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# The Responses to Trafficked Adults in the United Kingdom: Rights, Rhetoric and Reality

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for the degree of Doctor of Philosophy

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## **Abstract**

This thesis critically examines the responses to trafficked adults in the four regions of the UK in terms of both policy and practice. It critiques the inadequacy of the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings (CAT) to protect trafficked persons and their human rights. It is argued furthermore despite the inadequacies of the CAT, the UK's responses to trafficked adults still do not uphold all of its minimum requirements. The research argues that the CAT does not provide a genuine human rights approach. The thesis proposes such an approach is necessary to protect trafficked persons and their human rights and to provide the possibility of physical and psychological recovery. It details how each of the principles essential to a genuine human rights approach are contradicted. The research establishes how the responses prioritise the conviction of traffickers and the protection of immigration controls over the protection of trafficked persons. The thesis goes on to contend that adopting a genuine human rights approach would prove beneficial to realise those interests in the long-term. More specifically, the chapters offer a critique of the 'victim discourse' employed in the representation of trafficked persons, chart the provision of physical and psychological support and healthcare and accommodation for trafficked persons; and document cases in which trafficked persons are denied access to justice for the human rights violations they have suffered and are instead punished for criminal offences which they only committed because they were trafficked. The thesis exposes the contrasts between the UK government's powerful and emotive rhetoric around trafficking in persons and its actual policy and practice.

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## Introduction

**‘Every daring attempt to make a great change in existing conditions, every lofty vision of new possibilities for the human race, has been labelled Utopian.’ Emma Goldman.**

This thesis critically examines the response to trafficked adults in the United Kingdom (UK) in both policy and practice. The main focus is on the support and assistance provided by a variety of actors in the UK. The central argument is that the UK and all other States should respond to trafficking in persons with a human rights approach and that the UK should be no exception. A human rights approach begins by recognising trafficking as a series of human rights violations. This obliges States to respond to trafficked persons with various forms of remedy. The response is thus centred on providing support and assistance which upholds the human rights of trafficked persons so they can recover from their experiences.

There are two central elements to this research. First it examines to what extent policy and practice uphold the existing obligations of the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings (CAT) which the UK government is a signatory to. The CAT has been the most important international instrument in responding to trafficking in persons in European Union member states. The responses are examined against the CAT because on initial inspection it appears to provide a human rights approach which is argued should be the approach in response to trafficking in persons. The CAT has been recognised as providing a human rights approach by scholars and practitioners. The CAT explains human trafficking constitutes a human rights violation and establishes rights to support and assistance for trafficked persons.

The shortcomings and failings of the CAT should be recognised against the historical context of the international instruments responding to the global problem of human trafficking since the mid twentieth century. The modern international response to human trafficking began with the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The 1949 Convention which was drafted only one year after the 1948 Universal Declaration of Human Rights does not establish that the protection of



trafficked persons must mean respect and protection of their human rights. While the 1949 Convention used gender neutral language it was focused exclusively on women and children in prostitution (Edwards. 2008. p13). The 1949 Convention does not provide a definition of human trafficking which recognises people who are in circumstances of forced labour or domestic servitude as having been trafficked. The CAT's definition of human trafficking does include such experiences as constituting human trafficking. This thesis studies the responses to men and women trafficked for sexual exploitation, labour exploitation, domestic servitude and forced criminality.

It was more than fifty years until the next international instrument exclusively addressing human trafficking. At the start of the 21<sup>st</sup> Century the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) was drafted. The Palermo Protocol was a significant landmark because it widened the definition of human trafficking beyond sexual exploitation. However the Palermo Protocol primarily responds to human trafficking as a problem of international organised crime which should be tackled through a law-enforcement approach. This thesis argues that the most appropriate and productive way to respond to human trafficking is to recognise it primarily as a human rights problem and to recognise those who are trafficked as the holders of rights.

The second element of this research is the normative evaluation of the response against the principles of what is defended here as a *genuine* human rights approach in response to the CAT's proclaimed human rights approach. The fundamental principles required of a genuine human rights approach are that the responses provide an individualised approach. It argues that support should be unconditional. It requires gender equality and a gender specific response. It demands non-discrimination. It requires that trafficked persons are empowered and that their autonomy is respected. It requires that trafficked persons have access to justice and are protected from being prosecuted and convicted for crimes they were compelled to commit by their traffickers or which they committed as a consequence of being trafficked.

The research finds the CAT does not take a genuine human rights approach. The CAT does not oblige States to guarantee the protection of trafficked persons' human rights or to provide for their physical and psychological recovery. The CAT accepts protecting and supporting trafficked persons can be treated as a secondary ambition to convicting traffickers and protecting the State's control over immigration. The misrecognition of the CAT as a human rights approach enables the UK government to present responses which are compliant with the CAT as evidence of comprehensive protection and support. If the ambition is protecting trafficked persons human rights and supporting them to recover then the responses must transcend the limited obligations of the CAT. Evaluating the response to trafficked persons against the rights granted by the CAT alone gives a false impression of the State's response.

The thesis takes a normative approach by arguing what a just response to trafficked persons should entail. The conclusion of the thesis is that the UK government's policy responses to trafficked persons do not fulfil all of its international legal obligations under the CAT or the principles of a genuine human rights approach. The thesis recommends the UK government take urgent steps to at the very minimum comply with its obligations under the CAT and to undertake a response which is consistent with the genuine human rights approach discussed here.

## **Research Aims**

- 1 - Improve the treatment of trafficked adults throughout the UK by highlighting the shortcomings in the responses in policy and practice and explaining how these are accepted by the CAT's 'human rights approach.' The research aims to explain how the CAT does not constitute a genuine human rights approach and outlines what the principles and requirements of such an approach should be and how this would improve the responses to trafficked persons.
- 2 - Investigate whether all of the government funded support organisations in the UK respond to trafficked adults in ways which are consistent with a genuine human rights approach and the rights contained within the CAT.
- 3 - Examine whether the police balance their professional responsibilities to identify and arrest traffickers with responses to trafficked adults which are consistent with a genuine human rights approach and uphold the rights required by the CAT.

4 – To highlight the overall distinctions between the responses to trafficked men and trafficked women and to argue for the necessity of comprehensive support and assistance for both trafficked men and women to realise a genuine human rights approach.

5 – Raise awareness about the extent of the problem of trafficked persons being prosecuted and convicted for offences which they committed as a direct consequence of being trafficked. By focusing on cases of Vietnamese nationals imprisoned for cannabis cultivation that show strong indicators of trafficking the research aims to challenge responses which accept and demand the punishment of trafficked persons.

### **An Innovative Regional Study**

This research studies the regional variations in the responses to supporting trafficked adults in England, Wales, Scotland and Northern Ireland. The existing literature purporting to offer a UK wide examination often fails to recognise regional variations. For example, Jobe in Dresdner and Peterson (eds) 2009, is a chapter entitled ‘Accessing Help and Services: Trafficking Survivors’ Experiences in the United Kingdom.’ However the chapter focuses exclusively on the responses to trafficked women in England who were assisted by one support organisation. Regional variations have also been overlooked by policy researchers. For example the Centre for Social Justice (CSJ) a right-wing think tank established by the Minister for Work and Pensions, Iain Duncan Smith, published a report in March 2013 entitled ‘It Happens Here: Equipping the United Kingdom to Fight Modern Slavery’ which claims to study the response to trafficking in the UK. However the report only contains one paragraph on ‘aftercare arrangements’ in Scotland and Northern Ireland (Centre for Social Justice. 2013. p164).

The regional variations in the provision of support and assistance have been largely ignored by the UK government. For example in 2011 the UK government published a policy document entitled ‘Human Trafficking: The Government’s Strategy (Government’s Strategy) which does not discuss the support provided for trafficked adults outside of England and Wales. The regional governments should be responsible for funding and overseeing local strategic responses to trafficked persons but it is the UK government which signed the CAT. At a very minimum the UK government should acknowledge and discuss the support provided in Scotland and Northern Ireland.

This thesis will demonstrate how the Home Office within the UK government has sole responsibility for the most important policy responses to trafficked persons throughout the UK. These are the policies on the identification of trafficked persons and how long they can access support and remain in the UK. The reason for this dominance is that the UK government primarily considers human trafficking to be an immigration problem. Legislation on immigration matters is not an area of legislation which has been devolved to Wales, Northern Ireland and Scotland. This has prevented the regional governments from adopting their own significantly distinctive policies for identifying and supporting trafficked adults.

The largest and most significant regional variations in responding to trafficking in the UK are outside the research interests of the thesis. These regional variations are in the policing and prosecution of traffickers. This is because 'justice' is a fully devolved power in Scotland and a partially devolved power in Northern Ireland. The regional assemblies are therefore responsible for policy and legislation which deals with apprehending traffickers, defining the trafficking offences and for determining the nature of the punishment of convicted traffickers. However in relation to the support and assistance of trafficked persons these devolved powers do make the regional assemblies responsible for policy and legislation on the non-punishment of trafficked persons and for providing them compensation.

Previous studies of the response to trafficked adults in the UK have focused on the responses in England where support is comparatively comprehensive. The examination of the regional variations is essential to highlight the inadequacies in responses outside of England. The thesis explores how responses outside of England are less consistent with the CAT and the principles of a genuine human rights approach than the responses in England.

### **Rhetoric and Reality of Responses to Trafficked Adults**

The international anti-trafficking organisation La Strada released a statement on Human Rights Day on the 10<sup>th</sup> December 2010 calling on States to 'truly implement a human rights approach' (La Strada, 2010). I interpret this statement as highlighting that while governments make passionate claims about responding to trafficked persons with comprehensive support and protection in practice it is commonly not

forthcoming. The UK government has responded with powerful and emotive rhetoric to describe trafficking in persons and the responses to those who are trafficked. The thesis asks to what extent the rhetoric is realised in practice. The thesis demonstrates substantial contradictions between the rhetoric with the reality of limited and inaccessible support. The UK government's policies fail their moral and legal obligations towards trafficked persons by making or allowing their rights to support to be inaccessible.

The UK government's rhetoric describes trafficking as a horrendous act causing considerable suffering and harm to those who are trafficked. It asserts that those who are trafficked will receive comprehensive support to recover. David Cameron, Prime Minister of the UK, has described human trafficking as an 'evil trade' and has proclaimed, "We are and will continue to be world leaders in tackling this terrible crime and ensuring victims are protected" (Dugan. 2011). The Home Secretary, Theresa May, declared trafficked persons 'will undoubtedly be frightened and vulnerable. We must therefore do all we can to support them as they try to rebuild their lives' (HM Government. 2011. p3).

The findings of this research reject the Prime Minister's claim that the UK is a world leader in protecting trafficked persons. Such a claim is utterly baseless. Contrary to the words of Theresa May the UK government is not undertaking everything it reasonably can in the support it provides. This thesis highlights that the UK is not even fulfilling some of the minimum rights expected by the inadequate CAT.

The Group of Experts on Action Against Trafficking in Human Beings (GRETA), the body responsible for monitoring signatories' compliance with the CAT argues that a human rights approach requires 'transparency' from the State. (GRETA. 2012. p23) The thesis argues that the UK government has taken actions preventing transparency and a comprehensive understanding of the realities of the responses. Successive UK governments have ignored the CAT's recommendation of establishing an independent rapporteur which would provide an understanding of the realities of the responses to trafficked adults. Article 29.4 of the CAT states,

'Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.' (Appendix A)

The UK government has instead created an Inter-Departmental Ministerial Group on Human Trafficking (IDMG). The IDMG is composed of government ministers from the administrations in each region of the UK. The IDMG cannot function as a national rapporteur as defined by the Council of Europe which explains it must be ‘independent from governments, parliaments and any state authority.’ (Council of Europe. 2009. p6) A 2012 report by ECPAT UK (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), an organisation which advocates on the responses to trafficking in children in the UK explains, ‘The IDMG assists in coordinating and implementing government policy on human trafficking which means that it is not independent from the Government. For that reason it cannot ensure oversight and accountability.’ (ECPAT UK. 2012. p2) Neither of the two annual reports published by the IDMG since October 2012 provides transparency or any insight into the realities of the support and assistance trafficked adults access in the UK. The IDMG has not properly examined the State’s activities and implementation of its responsibilities. It has only defended the rhetoric about what should be provided by the UK as a signatory to the CAT. The IDMG offers no insight into the inaccessibility of the rights required by the CAT.

### **Protection as a Secondary Concern to Controlling Immigration and Convicting Traffickers**

A genuine human rights approach means that supporting trafficked persons and protecting their human rights are the primary concerns in responding to trafficking in persons. Aradau, 2005, explains, ‘In essence, a human rights-based approach asserts that the human rights of victims are at the core of the anti-trafficking response and that they take precedence over other considerations.’ (Aradau. 2005. pp123-124) This study argues that the UK government prioritises the law-enforcement approach and immigration approach instead. Bruch makes the broad observation ‘the law enforcement framework has typically ignored or marginalised human rights and labour concerns.’ (Bruch. 2004. p21) The thesis examines the harmful consequences of the prioritisation of these concerns on the accessibility and nature of the support and assistance. The research argues how the prioritisation of these approaches to the detriment of the protection of trafficked persons is equally counter-productive for realising the UK government’s central interests.

The law-enforcement approach focuses on trafficking as a criminal problem and prioritises the prosecution and conviction of traffickers to tackle the existence of trafficking in persons. (Bravo, 2009, Bruch 2004) The law-enforcement approach is the expected response of States concerned with protecting their borders. (Haynes, 2007) Gallagher explains how the Palermo Protocol adopted a law-enforcement approach to trafficking, ‘The principle emphasis of the protocol remains firmly on the interception of traffickers rather than the identification and protection of victims’ (Gallagher. 2001. p994). The Palermo Protocol was focused on combating trafficking as a criminal problem as demonstrated by recognising that it was a supplement to the United Nations Convention Against Transnational Organised Crime. The findings of this thesis show how the contemporary response is consistent with the law-enforcement approach adopted by the Palermo Protocol. Providing the best support for trafficked persons is consistently a secondary consideration. This is shown by the contradiction of the principle of unconditional support in the distinctions between the responses to trafficked persons who cooperate with the authorities to help prosecute and convict traffickers with the response to those who do not.

The thesis argues the best way for the States to fulfil their interests to see traffickers convicted will be to provide people the support and assistance they require to recover. This will enable people to choose to participate in investigations and proceedings against their traffickers. (Haynes. 2004, Chuang, 2010, Touzenis, 2010) Konrad argues, ‘Since trafficking victims currently are the primary source of witnesses for the prosecution, a victim-centred approach by law enforcement is not only consistent but logical if law enforcement objectives are to be achieved.’ (2008. p170) The explanatory report to the CAT acknowledges the importance of providing support for realising each of the internationally recognised 3P’s; protection, prosecution and prevention,

Immediate return of the victims to their countries is unsatisfactory both for the victims and for the law-enforcement authorities endeavouring to combat the traffic. For the victims this means having to start again from scratch – a failure that, in most cases, they will keep quiet about, with the result that nothing will be done to prevent other victims from falling into the same trap. A further factor is fear of reprisals by the traffickers, either against the victims themselves or against family or friends in the country of origin. For the law-enforcement authorities, if the victims continue to live clandestinely in the country or are removed immediately they cannot give information for

effectively combating the traffic. The greater victims' confidence that their rights and interests are protected, the better the information they will give (Council of Europe. 2005. p51).

Theresa May conveyed an understanding of the importance of providing support to trafficked persons to achieve prosecutions and convictions of traffickers when she told the House of Commons,

we want to ensure the protection of victims. Part of that is ensuring that the perpetrators can be caught, because if the victims have support and protection, they are more likely and willing to come forward to give evidence. In dealing with modern slavery and human trafficking, we must never take our focus away from dealing with the perpetrators (HC Deb. 28 April 2014. c518).

However the research finds that responses do not guarantee individuals the support and assistance they require to participate in criminal proceedings.

An immigration approach means governments respond to trafficking as an immigration problem best tackled by restricting and preventing immigration (Pearson. 2000. p63). Focusing on immigration in responding to trafficking in persons cannot offer any contribution to addressing the problem of people who are trafficked within their own country (Buckland. 2009. p153). In January 2010 the former Conservative shadow Immigration Minister Damian Green argued, 'The Government's failure to tackle Britain's porous borders has resulted in a disastrous rise not just in organised immigration crime, but in trafficking.' (HC Deb. 20<sup>th</sup> January 2010. C124) The UK government argues that preventing individuals from having access to safe and legal migration protects them from being trafficked and protects their human rights. The Government's Strategy focuses on tackling trafficking and protecting people from being trafficked by preventing them from migrating. This approach is highlighted in the second IDMG report which describes the policy of 'working smarter at the border.' It explains, 'The UK must seize every opportunity presented at the border to prevent people from being trafficked into or out of the UK' (Inter-Departmental Ministerial Group. 2013. p37.) This thesis argues the UK government manipulates trafficking as a moral justification for immigration controls.



The research explores how the UK government prioritises protecting control over immigration above protecting trafficked persons human rights. However this prioritisation has been publicly acknowledged by consecutive UK governments. David Cameron's explanation that the UK government was reluctant to sign the proposed EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims because it had 'to ask whether opting in would in any way endanger our borders and immigration system' was an unapologetic admission that the interests and rights of trafficked persons are secondary to the primary interests of protecting the State's borders and maintaining control over immigration. (HC Deb. 15<sup>th</sup> September 2010. Column 874) The UK government accepts the concession over immigration control required by the CAT of providing a reflection period. However this is not evidence that the protection of trafficked persons is paramount. The reflection period only provides trafficked persons temporary rights and protection from deportation for thirty days. (Anderson and Andrijasevic. 2008. pp143-144) The reflection period the UK government provides is utterly inadequate and responses in policy and practice ensure only a very small number of people ever receive a reflection period. The UK government's balance of interests is exemplified by having the immigration authorities integral to the official identification of trafficked persons. This research argues that the processes for identifying trafficked persons are focused on scrutinising the justification for a person's presence in the UK not guaranteeing every trafficked person is identified and can access their rights required by the CAT. The identification of trafficked persons is exclusive not inclusive.

The thesis finds that the responses to trafficked persons are unsatisfactory from the perspective of each of the three P's. The thesis argues the best way for each of these to be fulfilled is by taking a genuine human rights approach. A response which takes a genuine human rights approach is morally the right thing to do. It also fulfils legal obligations upon States. Finally it has instrumental value to States to realise their primary interests. While trafficked persons and their human rights are not being protected the UK government is simultaneously presently struggling with low conviction rates and high re-trafficking rates. The absence of comprehensive support and assistance can lead to people being re-trafficked (Skrivankova. 2006. p12). Ensuring all trafficked persons are correctly identified and have the necessary time and space for reflection and recovery will best enable them to participate in police

investigations and testify in criminal proceedings against their traffickers who facilitate the circumvention of immigration controls. Furthermore people who are supported to recover will be less likely to be re-trafficked meaning they will not make another irregular border crossing.

### **Gaps in the Existing Literature**

This research has addressed three important gaps in previous literature on the responses to trafficking in persons. Firstly, as has already been discussed the thesis responds to a gap in the previous literature by examining the regional variations in responses to trafficked persons in policy and practice. Secondly, previous literature has not addressed the consequences of the impact of new actors on the responses to trafficked persons in the UK since 2010 and 2011. Thirdly, previous literature has ignored and overlooked the problem of the trafficking of men and the support and assistance which is available for them.

### **Investigating the Impact of New Actors**

The thesis investigates the impact of two highly significant changes in political leadership and practical administration. The change in political leadership was the change in government in 2010. The international attention and response to human trafficking developed enormously during the thirteen years the Labour Party was in government between 1997 and 2010. During this period Labour governments signed the Palermo Protocol and the CAT. The Labour Party was responsible for the first policies responding to trafficking in persons. This included the 2007 UK Action Plan on Tackling Human Trafficking produced by the Home Office in the UK government and the Scottish Executive in the Scottish parliament and the 2009 Update to the UK Action Plan on Human Trafficking.

