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NO AIR TO BREATHE: VICTIMS OF SEX SLAVERY IN THE U.K.

Regina E. Rauxloh¹

Abstract: Today slavery is recognised as a heinous violation of numerous human rights and a crime against humanity under the Rome Statute. It is prohibited under a number of international law instruments, such as the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, 250 years after the famous decision in Somerset v. Stewart, when Lord Mansfield was reported to have announced that the air of England was “too pure for slaves to breathe,” the U.K. is still a country of destination for thousands of persons who are trafficked for the purpose of forced labour in agriculture and sweatshop industries, involuntary domestic servitude, and sexual exploitation. An increasing number of them are women and children, who are sold and re-sold, kept imprisoned, raped, beaten, humiliated, and psychologically abused in the billion-dollar industry of sexual exploitation.

I. INTRODUCTION

Two hundred and fifty years after the famous decision in *Somerset v. Stewart*², when Lord Mansfield was reported to have announced that the air of England was “too pure for slaves to breathe,” slavery has far from disappeared. Although a number of international, regional, and national legal measures have been introduced to fight modern sex slavery, the protection of such victims in the U.K. is still inadequate. This paper explores the effectiveness of international and domestic legislation in the U.K.’s fight against human trafficking for the purpose of sexual exploitation. The paper especially focuses on the possibilities and limits of law in offering victims adequate support. This paper argues that, because of the urgency of fighting modern sex slavery as a crime, law must play an active role in protecting the victims against reprisals and the risks of being re-trafficked. Law must also ensure that victims themselves are not criminalised, but rather they are provided with all the necessary support to recover from their mental and physical abuse and to reintegrate into society.

The first part of this paper sets out the reality of modern slavery describing the harm done to victims of human trafficking as well as the damage done to the public. The second part offers an overview of the international, regional, and domestic legislation trying to tackle human trafficking for the purpose of sexual exploitation and offer protection to the victims. The third part describes the difficulties of fighting and preventing human trafficking in the U.K. The fourth part illustrates the situation of the victims whose situation, despite the dif-

1. Regina Rauxloh is Lecturer in Law University of Surrey, United Kingdom.
2. *Somerset v. Stewart*, (1772) 98 Eng. Rep. 499 (K.B.).

ferent legal mechanisms described earlier in the paper, are left without satisfactory support and protection.

The paper argues that in international and European law, the notion is emerging that human trafficking has to be dealt with from a human rights approach centred around the victim. However, this development has not yet been translated into U.K. domestic law on human trafficking, which is still focused on crime prevention and border security.

II. THE REALITY OF MODERN SLAVERY

According to conservative estimates, at least 27 million people are held in slavery or slavery-like conditions worldwide.³ Between 600,000 and 800,000 women and children are trafficked across borders and probably several million within national borders each year.⁴ Although the *Slavery Abolition Act* of 1833 abolished slavery in the U.K.,⁵ it has never ceased to exist completely. Human trafficking re-emerged on a global scale after the end of the Cold War, when the movement of both humans and capital became much easier.

The NGO Anti Slavery International defines a slave as someone who is:

forced to work—through mental or physical threat; owned or controlled by an ‘employer’, usually through mental or physical abuse or threatened abuse; dehumanised, treated as a commodity or bought and sold as ‘property’; physically constrained or has restrictions placed on his/her freedom of movement.⁶

The victims of human trafficking and sex slavery suffer severe violations of nearly all internationally acknowledged human rights. These rights include: the right of physical and mental integrity, liberty, security of the person, human dignity, freedom from slavery, torture, inhuman or degrading treatment, family life, freedom of movement, privacy, health, and safe and secure housing.

In western countries, the practice of slavery is generally inseparable from the practice of human trafficking (which is what brings victims into the country). Usually, the victims are transported from poorer regions to wealthier regions, from developing countries to developed countries, and within Europe, from the developing east to the richer west. Human trafficking benefits from different developments of globalisation, i.e., improved international mobility on the one hand

3. Sandhya Drew, *Human Trafficking: A Modern Form of Slavery?*, 4 EUR. HUM. RTS. L. REV. 481, 492 (2002).

4. 2006 U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT*, June 2006, at 6, available at <http://www.state.gov/g/tip/rls/tiprpt/2006>.

5. An attempt was made to abolish the slave trade through the ASTA in 1807, and it was effectively abolished by the *Slavery Abolition Act* of 1833.

6. Anti-Slavery International Homepage, *Europe Reports*, <http://www.anti-slavery.org/homepage/antislavery/modern.htm> (last visited Feb. 15, 2006).

and “crushing poverty and, frequently, the breakdown in state order in some regions”⁷ on the other hand. Regions that have suffered natural disasters, such as a tsunami or warfare (e.g. civil war in Angola), result in large populations being without the necessary protective support network to prevent human trafficking. Refugees and orphans are more likely to fall victim to human trafficking, as there is no one who will notice that they have gone missing.⁸

Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (TIPP) defines human trafficking by examining three aspects:

1. the act of trafficking (recruitment, transportation, transfer, harbouring, receipt of persons)⁹
2. the method used (using force or threat of force against the victim or their family, deception, abuse of power position, giving or receiving payments of achieving consent of a person who has control over victim)
3. the purpose (exploitation).

