victims are exploited differs across European countries as traffickers tailor their criminal operations to the social and legal landscape of a country and circumvent anti-trafficking initiatives. However, there are links between countries in terms of the routes through which victims are trafficked. Hence, coordinated action across Europe is needed to tackle this problem.

There are tools that can be used to achieve this. The EU Directive (2011/36), which incorporates a wider definition of trafficking to include trafficking for criminal activities and forced begging should lead to harmonisation of legislation across the EU. However, some countries are further ahead than others at recognising this form of exploitation and taking steps to address it. As a consequence, this type of trafficking is under-reported. Our research found that the issue is more widespread than is currently reported, even in those countries, such as the UK, where this form of trafficking is acknowledged in national statistics. In countries where this type of trafficking has not been formally identified, NGOs and other frontline professionals are nevertheless identifying victims.

While the Directive provides for non-criminalisation of victims, authorities are often failing to identify trafficked persons who have been criminally exploited, and, as a consequence, are failing to protect them and uphold their rights as trafficking victims. This results in many victims, particularly children, going missing from local authority care and being re-trafficked. Consequently, trafficked persons who are criminally exploited are being punished and prosecuted for the crimes they are being forced to commit by their traffickers. States are failing to implement the non-punishment and non-prosecution provisions enshrined in international legislation. By doing so, miscarriages of justice are being committed against victims whilst their traffickers go unpunished.

The key conclusion from the research and the learning seminars conducted by the *RACE Project* is that tools that exist at the EU level, in form of legislation, as well as law enforcement tools offered by Eurojust and Europol are crucial in combating trafficking for forced criminal activity. At present these are underutilised, but we hope that the finding of the research and guidance by *RACE in Europe Project* will assist Member States in making better use of these tools and improving their implementation of the EU Directive.

Recommendations for Member States

- Transpose fully the EU Directive (2011/36), with particular attention to Art. 8 (non-punishment provision) and reflect its provisions in national action plans to tackle trafficking.
- Deliver regular training to frontline professionals who may encounter persons trafficked for forced criminality and begging
- Put in place data collection systems that take account of this form of trafficking.

- Improve intelligence-sharing and collaborative working through submission to Europol and Eurojust.
- Make full use of tools available under Europol and Eurojust such as Joint Investigation Teams
- Ensure that trafficking victims are protected and their full rights are respected.
- Guarantee safe accommodation to child victims of trafficking to protect them from going missing and being re-trafficked.
- Adopt a system of legal guardianship for child victims of trafficking in accordance with EU Directive (2011/36) provisions.
- Put in place an independent National Rapporteur to monitor and report in implementation of anti-trafficking legislation and policies.

ANNEX I.

Methodology

The research gathered data in five main ways:

- A literature and media review analysed publications on trafficking and child trafficking, and trafficking legislation and policies. A newspaper database and internet media search was conducted to find data on trafficking and on individuals arrested for particular offences that may be related to trafficking (such as cannabis cultivation or begging).
- Two focus groups were held in London with 25 participants from civil society, government agencies, law enforcement and the legal profession.
- Semi-structured interviews were also conducted with 12 practitioners across Europe working in frontline services, policy-making and police. These interviews helped to contextualise some of the findings, explore links between various countries as well as emerging trends, and policy and legal issues.
- Freedom of Information Requests (FOIs) were submitted to all police forces and local authorities in England and Wales requesting information on the number of foreign national adults and children arrested for theft and cannabis cultivation offences.
- Three, two and a half day seminars were held across Europe with over 90 frontline professionals from 16 European countries. Information was gathered through questionnaires, presentations, interviews and discussions.
- In Ireland, as well as the above methodologies, semi-structured interviews were conducted with key individuals from the legal profession, the Anti-Human Trafficking Unit (AHTU) within the Department of Justice and Equality, the Human Trafficking Investigation and Co-ordination Unit within An Garda Síochána, and the Chaplain Service at Mount-Joy Prison. Information was gathered from the Central Statistics Office, the Courts Service, the Irish Prison Service and the EU Drug Market Report.

ANNEX II.

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PART II.

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Guidance for Combatting Trafficking for Forced Criminal Exploitation and Forced Begging

This guide is intended to assist front-line professionals, such as police, lawyers, NGOs, prosecutors and social workers, who may come across instances of trafficking, in identifying the victims and the crime. This guide offers tools and tips for victim identification, evidencing trafficking crimes as well as case studies and good practice examples.

Some sections of Part II may be more relevant for specific professions than others, but it is important that all professionals are aware of the complexity of human trafficking. This will help professionals across a wider range of sectors to understand not only their responsibilities, but also the responsibilities of others, hence making the entire anti-trafficking response more effective.

1: Introduction: The Law and Identification of Trafficking

What is Trafficking in Human Beings?

Trafficking in human beings is a grave abuse of fundamental human rights. It is a global phenomenon that affects the lives of millions of people around the world. Trafficking involves bringing people away from the communities in which they live and forcing them into work against their will using violence, deception or coercion. When children are trafficked, no violence, deception or coercion needs to be involved: simply transporting them into exploitative conditions constitutes trafficking. People are trafficked both between countries and within the borders of a State.

What is the law?

For practitioners in Europe, the key international legal instruments relevant to work on human trafficking include:

1 *Palermo Protocol, 2000*

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) is the first legally binding international instrument aimed at combatting human trafficking²²⁶. It establishes minimum standards and has 3 main objectives:

- 1) To prevent and combat trafficking
- 2) To protect and assist victims
- 3) To promote international cooperation

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²²⁶The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention on Trans-National Organized Crime(2000). The full text of the Protocol is available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-pdf>.

It includes the first internationally agreed definition of trafficking that breaks down the crime of trafficking into three interdependent elements:

1: The ACT	What is done	Recruitment, transportation, transfer, harbouring or receipt of persons.
2: The MEANS	How it is done	Threat or use of force, deception, coercion, abuse of power or position of vulnerability.
3: The PURPOSE	Why it is done	For exploitation.

Trafficking in Children

The Palermo Protocol establishes child trafficking as a special case. For child trafficking, only two components are required; movement and exploitation. The crime of trafficking in children is constituted by the ACT of recruitment, harbouring, etc. for an exploitative PURPOSE. There is no MEANS required. Any child transported for exploitative reasons is considered to be a trafficking victim. A ‘child’ refers to anyone below 18 years of age.

2) The Council of Europe Convention on Action against Trafficking in Human Beings, 2005

This is the first legally binding European treaty on human trafficking and entered into force in 2008²²⁷. The Convention builds on the provisions to prevent, protect and promote included in the Trafficking Protocol, particularly strengthening the protection of trafficked persons by introducing binding provisions.

Article 4 defines trafficking 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 purposes 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 or servitude or the removal of organs.”

²²⁷Council of Europe Convention on action Against Trafficking in Human Beings, 2005. The full text of the Convention is available at http://www.coe.int/t/dg2/traffickig/campaign/Source/PDF-_Conv_197_Trafficking_E.pdf.

2) Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims 36/EU/2011

The EU Directive expands on the definition of trafficking to include exploitation for criminal activities and begging²²⁸. The Directive is binding for all EU Member States, with the exception of Denmark that exercised its opt-out right²²⁹.

Article 2(3) states:

*‘Exploitation shall include, as a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, **including begging**, slavery or practices similar to slavery, servitude, or the **exploitation of criminal activities**, or the removal of organs.’*

When all of the elements of forced labour are present, exploitation through begging falls within the scope of the trafficking definition.

What is the difference between people smuggling and trafficking?

Human trafficking and people smuggling are often confused. People smuggling is the illegal movement of people across a border for a fee. It can be dangerous and undignified, but on arrival in the country of destination the smuggled person is free. People trafficking is fundamentally different as the trafficker is facilitating the movement of that person for the purpose of labour (including criminal) or sexual exploitation. This begins on transit and/or when they arrive at the destination²³⁰.

	Trafficking in Persons (Adult)	Trafficking in Persons (Child)	Migrant Smuggling
Victims age	Over 18	Under 18	Irrelevant
Mental Element	Intention	Intention	Intention
Material Element	Act Means Exploitative Purpose	Act Exploitative Purpose	Act: Procurement of an illegal entry. Purpose: For financial or other material benefit
Consent of the trafficked or smuggled person	Irrelevant once the means are established	Irrelevant: means do not need to be established	The smuggled person consents to the smuggling
Trans-nationality	Not required	Not required	Required
Involvement of an organised criminal group	Not required	Not required	Not required

²²⁹Correct at the time of writing

²³⁰UNODC Toolkit to Combat Trafficking in Human Beings 2008, Available at http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf

How Are People Exploited?

Types of trafficking for forced criminal activity and begging

Men, women and children are trafficked and exploited through forced criminal activity and forced begging. The ‘exploitation of criminal activities’ involves coercing someone to commit an activity that is contrary to the law, such as namely; ‘pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain’²³¹.

Victims of trafficking for forced criminality are commonly:

1. Not allowed to keep the profits from the criminal activity.
2. Forced to carry out the activity against their will.
3. Bear the full risk of dangers arising from the activity, whether it be through the work itself or from criminalisation.