When the Conservative led coalition came to power in 2010 it was the first time it had responsibility for policy on trafficking in persons. In 2010 the UK government published a document entitled 'The Coalition: Our Programme for Government' which explained its commitment to 'tackle human trafficking as a priority' (HM Government. 2010. p21). Theresa May, Home Secretary wrote an article in *The Daily Telegraph* newspaper in November 2013 she states that, 'Tackling this abhorrent

crime is a personal priority for me.’ (May, 2013) The thesis does not find the UK government to have treated the protection and support of trafficked persons as a priority. In 2011 the UK government published the Government’s Strategy. This was published several months later than originally intended on the last day Parliament sat in July 2011 before the long summer recess. The strategy addressed the issue of human trafficking but did not make support and protection a priority. The faith-based social policy charity CARE (Christian Action Research and Education) which lobbies the UK government on human trafficking, issued a press release on the ‘long-awaited Human Trafficking Strategy.’ It highlights the lack of focus on the response to trafficked persons, ‘Although we are glad that the Strategy makes reference to victim care, we are disappointed that only two out of twenty four pages address the need for improved care and protection of victims.’ (CARE, 2011) The Government’s Strategy does not focus on trafficking as a human rights problem requiring remedies protecting trafficked persons human rights. This is illustrated by the absence of the term ‘human rights’ from the strategy.

The significant change in practical administration was the decision by the Ministry of Justice (MOJ) to award the UK government-funded contract worth £6m over three years for supporting trafficked adults in England and Wales to the Salvation Army (SA). This meant the Poppy Project (PP), an organisation with considerable expertise regarded as providing best practice which had held the contract since 2003 lost its government-funding to support trafficked women. Despite the initial furore surrounding that decision its impact on responses has not been comprehensively investigated in previous literature. This absence of literature is acknowledged by a 2014 report by Ox Policy, a student-run think-tank at Oxford University, on the responses to trafficked persons in the UK. (Ox Policy, 2014, p23) This research studies the huge consequences of this change. The support previously provided in England and Wales by the PP and its two sub-contractors is now overseen by the SA and provided through twelve sub-contractors.

### **Trafficked Men and the Justification of the Focus on Trafficked Adults**

The CAT obliges States to ensure equality in the responses to trafficked men and women. A genuine human rights approach goes beyond this and requires gender specific responses. Therefore it is imperative that the responses to trafficked men are

also studied. The trafficking of men and the responses to them have been ignored and overlooked in previous literature. Jones, 2010, uses the phrase 'The Invisible Man' to describe how the literature on trafficking in persons has ignored the trafficking of men and States responses to them. This thesis studies the support and assistance specifically available for trafficked men. It finds that while some important progress has been achieved in recognising the trafficking of men and responding to them with support and assistance the responses to men remain insufficient to be consistent with a genuine human rights approach.

This study focuses solely on the response to trafficked adults. It does not examine the response to trafficked children. The obligations to children and the nature of these responses are very different to those for adults. The 1989 Children Act and 2004 Children Act establish legal obligations for the treatment of children which are not applicable to adults. (Drew. 2009. p136) Wijers and Chew, (2010) do not examine the response to children alongside adults because of distinct legal duties. To have examined the responses to children and adults would have stretched the scope of the research too far. However, most importantly the research focuses on men and women to challenge the interconnection between trafficked women and children which reduces women to the status of children. The exclusive study of trafficked adults in this thesis rightly recognises trafficked women as adults who must be recognised and treated distinctly from children.

## **Chapter Summary**

The thesis is divided into five chapters which in conjunction provide a comprehensive understanding of the responses to trafficked adults. The first chapter explores the description of the CAT as a human rights approach and examines the rights it grants. The chapter argues that the CAT does not provide a genuine human rights approach and it establishes what such an approach requires. This chapter provides the framework for the critical evaluation of responses throughout the thesis.

The second chapter critiques what this thesis conceptualises as the victim discourse. The chapter explores the creation of the stereotypical victim of trafficking. It argues the victim discourse contradicts a genuine human rights approach and the CAT by preventing people from being identified as having been trafficked excluding them

from support and assistance. The chapter focuses on how the victim discourse contradicts the principle of responding in ways which empower trafficked persons and respect their autonomy. This disempowerment is best explained by Dottridge who argues 'Such individuals are victims of crime and of abuse of power, but their victim status routinely leads governments to treat them as powerless pawns (Dottridge. 2007. p1).

The third chapter critically investigates the processes in the formal identification of trafficked persons. It explains the extent to which identification is dominated by an immigration approach and how this contradicts the principles of a genuine human rights approach. It focuses on the rights to a reflection period, counselling and healthcare. The chapter demonstrates the inadequacies of the CAT to guarantee trafficked persons the support and assistance they require to recover and to have their human rights protected. The chapter argues that the responses do not take a genuine human rights approach.

The fourth chapter examines the accommodation provided for trafficked adults in the UK. It is argued that the right to accommodation provided by the CAT is inadequate. The chapter explores the inappropriate accommodation being used and argues that specialist supported accommodation is required to be consistent with a genuine human rights approach. The chapter critiques the policies of some government-funded organisations which confiscate mobile telephones and infringe upon individuals' freedom of movement. It is explained that such policies contradict a genuine human rights approach and are only necessary to fulfil the ambitions of the law-enforcement and immigration approaches.

The final chapter explores trafficked persons juxtaposed experiences of the criminal justice system. A genuine human rights approach requires that trafficked persons have access to justice in respect of their human right to legal remedy. The chapter explores how this is denied in both practice and policy. The chapter examines the inaccessibility of compensation and the pressure and coercion trafficked persons can come under to cooperate with investigations and criminal proceedings against their traffickers. These responses demonstrate an approach to trafficking in persons focused on the interests of the State rather than protecting trafficked persons human rights.

The chapter then examines the punishment of trafficked persons for crimes they were compelled to commit by their traffickers or which were a consequence of having been trafficked. Criminalisation denies people the rights required by the CAT. Trafficked persons who are criminalised are not treated as victims of crime or as people who have suffered a human rights violation. However the chapter demonstrates the inadequacy of the CAT to protect trafficked persons from being punished. The chapter explores how and why people are punished. The examination of the criminalisation of trafficked persons includes the use of original evidence from innovative research I conducted on the convictions of Vietnamese nationals for the cultivation of cannabis with indicators of trafficking.

## **Methodology**

A comprehensive and broad reading of the relevant literature has been undertaken for this research. The relevant government policy documents on trafficking from all four of the parliaments and assemblies in the UK and speeches by relevant politicians in parliament in the Hansard and at public events have been examined to understand government rhetoric in responding to trafficking. I examined reports and briefing papers published by NGOs to understand both practice and policy. Newspaper articles and online blogs were also used. I also made Freedom of Information requests to the MOJ. This included a request to view the application the SA submitted for the contract to support trafficked adults in England and Wales. However the requests were rejected because the information was considered to be commercially sensitive. The thesis uses a mixed methodology which includes fieldwork interviews with key practitioners about the responses to trafficked adults in the UK and a study of newspaper coverage on potential cases of Vietnamese nationals being trafficked for cannabis cultivation. I adopted a mixed methodology as the most effective way to gather the different evidence necessary to comprehensively understand and analyse the responses to trafficked adults in the UK.

## **Fieldwork**

The empirical evidence collected through the fieldwork is central to understanding how the practical responses compare with the UK government's rhetoric. It also provides the detailed insight necessary to understand the current the expectations of the CAT and what is necessary for responses consistent with a genuine human rights approach. This study uses the evidence from the testimony from thirty-five interviewees. The interviews were semi-structured and were conducted either face-to-face or by telephone. <sup>1</sup>

Previous research on the response to trafficked persons in the UK has only interviewed support workers at organisations considered as providing best practice.

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<sup>1</sup> Telephone interviews were necessary when interviewing people in Northern Ireland. To save the time and cost of wasted journeys, telephone interviews were also used when it was possible participants might have to cancel at short notice. In one instance an interview was cancelled at very short notice because the support organisation had received a number of referrals and was making necessary preparations to welcome their new arrivals.

These are the PP and the Trafficking Awareness Raising Alliance (TARA), an organisation supporting trafficked women in Scotland (See Easton and Matthews, 2012. Jobe, 2008. Hoyle, Bosworth and Dempsey, 2011). Abigail Stepnitz, former anti-trafficking director for the PP gave this conclusion of the work of TARA when presenting evidence to the Scottish Parliament's Equal Opportunities Committee in 2010, 'I cannot speak highly enough of the services that TARA provides and the work that it has done with us. TARA is a valuable asset' (Scottish Parliament Equal Opportunities Committee. 2010).

This thesis uses evidence from the quotes of support workers from eleven different organisations in the UK supporting trafficked adults. There was no bias in the organisations I chose to approach. I contacted every support organisation funded by the UK government, the Welsh Assembly, the Scottish Parliament and the Northern Ireland Assembly to support trafficked adults to request their participation in my fieldwork interviews. The organisations I did not interview either declined to participate or failed to respond to my repeated requests for them to participate.

## **Methodological Innovations**

### **Organisations Supporting Men**

A novel element of the methodology for this thesis is that I interviewed staff from organisations that support men who were trafficked. Previous research has only interviewed organisations working with women. For example the 2010 ATMG report 'Wrong Kind of Victim' interviewed staff from support organisations around the UK but did not interview any organisations supporting trafficked men.

### **Interviewing Police Officers**

The interviews conducted with police officers involved in trafficking investigations are another novel element of the methodology. Despite the police's central involvement in responding to trafficked persons they have largely been excluded from existing research. The inclusion of the police has previously been limited to discussing their role within the law-enforcement approach such as building intelligence and criminal cases against traffickers to achieve successful convictions.



This is demonstrated by the contribution of two serving officers from the Metropolitan police unit SCD9 (The Human Exploitation and Organised Crime Command) in Martin and Sumner. (2011). The 2010 ATMG report interviewed police officers but these were limited to how the UK's response to trafficking impacts upon the ability of the police to successfully apprehend traffickers.

This research examines the responses of the police towards trafficked persons from the perspective of their support and assistance. The police are often the first organisation to encounter trafficked persons. Their initial interactions and how they work with other organisations providing support is crucial. However these key questions are absent from the previous literature. The methodology involved searching national and regional newspaper articles on human trafficking cases in the UK through the internet. Through this individual police officers directly involved in the investigations and criminal proceedings were identified. The constabularies they were from were then contacted to get personal contact details for the individual officers. The participants spoke openly about their work and opinions on the issues. The majority had not taken part in academic research on human trafficking. If they had it was focused on their work in relation to a law enforcement approach and the 'P' of prosecution rather than the protection and support for those who had been trafficked.

### **Vietnamese Nationals Criminalised for Cannabis Cultivation**

Another innovative aspect of my methodology was searching online newspaper articles for cases of Vietnamese nationals given custodial sentences for cannabis cultivation in 'cannabis factories' who showed indicators of having been trafficked. By using a mixed methodology which included searching newspaper articles for cases of Vietnamese nationals prosecuted for cultivating cannabis who show trafficking indicators but who had not been formally identified as trafficked I was able to examine the responses to those people who are not identified as a potential trafficked person. This is significant because methodologies in previous literature on trafficking have been unable to examine the experiences of trafficked persons who have not been formally identified. These cases are explored at length in Chapter 5.

As an ethically engaged researcher I felt I had a moral obligation to share the data I was uncovering on the criminalisation of trafficked persons. I shared some of this data with politicians, including Jenny Marra, MSP, (Member of the Scottish Parliament) who later proposed the Human Trafficking (Scotland) Bill in 2013 which includes a provision on non-punishment. I also shared evidence about this problem with Peter Bone, former Chair of the All Party Parliamentary Group on Human Trafficking and the shadow Attorney General Emily Thornberry. I also communicated with journalists and NGOs about these cases in the hope that some of those individuals could be identified and released from prison or detention.

My research on Vietnamese nationals prosecuted for cannabis cultivation who showed strong indicators of having been trafficked was referenced in the 2013 ATMG report and was used in the 2014 report titled 'Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples' by RACE in Europe. The data I obtained through this aspect of my methodology has already had an impact in informing a very important emerging debate.

### **Ethical Considerations**

Full anonymity has been granted to all the interviewees including their names and the organisations they work for. Chapter 3 discusses the politicisation of anti-trafficking work. The reason for anonymity was to make interviewees comfortable discussing openly their experiences of responses to trafficked adults the UK. Interviewees were also made anonymous in the 2010 and 2013 ATMG reports, the 2011 'Inquiry into Human Trafficking in Scotland' by the Equalities and Human Rights Commission, the 2013 CSJ report and the 2013 IPPR report.

Trafficked persons have been silenced and prevented from leading or even participating in the discussion of how States should respond to human trafficking and those who are trafficked. Bilger and van Liempt in van Liempt and Bilger (eds) 2009, challenge the assumption that vulnerable migrants will be unable to make useful contributions to the understandings of smuggling and trafficking (2009. p119). Easton and Matthews argue that their research interviewed trafficked persons to 'ensure that the direct experiences and voices of victims and their needs were

considered as a key input to the evidence gathered and findings of the Inquiry' (2012. p8).

However it would be a fallacy to suggest that by simply using the words of an individual who has been trafficked in a written piece of work or placing a victim on a stage or in front of a camera means they are automatically empowered and respected as equals. The act of 'giving' someone a voice entails dominance and power from those who allow or enable the individual to speak. Hua argues, 'While the ability to tell one's story is an incredibly important exercise, it is also one that is not transparent or freely given.' (2011. p46) The question of who is given a voice and the words selected is significant. Testimony may be chosen which reinforces existing stereotypes and defends the status quo in the response. This research highlights how the words of trafficked persons have been used to defend government rhetoric and present policy as providing comprehensive support.

It is crucial that trafficked persons are empowered. That responses should be empowering is an essential principle of a genuine human rights approach. However this research made a conscious ethical decision not to interview trafficked persons. While interviews could have been beneficial and empowering for trafficked persons I was unable to guarantee that the interviews would not be harmful and disempowering for those who participated and I was unable to provide the necessary support to people if this was required in the aftermath of such interviews.

The primary motivation for conducting this research was to try and improve the responses to trafficked persons by highlighting the failures of current responses and arguing for what the responses should be. Therefore it was essential that the methodology would cause no harm to trafficked persons. Zimmerman and Watts, 2003, highlight, 'The first principle in most ethical guidance is the principle of "do no harm". Given the extreme risks associated with trafficking, the significance of this basic rule cannot be overstated' (Zimmerman and Watts. 2003. p5). Any potential harm to trafficked persons by being interviewed could not be justified by the potential benefit to the research. The concern for the wellbeing of trafficked persons should not be compromised. It is more important than amassing original evidence for the thesis. Jobe, 2008, interviews trafficked women but acknowledges the well-

being of the interviewees must be prioritised over the success of the fieldwork, explaining,

I could not personally justify interviewing the women again about their experiences and risk causing them further distress by asking them to relive experiences, which, according to data in the asylum case files, they often found difficult to talk about or recall (Jobe. 2008. p62).

Coghlan and Wylie (2011) study the responses to human trafficking in the Republic of Ireland. Their empirical research consisted of twenty-four semi-structured interviews with a variety of stakeholders. However they did not interview anyone who had been trafficked. They explained their reasons for this, 'It is important to note that we did not interview people who had been trafficked, on the ethical grounds that such primary research can be intrusive and unsettling for people in vulnerable situations.' (Coghlan and Wylie. 2011. p1517)

The pain and difficulties of interviews for trafficked persons is illustrated by the research of Easton and Matthews, 2012. They interviewed trafficked women supported by TARA. The researchers approached twenty-six women about participating in their research. Of the twenty-six women approached only ten agreed to take part in the research. (Easton and Matthews. 2012. p30) Similarly Jobe approached thirteen women about being interviewed. In total six women agreed to participate. However only four women participated as two did not attend the arranged interviews. Jobe suggests the absence of these two women was likely due to their poor mental health. (2008. p63)

Some organisations have a blanket refusal on facilitating contact between researchers and those they support. For example the PP states on its website, 'we are not able to grant interview requests to students or to researchers.' A support worker explained the reasons their organisation does not allow student researchers to interview the women they work with,

*We have a blanket refusal we won't even approach women to ask them to do that, because we don't want women to say yeah [name censored] I'll do it to say thank you for the help you've given me because sometimes women will do that, they'll want to please me rather than think about it. When is it ever safe for someone to interview someone who has been trafficked? They need to be very skilled, is it a voyeuristic approach? Peoples stories about what happens to people who have been trafficked [are] already out there, I don't know why you need to see that individual cry again about what's happened to them (Interview 1).*

The research would have required me to ask individuals questions about the experiences they were going through at that moment in their lives. To ask a person about the difficulties in accessing counselling services and the impact of this while they were still recovering from the trauma of their experiences would be inappropriate. To interview people during their reflection period would undermine the purpose of the reflection period. The experience of many trafficked persons is that a series of strangers ask them very difficult and uncomfortable questions. I did not want to become just another stranger asking difficult questions. I also considered my own personal strengths and abilities as to whether I would be able to conduct the interviews in a way which would not be re-traumatising and harmful.

Such careful consideration about interviewing trafficked persons is in stark contrast with the 2011 'Inquiry into Human Trafficking in Scotland' by the Equality and Human Rights Commission (EHRC) which contains no reference to any ethical considerations despite the methodology including interviews with thirteen trafficked persons. The inquiry makes the testimony from these interviewees a central part of the work. It dedicates whole pages to dramatic quotes printed in large bold font. That trafficked persons found the interviews distressing is emphasised by the authors. For example the report highlights the emotional state of one interviewee, 'One young woman tearfully described the revulsion expressed by her brother at her being engaged in prostitution and his outrage at the shame she would visit on the family, despite the police confirming her status as a victim of desperate cruelty.' (Equality and Human Rights Commission, 2011, p10) Describing the emotional state of interviewees does not further the understanding of human trafficking or the nature of the responses to trafficked persons. The description of the tearful woman presents trafficking in an unnecessarily emotive and sensational way typical of the victim discourse explored in Chapter 2.

The possibility of conducting ethnographic research by volunteering with a support organisation to work with trafficked persons was dismissed for ethical reasons. The main ethical concern was the potential consequence of confusing the role of a support worker with that of researcher. This problem is acknowledged by Andrijasevic, 2010, which used ethnographic research gathered from working in a women's shelter in Bologna as a support worker. Andrijasevic acknowledges, 'the double role of a social worker and a researcher was on one occasion a ground for

confusion that transformed a situation of a “fieldwork-interview” into a “social-worker consultation” session.’ (Andrijasevic, 2010. p21) However Andrijasevic does not acknowledge the ethical problems of the situation.

A 2008 report entitled ‘Guide to Ethics and Human Rights in Human Trafficking: Ethical Standards for Counter-Trafficking Research and Programming’ by the UN Inter-Agency Project on Human Trafficking describes the importance of ensuring informed consent when interviewing trafficked persons, ‘Counter-trafficking research and programming must be conducted with individuals who freely consent to participation after becoming fully aware of the possible risks and benefits of their participation.’ (United Nations Inter-Agency Project on Human Trafficking. 2008. p20) The EHRC inquiry however contains no mention of ‘informed consent’ from trafficked persons. The report by the CSJ interviewed trafficked persons but similarly contains no reference to ethical considerations and informed consent.

There is something uncomfortable about amassing tales of the suffering and tragedy of trafficked persons which brings status and success for researchers and their organisations when there is no evidence of any consideration for the well-being of the participants. Despite the worthiness of raising awareness about human trafficking and the difficulties and successes with the responses with the hope these might be improved, the individuals who participate must be recognised as active and equal participants with rights who deserve respect. Traffickers are condemned for using those they traffic as a means for their own ends. Human beings must always be treated as an end in themselves and not as a means. Methodologies which do not show proper respect and consideration for trafficked persons as interviewees treat them without dignity and instrumentalise them. Trafficked persons are more than objects and sources of information to be found and probed for the required evidence. They are human beings whose personal suffering and harm is what is supposed to motivate a response which prevents further painful experiences. I had a conversation with an anti-trafficking activist during the beginning of my research which made me very conscious of the relationship between researchers and trafficked persons. In discussing my intended research with this individual they told me they had worked with a person who had been trafficked. They were keen to help me with my research and told me I could “use it” for an interview. They quickly with embarrassment corrected themselves. However this mistake exemplifies the real danger that while

seeming to empower trafficked persons by giving voice to their opinions and experiences about the responses to them they can simultaneously be recognised as passive objects and sources of evidence.

