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Poppy Project

1. The Poppy Project, established in 2002, is the largest independently funded service in the UK which delivers support and/or accommodation to female victims of trafficking. We have, to date, received over 2000 referrals all of whom were trafficked into and exploited in the UK. Access to the project is dependent on a woman meeting certain criteria based on the international definition of trafficking. The Poppy Project supports women over the age of 16 who have been trafficked into or within the UK and who have experienced exploitation as a result of their trafficking situation. Exploitation can include sexual exploitation and prostitution, forced labour including domestic slavery, organ harvesting, forced illicit activities or other forms of exploitation as identified by Poppy.

UK trafficking responses in context

2. There is no free-standing legal framework for the recognition or protection victims of trafficking in the UK. The National Referral Mechanism, introduced by the UK Government in April 2009 to identify victims of trafficking, is a creature of policy, not statute. Prior to the entry into force of the Palermo Protocol (ratified by the UK in 2006) and the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by the UK December 2008, implementation effective from 1 April 2009) there was no primary legislation, or other legislation, which declared THB as human rights violation, albeit human trafficking for the purposes of sexual exploitation or labour exploitation constituted criminal acts under various pieces of UK criminal legislation. This position has not changed following the entry into force of either treaty. No legislation has been introduced by the UK by that would recognise THB is a human rights violation.
3. The UK is bound, as State Party and as a member of the Council of Europe, to the provisions of the European Convention on Human Rights, including the non-derogable rights under Articles 3 and 4. Hence, subsequent to the ECtHR judgment in *Rantsev v Cyprus and Russia* (7 January 2010) THB is now considered as a human rights violation in the UK, but this arises directly in consequence of the *Rantsev* judgment (as of course whilst the ECtHR in *Siliadin* in 2005 determined that domestic servitude constituted forced labour, that case was not assessed in light of its clearly trafficking background).
4. In the context of the positive obligations on States under Articles 3 and 4 ECHR to operate effective, procedural measures to protect victims of trafficking, including by way of the criminal investigation of their traffickers, *Rantsev* was recently applied, approved and followed by the High Court in the case of *OOO & Ors v The Commissioner of Police for the Metropolis* [2011] EWHC 1246 (QB) (20 May 2011) <http://www.bailii.org/ew/cases/EWHC/QB/2011/1246.html> In that case, the High Court found that the Metropolitan police had failed to investigate the claims of four victims of trafficking from Nigeria who had been trafficked to the UK as children and had each been exploited for forced labour (domestic servitude) and awarded each of the victims £5000 in damages against the police for failing to comply with their positive obligations to investigate under Articles 3 and 4 ECHR.

The UK legislative framework

5. In 2003 the Sexual Offences Act introduced the crime of Trafficking into (within, or out of) the UK for sexual exploitation,ⁱ a clumsily-worded offence that requires that a person is moved into, within or out of the UK for the purposes of exploitation *and* that the exploitation consists, at a minimum, of the commission of another relevant sexual offence listed in the Act, such as rape, sexual assault or exploitation in prostitution.
6. In 2004 the Asylum and Immigration (Treatment of Claimants) Act introduced a new offence of Trafficking people for exploitation,ⁱⁱ which creates an offence if and only if someone has been moved into, within or out of the UK, for the intention of exploitation as defined in Article 4 of the European Court of Human Rights, *and* it can

be demonstrated that the person was subject to force, fraud or deception – the other means indicated in the international definition of trafficking (coercion, exploitation of a position of vulnerability or the giving of gifts to secure consent) do not meet the threshold. As of the latest available official statistics, published in December 2010, 28 defendants had been proceeded against under the Act, with only 16 (57%) found guilty.ⁱⁱⁱ