Types of exploitation include, but are not limited to:

- Drug Cultivation – Victims are forced to cultivate illegal drugs. In Europe this is often the production of cannabis²³². There is a trend of victims being trafficked from South-East Asia.
- Drug Smuggling – Victims are forced to smuggle illegal drugs, often across borders and on their person. There is a trend of victims being trafficked from West and North Africa and South America.
- Drug Dealing – Victims are forced to sell illegal drugs. There is a trend of victims being trafficked from West and North Africa.
- Petty Crime and Theft – Victims are forced to steal and commit petty crime, including but not limited to; ATM theft and fraud, metal theft, shoplifting, car theft and burglaries. There is a trend of victims being trafficked from South-Eastern Europe, some are of Roma origin.
- Benefit Fraud – This is where fraudulent benefit claims are made in a victim’s name, the trafficker or other person receive the benefits. This is commonly done in conjunction with other types of exploitation.
- Pickpocketing – Victims are forced to pickpocket on the streets of major European cities. There is a trend of victims being trafficked from South Eastern Europe, many are children.
- Sham Marriage – In these cases, a victim, usually female, is coerced, sometimes kidnapped and transported against her will, and forced to marry a non-EU for the purposes of obtaining EU residence. There is a trend of victims being trafficked from Eastern Europe.
- Forced Begging – Begging is not illegal in all European countries, but forcing someone to beg for the profit of a third party is. There is a trend of victims originating from Eastern Europe, they are often children or adults with disabilities.
- Metal Theft – Victims are forced to scavenge and steal metal which is then sold by the traffickers for profit.

²³¹Recital to Trafficking Directive 2011/26/EU, Para 11.

²³²See RACE in Europe Project Briefing Paper: Trafficking for Forced Labour in Cannabis Cultivation 2013. Available at http://www.raceineurope.org/portfolio-item/race_briefing-trafficking-for-cannabis-cultivation/

Case Studies

The below case studies are based on the events of real trafficking situations routinely reported to NGOs, lawyers and in the media. The cases describe the experiences of victims trafficked for a range of criminal activities. These cases are referred to throughout the guidance, highlighting where and when identification and interventions could and should have been made.

Case Study 1 – Cannabis Cultivation

Y is from a small village in rural Vietnam. A poor harvest left his family struggling for food. In order to get by, his parents took out a loan from a man visiting from a nearby city. Unable to pay back the loan, the man insisted that Y came abroad with him to work until the debt was repaid.

Y travelled for a long time on road and planes to the Czech Republic where he was locked in a warehouse with several other Vietnamese men and boys. Y became fearful and was unsure where he was. When he questioned his traffickers or asked to go home, he was subjected to beatings and verbal abuse. He was hidden in the back of a lorry and smuggled into the UK where he was taken to a house in Birmingham.

The house was full of strange plants and lights and the windows were boarded up. He was taught how to look after the crop, told to sleep in the kitchen and that if he left his family back home would be hurt. He was told that the police in this country were corrupt and not to trust them. For three months he remained in the house and ate food that was delivered once a week.

One day the house was raided by the police and Y hid in an upstairs cupboard. When he was found he was disorientated and frightened, unable to speak English he could not ask for help. He was arrested and charged. At his interview Y was assigned a Vietnamese interpreter, but they misunderstood Y's regional accent. Y didn't have any identity documents or registered address, the police feared he would run away and hence was denied bail and kept in custody.

Y was 16 years at the time of he arrived in the UK but having no papers to prove this and unable to communicate, it was assumed by the authorities that he was over 18 and was tried in an adult court. He was advised by his lawyer to plead guilty to charges of cultivating an illegal drug. He was sentenced to 21 months in prison which was to be followed by immediate deportation.

In prison, Y was visited by an outreach worker specialising in migrant support. After time he began to tell his full story. The outreach worker was sympathetic and recognised that Y had been exploited. They continued to provide support until his deportation.

Case Study 2 - Forced Child Begging

V grew up in a large family on the outskirts of Sofia, Bulgaria. Her parents, having been unable to access the job market or social service assistance due to the discrimination her community faced (her family are Roma), fell into abject poverty. When V was 13, her parents were approached by a family friend who offered them good money to take V to Europe and find her work in the catering industry. Her parents accepted.

V was taken, along with several other children between the ages of 7 and 14 years to Amsterdam in the Netherlands. They were kept in a cramped house in the city with many other people they didn't know. V slept on a mattress on the floor with many other children. She was ordered to beg on the streets of Amsterdam and to pickpocket and steal where she could. A man kept watch over her and threatened her if she was not 'working' hard enough. She had to give all the money she was given to the man and was forced to beg for food.

Whilst in Amsterdam, benefits for housing and assistance were made in her name, but V did not see any of the money, did not go to school and wasn't given warm clothes in the winter.

One day V was caught by a policeman when she stole from a shop. She was released being told not to re-offend. Soon after she was caught by a different policeman pickpocketing and taken into custody. A man arrived claiming he was her uncle and she was released into his care. For 18 months, V was moved across 5 European countries and many more cities, all the while being forced to beg and steal and threatened with violence if she told anyone of her situation. She was repeatedly caught, cautioned and sometimes arrested by the police in different countries but was always released back to the streets.

Whilst in France, her poor health and inadequate clothing was noticed by the police and she was taken into local authority care where she stayed for several months. Having discovered her whereabouts, her traffickers called her mobile phone and threatened her. Soon after, her traffickers arrived at the children's home and she was taken away. V has not been seen since.

Case Study 3 – Forced Sham Marriage

L saw a job advert in a shop window advertising nannies to work in various European countries. The wage was good, accommodation provided and few qualifications required. Unable to find permanent employment in her native Slovakia, L called the number on the advert and a recruiter immediately began to arrange her travel and employment.

L met the recruiter at a bus station where, along with several other men and women they boarded a bus and headed to Bratislava airport. Several hours later L arrived with the recruiter in Dublin, Ireland. She handed over her passport and travel documents to him. She was taken to a house expecting to start work.

She arrived in an empty, unfurnished and dirty house, left alone and told not to leave. Soon after several men arrived, one she recognised as her recruiter, one other was Irish and the other Pakistani. She was told she had to marry the Pakistani man. When she objected and asked questions about her job she was hit. She was told to comply and threatened with sexual violence.

She was forced to marry the Pakistani man in order to legalise his status in Europe. She only saw her passport on her wedding day and then it was taken away from her again. She remained living in the house with him in Dublin for 6 months. During that time she was forced into domestic servitude, having to cook and clean. Her movements outside of the house were restricted and she was regularly visited by her recruiter and threatened if she did not stay complicit.

Having seen an advert for a helpline for a local NGO she called for advice. She sought shelter with the NGO and was assisted in returning home to Slovakia where she began proceedings to divorce. In Slovakia she filed a police report about her trafficking situation. Criminal proceedings ensued.

Identification

Who can identify?

Anyone equipped with the right information and tools can identify a potential victim of trafficking. However there are key practitioners who are most likely to come into contact with victims of forced criminality and forced begging, including: **police, lawyers, border guards /immigration officers, prosecutors, social workers/youth workers, NGO staff, churches, prison staff, prison outreach workers and health workers.**

It is important at these professionals have access to information and training that will enable them to spot the signs of trafficking and document and evidence the crime.

Identification of Victims

Traffickers prey on individuals who are vulnerable, often because of poverty, discrimination, age or disability. As a result, trafficked people often share a number of common characteristics or experiences such as levels of education, unemployment, physical or emotional abuse, social or cultural isolation, disabilities or immigration status.

What signs might indicate that someone may be a victim of trafficking?

There is no typical victim of trafficking. Victims are men, women and children that come from a variety of countries and from a variety of backgrounds. Each individual victim is likely to respond to their situation in a different way. Where a certain behaviour or characteristic may be present in one trafficked person, it may not be in another. For example, some do not realise that they are victims of trafficking and are unaware that they are entitled to support and assistance. Other have been

coached by their traffickers what to say if discovered by the police.

However, there are a number of signs which have been identified by experts that may indicate that someone is a victim of human trafficking.

These include:

- Showing signs that their movement has been restricted or monitored
- Being unable to recall facts about identity, location or situation
- Giving false accounts to authorities through fear or as a result of acting on the instructions of traffickers
- Giving the impression that they're bonded by debt or in a position of dependence
- Being ashamed of having committed a criminal act
- Being fearful and anxious
- Being withdrawn and apathetic
- Showing signs of physical, emotional or sexual abuse
- Being of poor health or malnourished
- Being sleep deprived or hungry
- Living in undignified/cramped conditions
- Speaking as though they've been coached/instructed
- Being unable to speak the language of the destination country
- Not possessing their own passport and/or identity documents or having only false documents
- Not knowing their address or not having keys to their house

Case Study 1:

When Y was discovered by the police who raided the cannabis farm he displayed many characteristics of a trafficked person; fearful, unaware of his location and in poor living conditions. These should have been considered and an investigation into a potential trafficking situation started.

Identification of *The Crime*

The crime of trafficking for forced criminal activities and begging occurs both in public and private locations. While victims of forced begging and those forced to pick-pocket and steal are will be doing so in public location, those in forced labour in cannabis factories will be locked away from the public eye. Each crime scene however will have some indications that the crime of trafficking is or has taken place. These indicators will relate not just to the victims, but importantly to the people and circumstances, such as the perpetrators, controllers, transporters and transport, housing, localities and places of exploitation.