# Chapter 1: How the CAT and a Genuine Human Rights Approach Respond to Trafficked Persons

## Introduction

The CAT is described as providing a human rights approach to trafficking in persons. Petya Nestorova, Executive Secretary of GRETA, describes the CAT in this way,

in recent years, victims of trafficking themselves have gradually moved up the ladder of attention by political decision-makers. To a significant extent this may be attributed to the Council of Europe and its Convention on Action against Trafficking in Human Beings, which adopts a human rights-based and victim-centred approach in all anti-trafficking measures (Nestorova. 2012 p21).

This chapter critically examines why the CAT has been described as a human rights approach. Pourmokhtari, 2012, explains, 'While it appears that the Convention is predicated upon recognition of a rights-based approach and gender equality, an in-depth review of the document reveals that this may not be the case.' (Pourmokhtari. 2012. p64) This study provides such a review, challenging these descriptions by critically dissecting the CAT's approach. The chapter argues the description of the CAT as a human rights approach is a fallacy. It will be argued that the rights within the CAT are not consistent with the rhetoric of the CAT's purpose and Preamble. This chapter argues that the CAT accepts that States can prioritise a law-enforcement approach and the protection of immigration controls beyond protecting trafficked persons human rights.

This chapter outlines the principles required of a genuine human rights approach and explores the extent to which these are contradicted or not guaranteed by the CAT. It is essential the portrayal of the CAT as a human rights approach is challenged because the CAT is the instrument which responses in the UK have been evaluated against since the 1<sup>st</sup> April 2009. A report by the centre-left think-tank, Institute for Public Policy Research (IPPR) declares that the CAT requires 'the UK to take a human rights approach.' (Cherti, Pennington and Grant. 2013. p20) The description of the CAT as a human rights approach has enabled the UK government and regional governments to present themselves as providing comprehensive support. However the responses simply fulfil the minimum obligations of the CAT which are inadequate to protect trafficked persons' human rights and to enable their recovery. A 2013



Foreign and Commonwealth Office report argued the UK's ratification of the CAT was evidence of its commitment to responding to trafficking, 'We are committed to tackling modern forms of slavery. The UK has ratified the Council of Europe Convention on Action against Trafficking in Human Beings . . . to demonstrate our commitment to tackle this horrific crime.' (Foreign and Commonwealth Office. 2013. p10)

If the ambition is to protect the human rights of trafficked persons and provide support which best enable physical and psychological recovery the responses should be evaluated against a genuine human rights approach. The CAT does not oblige States to respond in such a way. Goodey compares the Council of Europe's perception of the nature and importance of the CAT with the reality of what it obliges of States in their responses to trafficked persons. Goodey argues, the 'Council of Europe described the Convention as the "most important human rights treaty of the last decade" Arguably, however, the Council of Europe's human rights focused response to trafficking is one that countries feel they can afford to sign up to.' (Goodey. 2012. pp49-50)

### **Descriptions of the CAT as a Human Rights Approach**

The CAT is described as providing a human rights approach because it was the first trafficking instrument to recognise trafficking as a violation of human rights. (Pati. 2011. p124) The Preamble of the CAT declares,

trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being (Appendix A).

This recognition enabled the CAT to make significantly stronger demands for support than the Palermo Protocol. Article 6.3 of the Palermo Protocol declares, 'Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.' The CAT demands that 'Each Party shall adopt' the support and assistance within the CAT. The support for trafficked persons transformed from recommendations to rights. A report by Anti-Slavery International and La Strada described the CAT as 'the first international treaty that looked at human trafficking as a major human rights issue and makes the protection of victims' rights binding.' (Anti-Slavery International and

La Strada. 2013. p9) The CAT's obligations on States to provide support is central to its recognition as a human rights approach (Chaudary. 2011. p83). Rijken and de Volder argue,

Article 1 of the CoE Convention incorporates a human rights-based approach to trafficking. It sets forth that the Convention deals with the prosecution of traffickers (the first and second obligations), the protection of trafficking victims (the third obligation), and the prevention of trafficking (the fourth obligation). The main focus of the Convention, however, is the protection of victims' rights and overall well-being. Taking the Palermo Protocol as its starting point, the Convention imposes measures to increase the protection of trafficking victims' human rights (Rijken and de Volder. 2009. p59).

Chaudary, 2011, explains, 'The most comprehensive European anti-trafficking instrument is the Council of Europe Trafficking Convention, which contains detailed provisions on the assistance, protection, and support to be provided to trafficking victims.' (Chaudary. 2011. p83)

However Touzenis argues 'It should always be clear that a human rights approach to trafficking is a human rights approach to the victims, not a human rights approach to trafficking as a legal concept and definition' (2010. p18). The CAT's description of trafficking as constituting human rights violations should not mean it is automatically recognised as adopting a genuine human rights approach. It is essential to emphasise the distinction between recognising trafficking as a human rights violation with guaranteeing remedies respecting trafficked persons human rights (Krieg. 2009. p784). The support and assistance required by the CAT does not guarantee the protection of trafficked persons and their human rights or respect the foundational principles of human rights. Piotrowicz argues, 'Inasmuch as the European Convention and other instruments make provision for the welfare of victims of THB they may be said to be human rights instruments. However, such rights are limited' (2007. p285).

Gallagher offered an early assessment of the CAT which argues that the credentials of the CAT as an instrument protecting the human rights of trafficked persons should be judged in the context of the rapid progress it made in such a short period of time,

In evaluating the "human rights worthiness" and potential of the Convention, it is essential to recognise just how far and how quickly our standards have shifted upwards. Those lobbying at the Trafficking Protocol negotiations would never have even bothered to seriously push for a mandatory recovery and reflection period or for an independent monitoring body. In just a few

short years, it has now become accepted that trafficking is a violation of human rights; that governments should give victims assistance; that they should not push them back over the border; that they should ensure compensation; and that they should actually do something to stop trafficking from happening in the first place (Gallagher. 2006. p187).

Gallagher continues, describing the CAT as a 'revolutionary' instrument,

[The CAT] embodies this revolutionary way of thinking about trafficking and about victims of trafficking. The Convention explicitly recognises trafficking as a violation of human rights. It requires States to provide minimum standards of assistance and protection to all victims of trafficking irrespective of their willingness to cooperate with criminal justice authorities. No victim or presumed victim can be automatically deported. Cooperating victims and witnesses are entitled to extra help and extra protection as befits their increased need (2006. p187).

That the CAT made a significant advancement beyond the Palermo Protocol is unquestionable. However the 'human rights worthiness' of the CAT should not be assessed by the extent to which it improved upon the limited and weak protections offered by the Palermo Protocol, an instrument drafted with the intention of providing a law-enforcement approach to human trafficking.

The CAT should be judged against a genuine human rights approach which requires that the protection of trafficked persons and their human rights are the central and dominant concern (Aradau. 2005. p123). The United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasises "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." (Office of the UN High Commissioner for Human Rights. 2010. p51) The primacy of human rights must be asserted in all responses. Gallagher argues, 'Human rights are not a separate consideration or an additional perspective. They are the common thread which should serve as a foundation and reference point for all undertakings in this area' (2001. p1004). A report by the International Centre for Migration and Policy Development argues the 'human rights based approach asserts that human rights and wellbeing of victims are at the core of anti-trafficking response and take precedent over other considerations' (Bjerkan et al 2005. p24).

It has been argued that the CAT does achieve this and makes the protection of trafficked persons and their human rights the central and dominant concern.

Raffaelli, 2009, observes, 'The Convention is one of the few international documents

on trafficking focusing more on victims' protection than on traffickers' prosecution.' (Raffaelli. 2009. p212) GRETA highlights that, 'The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection' (2012. p22). The President of GRETA describes the CAT as providing a human rights approach and argues that where the CAT focuses on the P of prosecution this is with the purpose of helping the recovery of trafficked persons,

GRETA is especially keen to secure effective repression of trafficking while emphasising the "human Rights-based approach" pioneered by the Convention. The human rights-based approach implies carrying out investigations and implementing mutual assistance in criminal law matters if only because this paves the way for the rehabilitation of victims, which includes compensation to be paid by the trafficker (Le Coz. 2012. p37).

The reasons for these descriptions of the CAT making the protection of trafficked persons the central concern are due to an overreliance upon the rhetoric of Article 1b and Paragraph 5 of the Preamble of the CAT. These purport that the CAT makes the protection of trafficked persons and their human rights paramount. Paragraph 5 of the preamble of the CAT declares,

respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives (Appendix A).

Article 1b of the CAT titled 'Purposes of the Convention' explains the purpose is,

to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution (Appendix A).

Rijken and Koster, 2009, emphasise Paragraph 5 of the Preamble in their description of the CAT as a human rights approach,

An important instrument adopted within the Council of Europe made an effort to adopt this human rights based approach into a legally binding instrument, namely, the Convention on Action against Trafficking in Human Beings. Paragraph 5 of the Preamble to this Convention explicitly states that the respect for the rights and protection of victims must be the paramount objectives of the fight against THB (Rijken and Koster. 2009. p9)

Craggs and Martens discuss Article 1b, arguing, 'The achievement of this purpose has been the subject of much debate. The written text does, however, promote a rights-

based approach' (2010. p33). Touzenis regards Article 1 as significant in establishing the CAT's 'human rights perspective,'

Its human rights perspective and focus on victim protection is the main added value of the CoE Convention in relation to other international instruments . . . Article 1 of the Convention provides that its purpose include the protection and assistance of the victims and the designing of a comprehensive framework of the protection and assistance of victims and witnesses (Touzenis. 2010. p88).

It is argued in this chapter and throughout the thesis that this grand rhetoric from the CAT is not upheld by the realities of the rights and absence of particular rights within the CAT which contradict these expressions. The CAT does not require States to respond to trafficked persons as the central concern or make protecting them and their human rights the priority. While requiring States provide support and assistance the CAT ultimately accepts this can be treated as a secondary concern to the interests of States.

### **Unconditional Support**

A genuine human rights approach means the response is focused on providing support and protecting trafficked persons' human rights. If States truly prioritise this there can be no reason to make access to support conditional. A genuine human rights approach should adopt a non-consequentialist position in arguing for the accessibility of human rights, support and assistance for trafficked persons. Obokata summarises that the support of trafficked persons is 'important more from a human rights perspective. It helps victims restore their violated human rights and prepares them to re-integrate into their own societies or resettle into new ones' (2006. p401). Responding to trafficked persons in respect of their human rights is justified and necessary because it fulfils moral and legal expectations. However it is also recognised that unconditional support will in the long-term benefit the interests of the State.

The literature emphasises it is essential access to support and assistance is unconditional (Haynes, 2004, Obokata, 2006, Jorge-Birol, 2008, Adams, 2011, Copic and Simeunovic-Patic in Winterdyk, Perrin and Reichel (eds.) 2012). A 2009

report by the United Nations Global Initiative to Fight Human Trafficking (UN GIFT) weakly explains it is ‘more in line with a human rights-based approach to combating trafficking not to make residency status contingent on the victim’s cooperation with the authorities.’ (United Nations Global Initiative to Fight Human Trafficking. 2009. p59) Goodey rightly argues that examining whether support is unconditional is the ‘test’ for whether responses are ‘for’ those who have been trafficked. (Goodey. 2008. p433) A response which makes support and assistance conditional upon cooperation with criminal investigations and proceedings cannot be considered to take a genuine human rights approach. A report by the United Nations Office of the High Commissioner for Human Rights (OHCHR) explains the importance of unconditional support,

Importantly, the provision of such care is identified as being a non-negotiable right of the victim: a right that should be recognized and implemented irrespective of that person’s capacity or willingness to cooperate with criminal justice authorities in the investigation or prosecution of traffickers (OHCHR. 2010. p141).

The 2011 report by the UN Special Rapporteur on Trafficking in Persons, Particularly Women and Children provides a significantly stronger challenge to conditional support. It describes conditionality as ‘contrary to “the fundamental tenet of the human rights approach to trafficking”’ (Ezeilo. 2011. p8). The Council of Europe Experts Group on Trafficking 2004 report argues,

A human rights approach opposes the instrumentalising of trafficked persons. The right to protection, assistance and redress of trafficked persons as victims of a serious human rights violation is considered a right in its own based on international human rights law, and is not made contingent upon the willingness or capacity of the trafficked person to co-operate in legal proceedings and/or to give evidence (Council of Europe Experts Group. 2004. p140).

Traffickers are condemned for denying the personal freedoms and autonomy of those they traffic, using them as commodities and as means for their own ends. Such actions contravene the Kantian principle that one should, ‘Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means.’ Conditional support means the State makes a calculation about a person’s worth to them in their ambition to convict traffickers before they agree to provide urgently required support. Adams argues that providing residency and access to support based on the “worth” of an

individual further violates the human rights of those who have been trafficked (2011. p229). Such a situation is reminiscent of when traffickers consider the worth of an individual to them as a commodity. Both the dominant figures in the relationship, the State and the trafficker are influenced in their actions by what they can gain from the individual. Governments should not make support conditional. Only supporting people who agree to assist in a criminal investigation means the government violates the Kantian principle by equally reducing trafficked persons to becoming a means to an end as they reduce them to the status of a “tool” for the prosecution (Lee. 2010. p69). Within a genuine human rights approach the protection of trafficked persons and their human rights must be the end. Conditional support prevents the accessibility of support for all trafficked persons, contradicting the principles of equality and non-discrimination.

Much of the literature advocates unconditional support because of its positive consequences for realising the ambitions of a law-enforcement approach. It is argued unconditional support is more likely to secure individuals cooperation with the police (Konrad. 2008. p170). Rijken and de Volder argue, ‘the conditionality of the assistance provided will inevitably make trafficked persons suspicious of law enforcement agencies, unwilling to talk to them and, thereby, will hinder rather than help with the prosecution of traffickers.’ (2009. p79) Raffaelli (2009) highlights the successes in Italy in improving the cooperation of trafficked persons in criminal investigations as a consequence of providing unconditional support. Jorge-Birol argues,

Trafficked persons are victims – and witnesses considered as the best source of information for police investigation. Without their collaboration, evidence is often difficult to access and the application of domestic criminal laws against traffickers, read prosecution and punishment, becomes impossible (Jorge-Birol. 2008. pp165-166).

That unconditional support benefits the prosecution and conviction of traffickers is welcomed. However it is problematic if this becomes the central justification because it means trafficked persons are still treated as a means to an end. It means trafficked persons are primarily recognised from the perspective of their potential usefulness as tools for the prosecution. It is argued people must have unconditional support not because they have suffered human rights violations which oblige States to provide

remedy but because this will help the State realise the ambitions of a law-enforcement approach to see the prosecution and conviction of traffickers. Roth, argues,

trafficked persons are not regarded as entitled to assistance and protection simply as victims of a serious crime and human rights violation but because they are needed in the crime investigation and criminal proceedings. Protecting the rights of trafficking victims is regarded to contain an instrumental value for law enforcement and criminal justice (Roth. 2011. p126).

The description of the 'instrumental value' of protecting trafficked persons rights accepts an instrumentalising response. The focus is on trafficked persons as witnesses to a crime rather than as the victims of crime and human rights violations who have a right to legal redress. Gallagher and Karlebach demonstrate a discussion on a human rights approach which explicitly recognises trafficked persons as 'resources' rather than as rights-holders who have the right to legal redress:

a human rights approach to trafficking does not reject the active involvement of victims in the investigation and prosecution of their exploiters. Rather, such an approach confirms that States, through their national criminal justice agencies should be working towards a situation whereby victims of trafficking are recognized as an essential resource and are provided with the protection and support they need to participate safely and effectively in the criminal justice process (Gallagher and Karlebach. 2011. p10).

Encouraging States to recognise trafficked persons as a resource should not be regarded as consistent with a genuine human rights approach. Making support conditional on an individual cooperating with the police or encouraging States to recognise trafficked persons as 'resources' denies the recognition that trafficked persons have a right to legal remedy. The prosecution of traffickers must be regarded as important for the protection of trafficked persons and for providing restorative justice (Adams. 2011. p203). Conditional support makes the State the primary concern. The State agrees to provide support to help achieve convictions of traffickers to protect its own borders and immigration controls.

Article 12.6 of the CAT is consistent with the principle that support should be unconditional, it declares,

Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness (Appendix A).



However the CAT does permit conditional responses. Anderson highlights that the CAT takes an approach where ‘the protection of trafficked persons still depends on their co-operation with authorities’ (2007. p6). The right to a residence permit which provides trafficked persons ‘long term’ residency beyond the minimum thirty day reflection period required by Article 13.1 is conditional. Article 14.1 states,

Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both: (a) the competent authority considers that their stay is necessary owing to their personal situation; (b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings (Appendix A).

The explanatory report on the CAT discusses the two conditions to be granted a residence permit under Article 14.1,

Thus, for the victim to be granted a residence permit, and depending on the approach the Party adopts, either the victim’s personal circumstances must be such that it would be unreasonable to compel them to leave the national territory, or there has to be an investigation or prosecution with the victim co-operating with the authorities. Parties likewise have the possibility of issuing residence permits in both situations.

Kotak 2009, writing before the CAT entered into force in the UK highlighted ‘It is not yet clear how ‘personal circumstances’ are to be interpreted’ (Kotak. 2009. p3). The uncertainty of the ‘personal circumstances’ which would entitle a person to a residence permit through Article 14.1 means the only guarantee of residency is cooperation with the police. The CAT does not require the UK to guarantee a residence permit for all trafficked persons. Brunovskis highlights the conditionality of Article 14 and argues that this should dismiss the recognition of the CAT as a human rights approach, ‘While the CAT is a step in the direction of increased victim rights, it must however be noted that this so-called rights-based approach still generally requires cooperation with law enforcement’ (Brunovskis. 2012. p57). Bjerkan et al argue the use of ‘rewarding provisions’ with regard to issuing residence permits to trafficked persons’ reveals ‘the prioritisation of crime/migration control policy over the protection of victims; human rights.’ (Bjerkan et al. 2005. p68) The increased focus and strength of support in the CAT in comparison to the Palermo Protocol was achieved because States recognised the necessity of providing trafficked persons some support to enable them to assist the authorities in criminal investigations against their traffickers. (Gallagher. 2006. pp.181-182) Stoyanova

highlights that under the CAT, ‘The victim will be allowed to stay as long as she is available and useful as a witness’ which leads Stoyanova to conclude, ‘it is clear from the Council of Europe Trafficking Convention, protection in the sense of remaining in the territory of the receiving states is not actually a victim protection scheme, but a witness protection scheme’ (Stoyanova. 2011. p788).

The conditionality of receiving a residency permit illustrates that the prosecution of traffickers and the protection of State sovereignty are the paramount concern of the CAT. These concerns are prioritised over trafficked persons recovery and protection. Gallagher argues,

While human rights concerns may have provided some impetus (or cover) for collective action, it is the sovereignty/ security issues surrounding trafficking and migrant smuggling which are the true driving force behind such efforts. Wealthy states are increasingly concerned that the actions of traffickers and migrant smugglers interfere with orderly migration and facilitate the circumvention of national immigration restrictions (Gallagher, 2001. p976).

Obokata in reference to the CAT, argues, ‘an approach which provides residence permits on the basis that victims co-operate with law enforcement authorities should be re-considered’ (Obokata. 2006. p156). Pourmokhtari argues if the response is genuinely focused on providing support then trafficked persons should have equal access to support, ‘If a given policy claims to support human and not just legal rights, clauses should explicitly state that all trafficking victims should be offered unlimited access to every possible resource, regardless of whether or not they choose to pursue legal action’ (Pourmokhtari 2012. p64). A genuine human rights approach should require unconditional automatic residence permits for those identified as trafficked.

### **Access to Justice**

Access to justice is an essential principle of a genuine human rights approach. Lam and Skrivankova define “access to justice” as, ‘the ability of trafficked persons to overcome the trafficking experience and prevent its recurrence by seeking and obtaining a remedy, through the justice system, for grievances according to human rights principles and standards’ (2009. p8). The CAT contradicts the realisation of this principle in a multitude of ways.

Trafficked persons have the same human right to access justice as all victims of crime (Bruckmuller and Schumann. 2011. p118). Article 8 of the Universal Declaration of Human Rights (UDHR) declares, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” The human right to legal remedy is recognised by Article 2.3(a) of the International Covenant for Civil and Political Rights (ICCPR) which declares States must ‘ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity’ (ICCPR). Trafficked persons must be treated in respect of Article 4 of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which declares ‘Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.’