While the purposes for human trafficking range from child labour to removal of organs, this article focuses on human trafficking for the purpose of sexual exploitation.

In categorising the different countries involved, one distinguishes between source, transit, and destination countries, although a given country might fall into more than one category.¹⁰ Like many Member States of the EU, the U.K. with its substantial demand for trafficked girls and women is, above of all, a destination country. According to Home Office research, each year between 142 and 1,420 women are trafficked into the U.K. for the purpose of sexual exploitation.¹¹ The source countries are primarily Moldova, Romania, Albania, Thailand, Nigeria, and Sierra Leone. Van Impe has identified four waves of human trafficking of sex slaves into the U.K. The first wave, in 1992, was mostly comprised of Asian women, primarily from the Philippines and Thailand. In 1993, the victims came more from South America, especially the Dominican Republic and Colombia. In 1993, source countries from Africa prevailed, mainly Ghana and Nigeria; and since 1994, most of the victims are of central and eastern European origin from countries such as Hungary, Czech Republic, Russia, Ukraine,

7. Ryszard Piotrowicz, *European Initiatives in the Protection of Victims of Trafficking Who Give Evidence Against Their Traffickers*, 14 INT'L J. REFUGEE L. 263, 265 (2002).

8. Another augmenting factor is the growing gender gap in societies such as India or China.

9. Consent to trafficking does not make the action lawful.

10. Piotrowicz, *supra* note 7, at 264.

11. LIZ KELLY & LINDA REGAN, HOME OFFICE, STOPPING TRAFFIC: EXPLORING THE EXTENT OF, AND RESPONSES, TRAFFICKING IN WOMEN FOR SEXUAL EXPLOITATION IN THE UK 22 (2000), available at <http://www.homeoffice.gov.uk/rds/police/rspubs1.html>.

and Latvia.¹² However, as victims are regularly sold and resold into different countries, some victims are trafficked into the U.K. through other transit countries where they already have been exploited,¹³ or are trafficked to other countries from the U.K. Thus, the U.K. is both transit and destination country. In addition, some victims are also sold and resold several times within the U.K.¹⁴

A. *Physical Harm*

The victims of human trafficking for sexual exploitation are physically abused in many different ways. Frequently, victims are raped before being forced to work as prostitutes.¹⁵ Furthermore, when working in the sex industry, the constant, excessive, and often violent sexual activities the victims are forced to take part in can result in permanent damage to their reproductive organs. Obviously, forced, unprotected sexual intercourse also bears the risk of sexually transmitted diseases such as AIDS and hepatitis. In addition to rape, victims suffer other physical abuse such as being beaten with objects, burnt with cigarettes, thrown from moving vehicles, locked in, controlled in movement, and/or forced to get an abortion, including being beaten to induce miscarriage.¹⁶ In addition, victims are often forced into substance abuse to make them easier to control. All of these acts may amount to torture and inhuman or degrading treatment.

B. *Mental Harm*

In addition to the different forms of physical abuse, victims also suffer serious mental harm. First, there is the trauma of rape and constant violent assaults, which can lead to nightmares, insomnia, substance abuse, suicidal tendencies or actual suicide, and other post-traumatic stress disorders.¹⁷ In addition, traumas can be caused by the separation from family and the home country as well as the general loss of control and the consequent subordinate position under the trafficker. Furthermore, victims experience constant verbal abuse and threats of reprisal to themselves or their families back home (*e.g.*,

12. Kristof Van Impe, *People for Sale: The Need for a Multidisciplinary Approach towards human Trafficking*, International Migration, Special Issue 2000/1.

13. See HOME OFFICE, TACKLING HUMAN TRAFFICKING—CONSULTATION ON PROPOSALS FOR A UK ACTION PLAN 5 (2006), available at <http://www.homeoffice.gov.uk/documents/cons-2006-tack-human-trafficking/cons-2006-tackling?version=1>.

14. See Simon Jeffrey, *Report Reveals London's Sex Slaves*, GUARDIAN UNLIMITED (London), Aug. 19, 2004, <http://www.guardian.co.uk/print/0,4997377-104770,00.html>.

15. *Id.*

16. POPPY PROJECT NEWSLETTER, Apr. 2004, available at http://www.eaves4women.co.uk/POPPY_Project/Documents/News_Letters/POPPY%20Newsletter,%20Apr%202004.pdf.

17. See U.S. DEP'T OF STATE, *supra* note 4, at 14.

threats to kill or rape family members).¹⁸ Obviously, the forced sexual activity, isolation, and domination by the traffickers cause also serious emotional damage.¹⁹ It can take a lifetime to recover from such traumas.

Victims are also made to believe that they are responsible for their situation because they are in debt to their “employers.” Victims are told that they have to work off the fee for being brought into the country or the price they were bought for. In reality, however, they can never pay off the “debts” because they are charged for expenses such as rent, food, and clothes, which are more than they “earn.”²⁰

C. Damages to the Public

Given all the physical and mental damage suffered by the victims, it does not come as a surprise that this violence costs the U.K. National Health Service billions of pounds sterling. An internal Home Office study estimated that the total economic and social cost of people trafficked for sexual exploitation was approximately £1 billion in 2003.²¹ In addition, there is the danger of the increased spread of AIDS. Some experts even estimate that human trafficking for sexual exploitation advances not only the global spread of AIDS, but also the mutation of the virus.