The situation in which a victim finds themselves and their circumstances might point to the fact that the crime of trafficking has taken place. It is important to consider both the *subjective indicators*, relating to the person (such as victim’s behaviour) and the *objective indicators*, that relate to the physical circumstances (such as the premises in which victim is found).

	Subjective Indicators	Objective Indicators
	Relate to the person (victim)	Relate to the circumstance/ situation in which the victim is found
Example Indicators	<ul style="list-style-type: none"> - A person is anxious and fearful. - A person does not speak the language of the country they are found in. - A person responds as if they were reciting a learned answer. - A person does not know their address or the way to their accommodation. 	For example in a cannabis farm setting: <ul style="list-style-type: none"> - The door to the cannabis farm was locked from the outside. - The technical set-up of the cannabis farm, for example, would have required a high level of organisation that could not have been organised by a recently arrived 15-year old boy that does not speak the local language.

The following table includes examples of circumstances/places where a crime trafficking can be identified:

Situations / Circumstances that point to trafficking crime potentially being committed

At the border	<ul style="list-style-type: none"> - A person appears to be under control/escorted of another, perhaps one person is ‘controlling’ the movement of a group across the border. - Using false identities and documents. - A person is in possession of someone else’s identity documents. - Children travelling with adults who speak a different language or who are not their legal guardians. <p><i>Traffickers use the cheapest routes: budget airlines and international rail and coach lines – indicators will be more common on these transit routes.</i></p>
Begging on the Streets	<ul style="list-style-type: none"> - A person/child is always dropped off/collected by someone at the end of the day - A person/child begging is watched and instructed by others. - A person/child begging is frequently returning to another or to an adult and hands over earnings. - Children begging on the streets during school hours or during times when they should be in bed. - Women with children and babies begging for long hours in one place - Clusters of begging children operating in one area.

	<ul style="list-style-type: none"> - A large number of people/children give the same address when asked about their residence. - When spoken to, they may seem coached in what to say, or fearful to engage in other conversation.
Cannabis Farm	<ul style="list-style-type: none"> - Doors to the building are sometimes locked from the outside - Windows to the property are permanently covered from the inside. - Building is visited at unusual times by people who don't seem to live there. - Strange noises that seem to indicate argument/fight coming from within the building. - Hidden dangers at entrances; may be to keep people out or to keep someone in. - Poor living conditions within the cannabis farm. - Mobile phones on the premises with few numbers in the contacts. - Police should carry out surveillance on the property to identify signs of trafficking and track the criminals controlling the operation, prior to raiding the farm.
Petty Theft and Pick-Pocketing	<ul style="list-style-type: none"> - Indicators often overlap with those of forced begging. - A person/child committing the crime return to an adult to hand over proceeds. - The same people are seen committing crime over long distances, moving around regularly. - A large number of people/children give the same address when asked about their residence. - Children 'prowling' the streets can be inappropriately dressed or appear to have poor health and hygiene.
At the police station (if potential victim is apprehended)	<ul style="list-style-type: none"> - The same person is apprehended long distances from their home, or seem to be offending in multiple locations long distances from one another. - The same appropriate adults attend police stations, most commonly posing as a child's aunt or uncle. - The nationality/place of birth of those apprehended for petty theft or begging does not match that of those who come to pick them up. - Children telling the same 'story' as to why they're in that location or as to the whereabouts of their parents. - Children appear 'coached' in what to say and are unable to elaborate on details around their story.
Indicators of trafficking in stories reported in the media. ²³³	<p>Many cases of trafficking for forced criminality and begging go unidentified until they are reported on in the media. An article often describes the circumstances in which victims were found or comments made by judges that indicate trafficking:</p> <ul style="list-style-type: none"> - 'Did not receive any of the profits' - 'Was being used by the criminal gang / was bottom of the ladder' - 'Had paid lots of money to be transported here' - 'was being exploited'

- 'was a virtual slave'
- 'played no part in the sophisticated drugs operation'
- 'just wants to go home to XXX country'

Crime committed far away from home

A European study showed that the majority of offenders commit crime within a 20km radius of their home²³⁴. If a person is apprehended for offences committed (especially multiple times) further than 20km from their home, it may be indicative that they are a victim of human trafficking and are being moved around to commit the crimes.

Case Study 1

Y entered the UK in the back of a lorry. Had adequate checks been made at the point of entry, Y may have been discovered by the authorities and identified as a victim prior to his exploitation taking place. PROSECUTION OF TRAFFICKERS

Case Study 2

When V crossed the border into the Netherlands she was accompanied by an adult who could not prove he was her legal guardian nor spoke the same language. At this point border control should have made inquiries into the relationship between V and her trafficker.

Case Study 3

The border guards at Dublin airport failed to notice that L was not in possession of her passport – it was handed over by her recruiter who also spoke on her behalf. At this point they should have made further inquiries into their journey and notified security personnel.

Prosecution of Traffickers

Evidence and Investigation

Remember: Investigators should not let assumptions about migration status or smuggling get in the way of looking for a trafficking case.

Challenges in evidencing and investigating trafficking crimes arise because it is a complex crime that often takes place across a number of crime scenes and in different countries. Law enforcement

²³³Often crimes and related arrests are reported in the media and may include indicators of trafficking situations that weren't recognised as such at the time.

²³⁴Changes in Society, Crime and Criminal Justice in Europe: A Challenge for Criminological Education and Research. Crime and insecurity in the city. C. J. C. F. Fijnaut, Johan Goethals. 1995

may intercept the crime at any point in the trafficking process, even prior to exploitation occurring. In cases of trafficking for forced criminality the crime of *trafficking in persons* is obscured by the fact that the victim is caught committing a crime. This requires the police to *look for the crime beyond the crime* and in particular to be encouraged and enabled to do so (see section 3 on Challenges).

Gathering evidence from victims

As a result of the trauma, violence or coercion experienced by a trafficked person, it can be difficult for them to re-tell their ordeal. As a result, they may not be able to present evidence in a coherent, linear way. It takes time for a victim to build up trust with law enforcement, especially if they have been previously punished for the crimes they were forced to commit. Further considerations need to be made regarding language, culture and age to ensure that a trafficked person understands the interviewer.

CASE STUDY 1

When Y was arrested and interviewed in police custody he was assigned an interpreter who didn't understand his regional accent. Y was misunderstood and indications that he was trafficked were not noticed. Had Y been assigned an appropriate interpreter, the officer interviewing him could have discovered his trafficking situation and stayed his arrest.

Questions put to the victim should seek to ascertain in particular:

- Who controlled the victim at each stage of their trafficking journey? This doesn't necessarily have to begin at the recruitment phase.
- Discussion around the trafficking journey should be led by the victim.
- How the victim was communicated with. This will include finding out names and nick-names, phone numbers, methods of communication and descriptions of vehicles, places and persons.

REMEMBER: The first account of a victim may be incorrect; they might have been instructed/coached by traffickers in what to say to the authorities or threatened that their families will be harmed if they speak the truth to the authorities.

Special Investigation Techniques to be used in trafficking cases:

- Surveillance
- Collection and analysis of communications data
- Telephone intercept and other telephone activity
- Intrusive surveillance
- Covert human intelligence sources
- Criminal intelligence analysis

Gathering evidence at the crime scene

Crime scenes of trafficking can be locations, vehicles or persons. The aim is to record, protect and preserve the evidence for recovery so that it can be examined and used at a later date. Like with other crimes, the purpose of a crime scene examination is to establish, as far as possible, what happened at the scene, link criminals to the scene, link victims to the scene, secure the evidence for forensic examination and preserve the continuity of the evidence to support prosecution.

Evidence may include: biological material, finger marks and other body part marks, fibres and micro traces, documents, images of or actual equipment, IT and other electrical equipment such as phones, credit cards, correspondence and on-line footprint.

Begging, theft and pickpocketing often take place in busy areas where there are surveillance cameras. Police should monitor these for signs that those committing the crime are being controlled by others²³⁵.

Traffickers arrive and leave at key transport hubs, often moving a victim to or between places of exploitation. Suspicious activity or known vehicles should be traced and investigated. Tracing payments for travel tickets can help identify where victims were transported from or who arranged their travel.

When police suspect a building is being used as a cannabis farm or for harbouring victims, the building should firstly be monitored for signs of movement. Police should find out who attends the property, at what time and how they come and go. This will be key to tracking traffickers if a victim is later found inside.

Mobile phones are an important tool traffickers use to communicate with, and therefore control, their victims. Not only do they provide evidence to support a victim’s status but are key in tracing traffickers.

Identifying trafficking networks

Traffickers are often organised criminals operating criminal groups, usually formed of the nationals of the same country and sometimes formed of extended family members. Frontline professionals are likely to come into contact with those operating at the lower level of the criminal network. Front line professionals need to be aware of changing trafficking routes and exploitation trends. The use of UNODC, OSCE, and Europol reports (Europol produces an annual threat assessment) as well as country reports and national statistics should be encouraged. Investigators need to be willing and able to trace traffickers back to their country or region of origin which can be a lengthy process requiring international collaboration and meticulous evidencing.