Gallagher highlights the importance of Article 10 because it recognises correct identification is essential for people to be treated in respect of their rights,

Perhaps the most important of all victim protection provisions is the one relating to identification. In a landmark development for the international legal framework related to trafficking, the Convention explicitly acknowledges that correct identification of victims is essential to the provision of protection and assistance, and that failure to correctly identify a victim will likely lead to a denial of that person’s rights as well as problems in the prosecution process (Gallagher. 2006. p180).

However Gallagher does not acknowledge the failure of the CAT to provide trafficked persons the right to appeal a decision by the State when they are denied official identification as trafficked. This is disempowering and contradicts the CAT’s proclaimed importance of correct identification. Trafficked persons are excluded from accessing a tool of the criminal justice system to guarantee access to their rights to remedies. A response which respects the principle of access to justice must require trafficked persons have the right to appeal negative status decisions. The Council of Europe Parliamentary Assembly recommended that the CAT should provide a right to appeal a negative decision but this was rejected by the drafters (Raffaelli. 2009. p210). Providing a right to appeal should be regarded as necessary to be consistent with Article 13 of the European Convention of Human Rights which declares,

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’ The absence of a right to appeal a negative decision protects States interests of maintaining strong controls over immigration.

Trafficked persons engagement with the criminal justice system can have a tremendously positive impact from the perspective of the ‘P’ of protection but it is simultaneously extremely significant for the ‘P’ of prosecution. However access to justice is not guaranteed if trafficked persons participation in the criminal justice system is subjugated by a law-enforcement approach. Trafficked persons involvement in the criminal justice system does not automatically mean they are accessing justice. People must be respected as autonomous agents who decide for themselves whether to cooperate with criminal investigations and proceedings. Gallagher and Holmes argue ‘Trafficked persons need to become more than witnesses for the prosecutions. Trafficked persons must be able to be involved based on their own motivations and interests’ (2008. p338). If individuals are pressured into cooperating with criminal investigations then it cannot be claimed their participation constitutes access to justice. Pressure and coercion to cooperate with criminal proceedings and investigations may be harmful and re-traumatising. The absence of automatic residence permits within the CAT means people are not protected from such potential pressure. People may very reluctantly agree to cooperate with criminal investigations and proceedings as a way of prolonging their time in the country and avoiding deportation to their country of origin.

Access to justice means people can explain what has happened to them and are able to see that those who committed crimes against them and violated their human rights are punished. (Konrad. 2008. p175). Obokata emphasises the importance of pursuing justice for its potential ‘therapeutic value’ in the way that it ‘assists them in handling their anger and trauma in a constructive way, which can lead to the restoration of their sense of control, dignity, and self-worth’ (2006. p158). A genuine human rights approach requires empowering responses to trafficked persons. Access to justice empowers people as autonomous actors in the pursuit of justice against their traffickers as they take control over their own life (Obokata. 2006. p158). This is

argued by the Joint report by La Strada and Anti-Slavery International which explains,

Acknowledging the wrongdoing and recognising the rights of trafficked persons redefines victims as subjects of justice rather than objects of it and opens space for their active role in the process of bringing their traffickers to justice (La Strada and Anti-Slavery International. 2012. pp6-7).

The 2007 US State Department Trafficking in Persons report suggests how involvement within the criminal justice system marks a transformation in the relationship of power between the individual who has been trafficked and their trafficker. It explains, 'as a victim finds his or her voice and an exploiter is rendered speechless as justice is handed down.' (United States State Department. 2007. p37) Skrivankova explains the value and importance of the empowerment from accessing justice,

To experience justice and receive acknowledgement that what happened to you was wrong and to see the offender punished is very important to the recovery process of victims of trafficking. The restorative function of justice is to assist victims to overcome what they have been through and to focus on their needs. It is a process whereby a victim becomes the subject of justice rather than an object of it – he or she is not just a passive actor in a process of bringing perpetrators to justice (Skrivankova. 2011. p283).

Access to justice requires trafficked persons are equally as able to obtain compensation as they are to make a criminal complaint to the police that they have been trafficked, to give the police evidence and to testify against their traffickers in court. Trafficked persons who can testify against their traffickers but cannot receive compensation are denied access to justice. The inaccessibility of compensation indicates trafficked persons involvement in the criminal justice system is subjugated by the State's prioritisation of a law-enforcement approach which instrumentalises them as sources of evidence about a crime which occurred against the State.

Compensation is an integral element of access to justice. The right to compensation is as essential as the accessibility of all other forms of support and assistance such as accommodation and healthcare (Skrivankova. 2011. p285). The 2013 report by La Strada and ASI asserts, 'Compensation is a right and it should be a fundamental element of any anti-trafficking assistance service. It is not a luxury or supplement to the basic assistance provided to trafficked persons' (La Strada and Anti-Slavery International. 2012. p15). The right to compensation for victims of crime is

established in international human rights law. Article 15 of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law declares,

Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.

The State has a duty to provide compensation when this cannot be gained from those who committed the criminal acts. It is established in international human rights law in Article 12 of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power that, 'When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation.'

The accessibility of compensation demonstrates trafficked persons are recognised and respected as people who have been victim to human rights violations and criminal offences. The awarding of compensation ensures 'the victim's pain and suffering are acknowledged' (Anti-Slavery International and Eaves. 2010. p7). Simmons (2012) and Keren-Paz (2010) describe the 'symbolic value' of compensation that the State acknowledges that what happened to them violated their human rights and is completely unacceptable. Obokata also highlights the significance of compensation in demonstrating to the individual that the State recognises they have suffered a human rights violation, 'compensation is an important form of remedy. It is important because an award of compensation serves to "affirm public respect for the victim and give public recognition of the wrongdoer's fault in failing to respect basic rights' (2006. p160).

Awarding compensation cannot undo the physical and mental harm trafficked persons have endured but it can make an important positive impact upon their long-term safety and wellbeing (International Organisation for Migration. 2008. p1). Compensation will help prevent trafficking. Poverty is recognised as a significant causal factor for trafficking (Weissbrodt, 2008. Edwards, 2008. Haynes, 2004. Todres, 2009. Amiel, 2006). The Government's Strategy described 'poverty' as one of the factors creating 'opportunities for traffickers . . . to lure vulnerable migrants to

the UK for exploitation' (HM Government. 2011. p6). The 2012 Home Office report 'An Evidence Assessment of the Routes of Human Trafficking into the UK' also recognised poverty as one of several 'key driving forces of the supply of trafficked people' (Home Office. 2012. p6). Compensating trafficked persons can help to tackle such poverty and prevent re-trafficking (Lam and Skrivankova, 2009. Home Office and Scottish Executive, 2007. La Strada and Anti-Slavery International, 2012). The potential effect of compensation to prevent re-trafficking was noted by a spokesperson for the NGO Kalayaan, which supports people trafficked for domestic servitude, 'Poverty makes people vulnerable to trafficking and compensation is not only an important part of the justice process but it can also help to prevent the re-trafficking in the future and help people move on and recover their lives' (Royston. 2011) For those people who were living in poverty before they were trafficked compensation can be empowering (Sangalis. 2011). Compensation can provide 'financial autonomy.' (La Strada and Anti-Slavery International. 2013. p7) Individuals who receive compensation will be more able to financially support themselves and their family (Skrivankova. 2011. p280).

Articles 15.3 and 15.4 of the CAT provides a right to compensation for trafficked persons,

(3) Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators. (4) Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 (Appendix A).

Article 15.3 and 15.4 suggest the CAT is consistent with the principle of access to justice required by a genuine human rights approach. These rights suggest the CAT ensures trafficked persons can receive restorative justice and that they are not just treated as tools for fulfilling the interests of the State and a law-enforcement approach. However the CAT does not provide an equal response to these different interests. Trafficked persons are better protected by the CAT in their access to the criminal justice system when this serves the interests of the State and a law-enforcement approach. States interests are better protected by the CAT than the human rights of trafficked persons.

The CAT does not oblige States to guarantee trafficked persons residency to pursue compensation. This is distinct from its right to a residence permit for trafficked persons who participate in criminal investigations and proceedings against their traffickers. It will be extremely difficult for people to pursue compensation if they are outside of the country whose legal processes they are attempting to navigate (Lam and Skrivankova. 2009. p22). This difficulty is acknowledged by the explanatory report to the CAT, which explains, 'it would be very difficult for them to obtain compensation if they were unable to remain in the country where the proceedings take place.' Despite this recognition of this practical barrier the CAT does not oblige States to provide residency for people seeking compensation. Without the right to residency the right to compensation established in Article 15 is hollow and ineffectual.

This is deeply problematic. It enables States to present themselves as compliant with the CAT by ensuring compensation schemes are available while compensation is practically inaccessible for those without the right to residency. This response protects States ability to maintain strong control over immigration over the importance of ensuring the accessibility of the right to compensation. A normative genuine human rights approach requires trafficked persons have the equal right to residency to claim compensation as they do to participate in criminal proceedings against their traffickers. Providing unconditional residence permits in respect of a genuine human rights approach would resolve this.

### **Non-Punishment**

The principle of non-punishment is essential to a genuine human rights approach. It means people should not be prosecuted or convicted for crimes they were compelled to commit within the trafficking situation or as a consequence of being trafficked. Carter and Chandran establish the terminology 'trafficking-dependent crimes.' They define this as crimes committed by trafficked persons within three separate stages, during and after the trafficking situation. These are when the person is '(1) under the control of their trafficker(s); or (2) attempting to flee the control of their trafficker(s); or (3) otherwise acting to try to protect or assist him or herself on account of their trafficked status' (Carter and Chandran. 2011. p425).



Macklin strongly argues that those who are trafficked are ‘victims of human rights violations and deserve protection, support and possibly compensation.

Stigmatization, criminalization and punishment should be meted out to the traffickers, not the trafficked’ (Macklin. 2003. p483). The authorities responses towards trafficked persons should not continue their suffering and punishment. Criminalisation means people are doubly punished, first by their traffickers and then the State (ATMG. 2013. p93). Trafficked persons who are punished are re-traumatised by the State rather than offered support and protection. Cross (2013) argues that those who are criminalised suffer a ‘dual victimisation.’ (Cross. 2013) Villacampa and Torres explain punishment means trafficked persons ‘suffer a double process of victimisation’ (2014. p14).

Non-punishment is essential to guarantee a response consistent with the recognition of the Preamble of the CAT that ‘trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being.’ Prosecuting and convicting people for trafficking-dependent crimes contradicts treating them as people who have endured human rights violations. In practical terms trafficked persons who are punished are excluded from having redress and remedy. Gallagher argues, ‘Criminalisation is the antithesis of the victim-centred approach, inevitably operating to deny trafficked persons the rights to which they are entitled under international law’ (2010. p283). Touzenis argues, ‘In order for a trafficked person to be meaningfully recognized as a victim and enjoy the protections this status entails, the principle of non-punishment must be applied’ (2010. p119).

In particular the human right to legal remedy is denied when trafficked persons are punished for trafficking-dependent crimes. Trafficked persons who are prosecuted and convicted are prevented from claiming compensation or from participating in investigations and proceedings against their traffickers. Trafficked persons are instead made to suffer the injustice of being punished for having suffered human rights violations. This treatment is enormously disempowering (Hoshi. 2013. p54).

The denial of access to justice caused by punishment harms the interests of States responding to trafficking in persons to fulfil the P’s of prevention and prosecution. Preventing trafficked persons from giving vital evidence and testimony integral to a prosecution and successful conviction gives traffickers impunity from punishment

(ATMG. 2013. p93). A 2013 report by the Special Representative and Coordinator on Combatting Trafficking in Human Beings for the OSCE (OSCE SR) on the principle of non-punishment explains,

Victims of trafficking are also witnesses of serious crime. The non-punishment provision will, if applied correctly, equally and fairly, enable States to improve their prosecution rates whilst ensuring critical respect for the dignity and safety of all victims of trafficking who, but for their trafficked status, would not have committed the offence at all (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p30).

Trafficked persons who are imprisoned, detained and deported rather than supported to recover from their physical and psychological trauma will return to their countries in a worse condition than when they were initially trafficked, leaving them vulnerable to re-trafficking. Those who are re-trafficked will have no reason to approach the authorities in the hope of receiving any support or assistance when their previous experience was imprisonment and deportation. These responses contradict efforts to prevent trafficking and prosecute traffickers.

Article 26 of the CAT provides a ‘non-punishment provision’ which declares,

Each Party shall, in accordance with the basic principles of its legal system, 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 (Appendix A).

The 2013 ATMG report highlights that ‘non-punishment is an essential element of the human-rights based approach’ and explains that Article 26 ‘provide[s] for non-punishment.’ Raffaelli, 2009, uncritically describes how the CAT ‘provides for non-punishment of trafficked persons’ (Raffaelli. 2009. p212) Aradau argues that the CAT ‘explicitly integrates a “non-punishment provision.”’ (Aradau in Feldman, Geisler and Menon (eds.) 2011. p172)

It is contended here that Article 26 does not provide sufficient protection from punishment. The CAT only obliges States to provide for the ‘possibility’ of non-punishment. Gallagher acknowledges the problem with the word ‘possibility’ but underestimates the extent of its negative impact, ‘The importance of this provision, despite its unfortunate wording cannot be overestimated’ (2005. p178). I respond that the importance of the negative consequences of the word ‘possibility’ cannot be underestimated. Article 26 accepts those compelled to commit criminal acts can be

prosecuted and convicted as long as the State ensured there was a 'possibility' they would not be punished. This does not protect people from punishment. Elliott argues 'the language employed here is weak: non-prosecution is not a concrete requirement of the Convention' (Elliott. 2009. p738). Similarly Hoshi highlights Article 26 only provides 'for the possibility of non-criminalisation, rather than making it an imperative requirement, and so the protection remains qualified' (Hoshi. 2013. p60).

Article 1(b) of the CAT declares that one of the purposes of the CAT is 'to protect the human rights of the victims of trafficking.' Therefore it can be argued the punishment of trafficked persons contradicts the purpose of the CAT which States should uphold. The ATMG calls for the possibility of non-punishment in the CAT to be fulfilled because the prosecution and conviction of trafficked persons will 'breach the spirit' of the CAT (ATMG. 2013. p92). Trafficked persons protection from punishment for offences they were compelled to commit by their traffickers is reliant upon the subjective 'spirit' of the CAT. The CAT's non-punishment provision is as weak as the Palermo Protocol's rights to support and assistance. Non-punishment is recommended rather than required.

The CAT does not provide the same strength of obligation for States to protect trafficked persons from punishment as it does for States to prosecute traffickers. The 2011 EHRC report observes, 'there is an obligation to criminalise trafficking which is more binding and prescriptive than the requirement to provide for the possibility of not prosecuting or penalising victims for offences related to their trafficked status' (Equalities and Human Rights Commission. 2011. p19). This reflects how the CAT prioritises the interests of States. Traffickers must be punished for committing acts harmful to the State. However the State's ambition to see traffickers convicted is undermined by the punishment of trafficked persons. The necessity of punishing traffickers to provide restorative justice for trafficked persons is undermined by the acceptance that trafficked persons can be punished.

Article 26 also fails to establish a non-punishment principle consistent with a normative genuine human rights approach because of the explicit emphasis of the word 'compelled.' People who committed crimes as a direct consequence of being trafficked are excluded from protection against punishment (Hoshi. 2013. p59).

Trafficked persons should be protected from punishment for offences they committed as a consequence of having been trafficked. The 2013 OSCE SR report on non-punishment argues a human rights approach should include protection for trafficked persons who committed offences as a consequence of being trafficked, 'The non-punishment of victims of trafficking for offences they have committed as a consequence, or in the course, of being trafficked is an essential element of such a human rights approach' (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p3). This is recommended by Principle 7 of the 2002 report 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' by the OHCHR which declares trafficked persons should not be punished 'for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons' (OHCHR. 2010. p129).

Article 26 is also distinct from a non-punishment principle consistent with a genuine human rights approach because it only requires the State to provide 'the possibility of not imposing penalties.' The CAT accepts that trafficked persons can be prosecuted. A genuine human rights approach should require trafficked persons are protected from prosecution. This is recommended by Principle 7 of the OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking which states, 'Trafficked persons shall not be detained, charged or prosecuted' for trafficking-dependent crimes (OHCHR. 2002. p1). The EU Directive provides limited improvements for the protection of trafficked persons beyond the CAT with the significant exception of Article 8 which requires that,

Member States shall, in accordance with the basic principles of their legal systems, 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 they have been compelled to commit as a direct consequence of being [trafficked]

This recognises the importance of protecting people from prosecution. Irrespective of whether people are convicted, a prosecution for having suffered human rights violations amounts to punishment and excludes people from their rights required by the CAT. Cross explains the harmful consequences of prosecution,

By the time a case goes to trial, the criminal-justice system already failed to recognize a human trafficking victim and instead prosecuted the victim as a criminal perpetrator. Therefore, while these retroactive measures are important to catch victims who slip through the cracks, these initiatives are of secondary importance to those combating dual victimization before it occurs (2013. p413).

Hoshi similarly highlights it is not just a conviction which amounts to punishment of trafficked persons,

the process of prosecution – arrest, interview, court appearances, giving evidence and so on – is capable of re-traumatising a trafficked person as much as, if not more than, the sanction ultimately imposed, and a discretion to exempt trafficked persons does not provide an adequate remedy against such re-traumatisation (Hoshi. 2013. p59).

I argue that there should be a statutory defence from prosecution on the grounds that a person is identified as trafficked and it can be shown that they only committed the offence because they were compelled within the trafficking situation or as a direct consequence of having been trafficked. The State prosecutor must examine whether the offences were committed as a consequence of the person having been trafficked or because they were compelled by their traffickers. If this can be ascertained then the person should not be prosecuted. It must be clear that a non-punishment principle does not provide blanket immunity from prosecution for every person who has been trafficked or for every person who claims to have been trafficked.

It is important not to conveniently ignore what the response should be in circumstances where a trafficked person was compelled by their traffickers to commit the most severe criminal offences, particularly against other trafficked persons. The 2013 report by OSCE SR explains,

the most difficult situations are those in which a former victim of trafficking has himself/herself been involved in trafficking or exploitation of another individual, a phenomenon described as “a cycle of abuse”. In such situations, traffickers manipulate their victims to turn them into their assistants in the exploitation of others, this is a deliberate strategy to retain control over the remaining victims by placing a former victim in charge and to render them even more afraid of seeking help (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p22).

The OSCE SR concludes that even in the case of the most serious criminal offences trafficked persons should be protected from punishment if it can be shown that they only committed the offence because of the situation of trafficking which they were in,

These offences pose a threat to public safety and order. The State has a legitimate interest in preventing them and apprehending offenders. However, where a victim of trafficking has committed an offence as a direct cause or consequence, of being trafficked, the prosecutor or judge must consider in each case the extent to which the offence is connected with the trafficking of the victim and their lack of autonomy. Where the offence is linked to the accused's or suspect's situation as a trafficked person, the State must keep them immune from prosecution, detention and the application of a penalty. If instead the trafficked person acted independently of their trafficking and voluntarily committed the offence, free from the operation of one or more of the means foreseen in the trafficking definition on them, then they should be fully accountable (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p22).

The OSCE SR declares 'the duty of non-punishment applies to any offence so long as the necessary link with trafficking is established' (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p23).

People may object to such a position on non-punishment and may argue that trafficked persons who have suffered human rights violations should be punished for some offences even if they were committed under considerable coercion and would not have been committed if the person had not been trafficked. The extent of the misery and the horrors of having been trafficked and then trapped within a situation where one is forced to commit serious offences against others are unimaginable. Trafficked persons in these situations will themselves be amongst the most traumatised and brutalised and will be suffering the most severe psychological and physical harm. These are people most in need of long-term comprehensive physical and psychological support. For these people to then experience further punishment from the State will surely send them into the depths of despair. Fortunately these cases are atypical of the criminal activity that trafficked persons are being forced to carry out. The limited literature which is available on the trafficking of persons for forced criminality shows people are being trafficked for minor criminal offences such as shoplifting, pickpocketing, begging, selling counterfeit goods and the cultivation of cannabis (Skrivankova, 2006. ATMG, 2014).