Formalising identification

7. To assist all states parties with implementation the Organisation for Security and Cooperation in Europe (OSCE) developed the concept of a centralised National Referral Mechanism (NRM), a tool that was designed to ensure states could be compliant with the identification and victim care obligations in the Convention. A handbook on NRMs was published in 2004, and intending to reflect the multi-agency approach that the OSCE felt would necessarily underpin any effective system, it was called 'Joining efforts to protect the rights of trafficked persons.'^{iv}
8. The basic function of the NRM is to allow designated 'first responders,' or persons likely to encounter a potential victim of trafficking, such as police, immigration officials, specialist NGOs, and social services to make a detailed referral listing the indicators of trafficking to a 'competent authority' who then makes an initial assessment as to whether it is reasonable to believe that this person may be a victim. This decision is known as the 'reasonable grounds' decision and it grants the individual protection from removal and access to support arrangements (as detailed by Article 12 of ECAT)^v for a minimum of 45 days. During the 45 day 'recovery and reflection period' the competent authority must undertake a comprehensive assessment of the individual's claim, in conjunction with other involved professionals, which will allow them to reach a 'conclusive grounds decision,' determinedly finally if a person is a victim of trafficking, and whether or not, owing to their circumstances, they should be issued with a residence permit to remain in the UK. The explanatory report of the Convention explains the envisaged role of these important decision makers:

*"Victims frequently have their passports or identity documents taken away from them or destroyed by the traffickers. In such cases they risk being treated primarily as illegal immigrants, prostitutes or illegal workers and being punished or returned to their countries without being given any help. To avoid that, Article 10(1) requires that Parties provide their competent authorities with persons who are **trained and qualified in preventing and combating trafficking in human beings and in identifying and helping victims, including children and that they ensure that those authorities cooperate with one other as well as with relevant support organisations...**It is essential that these have people capable of identifying victims and channelling them towards the organisations and services who can assist them..."^{vi}*
9. It is clear that the Convention anticipated a cooperative identification process that is specifically designed to avoid misidentification of victims of trafficking as illegal immigrants, and that would ensure that qualified professionals, concerned with and able to respond to the complex needs of trafficked persons, would make these decisions.
10. In the UK, however, the decision making within the NRM has been divided into two competent authorities, divided along immigration status. For those who are UK or European nationals, decisions are made by the UK Human Trafficking Centre, which is part of the Serious Organised Crime Agency. UKHTC makes all decisions on cases of persons not subject to immigration control. Not only are these claims not contributing to UK immigration statistics, but it is important to note that positively identifying them does not create a financial obligation that otherwise would not exist. As nationals of EU states these individuals already have recourse to public funds.
11. There is no appeal process for any NRM decision, though some asylum decisions instruct those in receipt of negative NRM decisions to raise these issues when appealing an asylum refusal. Technically speaking, however, the only way to officially challenge a decision is via judicial review at the High Court. Judicial review is an

arduous and complex process and given a lack of understanding of the NRM amongst the judiciary it is rare that applications to the High Court are even accepted let alone successful. If that fails the only recourse is the European Court of Human Rights.

Discrimination in victim identification

12. Data regarding NRM decisions made for EU (**but not UK**) nationals from 1 April 2009 to 31 March 2011 shows that EU nationals were positively identified at the initial stage in 93.8% of cases, 85.5% of which were also positively identified at conclusive stage. For UK nationals the numbers are even higher, with 96.1% (of 52 cases) given positive decisions at initial stage and 91.8% of those given positive conclusive decisions.
13. It is very clear that positive decisions for non-EU nationals are significantly lower than that of EU and UK nationals. The average positive reasonable grounds rate for UK and EU nationals is 89.4%, compared to 61% for non-EU nationals. At conclusive grounds the comparison is even starker with an average of 82.8% of UK and EU nationals conclusively accepted to be victims while the average for non-EU nationals is only 45.9%. There is no evidence to suggest that UK or EU nationals present with more genuine claims than those of non-EU nationals, no greater likelihood of willingness to work with law enforcement or any other indicator, aside from not being subject to immigration control that sets those claims apart from those of non-EU nationals.
14. It is impossible to know exactly what percentage of non-EU nationals also claim asylum, but data collected by the Poppy Project suggests that it is possible that more than 90% of non-EU trafficked women are simultaneously seeking asylum.^{vii} From 1 April 2009 to 31 March 2011, 418 non-EU women with credible accounts of trafficking were referred to the Poppy Project. 181 of those women were able to provide information about their immigration status. Of those 181, 168 were either claiming asylum or had been refused. An additional seven women had not claimed asylum but expressed an intention to do so. Therefore of the 181 cases, 175 women, or 96.6% were also in the asylum system. The overwhelming majority of those claims are still outstanding, but longer-term data collected by Poppy suggests a refusal rate at initial decision of 75-80%. Of these, however, 89% are overturned at appeal and some form of leave is granted.^{viii}