.....
²³⁵In many cities, the review of monitoring surveillance cameras has been made easier by the use of automated software that organises footage into a database.

Pro-active Operations

The majority of human trafficking investigations are reactive, often in response to a victims claims of exploitation as part of a defence to criminalisation. If trafficking is to be curtailed investigators need to be pro-active. Pro-active operations could include:

- Targeted raids on suspected premises and locations where intelligence suggests that migrant petty thieves and beggars operate from or are housed in;
- Accompanying other agencies such as immigration officers on their proactive operations to observe conditions and identify who is present from vulnerable communities;
- Identification of routes used and planning operations at transport facilities and other suspected “nexus” points;
- Surveillance and other proactive investigation techniques, such as the use of CCTV to identify petty thieving networks;
- Planned border operations;
- Financial investigations and monitoring of financial transactions: Illegal earnings is a key indicator of the exploitation of others and therefore tracking the money flow is key to a proactive investigation: identification of bank accounts, use of money service bureaus, the conversion of stolen property into cash, conversion of cash into gold for easy smuggling back to the source country.

Case Study 2

V was apprehended by police on several occasions but released back onto the streets with cautions. Had officers made further inquiries as to why a child was committing crime they may have noticed that she was being forced against her will to commit the offences

Coordinated and specialised police units

Arguments have been made repeatedly in favour of developing specialisms and units dedicated to combating human trafficking within law enforcement.

Anti-trafficking units provide for a specialist law enforcement response to human trafficking. Officers are specially trained in preventing, identifying and prosecuting trafficking crimes. Operations should be coordinated between international, national and regional specialised police units and data collection, evidencing and operational activity should be shared amongst and between units.

Coordination is not only imperative between police forces but also between non-governmental organisations, state agencies, civil society and so on. Evidence has shown that in countries where NGO’s have been able to provide support to victims, prosecution rates have been higher. (See OSCE Handbook on National Referral Mechanisms)

International Mechanisms for Law Enforcement Cooperation

Due to its often international nature, tackling human trafficking requires a collaborative, cross-border approach. There are a number of international institutions and mechanisms available to front line practitioners that should be utilised.

Europol

Europol is the European Union's (EU) law enforcement agency. It assists EU member states in the fight against serious international crime, including human trafficking. It provides analytical support and coordination for joint operations between EU member states, largely through the provision of information sharing. Europol's Phoenix database stores and sorts data on human trafficking that can provide EU police forces a useful facility that can cross-reference identities of perpetrators as well as victims and may point to an international trafficking network. Law enforcement bodies provide Europol with information regarding trafficking investigations which can be shared with other bodies, increasing the likelihood of successful operations. Europol also supports investigations by providing staff and expertise and resources, such as meeting premises or language support.

Case Study 3

L filled a police report upon returning to her native Slovakia where she detailed the experiences of her trafficking situation. In this case, the officers should log this information with Europol.

Eurojust

Eurojust is the EU agency dealing with judicial cooperation in criminal matters. It improves the handling of cross border investigations and prosecutions by coordinating agencies of the EU member states and facilitating mutual legal assistance.

Joint Investigation Teams (JIT)

A 'Joint Investigation Team' (JIT) is the term given to a police operation whereby two or more forces from different European countries work together and share information throughout the course of an investigation²³⁶. A JIT is a legal operation under the Convention on Mutual Assistance²³⁷ which came into force with the Council Framework²³⁸ decision in June 2002.

²³⁶The Europol Manual on conducting JITs can be found here at <https://www.europol.europa.eu/content/page/joint-investigation-teams-989>

²³⁷The Convention on Mutual Legal Assistance can be found here at <http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm>

²³⁸Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:162:0001:0003:EN:PDF>

When is a JIT most suitable?

- During a difficult or demanding investigation that links with other Member States.
 - When the appropriate jurisdiction for proceedings is unclear.
 - Where there is a need to exchange information for an operation to be successful.
 - Where there is a need to request investigative measures in other Member States.
 - When it is advantageous to have officers seconded to other Member States.
 - When lots of mutual legal assistance²³⁹ is required.
-

What are the requirements for a JIT?

- 2 or more member states.
 - Specific time frame.
 - Specific purpose.
 - Composition of the team needs to be set out in the Agreement
 - Team needs to be set up in one or more Member States.
-

Members of a JIT

- Prosecutors
 - Police
 - Seconded Members
 - Eurojust
 - 3rd parties such as EUROPOL, FBI, member states or others.
-

Benefits of a JIT

- Direct Communication
 - Sharing of intelligence
 - Europol support
 - Common strategic objectives
 - Increased efficiency and impact
 - Spread of best practice
 - Direct request for coercive measures
 - Capability and use of second officers
-

How do you set up a JIT?

- Firstly identify a need – you must have at least one other EU Member State
 - A JIT can include non-EU Member States.
 - Request Eurojust Advise
 - Not necessary but recommended:
Strategic coordination group, clear agreed objectives and operational action plan, joint intelligence group.
-

²³⁹Mutual legal assistance (MLA) is an agreement between 2 or more countries for the purpose of gathering and exchanging information in an effort to enforce public or criminal laws.

Documents:

- The JIT Agreement: Outline the purpose of a JIT, specific organisational arrangements and disclosure of the JIT.
- The Operational Action Plan: Seconded Officers powers, sharing of evidence and information, disclosure, carrying weapons and cross border surveillance, language, costs.

Points for Consideration:

- Language, location, leadership, structure, legal structure, team building, team dynamics, national/local practices.
-

CASE STUDY 3

L filled a police report about her trafficking situation when she returned to Slovakia. The police should register these details with Europol. A JIT between Irish and Slovak police forces to investigate her trafficking and to apprehend and prosecute the traffickers could be set up.

Specialised Prosecutors and Judges

Human Trafficking cases are complex. Prosecuting such a case requires prosecutors and judges to be trained to be able to navigate and successfully prosecute traffickers. Criminal justice actors need specialised knowledge and training in all fields of trafficking, not only in the legal aspects, but in emerging trends of exploitation and changing patterns and methods of traffickers.

At present sentencing and compensation varies between cases and across borders and is often inconsistent with judgements, failing to reflect a clear framework of assessment. In many instances a charge of human trafficking is dropped all together in favour of pursuing seemingly easier, more straightforward prosecutions, such as charges of physical assault or unlawful earnings.

Inconsistencies are confounded by the reality that trafficking circumstances rarely play a role in sentencing. Aggravating factors include:

- Trafficking committed by two or more persons
- Trafficking committed against a child victim
- Trafficking resulting in serious physical injury or threats to life
- Trafficking that results in death.

In the Netherlands, The Public Prosecution Service appointed regional public prosecutors for human trafficking cases in 2009 and as of 2013, the Netherlands is the first country in the world to make human trafficking a specialisation for the judiciary.

The judiciary should use the above as a point of departure for determining sentences in individual cases.

In cases where specially trained prosecutors and judges are unavailable, the use of expert witnesses can greatly increase the chances of a successful prosecution. Expert witnesses can be instrumental in ensuring the court understands trafficking issues and correctly applies international and national legislation, especially those provisions pertaining to non-punishment and non-prosecution.

Victims' testimonies

As with other crimes, victims' testimonies are important for prosecution. For victims who decide to go to court, specialised care and assistance must be provided. Victims of trafficking have been subjected to abuses of their human rights and are often traumatised and fearful and consequently given conflicting accounts. This can lead to difficulties in presenting dates and experiences coherently, this should be taken into consideration and dealt with sensitively. Unnecessary cross-examination and questioning should be avoided. The chances of obtaining a reliable and coherent statement from victims will be dependent on early identification of the victim and appropriate support and care before, during and after the trial.

However, trafficking cases should not be reliant solely on victims' testimonies and in cases where a victim cannot, or decides not to give evidence, then the prosecution should look to other sources for evidence. These can include, but are not limited to: suspects, forensics, premises, vehicles and documents (see previous section on Evidence).

Austria has secured three convictions of human trafficking without any testimonies from victims.

Important: Assistance and support to victims of trafficking is not conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. Trafficked persons have right to support and assistance, regardless of their cooperation in criminal proceedings.

2: Victims Rights

The Rights Of Victims Of Trafficking

Victims of trafficking are guaranteed certain rights under domestic and international law²⁴⁰. These include rights to:

- Identification
- Assistance and support
- Protection before, during and after criminal proceedings
- Safe and appropriate accommodation
- Compensation
- Integration and labour rights
- Reflection periods and residency permits
- Protection against re-trafficking
- Non-punishment for crimes committed as a result of being trafficked
- Safe return

Victim Assistance Programmes²⁴¹

All potential and identified victims of trafficking are entitled to support and assistance, regardless of their nationality, background, the activities they've undertaken or their cooperation with law enforcement. Access to support and protection services should be ensured by state actors and can be facilitated by non-governmental organisations. Victims are individuals with different experiences and needs. Support services need to be flexible and tailored to a variety of requirements.