It may be contended that in such circumstances those who were the victim of crimes carried out by trafficked person as a direct consequence of being in the trafficking situation will be denied their right to legal remedy. However it is argued here that these victims of crime should have remedy against the traffickers rather than against the trafficked persons who should not be held criminally responsible for their actions. The non-punishment of the person who was trafficked will improve the ability to convict those who had overall responsibility for the actions of the trafficked person and will prevent these traffickers from exploiting others in the future.

It may also be contended that protecting trafficked persons from punishment will be a catalyst for traffickers to recruit people specifically to commit serious offences and that consequently the protection of non-punishment will put more people in situations of exploitation. However, adopting a strong non-punishment principle means those trafficked persons who committed criminal offences because they were compelled or as a direct consequence of being trafficked will be able to support criminal investigations and proceedings against their traffickers to prevent people being trafficked to commit criminal activity in the future. People will not be best protected from trafficking by punishing those who have already been trafficked.

### **Autonomy and Empowerment**

A genuine human rights approach requires the responses to trafficked persons are empowering and respect their autonomy. Human rights serve to protect the autonomy of human beings and therefore the autonomy of trafficked persons must be respected. Raz argues,

Human rights can then be seen as protections of our human standing or, as I shall put it, our personhood. And one can break down the notion of personhood into clearer components by breaking down the notion of agency. To be an agent in the fullest sense of which we are capable, one must first chose one's own path through life – that is, not be dominated or controlled by someone or something else (call it “autonomy”) (Raz. 2010. p321).

Bruch argues the approach to trafficked persons must ‘have a respect for individual autonomy’ (2004. p5). The response should support trafficked persons to re-establish control or to begin to develop full control over their lives (Martynowicz, Toucas and Caughey. 2009. p69). The 2004 report by the Council of Europe Experts

Group on Trafficking in Human Beings highlighted the importance of all responses to trafficked persons being ‘aimed at fostering the person’s empowerment and autonomy’ (Experts Group on Trafficking in Human Beings. 2004. p181).

Respecting trafficked persons autonomy requires they are free to decide for themselves whether to engage with the assistance and support which is offered. The lives of trafficked persons should not be controlled by support organisations who decide what is best for them. This is respected by the CAT to the extent it requires that people give their informed consent to all forms of assistance and support (ATMG. 2013. p14). Article 12.7 of the CAT requires,

each Party shall ensure that services are provided on a consensual and informed basis (Appendix A).

Informed consent respects the autonomy of trafficked persons and recognises their freedom to self-determination and to choose to decline assistance and support.

However a response which respects the autonomy of trafficked persons and enables them to be empowered requires more than just ensuring they can determine whether they engage with the support being offered. Sanghera in the report ‘Collateral Damage’ by the GAATW argues, ‘a human rights approach to trafficking is empty and meaningless if it does not place at the very core the voice and agency of trafficked and migrant women’ (Sanghera. 2007. pviii). Hamel argues support organisations should recognise trafficked persons as the “experts” of their own lives (Hamel, 2009. p52). D’Estree argues a ‘radical idea has begun to emerge, which suggests that victims and survivors actually participate in the decision making process that would possibly help alleviate not only their suffering, but the suffering of others facing a similar plight’ (2010. p80). Trafficked persons should not be treated as passive beneficiaries of support but instead should be empowered by being able to engage with practitioners and policy makers to be centrally involved in developing and evaluating the support and assistance they access. Wijers and Chew provide a compelling and firm explanation of this type of empowering response,

Within a human rights based approach, human beings are seen as active actors seeking to change their situation, rather than as powerless pawns or victims ‘in need of rescue’. Interventions should aim at giving people the power, capacity, capability and access they need to change their situation, to speak up for their own rights and, in the case of trafficked persons, to take back control of their lives (Wijers and Chew. 2010. p10).



Trafficked persons should be empowered by being able to become their own advocates. The rights to support and assistance are legitimised and made more powerful when trafficked persons are empowered to claim them for themselves and to determine what these rights must mean for them as individuals. The creation of international instruments and national laws and policies focused on the protection of trafficked persons should include meaningful participation from people who have been trafficked.

The drafting of the CAT was not consistent with such an empowering response. Trafficked persons had no direct involvement in its drafting and were excluded from contributing to any discussion about the requirements for support and assistance. ASI, Amnesty International and La Strada criticised the process of the drafting of the CAT for taking a response to trafficking where, ‘the protection of the rights of trafficked persons appeared to be secondary to political and institutional positioning’ (La Strada International, Amnesty International, Anti-Slavery International. 2005. p1). The engagement of trafficked persons in the CAT could have made a positive impact upon it providing comprehensive rights to support and assistance and truly making the protection of trafficked persons human rights the central concern.

Article 16.4 of the CAT accepts a fundamentally disempowering response to trafficked persons. It explains the consent of an individual to return to their country of origin is not obligatory but shall ‘preferably be voluntary’ (Appendix A). The CAT which declares its fundamental purpose includes ‘to protect the human rights of the victims of trafficking’ and to ‘design a comprehensive framework for the protection and assistance of victims’ ultimately accepts States have the right to transport trafficked persons across borders without their consent. Such treatment is reminiscent of the trafficking experience. Article 16.4 exemplifies how the CAT accepts the priorities of States which will not tolerate any requirements for them to give up anything beyond the most minor loss of control over immigration and the protection of their borders.

The text of the CAT provides no explicit reference to empowering trafficked persons or respecting their autonomy and the overall approach of the CAT does not achieve such a response. States which simply fulfil the minimum rights granted by the CAT will only provide trafficked persons short-term crisis intervention which neither

empowers them nor respects them as autonomous agents. A response which only provides a minimum thirty day reflection period and does not make residence permits universally accessible is not empowering. The CAT does not empower trafficked persons to stand up against the might of the State to appeal a decision which denies them official status as a trafficked person and the rights required by the CAT. Trafficked persons are empowered by having access to justice which the CAT does not guarantee. Furthermore the CAT fails to protect trafficked persons from the most disempowering response to trafficked persons which is punishment for committing trafficking-dependent crimes.

### **Non-Discrimination**

Non-discrimination is a fundamental principle of human rights and should therefore be recognised as essential for a genuine human rights approach. The academic literature argues the responses to trafficked persons must guarantee non-discrimination (Bruch, 2004. Rijken and de Volder, 2009. Uy, 2011, (Copic and Simeunovic-Patic, 2012. Surtees, 2007). Article 2 of the UDHR states that the rights and freedoms it contains should be upheld ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ Guideline 6 of the OHCHR Recommended Principles and Guidelines states ‘Appropriate protection and support should be extended to all trafficked persons without discrimination’ (OHCHR. 2002. p8). Article 3.2 of the UN Model Law on Human Trafficking declares,

the identification of victims and the measures to protect and promote the rights of victims] shall be interpreted and applied in a way that is not discriminatory on any ground, such as race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status (United Nations Office on Drugs and Crime. 2009b. p7).

Gallagher highlights that the CAT requires ‘All protection and support measures are to be provided on a non-discriminatory’ basis (2006. p177). Amiel emphasises that the CAT is the only trafficking instrument to require States respect the principle of

non-discrimination in their responses to trafficked persons (2006. p43). Article 3 of the CAT declares,

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Appendix A).

However despite Article 3 the CAT does not respect the principle of non-discrimination. The CAT accepts discrimination on the grounds of immigration status which excludes people from support and assistance (Piotrowicz. 2007. p285). The CAT permits discrimination in the accessibility of the human right to healthcare (Oram et al. 2011. p6). Article 12 (b) of the CAT establishes that all trafficked persons must have, 'access to emergency medical treatment' (Appendix A). However there is a caveat in Article 12.3 which states, 'In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help' (Appendix A). The Explanatory Report to the CAT confirms, 'Full medical assistance is only for victims lawfully resident in the Party's territory under Article 12(3).' The CAT's acceptance that 'necessary medical' assistance can be inaccessible for irregular immigrants discriminates against people in their right to health care because of their immigration status.

Amnesty International and Anti-Slavery International called on the drafters of the CAT to make Article 12 require 'all trafficked persons are given access to necessary medical assistance' (Amnesty International and Anti-Slavery International. 2005). Such a response is essential to be consistent with a genuine human rights approach which should respect Article 12.1 of the International Covenant for Economic, Social and Cultural Rights (ICESCR) which states without discrimination, 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'

## Individualised Response

An individualised response is vital for a genuine human rights approach. An individualised response is essential to treat people with dignity and to provide every person the best opportunity to have long-term recovery (Surtees. 2007. p185). A one-size-fits-all response to providing support will be ineffective (Lisborg, 2009. Surtees, 2007. IOM, 2010). A response which makes protecting trafficked persons human rights and providing for their recovery paramount must ensure every individual can access the support they require.

The principle of an individualised response has two elements both of which are unfulfilled and contradicted by the CAT. Firstly every individual should receive the full support and assistance required in response to trafficked persons (Todres. 2006. p896). The CAT's acceptance of limited access to 'necessary medical' assistance prevents every individual from accessing primary healthcare. The CAT also accepts that not every individual will be granted residency to remain in the country of destination to enable them to make a long-term recovery. The inadequacy of Article 26 means individuals will be excluded from the rights to support and assistance which the CAT requires for trafficked persons because they are punished.

Secondly an individualised response means recognising and responding to the fact that the term "trafficked persons" encompasses people who are extremely different, with their own personal experiences of being trafficked and with unique requirements (Brunovskis and Surtees. 2007. pp87-88). There are common aspects to trafficking but how individuals respond and cope with what has happened to them and the nature of support and assistance they will require are not uniform (Easton and Matthews. 2012. p13). The 2009 UN GIFT report highlights the importance of an individualised response to the 'rehabilitation' of trafficked persons (UN GIFT. 2009. p51). One of the key guidelines in The International Organisation for Migration (IOM) Handbook on Direct Assistance for Victims of Trafficking is that the response to trafficked persons should guarantee "individualized treatment and care." The IOM explains,

While acknowledging that trafficking victims share some common experiences and circumstances, organizations should recognize and respect the individuality of victims and, to the extent possible, provide personalized care

and assistance. Throughout the assistance process, staff should strive to provide the most appropriate protection, assistance and support appropriate to the needs and circumstances of the individual victim (IOM. 2007. px).

The reflection period established in the CAT requires States to provide each individual a reflection period 'of at least thirty days.' The CAT explains this should be regarded as the minimum length of time. States are left to choose whether to provide a longer reflection period. The explanatory report to the CAT discusses the purposes of the reflection period,

One of the purposes of this period is to allow victims to recover and escape the influence of traffickers. Victims recovery implies, for example, healing of the wounds and recovery from the physical assault which they have suffered. That also implies that they have recovered a minimum of psychological stability.

However the CAT accepts such a low minimum threshold that it makes a meaningful individualised response which can provide for different peoples physical and psychological recovery practically impossible. This is another right within the CAT which is in contradiction with what it declares in its Preamble and as its purpose. A genuine human rights approach requires the reflection period is not an arbitrary length of time providing a one-size-fits-all approach. Each individual should have a reflection period which provides them enough time to achieve adequate physical and psychological recovery.

## **Gender Equality and a Gender Specific Approach**

A genuine human rights approach requires gender equality. Trafficked men and women should have equal access to support and protection of their human rights. The CAT is consistent with this. It obliges States to ensure gender equality in their responses to trafficked persons. Article 1.b of the CAT establishes the central 'purposes of the Convention' which includes that State responses must be 'guaranteeing gender equality' in the protection of human rights.

Beyond gender equality a genuine human rights approach should require gender specific response to trafficked persons. The CAT does not contain any reference to the need for States to take a gender specific response. This requirement is now made

by Principle 3 of the EU Directive which states ‘assistance and support measures should also be gender-specific where appropriate.’ The primary aspect of support where this should be considered appropriate is the provision of supported accommodation for trafficked adults.

## **Conclusion**

This thesis argues that the UK government’s rhetoric on the responses to trafficked persons is not upheld in reality. This chapter has identified the same problem with the CAT. The opening declarations of the CAT portray an instrument focused on trafficked persons, committed to protecting their human rights and providing remedies for the human rights violations perpetrated against them. The CAT like the UK government is generous in its rhetoric but unforthcoming in the rights it bestows upon trafficked persons. The CAT’s articles do not oblige States to provide remedies which protect trafficked persons human rights and support them through to comprehensive physical and psychological recovery. This is illustrated by Article 26’s failure to protect people from punishment for trafficking-dependent crimes. It is also evident in the CAT not providing the right to appeal a negative decision or to receive a sufficient reflection period or residency permits for all trafficked persons.

I conclude that the CAT does not provide a genuine human rights approach. This chapter has outlined the principles of a genuine human rights approach and shown how the CAT fails to uphold or contradicts them. The CAT is ultimately an instrument created by States with the intention of harnessing widespread agreement amongst States to willingly sign and adopt the obligations of the CAT. States primary concerns are with upholding an immigration approach and law-enforcement approach. Protecting the human rights of trafficked persons and supporting them to achieve full recovery are a secondary. The inadequacies and absence of strong rights for trafficked persons within the CAT ensure that States are able to maintain protection over their borders and immigration.

## **Chapter 2: How the Victim Discourse Contradicts the CAT and a Genuine Human Rights Approach**

### **Introduction**

This chapter critiques what it conceptualises as the ‘victim discourse’ in the response to trafficking in persons. The academic literature has critiqued elements of this victim discourse but has not described the sum of these as constituting a ‘victim discourse.’ There are several central elements to the victim discourse. These are the focus on the innocence and vulnerability of those who have been trafficked and the need to rescue them. The victim discourse presents trafficked persons as people who never consented to their movement or to perform work. The victim discourse has focused on women and children almost exclusively as the victims of trafficking.

This chapter argues that the victim discourse contradicts the CAT and the principles of a genuine human rights approach. It will be explored how the victim discourse’s creation of what Srikantiah (2007) and Uy (2011) describe as a ‘perfect victim’ and what Munro (2008) Hoyle, Bosworth and Dempsey (2011) and Lee (2010) define as the ‘ideal victim’, causes people to be denied official identification as trafficked persons. Those wrongly denied identification are consequently excluded from the rights to support and assistance required by the CAT, denying the principles of unconditional support and non-discrimination. That the victim discourse can prevent people from being identified and supported is contrary to the most fundamental necessities of the response to trafficked persons. The principle of an individualised response is contradicted when people are not identified and are excluded from support because who they are, their experiences and reactions are not consistent with the expectations of the stereotypical ‘perfect victim’. The victim discourse can also prevent people from self-identifying as trafficked because they do not recognise themselves as a helpless victim who acted without any consent. The best example of this problem is found in Pearson which quotes how one trafficked woman reacted to the victim label, "I'm not a victim; I'm a person who's been fucked over. Sometimes I feel like the stupidest person in the world that I could get myself into a situation like this" (2002. pp32-33). The chapter focuses on how the principle of an empowerment and respect for autonomy is contradicted by a victim discourse which is inherently disempowering.

The chapter examines the negative consequences of the victim discourse's portrayal of trafficking as a problem almost exclusively affecting women and children. It is argued this has meant the significant number of men who are trafficked have been overlooked and ignored. This has caused inaccessibility of support and assistance for men contradicting gender equality (Lee. 2010. p66). It is argued the focus on trafficking as a problem of women being sexually exploited has been particularly problematic for men in self-identifying as trafficked and in taking up opportunities of support and assistance.

Those who have been trafficked can be treated as tools by those with their own ulterior priorities and agendas (Centre for Social Justice. 2013. p58). This chapter critically examines the interests of the 'political traffickers' in the victim discourse. It is argued the UK government uses the victim discourse to protect its controls over immigration. This is consistent with a central argument throughout the thesis that the responses to trafficked persons are determined by the interests of the State. The victim discourse provides the UK government the moral imperative to respond robustly to trafficking in persons in the name of protection. The suffering of trafficked persons is manipulated to achieve responses which potentially exacerbate vulnerability to being trafficked and perpetuate exclusion from support and assistance.

### **'Political Traffickers' and the Victim Discourse**

The UK government's rhetoric on trafficking in persons focuses on the innocence and vulnerability of powerless victims of trafficking to emphasise action is urgent and essential. Theresa May's foreword to the Draft Modern Slavery Bill explains the UK government will 'make sure that we prosecute the evil people involved in this crime whilst protecting the vulnerable victims whose life has been cruelly taken from them.' (Home Office. 2013. p.v)

Kostakopoulou argues, "protecting the vulnerable" must not be made subservient to the state's sovereign interest in migration control. Rather, it is a human rights issue' (2006. p350). Hathaway argues tackling trafficking has provided a 'context for developed states to pursue a border control agenda under the guise of promoting human rights' (2008. p57). Trafficking in persons provides governments the



opportunity to restrict freedom of movement and control immigration under the guise of protecting innocent victims of trafficking (Anderson and Andrijasevic. 2008. p137). Davies and Davies refer to governments manipulating the problem of trafficking to serve their own interests in controlling immigration as ‘political traffickers’ (2010. p228). This label can be applied to the UK government. The concerns about trafficked persons raised by the UK government have been made subservient to pursue policies and an agenda on immigration which causes considerable collateral damage to the protection of trafficked persons’ human rights, the rights granted by the CAT and the principles of a normative genuine human rights approach.

The UK government maintains full control over who is recognised as a victim of trafficking and who is recognised as an “illegal” immigrant (Bravo. 2009. p112). The immigration authorities within the Home Office responsible for controlling the number of people allowed into the UK and removing people from the UK have simultaneously been responsible for officially identifying trafficked persons.

Touzenis, 2010 argues that,

Destination country legislation and policy is often centred on giving effect to classifications of wanted and unwanted migrants. The objective of classification is to regulate immigration, to manage it so that the advantages can be gained for receiving countries and the perceived pressures of influxes of unpopular kinds of migrants can be avoided (Touzenis. 2010. p133).

The construction of the perfect victim of trafficking fits within this approach by creating a narrow classification of trafficked persons which limits the number of people who will be identified. This enables the UK government to maintain firm controls over immigration.

The UK government has consistently used misleading data on the scale of the problem of trafficking in the UK. Brunovskis and Surtees argue there may be ‘political dimensions’ for why trafficking cases are not identified and recorded. They argue governments have an interest in minimising the official numbers of trafficking cases to show their policies and legislation have been successful in tackling trafficking (Brunovskis and Surtees. 2012. p42). However the UK government does the opposite. It presents the problem of trafficking as large as it possibly can. The evidence of large numbers of innocent victims being trafficked gives the UK government the impetus to respond.

The Government's Strategy highlights 1,254 "potential victims" were identified between 1<sup>st</sup> April 2009 and 31<sup>st</sup> December 2010 (HM Government. 2011. p6). However official data from the UK Human Trafficking Centre (UKHTC) reveals only 287 adults were conclusively identified as trafficked persons by the State during that period. (Serious Organised Crime Agency) The first IDMG report presents the largest figure available declaring 946 "potential" victims of trafficking were identified in 2011. (IDMG. 2012. p4) The UK government's draft Modern Slavery Bill used the largest number possible highlighting '1,186 potential victims of modern slavery were referred in 2012 – a 25% increase on the previous year' (Home Office. 2013. p2). The numbers of people conclusively identified as trafficked by the State are significantly less. It is unsurprising misleading figures are not publicly challenged by NGOs who are dependent on funding from those concerned about human trafficking (Lee. 2010. p20).

Consecutive UK governments have used the problem of trafficking in persons to justify further restrictions on immigration and the enhancement of border controls (Nieuwenhuys and Pecoud. 2007. p1689). The 2002 Home Office report 'Safer Borders' is the clearest expression of how the Labour government interconnected preventing trafficking with preventing immigration. It explained, 'a comprehensive approach to people trafficking and smuggling must also include prevention in countries of origin. The primary aim is to stop organised illegal immigration into the UK' (Home Office. 2002. p88). The Government's Strategy by the coalition government focuses on tackling trafficking by 'strengthening' the border. It highlights that trafficking occurs because of freedom of movement, 'The ease of international travel has led to the opportunity for increased movement of people across borders' (HM Government. 2011. p6). The strategy then explains how the UK government has responded to preventing trafficking, 'In response to the existing threat of human trafficking we have already taken steps to strengthen the border' (HM Government. 2011. p17). The Government's Strategy highlights one of the ways it claims to have tackled trafficking, 'overseas border controls have been strengthened by placing officers in France and Belgium to stop illegal immigrants before they get to the UK' (HM Government. 2011. p17). This demonstrates the UK government's focus on trafficking in persons as an immigration problem rather than a human rights problem.