Moreover, human trafficking seriously damages the communities in the source countries. Traffickers pull—by force or by deception—children and young persons away from their communities.²² Not only are families torn apart, the young generation might lose the chance of education and development. Thus, the vicious circle of illiteracy, poverty, and trafficking is reinforced. Even if the victims manage to escape and return home, they will be uneducated and traumatised and are often perceived as a burden rather than as a contribution to the community. Due to their work in the sex industry, whether by choice or not, victims are often ostracised altogether. All these factors accumulate to a loss of human resources and thus have a serious impact in the labour market of the source country. In many cases, the source country already has suffered severe damage through civil war or natural disasters, and the loss of the younger generation prevents the community from rebuilding the country. Consequently, the development of a whole region can be retarded. Another problem for the countries involved is that the profits gained by human trafficking fuel other crimi-

18. See Kelly & Regan, *supra* note 11, at 25–26.

19. See U.S. DEP'T OF STATE, *supra* note 4, at 12.

20. See *id.* at 9–10.

21. These costs are mostly caused by the sexual and physical violence of traffickers or clients towards the victims. Van Impe, *supra* note 12, at 25.

22. Some children who are not taken by victims are driven into hiding. See U.S. DEP'T OF STATE, *supra* note 4, at 13.

nal activities usually linked with organised crime, such as drug trafficking, money laundering, and forgery of public documents.

III. LEGAL INSTRUMENTS

Increasingly, governments and inter-governmental organisations are looking for ways to fight human trafficking. In Europe alone, over 100 NGOs have called for more efficient ways of tackling human trafficking and protecting the victims.²³ Numerous international, regional, and national legal instruments have been passed.²⁴ Piotrowicz remarks on the numerous instruments:

*The volume of initiatives has been remarkable, frequently leaving at least this observer wondering which international organisation is going to be the next to draw up guidelines or adopt a convention.*²⁵

However, in spite of the huge and ever-growing number of national and international legislative instruments, prosecutions are still rare, and protection of the victims is weak. In terms of the degree of human suffering, these legislative instruments are absolutely inadequate.

A. United Nations

Besides customary international law and *jus cogens*, a number of international instruments explicitly forbid slavery:

- *Slavery Convention* 1926²⁶
- *Forced Labour Convention* 1930²⁷
- *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* 1957²⁸
- *International Covenant on Civil and Political Rights* 1966 (Article 8, 2 (3)(a))²⁹
- *International Covenant on Economic, Social and Cultural Rights* 1967 (Article 10 (3))³⁰
- *International Convention on Rights of all Migrant Workers and Members of their Families* 1990 (Article 11 and 16)³¹

23. Van Impe, *supra* note 12, at 7.

24. The United States has been very active in the fight against human trafficking.

25. Ryszard Piotrowicz, *Conny Rijken, Trafficking In Persons: Prosecution From a European Perspective*, INT'L J. REFUGEE L. 821 (2005) (book review).

26. *Slavery Convention* art. 12, September 25, 1926, 60 L.N.T.S. 253.

27. *See Convention Concerning Forced or Compulsory Labor*, June 28, 1930, 39 U.N.T.S. 55.

28. *See Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, 226 U.N.T.S. 3, Apr. 30, 1957.

29. *See International Covenant on Civil and Political Rights* art. 49(1), March 23, 1976, 999 U.N.T.S. 171.

30. *See International Covenant on Economic, Social and Cultural Rights* art. 27(1), Jan. 3, 1976, 993 U.N.T.S. 4.

31. *See International Convention on Rights of All Migrant Workers and Members of Their Families* art. 11, Dec. 18, 1990, available at http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm.

Examples of international legislative instruments that explicitly require states to prohibit human trafficking include:

- UN *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* (Article 1-4)³²
- *European Convention for the Protection of Human Rights and Fundamental Freedoms* 1950 (Article 4)
- *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) 1979 (Article 6)³³
- *Convention on the Rights of the Child* (CRC) 1989 (Article 35)³⁴
- *Optional Protocol on Sales of Children, Child Prostitution and Child Pornography* 2000 (Article 1-3)³⁵
- *Charter of Fundamental Rights of the EU* 2000 (Article 5 (3))³⁶

Victims might be protected under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) 1984,³⁷ as they are frequently exposed to different forms of cruel, inhuman, and degrading treatment. However, the definition of torture in CAT requires that the perpetrator be a public official or act in official capacity. *The Convention Relating to the Status of Refugees* 1951³⁸ offers protection only if the victim can demonstrate that she³⁹ has been persecuted for one of the recognised reasons.⁴⁰ Yet in most cases, the victims are not trafficked for the purpose of persecution, but simply for the purpose of sexual exploitation.

On November 15, 2000, the UN General Assembly adopted one of the most important instruments against trafficking: the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (TIPP), which generally is referred to as the “Palermo Protocol.”⁴¹ While Article 3 provides for a definition of human trafficking (see above), Article 6 requires states to consider providing assistance to victims of trafficking through such mechanisms as support in legal proceedings and providing for physical, psychological, and social recovery. Article 7 requires states to consider permitting

32. See *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, July 25, 1951, 96 U.N.T.S. 271.

33. See *Convention on the Elimination of All Forms of Discrimination Against Women*, Sep. 3, 1981, 1249 U.N.T.S. 13.

34. See *Convention on the Rights of the Child*, Sep. 2, 1990, 1577 U.N.T.S. 3.

35. G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000).

36. See *Charter of Fundamental Rights of the European Union*, 2000 O.J. (C 364) 1.

37. See *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 1, art. 3, June 26, 1987, 465 U.N.T.S. 85.

38. See *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 150.

39. This paper refers to the victim as “she,” because the majority of victims are female.

40. Race, religion, nationality, political opinion, and membership of a particular social group are the recognized reasons for persecution.