²⁴⁰See European Commission, The EU Rights of Victims of Trafficking in Human Beings, 2013. Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/index_en.htm

²⁴¹See OSCE National Referral Mechanisms Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook. 2004. Available at <http://www.osce.org/odihr/13967?download=true>



There are 3 main areas of support: financial, shelter and specialised services.

Financial services

Financial support is paramount to ensure access to accommodation, medical care, food, clothing, psychological support and legal advice, amongst others. Support for financial services should be timely, appropriate and adequate.

Victims often struggle to access these services as a result of their uncertain legal status within a destination country and can be further compounded for victims who've been criminalised. In many countries, the state is not the primary provider of such support (most OSCE countries, for example, don't have a legally binding victim support provision²⁴²) but comes from NGOs and social institutions. Potential donors include social welfare programmes, asylum or refugee funding, crime victim compensation funds, youth welfare funds or criminal proceeding funds. Cooperation agreements between the state and NGOs and other service providers help to ensure victims receive assistance.

Shelter

Accommodation is a central requirement of support and should be appropriate for age and gender. Shelter and safe housing should be flexible, meeting the diverse needs of individuals. Its uptake should be voluntary; no individual should be forced to accept the accommodation offered.

²⁴²See OSCE (2004) National Referral Mechanisms Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook. Available at <http://www.osce.org/odihr/13967?download=true>

Types of shelter include:

- Drop in centres/counselling centres – can form a link between specialised services and police, lawyers and outreach workers and provide vital services such as referral support and counselling.
- Confidential shelter – provides increased security standards whilst ensuring victims’ rights to privacy and autonomy usually through decentralised and secret premises.

Specialised Services

When providing these services practitioners need to be aware of key principles including informed consent and agreement, confidentiality, empowerment, non-victimisation and safety. The services provided include:

- Crisis intervention
- Long term counselling and psychological support
- Legal consultation
- Vocational training
- Support in accessing employment opportunities
- Support in dealing with authorities

Child Victims of Trafficking

Trafficked children are at increased risk of significant harm. They are more susceptible to isolation and ‘grooming’ by traffickers. They are less likely to come into contact with the professionals who would be in a position to assist them. The adults who traffic them take trouble to ensure that the children do not come to the attention of the authorities, or disappear from contact with statutory services soon after arrival in the host country or region.

When working to identify and safeguard children who may have been trafficked, the principles of the United Nations’ Convention on the Rights of the Child (UNCRC) should be applied, as well as those of the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. In particular, the following principles should be applied in the prevention, protection and assistance to child victims of trafficking :

- 1) Decisions taken should be in the best interests of the child
- 2) Practice should be non-discriminatory
- 3) Each child has the right to have his or her views listened to and taken into account in all matters affecting him or her
- 4) Every child has a right to privacy

²⁴³See UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe. Available at http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf

The harm caused to a child through being forced to commit crime or beg should not be underestimated. Furthermore, punishing the child for illicit acts creates secondary victimisation and will negatively impact further on their access to rights and long-term development and well-being.

Any form of child trafficking and child exploitation is child abuse and must be treated as such. The response of statutory services should follow existing child protection and safeguarding procedures, assessing the risk to the child, and to establishing and providing the required support and protection in order to keep the child safe from further harm.

CASE STUDY 2

V was released from police custody back into the hands of her traffickers. Authorities should make thorough and appropriate checks before releasing any child into an adults' care, being particularly cautious of those posing as aunts and uncles or other extended family members. Be sure to consult with the child away from the adult.

Non – Punishment and Non – Prosecution

Victims are often misidentified as perpetrators of the crime they were compelled to commit and then prosecuted. Forcing victims to commit crime is a low-risk and high-profit enterprise for traffickers who in most instances escape justice. To counter this, European legislation provides for the protection of victims from prosecution or punishment for the crimes they were compelled to commit.

Article 26 of the 2005 Trafficking Convention on Action against Trafficking in Human Beings states that parties shall:

'Provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.'

Article 8 of the EU Trafficking Directive 2011/36 goes further when it states:

'Each party shall take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities ... [which are committed as a result of their trafficking].

What does 'authorities are entitled not to prosecute...' mean?

The non-prosecution provision under the EU Directive is not a discretion, but a **prohibition on prosecution** where the person/defendant was compelled to commit a criminal offence as a direct consequence of their trafficking. The non-prosecution provision(s) are binding on member states and provide for a positive obligation on states not to prosecute victims of trafficking. It is **not optional**.

OSCE Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking. April 2013.

“[1] ...It is often a deliberate strategy of the traffickers to expose victims to the risk of criminalization and to manipulate and exploit them for criminal activities. It is therefore not uncommon that victims of trafficking commit criminal offences or other violations of the law directly connected with, or arising out of, their trafficking situation. In these situations they often come to the attention of the authorities primarily as offenders and they may not be easily recognized as actual victims of a serious crime. Therefore, States should be fully aware of these developments in order to enable accurate victim identification and effective investigation of the trafficking crime, as well as to ensure effective protection of victims’ rights, including non-punishment of victims for offences caused or directly linked with their being trafficked.”

Compensation

Compensation is a financial payment made to an individual for the loss, injury or harm suffered as a result of his or her trafficking experience. Compensation is recognised as a form of remedy to which trafficked persons are entitled to as victims of crime. States have an obligation to provide victims of trafficking with an effective remedy²⁴⁴. Child victims of trafficking are entitled to compensation also.

Compensation can be sought for:

- 1) General damages: compensate the trafficked person for non-material aspects of the harm suffered, including physical or emotional pain and suffering.
- 2) Special damages: compensate for the material, quantifiable, monetary losses, including medical expenses, repair or replacement of damaged property, lost earnings and unpaid wages.

The State has an obligation to:

- 1) Inform the victim about his/her right to compensation
- 2) Ensure that all victims have equal access to the remedies the law provides.

CASE STUDY 1

If Y had been correctly identified when in prison, and criminal proceedings against his traffickers begun, he would have been entitled to compensation. He could have also claimed compensation from the State for failing to prevent and protect his trafficking situation and for unlawfully detaining him.

²⁴⁴L. Janice and K. Skrivankova. *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*. Anti-Slavery International, 2008. Available at http://www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_and_compensation2009.pdf

Obtaining compensation depends on a trafficked person's access to justice. This means that in many jurisdictions, compensation claims are low and sentences for traffickers are inconsistent. The methods employed to calculate damages vary greatly.

From traffickers

Compensation from traffickers should be made as part of the criminal proceeding against traffickers. Compensation can also take the form of a civil claim for damages against the traffickers.

From the state

Where a victim of trafficking is not identified, wrongfully convicted or is punished for the crimes they were forced to commit, they may be entitled to seek compensation from the State. In instances where a miscarriage of justice occurred, the victim might have a variety of claims, such as for being falsely imprisoned (for example if they are remanded in custody or a detention centre), or any harm or damage caused to them by the failure of the state to investigate the traffickers. Investigating traffickers where there is a suspicion that this crime occurred is a positive obligation under international law and European jurisprudence²⁴⁵.

²⁴⁵See for instance: *Rantsev V Cyprus and Russia* [2010] ECHR 25965/04 (7th January 2010). This case concerned a woman trafficked from Russia to Cyprus. The ECHR found that the origin (Russia) and destination (Cyprus) states had failed to protect and prevent Rantsev from trafficking. Furthermore, Cyprus had failed to adequately investigate her trafficking and death. The case held that police and other state actors have an obligation to investigate trafficking and can be held accountable for failing to do so.

3: Good Practice Examples

This section identifies some promising practice in addressing trafficking for forced criminality and begging in Europe. It includes tools that can assist practitioners in applying the indicators of trafficking to instances of forced criminality and begging and help better understanding of the practical application of the core elements of the trafficking definitions. Furthermore, it presents a collection of practical examples of procedures and principles that have been tested in a European country and which can be adapted to the context of other EU countries.

Indicators

The section below gives examples of practical indicators to use when assessing a potential trafficking situation. It is important to note that not all indicators will be present, but that only a few are enough to warrant further investigation.

ILO Indicators

The International Labour Organisation (ILO) have developed ‘Operational Indicators of Trafficking in Human Beings’ which provides a comprehensive list of indicators and includes guidance on how they should be used²⁴⁶.

