



## PREPARING AND PRESENTING TRAFFICKING CASES

TRAINING COURSE  
GLASGOW

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## HUMAN TRAFFICKING 21<sup>ST</sup> CENTURY SLAVERY

The international protection rights of trafficking victims can only be fully addressed if an appropriate framework is developed in which to assess their applications and appeals as it is a violation of a range of fundamental human rights and amounts to variety of criminal acts



## PREPARING FOR A CASE

- Same true for preparation
- Need to understand the phenomena
- How it varies in different countries
- The forms of exploitation people are trafficked into
- The modus operandi adopted by the different trafficking gangs



## VARIATIONS BY COUNTRY

- Vietnam – cannabis houses
- Nigeria – domestic slavery and child prostitution
- Albania, Moldova – adult prostitution
- Africa – camel jockeys
- China – prostitution
  
- What are indicators ?



## VARIATIONS BY METHOD


- Albania- extreme violence and grooming – interconnected families
- Nigeria – involvement in cults and loose criminal connections
- Romania – dominant families involved
- China – criminal gangs preying on dispossessed



## CAUSES OF TRAFFICKING

- Poverty
- Globalisation
- Lack of education and employment opportunities
- Supply and Demand
- Cultural practices
- Strict immigration controls








## POVERTY




- "While poverty is an important factor leading to child trafficking it is not the only cause; there are plenty of poor communities around the world whose children are not trafficked"

Terre des Hommes




## OTHER CAUSES

- Save the Children research in South Eastern Europe has identified :
  - social isolation and separation
  - being placed in institutional care
  - being part of an ethnic minority as determinative factors




## CHILD TRAFFICKING

- Position of children within family and community an important factor
- Concepts of childhood are socially constructive and are not always protective
- Family may be complicit in trafficking as child seen as part of family's potential wealth




## THE CASE OF ROMA CHILDREN

- Very lucrative criminal exploit
- Forced into criminal activities as beggars, pickpockets, prostitutes
- Brought up to believe that must be their way of life as marginalised in societies of countries of origin
- Extremes of ill-treatment and exploitation



## CASE OF NIGERIAN GIRLS

- Often orphans or abandoned
- Promised life as nanny or plaiting hair
- Subjected to a ritual initiation
- May be prostituted in transit
- Controlled by fear of spirits taking vengeance on them

## INTERNATIONAL LEGAL CONTEXT

- UN Convention on Transnational Organised Crime
- UN Convention on the Rights of the Child
- UN Convention on the Status of Refugees
- Council of Europe Convention on Action Against Trafficking in Human Beings



## UN CONVENTION ON THE RIGHTS OF THE CHILD

- Ratified by the UK in 1991
- Reservation removed on 18.11.2008
- Not incorporated into UK law but Article 18 of the Vienna Convention on the Law of Treaties obliges the UK to refrain from acts which would defeat the object and purpose of the Convention



## ARTICLE 3

- "In all actions concerning children... the best interests of the child shall be a primary consideration"
- This does not mean that a child's interests are paramount but that they are equally important to immigration considerations



## ARTICLE 35

- "States Parties shall take all appropriate measures to prevent the sale of or traffic in children for any purpose or in any form"
- See also Article 1 of the 2000 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography ratified by UK on 20.02.2009



## Article 34

- States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse
- But important to note that children are also trafficked for domestic servitude, benefit fraud, forced marriage, forced labour, cannabis cultivation, ritual abuse.....



## ORGANISED INTERNATIONAL CRIME

- Human trafficking primarily viewed as international crime
- Mandatory crime prevention measures introduced in the UN Convention on Transnational Organised Crime with discretionary measures on victim protection – ratified by UK on 09.02.2006
- But contains useful definition of human trafficking



## Palermo Protocol - Article 3

(a) "Trafficking in persons" shall mean 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 and receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.





## APPLICATION TO A CHILD

- Where a child is involved it is not necessary to prove recruitment, deception or coercion
- It is enough that they are moved across a border or within a state for the purposes of exploitation



## Difference between smuggling and trafficking

- the relationship between a person entering the UK unlawfully and the agent who **smuggles** them in comes to an end once they have arrived here and the cost of the journey has been repaid
- In a **trafficking** case that relationship persists after they have arrived and until they no longer hold any value for the trafficker



## The Council of Europe Convention on Action against Trafficking in Human Beings

- adopted by the Committee of Ministers on 3rd May 2005 – ratified by UK on 17.12.2008 – came into force on 01.04.2009
- fundamental difference between this and the UN Convention is that it requires signatories to introduce mandatory provisions to protect and assist victims of trafficking.