41. G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) (supplement to *Convention Against Transnational Organized Crime*).

victims to remain on the territory, and Article 8 deals with questions of repatriation.

The U.K. signed the *Palermo Protocol* on December 14, 2000. In 2006, the Home Office proudly declared that:

*We now fully comply with our legislative obligations under the Protocol and aim to ratify it in the near future, once we have enacted the primary legislation to enable ratification of the main UN Convention.*⁴²

However, one has to ask how many lives were destroyed during these six years.

B. European Union

Likewise, the European Union adopted a range of measures, reports, and declarations regarding the fight against human trafficking such as:

- *Joint Action To Combat Trafficking In Human Beings And The Sexual Exploitation Of Children* 1997⁴³
- *Proposal For A Comprehensive Plan To Combat Illegal Immigration And Trafficking Of Human Beings In The European Union* 2002⁴⁴
- *Brussels Declaration On Preventing And Combating Trafficking In Human Beings* 2002⁴⁵
- *Report Of The Experts' Group On Trafficking In Human Beings* 2003
- *EU Council Of Ministers Framework Decision On Combating Trafficking In Human Beings* 2002⁴⁶

The *2002 Framework Decision On Combating Trafficking In Human Beings*,⁴⁷ which is based on Article 29, 31(e), and 34(2)(b) TEU, deserves special mention. While it is based on the *Palermo Protocol*, it develops further the definition of trafficking by broadening the notion of taking advantage or exercising pressure on the victim.⁴⁸ Article 1(c) and (d) include practices of debt bondage and the abuse

42. TACKLING HUMAN TRAFFICKING, *supra* note 13, at 6.

43. See Treaty on European Union Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, 1997 O.J. (L 63), available at <http://europa.eu/scadplus/leg/en/lvb/l33072.htm>.

44. See Proposal For A Comprehensive Plan To Combat Illegal Immigration and Trafficking Of Human Beings In The European Union 2002 O.J. (C 142) 23, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997F0154:EN:HTML>.

45. See BRUSSELS DECLARATION ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS, available at <http://www.belgium.iom.int/StopConference%20Papers/brudeclaration.pdf>.

46. Council Framework Decision 2002/629, *Combating Trafficking in Human Beings*, 2002 O.J. (L 203) 1.

47. See Comm'n of the Eur. Cmty., *Communication from the Commission to the Council and the European Parliament*, COM (2000) 854 final (Jan. 22, 2001).

48. See generally Council Framework Decision 2002/629, art. 1, *supra* note 46, ¶60.

of vulnerable persons, e.g., those who are mentally or physically disabled.⁴⁹ The Explanatory Memorandum makes clear that persons illegally staying in the territory of a Member State are also vulnerable in the sense of Article 1.⁵⁰

One of the most important and challenged legislative instruments is the *Council Directive On Short-Term Residence Permit Issued To Victims Who Co-Operate With Authorities*.⁵¹ As the name suggests, this directive introduces a “victim-inducing scheme.”⁵² Article 6 of the Council Directive requires Member States to offer a 30-day reflection period during which the victim cannot be expelled from the country. During this time in which the victims have to decide whether to cooperate with the authorities, they “are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment.”⁵³ In addition, Member States shall take safety and protection needs of the victim into consideration and provide translation and interpreting services.⁵⁴ They might offer free legal aid if the conditions under national law are met.⁵⁵ Article 7(2) requires Member

Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation:

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
 - (a) use is made of coercion, force or threat, including abduction, or
 - (b) use is made of deceit or fraud, or
 - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
 - (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.
2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.
4. For the purpose of this Framework Decision, “child” shall mean any person below 18 years of age.

49. See generally Comm’n of the Eur. Cmty., *supra* note 47, at 7–9.

50. *Id.*

51. Council Directive on the Residence Permit Issued to Third-Country Nationals Who Are Victims In Trafficking In Human Beings or Who Have Been Subject To An Action To Facilitate Illegal Immigration, Who Cooperate With The Competent Authorities, 2004/81, 2004 O.J. (L 261) 19 (EC).

52. See Piotrowicz, *supra* note 7, at 267.

53. Council Directive 2004/81, art. 7, *supra* note 51, at 21.

54. *Id.*

55. *Id.*

States to “attend to the special needs of the most vulnerable,” although as Piotrowicz points out, there are no guidelines on which criteria qualify “most vulnerable.”⁵⁶ Article 8 sets out the conditions for issuing or renewing the short-term residence. Not only does the victim need to give clear intention to co-operate in procedures against the suspected offenders,⁵⁷ but her presence in the country must present an opportunity for the investigations or the judicial proceeding.⁵⁸ As a further requirement, the victim must have severed all links with the suspected traffickers.⁵⁹ According to Article 12(2), Member States can impose the condition of participation “in a programme aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.”⁶⁰ Another threshold is that there are no objections on grounds of public order or national security. Once the criteria are fulfilled, the victim can be granted a six-month residence permit, which can be renewed.⁶¹

However, Article 14 allows for the withdrawal of the residence permit as soon as the conditions of Article 8 are no longer fulfilled. In particular, Article 14(e) is very problematic because it indicates that the victims might lose their residence permit as soon as “the competent authorities decide to discontinue the proceedings.” This means that once the criminal case against the traffickers is concluded, the presence of the victim is no longer useful and the permit cannot be renewed, no matter to what extent she had cooperated. Also, the degree to which she suffered or how long she was held in captivity is irrelevant.