²⁴⁶ILO Operational Indicators for Victims of Trafficking. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

Indicators of Deceptive and Coercive Recruitment:	In practice this could mean:
<ul style="list-style-type: none"> - Deceived about nature, conditions, content and legality of work - Deceived about family reunification - Deceived about housing and living conditions - Deceived about legal documentation or migration status - Deceived about travel conditions - Deceived about wages, payment or earnings - Deceived through the promise of marriage - Deceived about education opportunities - Victim is subject to violence - Victim is abducted, sold or forced into marriage - Victims documents are confiscated - Victim is held in isolation, confinement or under surveillance - Threats that they will be reported to the authorities - Victims are subject to threats of violence - Victims are threatened that family and the community will be told of their involvement in illicit activities - Victims' families are threatened with violence - Victims earnings are withheld 	<ul style="list-style-type: none"> - L was told she would be working as a Nanny - Y's families was told his debt would be paid off by his work - L was not told she will be forced to live with and care for a man - Y was told that his employer has permission for him to work overseas - Y was made to believe he could pay off his families debt - V's family were told she would be starting a catering apprenticeship - Y is physically abused en-route to the UK - L is forced to marry against her will - L is forced to hand over her passport and it is not returned - Y is locked inside a cannabis grow house, V is continuously watched by an adult whilst on the streets - V is told that if she goes to the police she'll be in trouble because she has been stealing - L is told she will be raped if she does not marry - Y is told that if he tries to escape his family will be told of his involvement in cultivating drugs - Y's family are threatened when he does not work hard enough - V is forced to give over all the money she gets begging
Indicators of Abuse of Vulnerability (recruitment and destination):	In practice this could mean:
<ul style="list-style-type: none"> - Abuse of a difficult family or personal situation - Abuse of a lack of education or information, including lack of knowledge of local language - Abuse of legal status - Control exerted by exploiters 	<ul style="list-style-type: none"> - V's family are targeted by traffickers as a result of social exclusion - Y is left further isolated and unable to relay his exploitation because he does not speak English - Y is told that if he goes to the police he will be in trouble because he is in the country illegally - Y is controlled through threatening text messages when his traffickers leave the cannabis farm

- False information about laws, attitudes and authorities
- False information about successful migration
- Abuse of psychological or emotional dependency
- Abuse of cultural or religious beliefs
- Dependency on exploiter
- Difficulty to live in an unknown area
- Economic reasons
- Family situation
- Relationship with authorities/legal status
- Difficulties in the past or personal characteristics

- Y is told that the police are corrupt and not to be trusted.
- V is led to believe that the adults exploiting her are doing so in her best interest
- Y feels he has a duty to pay off his family's debt by any means possible
- L initially struggles to seek help because she does not understand local customs and is unaware of support services
- V is led to believe that by begging on the streets she is helping her family through difficult times at home
- L is discouraged from seeking assistance because she may be punished as a result of her uncertain legal status

Indicators of Coercion and Exploitation:	In practice this could mean:
- Excessive working days or hours	- V is made to beg and steal all day in all types of weather
- Bad living conditions	- Y is forced to live in the farm on a mattress in the kitchen
- Hazardous work	- The farm Y is in is filled with dangerous fumes and there is a high risk of fire from the make-shift equipment
- Low or no salary	- L is not paid for her household work and her passport is withheld
- Victims documents confiscated	- V and the other children she begs with are always watched and their movements between the streets and their home monitored
- Debt Bondage	- L is beaten by her 'recruiter' when she pleads to leave Ireland
- Isolation, confinement or surveillance	- V was instructed to inform the adults if she saw any of the other children talking to the authorities
- Violence	- V was forced to tell the police that she was living with her uncle
- Forced into illicit/criminal activities	
- Forced to act against peers	
- Forced to lie to the authorities and their family	
- Threat of denunciation to authorities	
- Threats to impose worse working conditions	
- Withholding of wages	
- No working contract or employers respect of labour laws	

Abuse of a Position of Vulnerability (Apov)

EU Trafficking Directive, Article 2 (2):

‘A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved’.

Abuse of a Position of Vulnerability is one of the MEANS (see definition of trafficking in chapter 1.) used to subject victims to exploitation. Vulnerability can be a critical component of identifying a victim and in ensuring victims are appropriately supported and protected. Establishing vulnerability is often an important part of a trafficking case. However, the mere existence of vulnerability is insufficient in criminal proceedings. In such cases both the *existence* of vulnerability and the *abuse* of that vulnerability must be established by **evidence**²⁴⁷

Existence of vulnerability²⁴⁸

Vulnerability ought to be thought about in a number of categories:

Personal Vulnerability: May related to a person’s physical or mental disability.

Situational Vulnerability: May relate to a person being irregularly in a foreign country in which he or she is socially or linguistically isolated.

Circumstantial Vulnerability: May relate to a person’s unemployment or economic destitution.

Pre-existing Vulnerability: May be related to poverty, mental or physical disability, youth or old age, gender, pregnancy, culture, language, beliefs, family situation, or irregular status.

Created Vulnerability (facilitated by the trafficker): May relate to social, cultural or linguistic isolation, irregular status or dependency cultivated through drug addiction, or a romantic or emotional attachment, or through the use of cultural or religious rituals or practices.

Abuse of a position of vulnerability (APOV)

Abuse of a position of vulnerability occurs when a person’s personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of for the purpose of exploiting him or her.

Relationship of APOV to the ‘ACT’: Where APOV is being alleged as the ‘MEANS’, an offender should be shown to have abused the victim’s vulnerability IN ORDER to recruit, transport, transfer, harbour, or receive that person.

Relationship of APOV to the exploitative ‘PURPOSE’: A finding of APOV depends only on credible evidence that establishes the existence of a position of vulnerability on the part of the victim and an abuse of that position of vulnerability by the trafficker for the purpose of exploiting the victim. The particular form of the exploitative purpose in a case is not relevant to that analysis.

²⁴⁷UNODC. Abuse of a position of Vulnerability and other ‘means’ within the definition of Trafficking in Persons. 2013. Available at http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf

²⁴⁸UNODC. Guidance note on Abuse of Vulnerability as a means of Trafficking in Persons. Undated. Available at http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf

Evidentiary Challenges and Consideration: The standard of proof is the same for any crime; credible evidence must prove that the perpetrator intended to use APOV to commit an act.

Abuse of a position of vulnerability must be such that ‘the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victims situation.’

CASE STUDY 1

Outreach work to increase awareness of risks in source regions can be instrumental in preventing trafficking. Had Y’s family been warned of the dangers of taking loans from unknown sources and the likelihood of Y’s subsequent exploitation, Y may not have been trafficked.

CASE STUDY 2

Similarly, awareness raising around the dangers of false job adverts could have prevented L from accepting a false job and being exploited.

Protection

The 7 Stage Identification Model

All criminal justice system actors have an obligation and an opportunity to prevent the criminalisation of trafficking victims. In response to this, the Crown Prosecution Service in England and Wales has released the ‘CPS’s Seven Stages of Intervention for a Victim of Trafficking who may be Criminalised’. It highlights the 7 key stages within the system that practitioners can identify and prevent victims from being criminalised. The earlier the identification occurs the more likely it is that prosecution will be discontinued.

STAGE ACTORS

Crime Scene	Police, Immigration authorities (UKVI)
Interview	Police, Immigration authorities UKVI, Defence Solicitors, Interpreter, Social Services
Charging	Prosecutor, Defence Solicitor, NGO, Police, Competent ²⁴⁹ Authority
Preparation	Prosecutor, Defence Advocate, NGO, Competent Authority
Court	Prosecutor/Advocate, Defence Advocate, Magistrate ²⁵⁰ , District Judge, Immigration Judge, Crown Court Judge, Youth Offender Teams, Competent Authority
Conviction	Prosecutor/Advocate, Defence Advocate, Judge, Probation Officer, Youth Offender Teams
Post-Sentence	Legal Representative, Prison Officers, Outreach Worker, Competent Authority

The key actors include²⁵¹:

Prosecutors – Prosecutors should be proactive and make further inquiries when there is suspicion that a defendant may be a victim of trafficking. This was reinforced in *R v O (2008)*²⁵² which held that a prosecutor is duty bound to be proactive in undertaking investigations. Prosecutors should also be ‘alert to the possibility’ that someone may have been trafficked.

Police – If the police notice any trafficking indicators they should halt the prosecution and refer the potential victim for formal identification. This was reinforced in the case *R v LM and others (2010)*²⁵³.

Defence advocate – There is also a duty on the defence to make inquiries if they suspect that those being prosecuted may in fact be a victim of trafficking compelled to commit the crime they are charged for.

Judges – Judges and magistrates are also in a position to request further inquiry if they suspect the defendant to be a victim of trafficking. Furthermore, they should not let the pressure to expedite procedures prevent them from fully considering a trafficking situation.

CASE STUDY 1

The defence solicitor assigned to Y advised him to plead guilty, on the pretext that doing so would get him a reduced sentence. However, having pled guilty, Y’s culpability was assumed by the court and the chances of him later being identified as a victim greatly reduced. Safeguarding children who may have been trafficked

²⁴⁹A competent authority is any person or organisation that has the legally delegated or trusted authority, capacity or power to formally identify a victim of trafficking.

²⁵⁰Magistrate: a civil officer who administers the law, especially one who conducts a court that deals with minor offences and holds preliminary hearings for more serious ones.

²⁵¹For further information see Anti-Trafficking Monitoring Group. In the Dock. 2013. P 92. Available at http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf

²⁵²*R v O* [2008] EWCA Crim 2835 Available at <http://www.bailii.org/ew/cases/EWCA/Crim/2008/2835.html>

²⁵³*R v LM and Others* [2010] EWCA Crim 2327 Available at <http://www.bailii.org/ew/cases/EWCA/Crim/2010/2327.html>

Safeguarding children who may have been trafficked

Identification

Early identification of children who may have been trafficked is vital. However, there are challenges to doing this as children may not disclose details of their abuse because they have been groomed or are scared of the consequences. Many children will not see themselves as victims and may have 'bonded' with those who have exploited them. In some cases, the children's family members may be involved in their trafficking.