Experiences and outcomes of trafficked persons claiming asylum

15. This is not merely a statistical problem. An overreliance on the asylum system to inform trafficking decision making has horrific consequences for the individuals involved. In the case of women who may have a claim for protection based on sexual exploitation the overlap between these two systems can be particularly damaging. The Poppy Project has collected several examples of cases where violence against women has been dealt with inappropriately in both systems. For example in the case of Ms A, a Nigerian national who claimed asylum and raised a trafficking claim in the NRM, the competent authority determined that her claim to have fallen prey to traffickers after fleeing sexual violence as a child was not accepted, and therefore her entire trafficking claim was refused. The refusal letter stated "it is not accepted that you were raped when you were 12 years old [as such] your father and family would not have been killed, and as a consequence of this your whole account of events has been fabricated."^{ix} In Ms A's case a property used to exploit women in prostitution in the UK had been identified and a police investigation was underway, yet because the basis of her asylum claim had not been found credible her entire trafficking account was refused.
16. Or take the case of Ms B, an Indian woman exploited in forced labour who also experienced sexual violence at the hands of her trafficker. Her NRM decision stated:
"It is noted that you have highlighted numerous incidents of non-consensual sex [...] and some instances of violence. [...] Although this experiences [sic] are extremely unpleasant it is considered that this treatment [...] does not amount to trafficking in your case."^x

17. Thankfully her initial asylum refusal was overruled at appeal where the judge accepted her claim to be trafficked and raped, rendering the NRM refusal meaningless.
18. Ms C, an Albanian national, received a decision that stated she could not be believed because she was “significantly aware of the pricing structure”^{xi} in the brothels in which she were exploited – a detail established at her asylum interview which was used to refuse a trafficking claim.
19. Official UK Borders Agency guidance on assessing whether or not someone is a victim of trafficking states:

“Victims of trafficking may be reluctant to go into much detail about the full facts of their case... interviewing officers should phrase their questions carefully and sympathetically, but should keep in mind the need to get as full an account as they can, while at the same time taking care not to cause undue distress...The first task is to assess the material facts of the asylum claim, giving appropriate weight to all the evidence, oral or documentary.”^{xi}
20. Despite this guidance decisions are still issued which make statements such as:

“Your description of how you escaped the brothel is contradictory and vague in your asylum interview. You do not remember where the house was located, you do not know the name of the man who helped you to escape, you do not remember the name of the train station you went to after escaping. Whilst it is noted that you were relatively new in this country when these events unfolded, it is considered that you would have some memory of such basic details given the significance of these events and their impact upon you...You explained this by saying you were “stressed and not thinking.” You (sic) explanation is not accepted...Consequently your evidence about the alleged escape from your abductors is not accepted.”^{xiii}
21. The decision quoted above has been accepted, in conjunction with another Poppy Project case, by the European Court of Human Rights^{xiv} on the basis that the UK’s ongoing attempts to remove her to the country from which she was trafficked give rise to potential Article 3 (protection from torture) and Article 4 (protection from slavery) violations. The acceptance of potential Article 4 violations is critical as slavery and servitude can be seen to have been raised via the NRM, not the asylum system, which could have allowed the ECHR to refuse to consider them as This case has been given priority by the court under Rule 41 and could set an extremely important precedent with regard to attempts to rely on the asylum system to remove victims of trafficking from the territory.