The Council Directive illustrates that states are only willing to grant a victim protection as long as she is useful in the proceedings against the traffickers. This criminal-centred approach neglects the status of the trafficked persons as victims who need protection from serious human rights violations. At the same time, this scheme does not promise to be very effective in tackling the crime as it offers little inducement for the victim to actually undergo the risks of co-operating in proceedings against the traffickers. As Piotrowicz puts it:

*There can be little incentive for anyone to enter any of these programmes if they believe that they will have to leave as soon as their usefulness for the criminal justice process has elapsed.*⁶²

The strongest concern, however, comes from the human rights perspective when looking at the human dignity of the victim. The aspect

56. See Piotrowicz, *supra* note 7, at 269.

57. Council Directive 2004/81, art. 8, *supra* note 51, at 22.

58. *Id.*

59. *Id.* at 22–23.

60. *Id.* art. 12, at 22.

61. *Id.* art. 8, at 22.

62. Piotrowicz, *supra* note 7, at 272.

of losing the residence permit as soon as the proceedings are over and outstaying her usefulness renders the victim again into a commodity!

C. Council of Europe

Article 4 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) 1950 declares that no one shall be held in slavery or servitude, and that no one shall be required to perform forced or compulsory labour. The *European Convention Against Trafficking in Human Beings* (ECAT) 2005 is the first piece of international legislation to require (and not only recommend) states to take action to safeguard the rights of trafficked persons. The Convention, which was adopted by the Council of Europe on May 3, 2005, is primarily concerned with the protection of the victims and their human rights. So far, 30 Member States of the Council of Europe have signed the Convention, but only one state (Moldova) has ratified it. The U.K. Home Office explained the government's refusal to sign and ratify the convention as follows:

*While we support fully its aims, we have concerns that some of the provisions, such as the automatic granting of reflection periods and residence permits for trafficking victims, may act as "pull" factors to the U.K.*⁶³

This justification is unconvincing, as it is quite unlikely that a person who decides to illegally immigrate chooses the country of destination according to the protection available for victims of human trafficking for the purpose of sexual exploitation. Nor will the traffickers be encouraged to commit the crime when they realise that victims get greater protection once they indicate they want to cooperate in the proceedings. Another reason given by the Home Office regarding the government's reluctance to sign and ratify the convention is that victims "could be misused by individuals seeking to extend their stay in the U.K., where they do not have a genuine claim as a victim of trafficking."⁶⁴ However, considering the degree of suffering of the victims, surely it is tolerable to have some women stay in the country without genuine claim as long as authentic victims are protected and supported. A related concern of the Home Office is that "dealing with fraudulent applications will slow down our ability to respond to genuine claims."⁶⁵ But, again, it is preferable to have a slow system that grants protection to some victims than to have none at all. Finally, the Home Office fears that a "reflection delay" might delay police investigations, creating a risk that "the trail could run cold."⁶⁶

63. TACKLING HUMAN TRAFFICKING, *supra* note 13, at 6.

64. *See id.* at 17–18.

65. *Id.* at 18.

66. *Id.*

This assertion shows yet again that the Home Office prioritises crime control objectives over victims' interests.

The range of protective measures offered to the victims of human trafficking for the purpose of sexual exploitation are listed in Article 12 ECAT:

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
 - i. standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - ii. access to emergency medical treatment;
 - iii. translation and interpretation services, when appropriate;
 - iv. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
 - v. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
 - vi. access to education for children.
2. Each Party shall take due account of the victim's safety and protection needs.

Article 12(6) makes it clear that such assistance must not be made conditional on the victim's cooperation in legal procedures against the suspected traffickers. In addition, Article 13 provides for a recovery and reflection period of at least 30 days,⁶⁷ similar to the reflection period provided for by the Council Directive. Furthermore, victims are granted a residence permit not only if their stay is necessary for criminal investigations or proceedings, but also when "the competent authority considers that their stay is necessary owing to their personal situation."⁶⁸

Despite these extensive protection measures, the Convention itself is criticised for not offering sufficient protection to the victims. For instance, it lacks an explicit requirement regarding appropriate training for authorities to be able to identify trafficked persons. Nor is there a right of appeal against the decision whether a person can be

67. Council Directive 2004/81, art. 13(1), *supra* note 51, at 23–24.

Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

68. *Id.* at 24.

classified as a trafficked person. Another criticism is the short length of the reflection period. A mere 30 days seems to give very little time for victims, who have just escaped slavery, to recover from their trauma and to take on the serious decision of whether to get involved in legal proceedings against their traffickers. The Netherlands, for example, offer a reflection period of 90 days. Another weakness of the Convention is the aspect of repatriation. The Convention should require a risk assessment before repatriation and offer rights to residence or asylum if the trafficked person is at risk of abuse, stigmatisation, or re-trafficking in her home country. The Convention's most important gap in the protection of trafficked persons is the lack of a provision that prevents trafficked persons from being held criminally liable for their illegal entry into a Member State. Likewise, the victim of human trafficking should be exempted from criminal liability for any participation in unlawful activities that are a consequence of her situation as a victim of human trafficking. Even if the person initially entered the country voluntarily, she should be clearly categorised as a victim rather than as a criminal because she has been trafficked.