Initial contact of children trafficked for forced criminality and forced begging is often with police officers or others in the criminal justice system. However, those tasked with interviewing and assessing children who may have been trafficked must be child protection specialists who are trained in identifying indicators of trafficking. Children should be prevented from having to repeat the same information to various practitioners and interviews should take place in a suitable, child-friendly environment with the same persons, where possible and appropriate (UNCRC Article 15).

The EU Trafficking Directive supplements the United Nations Convention on the Rights of the Child (UNCRC) and makes it clear that a child's best interests shall be a primary consideration when dealing with trafficked children (Article 13). It also states that Member States *"shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child"*.

In 2011, the London Safeguarding Children Board launched guidance to help agencies across the UK to identify and support children who have been trafficked. It is aimed at social workers, teachers, police, health workers and other professionals who may come into contact with suspected child victims of trafficking. It incorporates a Trafficking Toolkit²⁵⁴ including an indicator risk assessment matrix and guidance on how to safeguard trafficked children.

Assessing age

Many children who have been trafficked are forced to carry false documents or have no identity documents at all. This can make it very difficult to accurately identify their age. Incorrectly identifying someone as an adult when they are a child, including if they were a child at the time of their trafficking, means they are denied of the correct care and assistance. It is therefore imperative that adequate age assessments are carried out and children correctly identified.

The EU Directive places an obligation on Member States to "ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection".

²⁵⁴http://www.ecpat.org.uk/sites/default/files/london_safeguarding_trafficked_children_toolkit_feb_2011.pdf

Therefore, it is vital that all those who claim to be children, or if there is any reason to believe a person is a child, the individual should be treated as a child and given immediate access to the relevant support and protection for children until their age has been assessed and any dispute over age has been resolved.

Legal guardianship

Child victims of trafficking are amongst some of the most vulnerable children in the UK and are particularly vulnerable to trafficking and re-trafficking. In addition to having suffered physical, sexual and/or psychological abuse at the hands of their traffickers, child victims of trafficking find themselves alone in destination countries without parents or legal guardians. The level and quality of support provided to them varies widely and is often found to be inadequate.

An effective legal system of guardianship can help to ensure that children's views and wishes are heard. A legal guardian can advocate in the child's best interests, represent the child's views, hold public authorities to account and act as an important link between all of the agencies working with the child.

If a child is being criminalised as a result of their exploitation, the guardian can help to ensure those working with the child are informed of the child's rights and the legal obligations of non-prosecution and non-punishment.

The Fundamental Rights Agency (FRA) in 2014 published the handbook 'Guardianship for children deprived of parental care'. It aims to strengthen national guardianship systems for children in Europe and give guidance on guardianship for trafficked children. It outlines the important role that guardians play in protecting all children from abuse and exploitation and aims to promote a shared understanding of the main principles of guardianship systems. It presents a set of core common principles and key standards. These include:

1. **Non-discrimination:** All children are entitled to the same level of protection, no matter where they come from. In this respect, EU Member States should harmonise guardianship provisions and services.
2. **Independence and impartiality:** Guardians must be able to act independently and impartially, guided by the best interests of the child.
3. **Quality:** Guardians and legal representatives should be qualified and receive continuous training on child protection and welfare. They should be skilled in meeting the particular needs of child victims of trafficking or unaccompanied children.
4. **Accountability:** National law should ensure that guardianship systems are clearly defined and monitored so that the relevant authority can be held responsible and accountable.
5. **Sustainability:** States should provide sufficient human and financial resources for guardianship systems, which should also cover monitoring and training.
6. **Child participation:** Children should be informed and involved in all aspects of their guardianship. This also includes awareness of their rights and of how to complain if their rights are not respected.

NIDOS – Guardianship Model

NIDOS is a Dutch Independent Guardianship Institute. It has been appointed by the Dutch Ministry of Justice as Guardianship and Family Guardianship organisation for refugees and asylum seekers. The guardian is the legal representative and overseers of a trafficked child's development and safety.

It provides care, support and safety to young people pursuant to custodial remedies and child protection measures. It works with the best interest of the child in mind, taking into consideration cultural, linguistic and social origins. Staff are specifically trained and experts in rehabilitation and safeguarding and all receive specialist training on the rights and care needed for child victims of trafficking. More information on NIDOS can be found on their website: <http://www.nidos.nl/>

Safe Accommodation

Research has shown that child victims of trafficking are at a high risk of going missing and losing contact with authorities. It is vital that the past, present and ongoing risk to the child is assessed and provision is put in place to protect the child from future abuse. Any safety plan should include the child and be wider than merely accommodation provision. It should include a multi-agency response that incorporates the specific risks to the child and provides emotional and psychological support for the child, taking into account the trauma that the child has suffered.

ECPAT UK have released 10 principles on the safe accommodation on child victims of trafficking:

- 1 The best interests of the child should be at the centre of all decisions regarding the provision of safe accommodation and related support
- 2 Children should be asked about what makes them feel safe
- 3 Children should be given sufficient information to help them make informed decisions about their accommodation and care
- 4 Safety measures should be implemented to reduce a child's risk of going missing, especially within 24 to 72 hours after first contact with the child
- 5 Safe accommodation should be understood as multi-faceted, involving physical and psychological elements, with particular recognition of the impact of trauma on a child's perceptions and behaviour
- 6 A child's accommodation and safety needs will change over time and should be regularly assessed
- 7 A child should not feel punished or overly restricted by measures taken to help keep them safe in accommodation
- 8 A child should be given access to a range of psychological, educational, health, social, legal, economic and language support that 'brings safety to the child' and helps them recover
- 9 Everyone working with child victims of trafficking should be trained to recognise and respond appropriately to their needs
- 10 Efforts to keep children safe should involve the wider community in ways that help create an environment that is difficult for traffickers to operate in

CASE STUDY 2

V was placed in local authority care but her location was discovered by her traffickers, she was coerced via her mobile phone and returned to her traffickers. V should have been placed in specialist accommodation under the care of specially trained practitioners or a guardian, this would likely have prevented her re-trafficking.

Safeguarding Vulnerable Victims Throughout The Criminal Justice System And In Prison

When victims are criminalised it is commonly the result of a failure to identify them early in the prosecution or because their trafficking case was not properly understood by practitioners. The later they are identified the harder it is to halt prosecution and the less likely it is that they will receive justice. In the unfortunate circumstances that a victim is wrongfully imprisoned, there are still opportunities for frontline practitioners to identify and protect victims.

Importance of Prison Staff and Prison Outreach

Prison wardens and support service staff have opportunities to engage with victims whilst they are detained. If, through observation or discussion with detainees, they disclose that they have previously been exploited or indicate that they were coerced or forced into committing the crime they were prosecuted for, further investigations should be made. Identification at this stage is also crucial in preventing their deportation back to their home countries where they could face further exploitation or re-trafficking.

CASE STUDY 1

Y was regularly visited by prison outreach workers whom he began to trust and disclose parts of his trafficking situation to. At this point his victim status should have been identified and an application for formal identification and subsequent redress made.

Migrant Rights Centre, Ireland.

Migrant Rights Centre Ireland (MRCI) receive requests from legal teams to conduct an assessment of human trafficking in cases where they have concerns that indicators of human trafficking are presenting in their client's cases. MRCI are part of the Criminal Law Legal Aid Scheme which enable them to produce expert reports on cases for a legal team to present in court. Once they receive the request, the solicitor arranges with the prison for MRCI to visit and conduct an assessment of the case over a number of visits and produce a report which is presented in court as part of the person's trial.

MRCI are also contacted by prison governors who have concerns about cases. In these circumstances MRCI will visit the person and have a preliminary interview with them about their case to identify if any indicators of human trafficking are presenting. MRCI will then contact their legal team to

discuss and offer to conduct a full assessment and prepare a report.

It was important that MRCI applied through the Courts Policy Division within the Department of Justice and requested to be listed as experts for the purposes of conducting assessments within the Criminal Legal Aid Scheme. This enables MRCI to have a formal relationship with the legal team and conduct assessments which are presented as part of the person's defence in their trial.

More information can be found on MRCI's website: www.mrci.ie

Cooperation

The crime of human trafficking impacts on a wide range of sectors and no one sector on its own can prevent it. For this reason, combatting human trafficking and protecting its victims requires a multi-disciplinary, cross-sector approach. This includes actors in civil society, law enforcement, government, international institutions and legal professions, amongst others. There are many benefits to engaging in partnerships, including information sharing, the provision of appropriate support services and increased coordination. Furthermore it can help to prevent the collision of differing approaches, such as a human rights based approach and a law-enforcement approach. Below are some examples of how cooperation amongst and within sectors can better tackle trafficking.

Avon and Somerset Partnership Model, UK.

The Bristol Anti-Trafficking Partnership (ATP), in the South-West of England was set up in 2011 and brings together 22 organisations, including law enforcement, NGOs and local government, in a joint approach to tackling human trafficking. Bristol ATP disrupts trafficking operations by conducting extensive outreach and education throughout the community and thereby exposes how traffickers function and attempt to conceal their operations.