The UK government argues restricting access to legal migration protects people from being trafficked. This focus on trafficked persons as people who are vulnerable distracts from how the UK government's policies create vulnerability to trafficking through restrictive immigration policies and the denial of rights for non-citizens. Anderson explains how this focus obscures the ways that the State creates vulnerability,

The figure of the evil employer and trafficker throws a shadow over the role of the state in constructing vulnerability. For the Victim of Trafficking (VoT) or the victim of exploitation it is the employer, pimp or trafficker who denies access to hospital treatment for example. The problem is of course, that if they were not denying her this access then the state would (Anderson. 2008. p7).

There is a substantial body of literature which argues that restricted access to legal migration perpetuates and exacerbates vulnerability to human trafficking (Haynes, 2004. Berman, 2009. Pecoud and de Guchteneire, 2006. Jorge-Birol, 2008. Saari, 2006. Pomeroy, 2010. Hua. 2011). As Buckland explains, 'Severely restrictive immigration policies are more likely to fuel organised, irregular migration than stop it' (2009. pp156-157) It is argued traffickers 'benefitted from the restrictive immigration policies in western countries, which hindered legal entry' (Simeunovic-Patic and Copic. 2010. p46). Similarly Hales and Gelsthorpe argue, 'With countries such as the UK making legal entry for asylum or unskilled work almost impossible, the potential for agents/facilitators exploiting this has grown' (2012. p28).

On the 6<sup>th</sup> April 2012 the UK government abolished the Overseas Domestic Worker visa (ODW). This was a decision which exacerbated peoples' vulnerability to exploitation. The 2009 Home Affairs Committee report on human trafficking explained the importance of this visa, 'we agree with Kalayaan that: "To retain the existing Migrant Domestic Workers visa and the protection it offers to workers is the single most important issue"' (Home Affairs Committee. 2009. p26). The visa enabled people to work for a different employer after they moved to the UK without losing their right to residency. The abolition of the ODW visa means migrant domestic workers right to residency is now tied to their employer. The consequence of the scrapping of the visa is that those bringing domestic workers into the country know they will be highly dependent upon them, giving them increased power over them. Domestic workers who are exploited and abused by their employers can be deported if they leave this employment. This discourages people suffering violence or

exploitation from contacting the authorities because they feel they have no choice but to remain in that situation.

However the UK government claimed the decision meant people would be better protected. A written statement by Theresa May explained ‘the biggest protection for these workers will be delivered by limiting access to the UK through these routes’ (HL Debate 29 Feb 2012. C121). The statement illustrates how underneath the rhetoric about protecting people from being trafficked the primary ambition is protecting the UK government’s control over immigration. The statement continues, ‘At a time when we are reserving settlement for the brightest and best and moving towards a more selective system in general, it is not right that domestic worker routes should lead to settlement in the UK’ (HL Debate 29 Feb 2012. C120).

Jenny Moss from Kalayaan strongly challenged the claims justifying the policy change would provide people better protection and highlighted that this policy contradicts the UK government’s rhetoric on its response to trafficking in persons,

The decision to remove the right to change employer, and therefore remove an important protection from abuse, turns back the clock fifteen years to the days when domestic workers were deported for experiencing abuse. This decision makes no sense, its effects are entirely disproportionate to its aims and runs counter to Prime Minister David Cameron’s commitment to fighting slavery (Anti-Slavery International. 2012).

The victim discourse conceptualises the stereotypical victim of trafficking as someone who did not consent to their movement or to perform particular work. The UK government simultaneously discusses protecting victims of trafficking while adopting tough rhetoric on immigration and criminalising, detaining and deporting “illegal immigrants” (Jobe. 2010. p167). Chacon argues ‘Lawmakers seek to maintain clear distinctions between noncitizens who have voluntarily contracted to be smuggled into the country and those who are here as a direct consequence of force, fraud, or coercion’ (2010. p1627). A 2002 white paper by the Home Office under the previous Labour government entitled “Safe Borders, Safe Haven” implied that those who have been trafficked did not consent to their movement. It explained, ‘available evidence points to the majority of illegal immigrants to the UK being here by their consent and that the number of trafficked people is small by comparison’ (Home Office. 2002. p75). In September 2010 David Ford, the Justice Minister for the Northern Ireland Assembly, responsible for overseeing the Department of Justice

which funds support services for trafficked adults in Northern Ireland, gave this description of human trafficking in relation to smuggling in an assembly debate,

The difference is that, with people smuggling, the people involved are consenting, as they have willingly paid a smuggler to bring them into another country to live as illegal immigrants somewhere where they have no right to live or work. However, that is not the same as trafficking, to which no consent is given (Northern Ireland Assembly. 2010)

Focusing on trafficked persons as innocent and vulnerable victims who did not consent to their movement serves the interests of the UK government because it distinguishes trafficked persons from undocumented immigrants. This enables government policies which marginalise migrants from society and exclude them from their basic rights to be accepted and normalised. The presentation of a victim of trafficking who did not consent to their movement means they are juxtaposed against those who consented to being smuggled who must therefore be punished as guilty offenders and not protected (Dauvergne. 2008. p91). These individuals are punished because they are 'guilty of ambition' (Chapkis 2003. Buckland 2008).

The acceptance of the constructed victim of trafficking juxtaposed against the undocumented migrant is 'used to determine punishment and protection' (Chapkis. 2003. p931). Buckland similarly argues that the innocent victim of trafficking is used as 'justification for equally severe punishments meted out to economic migrants, asylum seekers and smuggled people' (2008. p42). The response to individuals fails to prioritise recognition of the exploitation, abuse, deception, coercion and the violations of the human rights and human dignity. Instead the most significant factor is whether a person wanted to migrate and is therefore recognised as guilty rather than an innocent victim (Bhabha and Zard. 2006. pp6-7). This recognises trafficking in persons as an immigration problem not a human rights problem.

The victim discourse identifies trafficked persons as people who must be rescued and rehabilitated (Jordan. 2002. p30). The need to rescue victims of trafficking reinforces the recognition of their innocence. The media have played a significant role in the focus on rescue. Purohit studied 139 articles on human trafficking in British broadsheet newspapers and the research highlighted 15.1% used rescue language (2011. p30).

Faith-based support and advocacy organisations have given considerable focus to the need for people to be ‘rescued.’ The faith-based SA provides a narrative and description of what happens to trafficked persons who go through their ‘victim support programme.’ A SA leaflet explains, ‘Victims are transported from their place of rescue to safe and secure accommodation where they will be cared for’ (Salvation Army. 2012 (c)). The Medaille Trust, a faith-based sub-contractor describes how, ‘For trafficked victims, being rescued is the start of a long road to restoration and freedom.’ City Hearts, also a faith-based sub-contractor explains the organisation provides support for, ‘men, women, and families who have been rescued from human trafficking’ (City Hearts. 2012). The faith-based NGO ‘Hope for Justice’ use the slogan ‘Join the Rescue Mission.’

The UK government has focused on identifying trafficked persons through ‘rescue operations’ (X-Talk. 2010. p11). The Government’s Strategy discusses how law-enforcement continues to ‘rescue victims’ (Home Office. 2011. p21). Conservative MP Peter Bone, former Chair of the All-Party Parliamentary Group on Human Trafficking in the UK Parliament told the House of Commons, “If a young woman is trafficked into this country, she will be rescued” (HC Deb. 25 Oct 2011. c161). Operation Pentameter 2 was a police operation in the UK in 2007, involving all fifty-five police forces. Police officers raided hundreds of brothels and arrested hundreds of people. The former Home Secretary, Jacqui Smith, explained,

Human trafficking is a despicable crime, perpetrated by organised criminal gangs whose business is to make money from human misery. . . I would commend all those involved who have made a real impact in rescuing victims and bringing to justice those who exploit them (BBC News. 2008).

The focus of the victim discourse on rescuing trafficked persons has an important function for the State. Within the narrative of rescuing trafficking victims the State is portrayed as the protector of vulnerable victims, only concerned with removing them from harm, exploitation and victimisation. The possibility that the State creates vulnerability to trafficking through restrictions on immigration, on access to the labour market and the enforcing of policies which make the human rights of non-citizens inaccessible is completely dismissed by the focus on the State rescuing victims. The immigration authorities and the police are instead portrayed as the saviours and rescuers of trafficking victims (Anderson. 2008. p7). The focus on rescue denies any acknowledgement of the possibility that some of those trafficked

persons who are rescued will be prosecuted, punished and deported (Purohit. 2011. Touzenis 2010).

Exiting exploitation is clearly the first significant step towards physical and psychological recovery. However escaping exploitation does not mean people automatically overcome the trauma of having suffered human rights violations. It is in the interests of the State to focus on rescuing trafficked persons as the sole remedy required. The emphasis on rescue ignores the necessity of providing comprehensive long-term support and assistance to provide physical and psychological recovery (Zheng. 2010. p10). The State presents its responsibility and role as fulfilled by having rescued the victims. Vance explains the rescue focus ‘replaces the trafficked person’s claim to multiple rights with a single remedy, the right to be rescued’ (Vance. 2010. p139).

The focus on rescuing people from their traffickers is advantageous to the UK government in overseeing an immigration approach. Bravo argues the focus on rescue is the ‘vindication of the “innocent,” pure, and sexually exploited victim who has played neither a voluntary nor an active role in her unsanctioned transnational movement’ (Bravo. 2009. p116). The focus on rescuing people asserts their innocence by emphasising they were physically trapped in a situation they did not want to be in. Presenting trafficked persons as people who need to be rescued and who never consented to migrate to the UK enables the UK government to present it as reasonable to expect trafficked persons to return to their own country within a short period of time because they never wished to migrate to the UK. The UK Government’s reply to the 26<sup>th</sup> report of the Home Affairs Committee explained ‘Many victims wish to return home and the voluntary return of victims can help with long term recovery and resettlement’ (HM Government. 2009. p11).

The conceptualisation of trafficked persons as innocent victims was necessary to help the authorities to prosecute traffickers. It is more difficult to punish traffickers who organise clandestine immigration without cooperation from those who have been trafficked. The detention and deportation of trafficked persons provides little opportunity for cooperation with the authorities to successfully prosecute and convict their traffickers (Brunovskis, 2012. p17). The transformation of trafficked persons from criminals into innocent victims’ meant they could help the police in

their criminal investigations and achieve successful prosecutions of traffickers (Roby, Turley and Cloward. 2008. p512). Those who have been trafficked who do not cooperate with the police can have their recognition as a genuine victim scrutinised and challenged (Srikantiah. 2007. p199).

### **Contradicting the CAT and a Genuine Human Rights Approach**

A human rights approach requires ‘the recognition of human beings as subjects and holders of rights’ (Bjerkan et al. 2005. p24). It is argued here that the victim discourse does not recognise trafficked persons as individuals and as rights-holders who have strong claims against a duty-bearer to uphold their rights in recognition that they have suffered human rights violations. The victim discourse contradicts this by encouraging the recognition of trafficked persons as vulnerable and passive victims to enable their access to support and assistance. Instead of arguing trafficked persons should be treated in respect of their human rights the victim discourse justifies providing support on the basis of their victimhood (Purohit. 2011. p43). A genuine human rights approach must reject the victim discourse’s conceptualisation of trafficked persons and should transcend focusing on trafficked persons as victims. A trafficked person’s status as a victim is exclusive and earned through matching certain agreed characteristics. While anti-trafficking activists seized the language of “victim” they should have instead seized the language of “rights.” Dauvergne explains, ‘Although victimisation replaces illegality in this migration context, it does not replace it with the empowered, rights bearing individuals that Western law is tooled to protect’ (2008. p92). The relationship between the rights-holder and the duty bearer is fundamentally different to that of the victim and their rescuer. It is the moral and legal strength of the language of rights which is required to ensure all trafficked persons receive support and have their human rights protected (Anderson. 2008. p2).

A genuine human rights approach requires respect for the fundamental principles of human rights. This means treating people with dignity and respect. The ambition of the victim discourse is for trafficked persons to be recognised as people who should receive support and assistance. However the methods which attempt to achieve this create a distinction between trafficked persons as deserving innocent and undeserving smuggled irregular immigrants. This perpetuates and exacerbates



immigrants' marginalisation. The response must be to recognise people who are smuggled and trafficked as human beings who are rights holders. Instead of seeking to highlight distinctions between those who are smuggled and those who are trafficked the important commonality should be acknowledged that they are all human beings with human rights which must be upheld and that appropriate remedies must be provided for people whose human rights are violated. All human beings including those who enter the country as irregular immigrants should be treated with dignity and respect for their human rights.

It must be emphasised that people can be trafficked internally within States and trafficked persons may be regular migrants who have the right to residency in the country they have been trafficked to. However the popular understanding of trafficking is the movement of people across borders who are irregular immigrants.

The responses to trafficked persons occur within the context of considerable hostility towards immigration in the UK. For example, in May 2012, the Home Secretary, Theresa May, gave an interview to *The Daily Telegraph* newspaper where she explained, 'The aim is to create here in Britain a really hostile environment for illegal migration' (Kirkup and Winnett. 2012). The general public has very little sympathy for those branded as "illegal" immigrants or those engaging in behaviour that is regarded as immoral such as prostitution (Jahic and Finckenauer. 2005. p27). A British Social Attitudes survey by NatCen Social Research conducted in 2013 found 77% of people supported a reduction in immigration (NatCen. 2014. p1).

Given such negative attitudes and hostility towards immigration it is understandable anti-trafficking activists might want to portray trafficked persons as innocent and vulnerable victims whom the public should have sympathy for. Creating willingness for compassionate responses is vital for raising charitable donations which enable anti-trafficking organisations to continue operating. It is also important for harnessing pressure on the UK government to sign new international instruments and improve policy responses. The concern is that if trafficked persons are not regarded as innocent victims the public's reaction will be indifferent with little sympathy towards them. I interviewed an MP who is a member of the All Party Parliamentary Group on Human Trafficking about the attitude of the general public,

and their reply highlighted the lack of sympathy that the public can have towards immigrants,

*The public would appear to be somewhere between Alf Garnett [a racist comedic fictional character] and a half drunk guy in a pub in attitude towards people who end up in an exploited situation, 'it's their own fault, they knew what would happen (Appendix B. Interviewee 2).*

I conducted a group interview with three senior staff at an organisation supporting trafficked women. The group interview format was at the request of the organisation which was keen to assist me in my research but did not want the process to be too time consuming for staff. The interviewees acknowledged the need to present trafficked persons in a particular way and the consequences of this.

*The tension arises where you're trying to talk about these issues and raise public awareness because people respond to the fact that someone's a victim . . . it's [the victim label] got currency basically (Appendix B. Interviewee 3).*

Their colleague agreed, adding,

*Yes, and if you're trying to win public support it's easier to do that seeing somebody as a victim, but I don't think that's helpful for the women (Appendix B. Interviewee 4).*

The victim discourse presents trafficked persons as a unique category of people who should be treated differently to other immigrants because of their special status as innocent victims. The victim discourse creates a separation between the moral and legal duties towards trafficked persons and smuggled persons. The portrayal of the innocent vulnerable victim of trafficking is juxtaposed with the smuggled migrant (Buckland, 2008, p45). The response to trafficked persons creates two categories of people; the deserving and the undeserving (Green and Grewcock, 2002. McSherry and Kneebone, 2008. Davidson and Anderson 2006. Touzenis, 2010). The innocent victims of trafficking are considered as deserving and those who have been smuggled are undeserving. The deserving can access support and assistance while it is tacitly accepted that those who are undeserving can be denied their basic human rights and can instead suffer criminalisation and punishment. A genuine human rights approach should not respond in a way which protects the human rights of one person at the expense of another. This betrays the fundamental principle of equality and respect for the dignity of all human beings integral to human rights.

A gross affront to the dignity of human beings is to be labelled illegal. Such language is dehumanising and treats people with neither respect nor dignity (Green and Grewcock. 2002. p88). As a 2009 report by the organisation Statewatch argues, ‘People are not ‘illegal’. Their status vis-à-vis state authorities may not be regular but that does not render the individual somehow beyond humanity’ (Statewatch. 2009. p40). However arguments about the responses to trafficked persons explain they must not be treated as ‘illegal immigrants.’ This tacitly accepts the State’s treatment of undocumented immigrants. The 2011 report by the EHRC explains, ‘The antagonisms towards illegal immigrants can blind the public and those in authority to what is, in fact, trafficking, a human rights abuse of terrible consequence’ (Equality and Human Rights Commission. 2011. p7). The CSJ report argues, “Treating a potential victim of modern slavery as an illegal immigrant is utterly counter to a victim-centred approach” (Centre for Social Justice. 2013. p84). Coghlan and Wylie highlight submissions from NGOs to the government of the Republic of Ireland over its National Action Plan on trafficking which do this. The Irish Human Rights Commission expressed ‘Victims of trafficking should not be treated as illegal immigrants’ and the Immigrant Council of Ireland stated ‘Victims should not be treated as illegal immigrants or criminals’ (Coghlan and Wylie. 2011. p1516).

The 2011 report by the EHRC claims there is a clear divide between those who have been trafficked and smuggled.

It is important to distinguish between trafficking and smuggling of migrants. There are many people who will give their life-savings to be transported across the world in the interstices of vehicles so that they can make a life elsewhere, evading the complications of visa requirements (Equality Human Rights Commission. 2011. p10).

This creates a false division between those who are smuggled and those who are trafficked. There are people who are trafficked who sought a better life for themselves who paid all of their savings to a recruiter who deceived them about what would happen to them upon arriving in another country. Those who are smuggled and those who are trafficked can both suffer exploitation, violence, abuse and denials of their human rights (Touzenis. 2010. pp10-11). Bjerken et al challenges the notion that there are clear distinctions between the two forms, arguing, ‘there are typically no clear differences between the circumstances of trafficked persons and illegal/migrant workers’ (2005. p27).

The 2011 EHRC report declares ‘Hearing the direct experience of victims of human trafficking enabled the Inquiry to make a clear distinction between trafficking and other ill-treatment such as smuggling’ (Equality and Human Rights Commission, 2011, p34). However those who have been smuggled are silenced. Their experiences of being smuggled and their reasons for migrating and the conditions they face in the country of destination are ignored and disregarded. The EHRC report does not discuss the experiences of those who are smuggled which reveal how the two dichotomies of smuggling and trafficking are blurred rather than binaries. Both those who are trafficked and smuggled can face abuses en-route to the country of destination and while in the country of destination.

Dauvergne argues the acceptance of providing support for undocumented victims of trafficking challenges traditional responses to irregular immigration,

trafficking has “victims”. As victims, those who are trafficked fit differently into the imagination than many of those who are rendered illegal by the migration laws of prosperous nations. The label “illegal” will hardly stick, as the victims are innocent. This makes it more difficult for states to rhetorically cast the victims of trafficking as transgressors, thus altering the familiar illegal immigration discourse. . . More than refugees, the victims of trafficking trouble the insider-outsider dichotomy of migration law. Faced with the victims of trafficking, some of the righteous indignation that defends prosperous borders crumbles away (Dauvergne, 2008, p69).

This chapter challenges Dauvergne’s description of the victim of trafficking altering the ‘illegal immigration discourse.’ The victim of trafficking does not challenge the ‘insider-outsider dichotomy’. The victim discourse only establishes trafficked persons as exceptions to the rule, as special cases who alone need support and assistance. The victim discourse is the consequence of a failure to challenge the illegal immigration discourse. The victim discourse attempts to present trafficked persons in a way that the State will accept that the protection of their human rights can temporarily be prioritised over controlling immigration, protecting the border and punishing irregular immigrants. UK nationals who have suffered domestic violence are not forced into a similar victim discourse. The accepted language of domestic violence is “survivor.” These women are not at risk of being condemned or ignored because they are not migrants subjected to suspicion and prejudice. Therefore they are not required to be recognised as innocent to be considered deserving of support and assistance. The focus on the separation of the victim of trafficking only accepts and

strengthens the othering of immigrants. The victim discourse only enables a small number of people to be accepted as deserving of their rights while simultaneously legitimising and normalising the exclusion of migrants and the inaccessibility of their human rights (Anderson and Andrijasevic. 2008. pp143-144).