D. U.K. Law

Not only in international law, but also in national law, human trafficking has gained more importance. In January 2006, the Home Office announced: "The Home Secretary, in setting the priorities for the Serious Organised Crime Agency (SOCA), has indicated that organised immigration crime should follow drugs as the second current priority for the agency."⁶⁹ It would be interesting to know the explanation as to why modern slavery is listed second to drug crime.

The U.K. has tackled human trafficking through a number of legislative instruments.⁷⁰ The suggestions of the White Paper "Secure Borders, Save Haven,"⁷¹ published in 2002, proposed the criminalisation of human trafficking, but the suggestions were only partially taken up in the *Nationality, Immigration and Asylum Act* (NIAA) 2002. Section 145 criminalises traffic in prostitution, but does not apply to cases where persons are trafficked for purposes other than prostitution. The NIAA is also criticised for not offering any appropriate protection for the victims.⁷² The *Sexual Offences Act 2003* introduced the offence of

69. TACKLING HUMAN TRAFFICKING, *supra* note 13, at 12.

70. See, e.g., Slave Trade Act, 1807, 47 Geo. 3, c. 36 (Eng.), available at http://www.pdavis.nl/Legis_06.htm; Slavery Abolition Act, 1833, 3 & 4 Will. 4, c. 73 (Eng.), available at http://www.pdavis.nl/Legis_07.htm.

71. SECRETARY OF STATE FOR THE HOME DEPARTMENT, SECURE BORDERS, SAFE HAVEN, 2002, Cm. 5387, at 84.

72. See Tom Obokata, *Human Trafficking, Human Rights and the Nationality, Immigration and Asylum Act 2002*, 4 EUR. HUM. RTS. L. REV. 410, 419 (2003).

trafficking for sexual exploitation in sections 57 to 59.⁷³ These offences in both acts are punishable for up to 14 years. In spite of the new legislative measures, preventing and fighting human trafficking in the U.K. proves very difficult.

1. Crime Prevention

There are numerous suggestions as how best to prevent human trafficking for sexual exploitation.⁷⁴ The first group of preventive measures are deterrent mechanisms. A very effective measure could be to publicise convictions of offenders in the U.K. in both source and transit countries. Unfortunately, there are still very few successful criminal prosecutions (see below). Another strategy is to raise the awareness of officials issuing visas on signs of possible trafficking, increasing their caution. The same is true for airline liaison officers again in both source and transit countries. Other suggested techniques include improved sharing of passenger data and even the use of biometric identifiers in passports.⁷⁵

The second group of preventive measures seeks the reduction of demand for illegal entry into a country, for example, to promote legal migration routes.⁷⁶ In addition, it is vital to supply sufficient information to all visa applicants alerting them about the dangers of trafficking, *e.g.*, warnings never to give away the passport. In Brazil, for example, every visa applicant is given a card that states: "First they take your passport then your freedom" and the number of the helpline.

However, the most effective means of combating human trafficking for sexual exploitation is probably to tackle related crimes such as theft or forgery of official documents, because it makes the crime more difficult, which means more expensive and therefore less lucrative.⁷⁷

2. Problems of Law Enforcement

For a variety of reasons the number of successful prosecutions is still very small. As of this date, there are only seven cases which have resulted in convictions for trafficking for sexual exploitation under the *Sexual Offence Act 2003*, attracting penalties from two to nine years.⁷⁸

73. See *Sexual Offences Act, 2003*, c. 42, §§57–60 (Eng.), available at <http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm> (addressing trafficking into the UK for sexual exploitation in §57, trafficking within the UK for sexual exploitation in §58, and trafficking out of the UK for sexual exploitation in §59).

74. TACKLING HUMAN TRAFFICKING, *supra* note 13, at 10.

75. *Id.* at 7.

76. *Id.* at 10.

77. Van Impe, *supra* note 12, at 123.

78. See TACKLING HUMAN TRAFFICKING, *supra* note 13, at 12.

There are several reasons why law enforcement against human trafficking is so difficult.

One source of difficulty for law enforcement in this area is the strong link between human trafficking and other international organised crimes such as global trade in drugs, guns, and other illicit commodities.⁷⁹ With increasingly successful law enforcement against trafficking in drugs and weapons, comparable low-risk trafficking in human beings is ever more attractive for organised criminal groups.⁸⁰ Unlike drugs, people can be resold time and again thereby increasing the profit margin.⁸¹ Furthermore, while the trade in human beings is financially as lucrative as drug trafficking, the sentences in the event of a conviction are much more lenient.⁸²

The second major difficulty is that a successful conviction usually depends on cooperation by the victim, which is often difficult to get. Victims are all-too-often considered to have breached immigration and/or employment laws, and thus they themselves are subject to prosecution. In addition, traffickers often manipulate the victims, which means that, even if the trafficked person officially is recognised as a victim rather than as a criminal, she still might fear contact or collaboration with official authorities. For instance, the traffickers may convince victims that they depend on the traffickers' help and protection to avoid severe sanctions by the authorities for being illegally in the country. Moreover, traffickers may also threaten violent retribution against victims or their families. Sometimes it is sufficient to warn victims that their families will be informed about their work in the sex trade industry. As a consequence of all this intimidation, victims are often too scared to oppose their oppressors or work with the authorities.⁸³ An additional problem that arises from the above circumstances is that traffickers often force victims to lie about illegal immigration to the authorities, which means that they are found unreliable in later proceedings.