Recommendations:

Trafficking

1. The National Referral Mechanism must be reviewed and extricated from the asylum system to ensure that the system:
 - a. is genuinely multi-agency, placing identification and support, not immigration status, at the centre of decision-making
 - b. carries a right of appeal to an independent body, comprised of multi agency staff
 - c. Ensure that asylum decisions are not made by the same individuals who make NRM decisions
2. Publish guidance and provide training for first responders and decision-makers that effectively and accurately reflect the ECAT definition of trafficking and instruct those working with trafficked people on appropriate application thereof.
3. UKHTC and the UK Borders Agency must publish quarterly statistics that actively seek to understand any overlap occurring between the asylum and NRM systems.
4. Ensure that ‘dip sampling’ of decisions looks at linked decisions and that changes in one decision (i.e. overturning of a negative NRM decision) is reflected in any related asylum decision.

5. Appoint an independent anti-trafficking rapporteur to oversee identification, decision making, collaborative working and data collection. This office requires with statutory powers to request information from law enforcement, UKBA, social services, a dedicated function that works collaboratively with NGOs, and must be accountable to Parliament.

Asylum

1. UKBA must fulfil all obligations with regard to non-discrimination and equality to ensure that all individuals are able to benefit equally from the services they provide.
2. Ensure that female asylum applicants are provided with female case owners, who carry the case from beginning to end whenever possible, and that female interpreters are provided at all interviews.
3. Ensure that case owners making decisions on asylum claims in which trafficking have been raised:
 - a. Understand the application of the Geneva Conventions, ECAT and other relevant documents with regard to gender and human trafficking
 - b. have a thorough understanding of relevant domestic policy and legislation and have access to specialist advisors within the agency
 - c. treat applicants with respect and dignity, conducting interviews with an appropriate regard for the trauma experienced
 - d. do not make assumptions, speculate about an individual's experience, or provide alternative theories where credibility is questioned
 - e. work with all involved support professionals regarding trafficking issues, including seeking input from law enforcement or prosecution where relevant.

ⁱ *Sexual Offences Act 2003.s.57-59*, London: HMSO

ⁱⁱ *Immigration and Asylum (Treatment of Claimants) Act 2004.s4*, London: HMSO.

ⁱⁱⁱ HC Hansard, Vol 520, Col 1178W, 21 December 2010.

^{iv} Office for Democratic Institutions and Human Rights, 2004. *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*. Warsaw: Organisation for Security and Cooperation in Europe.

^v Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT)*, CETS 19716 May 2005. Article 12. Council of Europe. Available at:

<http://www.unhcr.org/refworld/docid/43fded544.html>

^{vi} *Ibid.*, *Explanatory report at paragraphs 128-130*

^{vii} This estimate is based on an analysis of information held on Poppy Project service users referred between 1 April 2009 and 31 March 2011. All data held by Poppy Project, London.

^{viii} *Ibid.* based on data collected between March 2003 and August 2011.

^{ix} UK Borders Agency, 2011. NRM Reasonable Grounds Decision [fax] (Personal communication 16 August 2011).

^x UK Borders Agency, 2011. NRM Reasonable Grounds Decision [fax] (Personal communication 15 May 2009).

^{xi} UK Borders Agency, 2011. NRM Reasonable Grounds Decision [letter] (Personal communication 22 September 2010).

^{xii} UK Borders Agency, 2010. *Victims of Trafficking: Guidance for Frontline Staff*, p23. London: UKBA.

^{xiii} UK Borders Agency, 2011. NRM Reconsideration [email] (Personal communication 15 February 2011).

^{xiv} European Court of Human Rights. Application no. 20658/11. ECHR-LE4.1aR. PHA/SMI/ssh. [fax] (Personal communication 31 August 2011).