The division between the deserving victim of trafficking and the undeserving smuggled migrant has led some to challenge the entire trafficking discourse. It is argued “trafficking” is problematic because it excludes smuggled persons who have suffered human rights violations within their home country and country of destination from being treated compassionately and supported. The subjection to violence and abuses of labour rights in the country of destination of those who are smuggled becomes acceptable as they are not the victims of trafficking whose suffering and experiences is characterised as being much worse. (Chuang. 2010. p1698) Davidson and Anderson question the trafficking discourse, arguing it,

encourages the construction of moral hierarchies as well as practical and legal barriers between “deserving”, “less deserving” and “undeserving” causes and victims. How, for example, does the concept of trafficking speak to the experience of those who make their own way across a border to seek work and subsequently find themselves subject to slavery like practices by an abusive employer? (2006. p22).

It is correct that the concept of trafficking does not provide protections for such people. However the definition of trafficking provided by the international trafficking instruments is not responsible for the divisions and inaccessibility of rights of immigrants. Trafficking describes a series of processes and events. The trafficking definition does not prevent smuggled migrants who have suffered violations of their human rights and have been victim of criminal acts from having their human rights protected and upheld. Challenging “trafficking” is the wrong response. Instead it is the conceptualisation of trafficking in persons through a victim discourse which should be challenged. Discussion and action on trafficking in persons should not exclude compassion, care and support for people who have been smuggled into the UK who are denied their human rights, treated without dignity and respect or harmed and exploited by their employers.

## Identification Denied

Hoyle, Bosworth and Dempsey while discussing the problematic aspects of a focus on trafficked persons as victims, explain the positive impact of the language of victim,

There is clearly currency in the victim label. When crimes are committed against us, the label 'victim' validates our experiences. It shows us that our stories of harm are believed and that we are right to feel angry, sad, afraid or resentful. It also opens doors; allowing us access to services and support that help us to, at the one end of the spectrum, rebuild our lives, and at the other end, to claim compensation, to receive advice or to feel that our appetite for redress will be met by the state (Hoyle, Bosworth and Dempsey. 2011. p326).

The basic aim for any response to trafficked persons should be that all those who require support are able to receive it. The victim discourse inhibits this by undermining the possibility of all trafficked persons being correctly identified. The question of who constitutes a "victim" within the victim discourse can actually invalidate the experiences of some trafficked persons. The focus on trafficked persons as innocent people who did not consent to their movement even under deception or coercion, who were subjected to considerable physical violence and imprisonment and who have to be rescued creates a narrow conceptualisation of a trafficked person. People will be prevented from being identified if their experiences and responses are not consistent with the stereotype of a genuine victim (Chang and Kim 2007. p11). Consequently they will be excluded from the rights to support and assistance required by the CAT (Uy. 2010. p218). For such individuals the victim label does not 'open doors', instead they are slammed shut. This is in both a metaphorical and literal sense as trafficked persons who are not correctly identified face imprisonment and detention as immigration offenders (Munro. 2008. p243).

Expectations about how a "victim" should behave can have very negative consequences (Pearson. 2002. p33). For example one interviewee from a support organisation highlighted how one woman was denied official identification as trafficked because of the characteristics she displayed,

*We've had a terrible negative decision letter recently where they basically said she wasn't emotional enough to have been trafficked (Appendix B. Interviewee 1).*

The individual emotional resilience of that individual was negatively construed and prevented them from being correctly identified. The victim discourse denies an

individualised response. It expects and requires individuals to match a uniform victim of trafficking.

The academic literature highlights the portrayal of the innocence of trafficked persons by policy makers and practitioners (Doezema, 2000. Aradau, 2004. Hamel, 2009. Srikantiah, 2007. Buckland, 2008). Fowler, Che and Fowler plead, 'We may never know first-hand what these innocent victims experience, but that in no way excuses us from doing everything we can to help educate and rehabilitate those whose innocence has been lost' (2010. p1348). Trafficked persons have been explicitly described as innocent by the UN. A foreword by the Executive Director of the United Nations Office on Drugs and Crime in the 2008 report by the UN GIFT declares, 'Unscrupulous traffickers exploit the poverty, hope and innocence of the vulnerable' (UN.GIFT. 2008. p v). Robert Tooby, former Anti-Human Trafficking Coordinator for Wales, described trafficking as, 'Exploiting the innocent and vulnerable for personal gain' (2011. Slide 17). The introduction to the CSJ report describes how 'innocent adults and children are being exploited in modern slavery in the UK' (Centre for Social Justice. 2013. p29).

A genuine human rights approach has no reason to describe trafficked persons as 'innocent'. The CAT does not use the language of innocence in its descriptions of trafficked persons. The victim discourse makes identification and access to support conditional on the possibility that the person can be recognised as 'innocent.' Focusing on trafficked persons as innocent and vulnerable has created a distinction between the deserving and undeserving victims of trafficking. (Lee. 2005. p7) Individuals with undesirable histories or who are seen as partially responsible for what has happened to them can be treated unsympathetically and denied official identification as trafficked. (Goodey. 2005. p124)

Trafficked persons' innocence is proven by their physical suffering. Aradau uses the phrase 'baptism of brutality' to describe the focus on examples of extreme violence against those who have been trafficked to encourage sympathy and pity towards them (Aradau. 2004. p261). Lainez argues, 'Representing the body in pain also purifies the victim because blood is an undeniable proof of the veracity of suffering and innocence' (2010. p141). Trafficked persons have to earn their support by their physical suffering. The 2011 report by the EHRC demonstrates such an approach. It

highlights the most shocking examples of the physical violence perpetrated against trafficked persons. The report places a quote from a woman trafficked for sexual exploitation in large bold font on a page all to itself for maximum impact,

I was told that if you tell anyone what has transpired you are going to die. They gave me a razor blade to eat, they took my armpit hair, they removed my nails from my toes and my fingers... they removed the hair on my body, they tied it up and put it in this shrine, then they tore my body and told me that if I tell anyone...you will just die... I was so scared... I think that if anything is happening I am going to die (Equality and Human Rights Commission. 2011. p87).

This quote describes a ritual carried out to ensure control over the person. However the importance of displaying the physical violence perpetrated against trafficked persons is also a ritualistic and sacrificial offering of their pain and blood to be considered worthy of being treated with dignity and being able to access support. A consequence of continually only using the most shocking cases and sensational testimony is people may become delegitimised as victims of trafficking. People will not be able to prove themselves as innocent victims because they have not suffered such levels of physical violence (Lee. 2010. p67). The psychological control over individuals who faced threats of violence against them or their families may be insufficient to prove they were trafficked.

Haynes (2007) challenges the stereotypical depiction of a trafficked person being under severe physical control and requiring rescuing in the title of her journal article '(Not) Found Chained to a Bed in a Brothel.' However trafficked persons continue to be understood as people under severe physical control who must be rescued (Bindel, Breslin and Brown. 2013. p50). For example on February 15<sup>th</sup> 2012 *The Daily Mail* printed a story on trafficking with the headline 'Teenage sex slave found locked in cage in Birmingham brothel' (Wrenn. 2012). Such an understanding of trafficked persons can prevent people from being identified if they were not rescued. This excludes people from the rights to support and assistance granted by the CAT. People who escaped their trafficking situation can be scrutinised as a genuine trafficked person because they contradict the construct of a helpless victim desperately waiting to be rescued (Srikantiah. 2007. p199). The accusation is that if a person could escape then they cannot have been in a truly controlled environment and therefore they could not have been trafficked (Haynes, 2007. Todres, 2009). My fieldwork



research found that the rescue focus does undermine people being identified as trafficking. One support worker I interviewed explained,

*If you have managed to get out of the trafficking situation and you've survived somehow that's then held against you (Appendix B. Interviewee 5).*

A Detective Inspector (DI) who had worked on numerous cases of trafficking for sexual exploitation who was an interviewee in the fieldwork research expressed her doubt about people claiming to have been trafficked if they were not rescued,

*we've interviewed girls that say they've come into the UK and that they've never seen the light of day in England and they've been forced into prostitution blah, blah, blah, but they've managed to escape (Appendix B. Interviewee 6).*

These responses are consistent with the findings of Bindel, Breslin and Brown 2013. In particular they quote a police officer who explained why he believed that women involved in street prostitution are not trafficked, “on the street...they can just walk away if that's what they wish” (Bindel, Breslin and Brown. 2013. p50).

A report by the ATMG highlights the letter a person received which explained they had not been identified as trafficked because their description of how they escaped was inconsistent with their description of being physically controlled,

[Y]our account of escaping when your employer left the doors unlocked but actually open is considered inconsistent with your account of their previous behaviour where they kept the doors locked, wholly restricted your freedom and controlled you actions (ATMG. 2013. p24).

When Glyn Williams, former Director, Asylum and Executive Director at UK Visas and Immigration (UKVI) which is responsible for deciding whether non-EEA nationals are trafficked gave evidence to the Joint Committee on the Draft Modern Slavery Bill (JCDMSB) he explained people are less likely to be identified as trafficked if they were not rescued by the police,

As a generality, we think that the EEA ones tend to come off the back, as it were, of a police investigation. Very often they are people who have been caught—sorry, not caught, but found in a trafficking situation, with the traffickers possibly to hand and the police involved. It is very immediate and their evidence can be corroborated by the police. Quite often with our non-EEA cases, it is a more remote situation and the police have not been directly

involved, so it can be more difficult for us to corroborate (Joint Committee on Draft Modern Slavery Bill. 2014. p2).

Article 4.b of the CAT explains, “The consent of a victim of “trafficking in human beings” to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.’

The means established in Article 4 (a) are,

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 purpose of exploitation (Appendix A).

The occurrence of any of these means to gain the consent of a person should mean they can still be recognised as having been trafficked. The CAT recognises consent gained under coercion or deception or through abuse cannot be considered as true consent. The victim discourse contradicts this by creating a perception of trafficked person as people who did consent to their movement or to engage in certain activities which they were trafficked to prove their innocence.

The consequence of the focus on trafficked persons as not having consented prevents people who gave consent under the circumstances described in Article 4 of the CAT from being identified (Touzenis. 2010. p8). Those who are not identified are excluded from their rights to support and assistance obliged by the CAT. Silverstone and Savage, 2010, discuss the trafficking of Vietnamese children to the UK for cannabis cultivation. They argue ‘it is necessary to distinguish between those forcefully trafficked and those who migrate ‘voluntarily’ to the United Kingdom’ (Silverstone and Savage. 2010. p26). This is not necessary. The CAT sees no distinction between these when the means in Article 4(a) of the CAT are present.

Munro, 2005, highlights how the focus on the genuine victim of trafficking being someone who gave no consent to their movement excludes people from identification and support through the words of a senior police officer,

the true victim who has been trafficked and coerced and intimidated and is there doing something they don’t want do should have all the support and help we can give them, whether or not that means giving them indefinite support, exceptional leave to remain, etc . . . but there’s an awful lot of people that don’t fit into that category, that are victims to a degree, but I think they have to take some of the responsibility for them being in that position

themselves, you know, and at the time they wanted to come here (Munro. 2005. p108).

The 2010 ATMG report found ‘in numerous cases reviewed by the research, the authorities concluded that as the person concerned agreed to come to the UK for work, they could not have been trafficked.’ (ATMG. 2010. p12) The 2013 ATMG report identified examples where people who consented to travel to the UK through deception were regarded as complicit in their exploitation. For example,

In another case the potential victim was aware that she would work in prostitution but the terms agreed to were very different in practice. . . The CA found that since she had agreed to work in prostitution she had not been subject to ‘deception’, one of the listed ‘means’ of trafficking and disregarded the fact that she was in fact being coerced (ATMG. 2013. p35).

Similarly the fieldwork research for this thesis found evidence of people being rejected as a trafficked person because they gave consent to their movement. An interviewee from an immigration detention charity highlighted a case of a non-EU national teenage girl trafficked into the UK with the promise she would be educated. The interviewee explained why the girl was not recognised as having been trafficked by the UKBA,

*Her trafficking claim was completely dismissed because they said ‘oh she agreed to come’ but she was [a teenager, under 18] and she was lied to (Appendix B. Interviewee 7).*

Such a reason for rejecting someone as having been trafficked is completely contrary to the definition of trafficking provided by the CAT.

### **Contradicting the Principle of Empowerment**

The victim discourse contradicts a genuine human rights approach because it is disempowering. It denies trafficked persons recognition as autonomous agents who can make decisions for themselves within the context of their own lives. Presenting trafficked persons as people who did not consent to their movement denies they had any desire or capacity to improve their own life. Jacobsen and Skilbrei, 2010 argue ‘women have to exclude most traces of agency from their self-representations in order to be recognized as victims’ (2010. p196). Haynes explains that within the victim discourse ‘the trafficked person must present herself as a victim, rather than a

survivor. To secure the benefit she seeks, she must prove up the victimhood nature of her situation' (2009. p51).

Trafficked persons are fundamentally disempowered when they are recognised as people who can only be rescued. A support worker interviewed in Hoyle, Bosworth and Dempsey explained,

I'm very wary of the term 'rescued'. I don't like it and it's used by the police a lot. They say, 'we went in and rescued these women' like they're sort of sitting there waiting to be rescued. I think it doesn't really reflect on the situation. I think it's more about expanding women's choices or giving women choices really' (Hoyle, Bosworth and Dempsey. 2011. p324).

Those who have been trafficked should be able to engage in policy creation and assessment (Bruch. 2004. p39). However while trafficked persons are regarded as lacking any autonomy or control over their lives they will be prevented from becoming advocates for their own rights and excluded from contributing to decisions about their own lives. The victim discourse is a barrier to the development of policy and practice in which trafficked persons are empowered and active participants in their own individualised recovery. Trafficked persons have been restricted in their ability to engage in policy or be recognised as stakeholders within the campaigning efforts of NGOs (Anderson. 2008. p7). It is difficult for an individual to make a metamorphosis from helpless victim who can only hope a police officer breaks down the door to a brothel to becoming an active agent capable of involvement in determining their own recovery and the responses to themselves and others. The victim discourse instead reduces trafficked persons to inactive and silent objects. Anderson and Andrijasevic, 2008, explain,

To pass the test of trafficking one must be a true victim: unable to engage, or to make choices. One can only suffer and be rescued. Those who are angry, who are resentful, are not victim enough. Because they can only be helped and rescued they are not political subjects, rather they are the objects of negotiation. Since they cannot actualise their rights, they must be given to others to act on their behalf (Žižek, 2005), and indeed there has been a veritable plethora of anti-trafficking organisations and initiatives. But the organisations cannot be comprised of trafficked people – for they are the victims (Anderson and Andrijasevic. 2008. p143).

The victim discourse undermines the ability for trafficked persons to contribute to the debate on governmental policy responses to trafficking in persons trafficking and the evaluation of current responses. A 2013 research report commissioned by the

Home Office evaluating policy responses to domestic violence included survivors of domestic violence in the evaluation of these responses (Kelly et al. 2013). This direct engagement of the survivors of domestic violence is in direct contrast to the exclusion of the victims of trafficking from any such evaluation of the responses to trafficking in persons.

Aradau (2004) and Lazinez (2010) describe the 'politics of pity' in which trafficked persons are framed in ways that are effective in creating a temporary emotional response which is supportive towards trafficked persons. The victim discourse disempowers trafficked persons by only allowing them to take on the passive role of objects of pity. Bruch argues such a recognition leaves individuals 'very little role for them to play – other than as subjects of stories that evoke shock and pity' (2004. p21). Human rights are not about protecting the meek and pitiful. There is little respect for the dignity of the individual when they are treated with pity. Zimmerman and Watts guide for interviewing trafficked women stresses, 'while interviewers should demonstrate understanding and concern, expressions of pity or sympathy may be inappropriate and unwelcome as many women do not wish to be treated as victims' (2003. p10).

Trafficked persons who act as empowered agents who are holders of human rights rather than passive victims can be treated with disapproval and scepticism. A series of well publicised successful compensation claims made by trafficked persons through the Criminal Injuries Compensation Authority (a government scheme awarding compensation from government finances to persons who have suffered criminal injuries in the UK) resulted in the law firm which represented the women being 'flooded' with letters of complaint from the public (Lam and Skrivankova. 2009. p16). Once these women were recognised as more than objects of pity and were identified as women who had actualised their rights and won justice for themselves in the form of compensation they were treated unsympathetically and viewed negatively as immigrants taking from the public finances.

The focus on rescuing victims is adopted by NGOs. The intention of the rescue message is to encourage the public to feel they have the power and autonomy to rescue trafficked persons and end trafficking through their donations. The trafficked person in contrast is viewed as having no power or control. Hope for Justice's slogan

‘Join the Rescue Mission’ gives all power and agency to the rescuer. Trafficked persons are left at the mercy of their rescuers. The focus on rescuing those who have been trafficked places the rescuer and the ‘saviour’ at the centre of the response (Todres. 2009. p662). Chico argues ‘When a helper becomes too invested in the “rescuer” role, or a survivor too invested in the “victim” role, it blocks the path to true recovery’ (2009. p5). Agustin explains how this relationship disempowers those who have been trafficked, ‘One problem is that the person designated a victim tends to take on an *identity* as victim that reduces her to a passive object of others’ actions. According to this logic, the subject of the discourse becomes irrelevant, and the “helper” takes centre stage’ (Agustin. 2005. p107). This response is exemplified in the foreword written by the Chair of trustees for the Medaille Trust in their own newsletter. The foreword explains, ‘The residents in our houses need us, but we need them in order to make us more like “Gospel” people’ (Medaille Trust. 2012. p2). A genuine human rights approach requires the response to trafficking is focused on the people who have been trafficked. As one interviewee described,

*It’s not about us as workers. It’s not about us as activists. It’s not about as researchers. It’s about the people at the centre of it, the people who have been hurt and exploited (Appendix B. Interviewee 1).*

### **Harmful Consequences for Women and Men**

The victim discourse has focused on trafficking in persons as a problem almost exclusively affecting women and children. This has harmful consequence for trafficked women and men.

The focus on trafficking as a problem for women and children occurs at the highest level of the international response to trafficking. Article 10 of UN General Assembly Resolution 53/111 was the catalyst for the creation of the Palermo Protocol. It stated that the resolution,

Decides to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children.

The Palermo Protocol treats women and children as a special category (van Liempt. 2006. p35). The full title of the Palermo Protocol includes 'especially women and children.' The CAT also focuses on 'women and children.' This focus is also demonstrated in the title of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children.

Women are disempowered and viewed as helpless passive victims lacking any agency or autonomy when they interconnected with children. Davidson and Anderson argue women 'are lumped together with children as categories of persons requiring special protection, and constructed as the passive victims and objects of third parties within the migration process' (2006. p21). Touzenis argues trafficked adults should not be 'infantilised' by States responses to them (2010. p35). The merging of women and children infantilises women. The continued associations reduce women to being treated and recognised as having the same capacity for autonomy and rational thought and ability to plan and carry out a migration strategy as children (GAATW. 1999. Doezeema. 2010).

There are important reasons for why women have been the centre of attention. Stepnitz argues 'The focus on sexual exploitation has played an important role in highlighting the heavily gendered component of trafficking; patriarchy is an essential component of the structures that oppress and lead to the trafficking of women and children' (2009. p19). It is important to recognise structural inequalities and oppression of women which fundamentally denies their human rights and creates environments in which trafficking can occur. However the focus on women as the victims of trafficking arose from a disempowering view of women (Askola. 2007. p33). Female migrants are automatically framed as victims (Van Liempt. 2011. p179). Women have predominantly been recognised as the victims of trafficking because of a disempowering generalisation that women are inherently vulnerable (Krieg, 2009. Kapur, 2002). Women are only accepted as being helplessly carried over borders. This is in stark contrast with men, recognised as active agents seeking out an improved life for themselves in another country. It was simply assumed and accepted women are predominantly trafficked and men smuggled (Bhabha and Zard. 2006. pp6-7). This supposed truth was not supported by any reliable data or evidence (van Liempt. 2006. p35).