Although the U.K. has begun to acknowledge and address the problem through several measures, it seems that most legislative activity focuses on criminalizing trafficking while neglecting to strengthen the rights and protection of the victims of the crime.

IV. THE SITUATION OF TRAFFICKED PERSONS IN THE U.K.

Criminal prosecutions and convictions of traffickers, however, are only one part of the fight against human trafficking. Much more important from a human rights perspective is the protection and reinte-

79. See Van Impe, *supra* note 12, at 118.

80. Council of Europe Convention – Explanatory Report, I.a., ¶ 5.

81. Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 EMORY L.J. 1041, 1046 (2002).

82. See Jeffrey, *supra* note 14.

83. See Piotrowicz, *supra* note 7, at 264.

gration of the victims. The obligation to treat trafficked persons as victims rather than criminal offenders is one of the major achievements of the *Palermo Protocol*. At the same time, it is the most difficult aim to achieve. States recognise that making human trafficking a criminal offence is much easier and less expensive than positive action to help the huge number of victims. Nonetheless, there is a range of actions needed to protect the victim.

A. *Protection of Victims*

The first step every state should take is to acknowledge the status of a trafficked person as victim. Voluntary consent to be smuggled into a country does not mean a person cannot be victimised by traffickers.⁸⁴ To be smuggled, the person has to put herself in the hands of the smuggler, a subordinate position that is often abused, as it becomes a means to traffic the person rather than simply bring her into the country.⁸⁵

Subsequently, all victims need to be provided with basic assistance such as accommodation and medical help, including psychological assistance. In addition, victims need to be protected from retribution by the accused or their associates by effective witness protection schemes. Although victim protection is essential to secure their cooperation in criminal proceedings against traffickers, it should not be made conditional on giving evidence against traffickers. It is the minimum requirement to restore the victims' human rights.

Moreover, victims need to be provided with access to free interpreters and free legal advice.⁸⁶ It is even claimed that states should have the duty to compensate the victims for not effectively preventing smuggling and abusing smuggled people.⁸⁷ Another proposal is to allow assets seized from traffickers, which would normally end up in the public purse, to be given directly to support services for trafficked women.⁸⁸

Further, the victims should have a right to participate in the criminal proceedings against their traffickers.⁸⁹ This right is important not only to make their voices heard, but also to attribute to them a role as an active subject rather than that of a passive object (e.g., when they were held as slaves). In this way, their sense of dignity and control can be restored. Of course, this important therapeutic value⁹⁰ is lost

84. See Drew, *supra* note 3, at 489.

85. See Van Impe, *supra* note 12, at 113–14.

86. Obokata, *supra* note 73, at 417.

87. Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors Under International Human Rights Law*, 17 INT'L J. REFUGEE L. 394, 413 (2005).

88. See Kelly & Regan, *supra* note 11, at 41.

89. Obokata, *supra* note 73, at 417.

90. *Id.*

when the victim loses her residence permit once she is no longer needed for the criminal proceedings. She will (once again) feel reduced to an object valued only according to her usefulness.

It is also essential that public authorities are aware of the risks of repatriation when deciding on residence permits, as there is a very real danger of the victim being re-trafficked.⁹¹ This situation is especially true if having worked in the sex industry means ostracism and isolation for victims in their home communities. In some cases, the local law enforcement agencies in the victims' home countries even work together with the traffickers.⁹²

All these measures to help victims are essential to restore the dignity of the trafficked person and to reintegrate her into a free life, and thus, do not need further justification. However, they have the valuable side effect of indirectly supporting the law enforcement against traffickers. Obviously, the more the victim is protected, the more likely she will give information to the authorities and assist in the criminal procedures against her traffickers.

B. *The POPPY Project*

In the U.K., the government has launched a pilot victim protection programme run by the Eaves Housing for Women organisation called the POPPY Project.⁹³ This project provides up to four weeks of basic care, such as food, medical care, advice, interpretation and translation services, and shelter for women who have been trafficked into the U.K. for sexual exploitation. This time period of four weeks can be extended to six months (which can be renewed)⁹⁴ under the condition that the victim agrees to assist the authorities by providing information about the traffickers and taking action against them.⁹⁵ The conditions set out by the Home Office (which are currently under review) are:

- The victim was brought to the U.K.;
- She was working as a prostitute in the last 30 days (in the U.K.);⁹⁶
- She has been forcibly exploited;
- She has come forward to the authorities;
- She is willing to cooperate with the authorities.