One example of how the ATP works to combat trafficking for forced criminal exploitation is through identifying victims of trafficking forced to cultivate cannabis. Police are assisted by members of local anti-trafficking NGOs when raiding cannabis farms. The NGO staff focus on identifying potential victims of trafficking, preventing them from being criminalised and leave law enforcement to focus on apprehending traffickers. More information on the ATP can be found here: <http://www.unseenuk.org/projects/atp>

Had the police officers raiding the cannabis farm Y was found in been accompanied by a frontline professional with knowledge and experience of trafficking indicators, he may have been identified and given support and assistance. He may have assisted the authorities in apprehending his traffickers and the criminal gang behind the cannabis farm.

'Wrap Around' Model of Safeguarding Children in the Netherlands.

The Dutch National Police, in partnership with government and civil society organisations have embarked on a holistic and coordinated approach to tackling the issue of trafficking of Roma children for forced criminal exploitation and forced begging. A National Programme, set up by the Ministry of Justice and Platform for (Roma) Municipalities, established 'Combatting the Exploitation

of Roma Children'. The programme is centred around a multi-disciplinary approach to working with Roma families on all issues including health, education, and employment and so on, with a particular focus on the welfare and future of the children.

The Wrap Around Model involves assigning a Family Manager to each family identified as being at risk of child abuse and child trafficking. Potential trafficked children may be unclear about the role that each professional support person has to play and it may take time for them to build up trust with each individual. The Family Manager therefore, acts as the intermediary between the family and those professional organisations working with the family. This creates one point of contact and assists in building trust and coordination. It has been incredibly successful in identifying issues and particularly in identifying and preventing trafficking and the exploitation of children.



More information about the Wrap Around Model can be found through the organisation Lindenhout: <https://www.lindenhout.nl/>

Austrian Policing Model

Police operations in Austria to tackle trafficking for forced begging have been particularly successful. They are based on the principle that a coordinated, centralised and specialised unit is the most effective way of preventing trafficking and protecting victims. Austria's successes can be attributed to the following measures:

- All human trafficking cases are linked to one central specialised unit: The Human Trafficking Office
- The police run a nationwide 24 hours human trafficking hotline which can be used by the public and police alike.
- The central intelligence service collects all information on human trafficking. Its sources include:

Europol, liaison office consulates, crisis centres, police reports, victims, individual sources, investigations and the public

- Attempts to disrupt forced begging were achieved through operational activities such as: wiretapping, surveillance, identity checks, international meetings, and controls in public places and on public transport.
- Prosecutors receive specialist reports and international cooperation in the form of judicial assistance.
- In 2005 Austria implemented the Plume Treaty which gave executive powers to police officers from other jurisdictions, dramatically increasing the opportunity for cross border collaborative investigations into human trafficking
- Police officers receive training in spotting trafficking indicators and only specially trained members of trafficking units are allowed to interview potential victims of trafficking.

CASE STUDY 2

V came into contact with police time and time again. Because there was no centralised body to coordinate or no obligation to share information on arrests and activities, it was assumed that each apprehension was her first and no further inquiries made.

Challenges

Protecting the rights of trafficked persons and prosecuting traffickers can be complex and challenging. There are certain dilemmas that will arise and practitioners should know how to navigate these and work collaboratively to find the best possible solution.

Common Myths

The understanding of human trafficking is filled with misperceptions as to what a victims should look like, how a victim should behave etc. These myths complicate identification and it is important that these misperceptions are challenged. Some of examples of common myths surrounding trafficking are:

Myth: A victim is discovered in a cannabis factory along with a phone and laptop. Because he had such 'luxuries' he could not be a victim of trafficking.

Reality: Such 'luxuries' are in fact a method of control by the traffickers – a way to communicate with and coerce the trafficked person.

Myth: A child was caught numerous times by police stealing and pickpocketing on the streets. On one occasion they were even interviewed by a social worker but the child defended the adults controlling them, saying they were extended family. The child could not be a victim of trafficking.

Reality: Their traffickers were the only adults the child knew in the destination country and the child harboured a sense of loyalty and dependence to them. Furthermore, the child had been told that the authorities were corrupt and would punish them severely for stealing, they should therefore do all that they could to be released.

Myth: A victim forced to marry against her will was free to leave the house she was kept in to carry out chores such as shopping and visiting the launderette. On those occasions she had the ‘opportunity’ to visit a police station and inform the authorities of her exploitative situation – but she didn’t – therefore she could not have been a victim.

Reality: The trafficker had used a variety of psychological controls, including threatening her with sexual violence and making threats against her family back home if she went to the police.

Challenges with identification

There are further challenges that result from insufficient understanding of trafficking and its impact on victims. Furthermore, traffickers are resorting to more subtle forms of coercion, using sophisticated methods of psychological violence, pressure and implicit rather than explicit control measures. These tactics are further hindering practitioners’ ability to identify victims. Challenges with identifying victims are exacerbated by the nature of the exploitation they suffer. It is therefore important to remember that that in cases of trafficking for forced criminal activities and begging:

-Victims first contact with authorities is likely to be when they are apprehended for crimes. It is counterintuitive, especially for law enforcement who are tasked with enforcing the law to think of those who commit an offence as victims.

-Victims mistrust of the authorities, especially if they have been previously arrested or punished. This may mean they’ll have deep-rooted concerns about how they’ll be treated.

-Many will have been coached by the trafficker about what to say if and when they’re arrested²⁵⁵.

-The trafficker will have employed tactics to stop the victims coming forward, including threats and intimidation.

Crime behind the Crime

Police are tasked with preventing crime and apprehending and prosecuting its perpetrators. This type of trafficking makes the victim appear to be the criminal, making it challenging for law enforcement to look beyond the immediate crime and identify a trafficking situation. However, law enforcement also have an obligation to protect victims of crime, including victims of trafficking and a positive obligation to investigate trafficking. Awareness raising, training and information sharing around the issue of criminal exploitation amongst officers is imperative.

Protecting those with no permanent address

Often, and especially in cases where gardeners are arrested for cannabis cultivation, a defendant, and potential victim will have no permanent accommodation (often as a result of living in the cannabis factory). In these cases defendants are denied bail through fear they’ll abscond. Furthermore, where officers suspect that the defendant is being exploited and potentially in danger, they may feel that keeping them in custody and away from the traffickers is preferable to releasing

²⁵⁵International Association of Chiefs of Police, the Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation, November 2006. Available at <http://www.theiacp.org/documents/pdfs/RCD/CompleteHTGuide.pdf>.

them. In this situation officers are confronted with the dilemma of unjustly detaining someone in order to protect them. It is a case of weighing up a victims' right to freedom against their right to protection. Ideally victims should be taken to a safe place that is not a police station, such as a counselling centre.

CASE STUDY 1

Y was not granted bail because he had no permanent accommodation. This may have prevented him from being found by his traffickers and exploited further. However, being kept in custody, despite being a victim of trafficking is in breach of his human rights

Victims returning to their traffickers

Some victims will return back to their traffickers. There are a number of reasons for this. Often traffickers are the only people victims know in their destination country or region and they will have a perceived sense of loyalty or attachment to them (the so-called Stockholm syndrome). Victims may still be held by threats to themselves and their families and feel that returning to their traffickers is their only option. Often this is the result of not feeling safe and protected in their current situation. Victims may still be debt bonded to the traffickers and would fear repercussions, or have a sense of obligation (often conditioned by their culture or belief) to repay the debt. The authorities should do all that they can to ensure that victims feel safe and protected, and to find a durable solution for the victim to avoid their return to a situation of exploitation.

REMEMBER: Should the victim still return back to their trafficker, they nevertheless remain a victim of crime.

What should you do if you suspect someone of being a victim of human trafficking for forced criminal exploitation or forced begging?

If you suspect someone may be a victim of trafficking for forced criminal exploitation you should ...

- Seek advice and assistance from NGOs or other specialist services and find out what support is available.
- Consult with a specialist trained on identification of trafficking within your organisation.
- Refer the person to an appropriate authority or organisation that can formally identify them. This will differ from country to country.
- Refer victims to specialised service providers.
- If you are engaging with a potential victim, on the street or elsewhere, try to do so out of the view of potential 'controllers' and in a sensitive and calm manner.
- Re-assure them that what they're saying is being taken seriously but do not make promises to them that you may not be able to keep.
- Do not expect a victim to use the term 'trafficked'. Many do not know what this means, those that do may not self-identify as a victim of human trafficking.

Where To Get Further Information And Advice

EU Anti-Trafficking Website (contacts for NGOs in all 28 member states)

<http://ec.europa.eu/anti-trafficking/>

Europol

<http://europol.europa.eu>

Eurojust

<http://eurojust.europa.eu>

Frontex

<http://frontex.europa.eu>

RACE in Europe Project

www.raceineurope.org

Anti-Slavery International

www.antislavery.org

ECPAT UK

www.ecpat.org.uk

Migrant Rights Centre Ireland

www.mrci.ie

Specialist Policing Consultancy

www.specialist-policing.co.uk

La Strada Czech Republic

www.lastradainternational.org

Multicultural Centre Prague

www.mkc.cz

Dutch Police Academy

www.politieacademy.nl

Vietnamese Mental Health Services

www.vmhs.org.uk

TRAFFICKING CE

RESPONSE AGAINST
TRAFFICKING FOR FORCED
CRIMINAL EXPLOITATION



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