## Article 12

- requires that assistance is given to victims of human trafficking
- This can include the recovery and reflection periods provided for in Article 13.



## Article 14

- goes further and requires Member States to issue a renewable residence permit to victims in certain circumstances



## THE NRM

- In order to comply with Article 10 of the Council of Europe Convention UK has established a National Referral Mechanism
- Article 10 requires Member States to provide competent authorities to identify victims of trafficking and prevent and combat future trafficking





## THE PROCESS

- First Responders including police, immigration officers, local authorities, health service, some government funded NGOs refer to
- Competent authorities within the UK Border Agency where person is subject to immigration control and decide whether there are reasonable grounds to believe they are victims of human trafficking



## BRITISH AND EEA NATIONALS

- SOCA is now responsible for UK and EEA nationals
- Serious difficulties arise when EEA national has been trafficked – do not qualify for protection under Refugee Convention
- EEA States also signatories to ECHR – difficult to argue Article 3 or 8
- Can raise Article 4 – but what would the remedy be ?



## RECOVERY AND REFLECTION

- But if there are reasonable grounds to believe that a person has been a victim the UK is obliged to provide a period for recovery and reflection
- UK has opted for 45 days
- Victims who are subject to immigration control are granted temporary admission



## RESIDENCE PERMITS

- Article 14 of the Council of Europe Convention places a duty on States to issue a renewable residence permit so the victim can co-operate in criminal investigations or proceedings or where it is necessary to do so because of their personal situation



## PROVISION IN UK

- Residence permits issued for one year period and is then renewable
- Will only be issued if a competent authority has reached a conclusive decision that the person has been a victim of trafficking on a balance of probabilities
- Assisting in criminal prosecution



## PERSONAL SITUATION

- Or for reasons connected to their "personal situation", which is not defined
- Do not have to show that a failure to provide a permit would lead to a breach of the ECHR
- Could assert need to complete studies, medical conditions, age ?





## PERMIT OR ASYLUM

- Residence permit issued if on a balance of probability the person was a victim of trafficking in the past
- Refugee status granted if as a victim of trafficking the person falls within a particular social group AND
- Would be persecuted for this reason if removed to their country of origin in the future



## REFUGEE PROTECTION

- UKBA still reluctant to accept that that trafficking engages the Refugee Convention
- However case law has confirmed that victims can qualify as members of particular social groups in certain circumstances



## USEFUL CASE LAW

- SB (Moldova) CG (PSG – Protection Regulations – Reg 6) [2008] UKAIT 00002
- HC and RC (Trafficked women) China CG [2009] UKAIT 00027
- AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC)



## SUFFICIENCY OF PROTECTION/ INTERNAL FLIGHT

Major difficulty as was exposed in HC & RC (Trafficked Women) China CG [2009] UKAIT 00027 and PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046



## PREPARATION 1

- Read reasons for refusal and COIR very thoroughly
- Spot inconsistencies and exploit
- Do research through ECPAT (UK), Anti-Slavery International, UNICEF, Save the Children, Human Rights Watch
- Consider US State Dept reports



## PREPARATION 2

- Identify key weaknesses and lacuna in own case
- Do skeleton referring to results of own research
- Also brief experienced and suitably qualified experts
- Distinguish any country guidance cases





## ECHR PROTECTION

- A victim may also be entitled to protection under Article 4 of the ECHR if trafficked for domestic or other forms of slavery, servitude or forced or compulsory labour
- *Silidian v France* (Application No. 73431/01)
- *Rantsev v Cyprus and Russia* (Application No. 25965/04)



## OTHER ARTICLES

- Article 3 likely to mirror Refugee Protection
- Humanitarian Protection assertions very under used in asylum cases
- Article 8 a useful alternative if victim arrived as a child and/or has been in the UK for a long time as fact trafficked here weighs in their favour for purposes of Article 8(2)



## APPEALS TO UPPER TRIBUNAL

- Important to front load application and first tier appeal as trafficking cases likely to be very fact sensitive
- As are elements of test for refugee protection
- Presently accepted potential social group and same internal flight test likely to apply



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