Although the project has run successfully for three years, it has not been extended or introduced to other cities. Granting shelter is a dis-

91. See Piotrowicz, *supra* note 7, at 264.

92. See Drew, *supra* note 3, at 488 n.32.

93. See POPPY Project, http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php (last visited Feb. 5, 2007).

94. The average length of stay is 8-12 months.

95. See TACKLING HUMAN TRAFFICKING, *supra* note 13, at 15.

96. This means there is no help for trafficked persons who managed to escape before being forced into prostitution.

cretionary decision and there is no right to access. POPPY can only accommodate 25 women, and indeed women are regularly turned down because there are no free spaces.⁹⁷

This basic care for the victims should be granted to all identified people trafficked into the U.K. for sexual exploitation and not made conditional for assistance in the criminal proceedings in return. The need for non-conditionality is important when remembering the high risk that victims run in cooperating with the authorities regarding exposition of their own illegal status and possible retribution by the traffickers or the traffickers' group.

C. *Criminalisation of the Victim*

Besides ostracism in their home communities and the serious risk of retribution by the traffickers against the victims and their relatives, the most urgent problem for victims is the risk of being criminalised. Although the Home Office announced in January 2006: "Tackling the organised criminals involved and protecting victims"⁹⁸ legislation seems to be more directed at fighting illegal immigration rather than helping victims of human trafficking. This situation becomes apparent when considering that victim assistance schemes like POPPY or the short-term residence permit proposed in the European Convention are made conditional on the victim's cooperation in the criminal proceedings. Moreover, as Obokata points out:

*Those trafficked are often seen as a threat to internal security because of their link with criminal activities and organisations, and therefore such measures as detention and deportation are frequently taken.*⁹⁹

However, one cannot equate human trafficking with voluntary illegal immigration and prostitution. For example, the fact that many women are physically abused and raped before trafficking¹⁰⁰ is often disregarded. Research shows that there is a range of reasons why women decide to give themselves into the hand of traffickers:¹⁰¹

- 1) Some women have no choice at all as they are kidnapped or threatened with death.
- 2) Some women chose to leave the country but are compelled to do so because of the need to escape political persecution or domestic violence and/or rape or gang rape.
- 3) In most cases, women agree to immigrate because they want to escape poverty and unemployment, but are deceived about the circumstances. They usually are promised educational or work opportunities. A huge number of victims are lured by (bogus) employment agencies.

97. Moreover, POPPY does not have any special shelter for children.

98. See TACKLING HUMAN TRAFFICKING, *supra* note 13, at 7.

99. Obokata, *supra* note 73, at 415.

100. See Jeffrey, *supra* note 14.

101. KELLY & REGAN, *supra* note 11, at 24.

- 4) Other women are aware that they will work as nightclub dancers or prostitutes, but are told that they could make much money in a short period of time and are not aware that they are held as a commodity who then has to work off her "debts."

While one can see from these findings that the main reason for trusting the traffickers is deception of what to expect in the designated country, it becomes clear that the underlying reason is poverty and unemployment. Accordingly, the main means of prevention is to tackle poverty in the source countries. However, in the short run, it is easier but nevertheless effective, to strengthen information campaigns not only to warn victims about traffickers, but also to explain legal ways of immigration and the legal rights of immigrants.

D. Summary

Although the U.K. has enacted some pieces of anti-trafficking legislation which specifically criminalises human trafficking for sexual exploitation and secures a number of prosecutions and convictions of human traffickers each year, the law fails to provide adequate protection for the victims who are often depicted as illegal immigrants and prostitutes rather than trafficked persons. Considering the degree of suffering of trafficked person who are effectively modern slaves, governments need to overcome their approach of dividing the problem in different areas of law that is criminal law, immigration law, and labour law. Rather, a more cross-departmental approach of prevention and restoration has to be taken.

V. CONCLUSIONS

The right to freedom from slavery was the first human right to be protected by an international treaty,¹⁰² and although there are numerous legislative instruments and declarations on international, regional and national levels, the protection that the individual victim actually is granted is still less than sufficient. The three famous "Rs" set out in *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report*¹⁰³, i.e., Rescue, Rehabilitation, Reintegration, are only starting to be achieved.

*The Recommended Principles and Guidelines on Human Rights and Human Trafficking in the Report of the UN High Commissioner for Human Rights to the Economic and Social Council*¹⁰⁴ argues that human trafficking has to be prevented, criminalised, and prosecuted

102. Drew, *supra* note 3, at 481.

103. U.S. DEP'T OF STATE, *supra* note 4, at 5.

104. The United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, delivered to the Economic and Social Council*, ¶¶ 1–17, U.N. Doc. E/2002/68/Add.1 (July 26, 2002).

and victims have to be granted protection and assistance. Above all, it sets out the primacy of human rights considerations:

*The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.*¹⁰⁵

The problem with current international and regional legislation is that human rights law is directed at states, whereas most traffickers are non-state related. Alternatively, national criminal law often focuses too much on the offender while marginalising the victim. Moreover, the victims themselves face criminal prosecution for their involvement in prostitution and illegal immigration related offences.

Criminalisation of traffickers has some future benefit for potential victims as it might serve to some extent as a deterrent. However, as long as modern slavery does exist, the needs of the individual victims have to be addressed immediately. Taking a more human rights centred approach, the emphasis has to shift from the nation States' interests in tackling illegal immigration towards effective and unconditional victim support.

105. *Id.* ¶ 1.