The focus on women was also raised by those whose responses undermine women's autonomy, freedoms and rights. Those responding to trafficking were concerned about women aspiring to migrate and the types of work they were willing to undertake to realise their ambitions. Women who move across borders for sex-work are automatically regarded as victims who must be rescued (Zheng, 2010. Pajnik, 2010). Chuang argues 'Purported concern for vulnerable women provides a convenient excuse for restricting women's migration—motivated at best by paternalism, at worst by a deeper anti-migration agenda' (2010. p1712). Kapur argues that within the anti-trafficking community 'there is an inadvertent tendency to try to dissuade women and girls from moving in order to protect them from harm' (2005. p117). The concerns about the trafficking of women were raised by those who wish to see women remain in their traditional societal roles as mothers and homemakers. Warning women about the dangers of trafficking seeks to encourage women to stay at "home" (Jacobsen and Skilbrei. 2010, Van Liempt 2011). Doezema, highlights the presence of this approach in the International Movement Against All Forms of Discrimination and Racism's (IMADR) 1998 report for the UN Working Group on Contemporary Forms of Slavery. In regard to state policies supporting female economic migrants the report warns,

State sponsored export of labour to foreign countries places increasing numbers of women at risk for sexual exploitation. Additional negative aspects....are linked to erosion of the family. Prolonged separation of husbands and wives can lead to divorce. Children left unattended and unguided may lapse into juvenile delinquency or fall victim to traffickers and paedophiles (Doezema. 2000. pp41-42).

The Human Rights Caucus argues the phrase 'women and children' fails to acknowledge men are trafficked (Doezema. 2010. p132). This focus has harmed the identification of trafficked men and the availability of specific support and assistance for them which upholds the rights required by the CAT. Ditmore argues that the consequence of this focus is that 'trafficked men are invisible and their situations continue to be less recognised and therefore more difficult to address' (2005. p108). Men appear in the trafficking narrative as victimisers rather than as trafficked persons (Lee. 2010. p66). Men feature in narratives on trafficking in persons as the recruiters, transporters, exploiters, punters, the policemen who break down the door during a raid or the Judge who passes sentence on the traffickers. Lee argues how this has made trafficked men invisible, 'The social construct of an "ideal" victim, the



continued salience of hegemonic masculinities and the broader notion of men as victimiser, have tended to render men invisible' (2010. p66). Consequently specific support and assistance for trafficked men has been inaccessible and slow to develop. The focus on the trafficking of women for sexual exploitation has harmed the recognition of trafficking for forced labour (Uy. 2010. p210). Men have been portrayed as dominant and powerful and women as weak and vulnerable. The focus on women and children can prevent men from self-identifying as trafficked (Chuang. 2010. p1711). Dauvergne highlights that male self-identification may be undermined because the labelling of trafficking is emasculating because of its connotations with female vulnerability (2008. p72). This means men will not claim the rights to support and assistance granted by the CAT.

## **Conclusion**

This chapter concludes that the victim discourse serves the interests of the UK government while countering the interests of trafficked persons. The conceptualisation of trafficked persons within a victim discourse creates a stereotypical trafficking narrative and victim which is unrepresentative of the experiences of many trafficked persons. The way that trafficking is presented provides the UK government with a moral justification for immigration policies which can contribute to creating and exacerbating people's risk of being trafficked. Simultaneously it presents trafficked persons in such a way as to limit the number of people who will be identified as trafficked and able to have temporary residency and access to limited rights. However those individuals who are not officially identified as trafficked persons are still counted in official government data as 'potential victims' as evidence of a substantial problem. The victim discourse most benefits States by not challenging the acceptance that undocumented migrants can be denied their basic rights. The victim discourse defends that protecting States borders and control over immigration are more important than protecting people and respecting their human rights. The victim discourse only protects the human rights of the innocent and non-consenting while further marginalising other migrants. A genuine human rights approach should transcend recognising trafficked persons as victims and should recognise them as persons who are rights-holders.

The victim discourse has profoundly negative consequences for trafficked persons. The research has found that trafficked persons can be denied identification and access to support because their experience of trafficking is not consistent with the trafficking narrative created within the victim discourse. This means that trafficked persons will not be able to access the rights to support and assistance granted by the CAT. This chapter has shown how the victim discourse leads to responses which contradict an individualised response, an unconditional response, an empowering response and non-discrimination. The way that trafficking in persons is presented needs to radically change to ensure that trafficked persons are not misidentified and prevented from accessing support and assistance.

## **Chapter 3: Identification and Support in Policy and Practice**

### **Introduction**

This chapter critically studies the identification of and support for trafficked adults against the obligations of the CAT and a genuine human rights approach. This chapter finds the principles of a genuine human rights approach to be denied in the responses to trafficked persons in the UK. In particular the chapter studies how the principles of unconditional support and empowerment are contradicted.

The chapter highlights the regional variations in the practical delivery of support. It focuses on the contract awarded to the SA in 2011 and argues that this was awarded to serve political interests rather than improving the support and assistance for trafficked adults. This illustrates that the UK government's approach is not focused on protecting trafficked persons and their human rights.

On the basis of the policy analysis within this chapter it is argued that the responses to trafficked persons are dominated by an immigration approach. Protecting control over immigration is the priority of the UK government. The research finds that this approach has severe consequences for the identification of trafficked adults and the nature and accessibility of support and assistance. The chapter critiques the central role that the immigration authorities have in identifying trafficked persons. The research finds that their involvement is objectionable. The chapter specifically studies the evidence of how their responses can be regarded as contradicting the principle of non-discrimination. The chapter argues that making support and assistance for trafficked persons subordinate to convicting traffickers and controlling immigration ultimately undermines realising and addressing those primary ambitions and concerns.

The chapter explains how responses which uphold the minimum obligations of the CAT fail to protect trafficked persons' human rights and provide for their recovery. This chapter closely studies the most important example of this which is the policy of a reflection period obliged by Article 13 of the CAT. The research finds that the reflection period provided in the UK is deeply inadequate and is a tremendous barrier to people accessing the support and assistance they require for their physical

and psychological recovery. The chapter focuses on the rights to physical and psychological support granted by the CAT and examines the evidence of how these rights are not comprehensively protected in policy and practice in the UK. The research finds that despite the inadequacies of the CAT the response in the UK fails to fulfil all of the rights granted by the CAT.

This chapter does not provide a detailed examination of the extent to which Article 12.4 of the CAT is upheld. Article 12.4 requires, 'Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.' (Appendix A) In 2012 GRETA published a report on its evaluation of the UK's compliance with the CAT. The report recommends that the UK government and regional governments take action 'enabling victims of trafficking to have access to the labour market, vocational training and education as a form of rehabilitation' (GRETA. 2012. p64). It is argued that the UK's approach only guarantees short-term crisis intervention and that meaningfully fulfilling Article 12.4 within the confinements of the short-term approach is extremely problematic. Individuals will not have sufficient time to feel capable of accessing such support or for it to have a significant positive impact. Article 12.4 will not be upheld until the UK government adopts a long-term approach focused on protecting the human rights of trafficked persons. This is illustrated by the SA's report on its second year of managing the contract for supporting trafficked adults in England and Wales contains no reference to providing vocational training or supporting people to enter the labour market. Moreover neither of the IDMG reports contains any reference to trafficked persons receiving vocational training or support to access the labour market.

The chapter examines the responses against the UK government's powerful and emotive rhetoric describing trafficking in persons. This rhetoric is demonstrated in the text of the first IDMG report which declares that trafficking is,

the vilest of crimes [which] equates to modern day slavery. Men, women and children from across the world are exploited and forced into performing services or other work against their will. In some instances the exploitation can be experienced over a prolonged period of time. Those who are exploited may face years of sexual abuse, forced labour, or domestic servitude and, in many instances never fully recover from their traumatic experience (IDMG on Human Trafficking. 2012. p3).

The IDMG acknowledges some people may ‘never fully recover from their traumatic experience’ (2012. p3). Damian Green wrote an article on Anti-Slavery day in 2011 describing trafficking as ‘a brutal crime which ruins lives’ (Green. 2011). In 2012 he described the ‘evil of human trafficking’ during a parliamentary debate (HC Deb, 8 February 2012, c139). Theresa May wrote trafficking ‘destroys lives’ in the foreword of the Government’s Strategy (HM Government. 2011. p3). In the foreword to the draft Modern Slavery Bill Theresa May exclaimed ‘Modern slavery is an appalling crime. It affects victims in ways that are almost incomprehensible.’ The Foreign Secretary, William Hague, explained in a speech “Human Trafficking is a horrific and inhuman practice that destroys lives.” (Hague. 2012) Helen Grant, former Victims’ Minister within the MOJ told the audience at a conference on human trafficking in the UK hosted by the SA in May 2013 that trafficking is a ‘terrible and sickening crime.’ She explained her own personal emotional reaction, ‘it also brings a tear to my eye and sends a shiver up my spine’ (Salvationarmyvideo. 2013). The research concludes that the responses in policy and practice are entirely inconsistent with such powerful rhetoric.

### **Regional Variations in the Provision of Support in the UK**

There are important regional differences in the responses to trafficked adults in the UK. The governments in Scotland and Northern Ireland have separate contracts for the provision of support and assistance for trafficked adults. While it was the UK government which signed the CAT the support in Northern Ireland and Scotland is neither funded nor overseen by the UK government. The IDMG is responsible for overseeing the UK wide approach to human trafficking but it does not have control over the creation of policy and the provision of support services.

There are a number of devolved powers which Wales, Northern Ireland and Scotland have that are relevant in fulfilling the rights of trafficked adults expected by the CAT. These include health and education in Scotland, Northern Ireland and Wales and housing in Scotland and Wales. These devolved powers could provide the different countries the opportunities to adopt innovative and unique responses in providing support and assistance to trafficked adults. However the different regions of the UK have to adhere to central policies decided by the UK government and work within a UK wide system for identifying and responding to trafficked persons. This is due to

trafficking in persons being primarily considered as a matter of immigration, an area of legislation which the UK parliament retains full control over.

The support and assistance for trafficked adults in Northern Ireland, Scotland and Wales is provided by a significantly smaller number of organisations than in England. This is because out of the 1295 adults identified as potentially trafficked in the UK in 2013 1155 adults were in England (National Crime Agency. 2014. p7). In Scotland and Northern Ireland the same four organisations have received continuous government-funding since the regional administrations began funding responses to trafficked adults. This situation should provide the opportunity for the development of expertise and the creation of best practice in providing support and assistance.

This has not been the case in Northern Ireland. This region has the smallest number of recorded potential cases of human trafficking in the UK. In 2013 there were twenty-one adults identified in Northern Ireland who were referred as potentially trafficked (National Crime Agency. 2014. p12). In the absence of large numbers of identified trafficking cases the Northern Ireland Executive has not provided sufficient resources to establish specialist support in the region.

In Northern Ireland it is the Department of Justice within the Northern Ireland Executive which has been responsible for overseeing the provision of support and assistance for trafficked adults. The Department of Justice is responsible for awarding and overseeing the government tender contract for the provision of support for trafficked adults. The Department of Justice has made Migrant Help the contract provider. Migrant Help supports trafficked men and has sub-contracted to Women's Aid to support trafficked men and women.

Neither of the contracted organisations in Northern Ireland are specialised in supporting trafficked adults. This means that trafficked adults do not access specialist tailored support services and facilities. Trafficked women in Northern Ireland are supported within facilities designed for survivors of domestic violence. This situation is in contrast with the responses in the other three regions of the UK where people who have been identified as potentially trafficked can access facilities and services specifically for trafficked adults. The suffering and trauma a person who has been trafficked experiences is not diminished by the prevalence of the problem.

In Scotland the responsibility for supporting trafficked adults is partially overseen by local government. Glasgow City Council and the Scottish Police Authority jointly own the charitable body Community Safety Glasgow which runs the TARA service (Trafficking Awareness Raising Alliance) which supports women trafficked for sexual exploitation in Scotland. The Scottish government has funded TARA since its establishment in 2006. Initially TARA was only funded to support women trafficked for sexual exploitation within the jurisdiction of Glasgow City Council (Lebov. 2009. p4). However for several years TARA has been funded to support women trafficked for sexual exploitation anywhere in Scotland. The Scottish government has also other government-funded support organisation in Scotland is Migrant Help which was established in 2009 and supports men and women trafficked for all types of exploitation (GRETA. 2012. p62). TARA has developed considerable expertise in responding to trafficked women but they have never been funded to provide specialist supported accommodation for the women they support.

The UK government has provided £7.5m to fund the support for trafficked adults in England and Wales over the last three years. In England and Wales it has been the Ministry of Justice within the UK government which has been responsible for awarding the contract for supporting trafficked persons in England and Wales and for overseeing its operation. There are a total of twelve sub-contractors funded to provide specialist support and assistance for trafficked men and women in England and Wales (Chart 1). The 2011 contract significantly increased the number of regions in England where support was available. In May 2011 shortly after the contract was awarded Damian Green told the House of Commons he hoped the 2011 contract would 'make the new system less London-centric' (HC Debate. 9<sup>th</sup> May 2011. c994). However outside of England the charity BAWSO (Black Association of Women Step Out) remains the only sub-contracted organisation supporting trafficked adults in Wales. This support is available at two locations in the north and south of the country.

***Sub-Contracted Organisations under the Salvation Army Contract to Support Trafficked Adults in England and Wales (Chart 1)***

<b>Support Organisation</b>	<b>Experience in Supporting Trafficked Adults Prior to Becoming Sub-Contractor in 2011</b>	<b>Gender Supported</b>	<b>Region</b>
Ashiana	Yes	Men (outreach only) and women.	South Yorkshire
BAWSO	Yes	Men (outreach only) and women.	North and South Wales
Bournemouth Churches Housing Association (BCHA)	No	Men and women.	South West
City Hearts South Yorkshire	Yes	Women only.	South Yorkshire
City Hearts North West	No	Men only.	North West
Hestia	No	Men (outreach only) and women.	South East
Jarret Community	Yes	Women only.	North East
The Medaille Trust	Yes	Men and women.	South East
Midland Heart	No	Men only.	Midlands
Migrant Help	Yes	Men and women.	South East
Riverside	No	Men and Women	
Sandwell Women's Aid	No	Women only.	Midlands
Unseen	Yes	Women only.	South West



## **The Ministry of Justice Contract Decision**

The MOJ's decision to award the SA the UK government's contract to support trafficked adults in England and Wales was the most significant change in the response to trafficked adults in England and Wales during the period of time examined by this research. The responses to trafficked persons should be focused on providing the most comprehensive support possible and protecting human rights. It is argued here that it can be suggested that such ambitions were not central to the MOJ's decision. The decision can instead be seen as being determined by a desire to prevent transparency and dissenting voices from publicly challenging the UK government's policy responses to trafficking in persons.

The decision to award the contract to the SA in 2011 was made in the context of the PP having been the central recipient of UK government-funding to support trafficked women since 2003. Between March 2003 and March 2011 the Poppy Project (PP) housed and supported 334 trafficked women and provided outreach support to 449 women (Robinson, 2011). The MOJ decision meant the UK government ceased funding an organisation considered as providing best practice in supporting trafficked women and began funding an organisation with limited experience.

Support organisations should be able to publicly challenge responses to trafficked persons not upholding the obligations of international human rights law and trafficking instruments. Raising public attention about problems with policy and practice is essential for them to be resolved. Consecutive UK governments signed the CAT and the EU Directive after public campaigns urging the government to improve the treatment of trafficked persons. While the PP received government-funding between 2003 and 2011 it publicly challenged the contradictions between the UK government's rhetoric and the obligations of the CAT with the reality of the responses. There are a multitude of examples of their challenges to government rhetoric. Firstly there is the report 'Prisoners with No Crime: Detention of Trafficked Women in the UK' which the PP published in 2008 which documented the punishment of trafficked women in the UK. The PP is a member of the ATMG which has critically examined the response to trafficked persons in the UK in the absence of an independent national rapporteur. In 2010 the ATMG published a damning assessment of the system for identifying and supporting trafficked persons in the UK,

describing it as 'not fit for purpose' (ATMG. 2010. p2). In the months prior to the new contract decision the PP was involved in a number of high profile challenges to the treatment of trafficked persons in the UK. In February 2011, Denise Marshall chief executive of Eaves, which runs the PP, publicly gave up her OBE (Order of the British Empire) which she received for services to disadvantaged women. She criticised the MOJ's proposals for the new support contract weeks before it was awarded, arguing the MOJ 'want a bargain basement service' (Gentleman. 2011). During the same period the PP supported a Moldovan woman, trafficked to the UK aged fourteen, to win substantial damages from the Home Office for her mistreatment by the authorities in the UK. She was trafficked to the UK but the authorities failed to identify her as trafficked and consequently she was excluded from support and deported to Moldova only to be re-trafficked to the UK before finally being correctly identified (Gentleman. 2011b).

The problem for organisations that have concerns about the policies of the UK government is they are dependent upon government-funding to operate. Musto writing on the response to trafficking in America, highlights 'dependency on government-funding, particularly US federal funding has the potential to blunt NGOs' willingness to challenge the policies of the government that funds them' (2010. p27). The PP did not allow their dependency on government-funding to prevent them from publicly challenging the UK government's responses to trafficked persons in the UK.

I suggest that the coalition government which took office in May 2010 was unwilling to fund an organisation publicly critical of government policy and acted to ensure their rhetoric would go unchallenged. The 'transparency' GRETA argues is necessary for a human rights approach was significantly undermined following the 2011 MOJ contract decision. The former Labour MP Dennis MacShane wrote a letter to the former Justice Minister Crispin Blunt expressing concern that the MOJ's decision in 2011 was motivated by a desire to silence the PP's dissenting voice. He wrote,

No other women's organisation has done such work to help trafficked women in Britain or done more to raise the profile of this modern slavery. I am concerned that because Poppy and its parent Eaves constitute a campaigning organisation which has not been afraid to criticise the frankly conservative Whitehall thinking on this issue, Poppy is being victimised' (Womensgrid. 2011).

Evidence for the 2011 MOJ contract decision being primarily focused on suppressing public criticism and transparency is provided by the message the chair of the APPG on Human Trafficking, Fiona Mactaggart read in the House of Commons in December 2013, which she received from a member of staff at a sub-contracted organisation. The message highlights that organisations are threatened with losing their funding if they critique or even discuss the UK's response to trafficking in persons,

MoJ officials have directly, robustly and unequivocally told us that we are not to talk about current victim support arrangements in any way whatsoever with anyone. In addition we have been told that we are not to criticise, or talk about in any form, any part of the Government's current anti-trafficking work or policies. The threat was implicit that to do so would lead to the loss of our contract. In view of this, there is no meaningful way in which I can engage in the proposed evidence giving or consultation exercise (HC Deb, 5 December 2013, c1145).

If the primary consideration was awarding the contract to an organisation which would act as a silent partner and not challenge government policy the SA was the ideal candidate. For example the SA had no involvement with the ATMG and no history of critiquing responses to trafficked persons. Furthermore since becoming the contract provider the SA has not publicly criticised any aspect of policy and practice. The SA has published a six month review, a one year review, a two year review, and a report on the response to trafficked men. The descriptions of the response to trafficked adults in England and Wales in these reports reinforce government rhetoric. For example the one year review only includes positive quotes from individuals about their treatment since exiting trafficking. The one year review primarily consists of statistics about the numbers of people, nationality, gender, type of exploitation supported under the contract. The review describes the type of support which sub-contractors can provide, including, "counselling", "health care", "education and training" and "outreach support." The SA has the most significant insight into the response to trafficked persons in England and Wales but has not publicly acknowledged any problems with the policy responses towards trafficked persons.

The ability for support organisations to publicly discuss and challenge responses to trafficking in persons requires that funding decisions cannot be politically influenced. Decisions about the practical provision of support and assistance must be

solely determined by providing the best possible support and protection for trafficked persons and their human rights. This could be achieved by granting a future independent anti-trafficking coordinator in the UK some influence in deciding which organisations are awarded funding to provide support. At a minimum this body should be granted oversight into the decision making processes of which organisations receive funding. This would enable organisations to speak freely about anti-trafficking policy, to highlight important distinctions between rhetoric and reality and to advocate for improved responses. This would guarantee the transparency GRETA argues is necessary for a human rights approach.

Unsurprisingly those in government who commented on the awarding of the contract did not explain that the decision served to protect the UK government's responses to trafficked persons from public criticism. The factors which influenced the decision cannot be definitively known. The Minister of State, Lord McNally explained in the House of Lords, 'The debrief information is commercially confidential to the unsuccessful bidders' (HL Deb 10 May 2011 Column 202). The MOJ's justification for the decision was it would have a multitude of positive consequences consistent with a decision determined by providing the best response for trafficked persons. It was explained the decision meant 'specialist' organisations with 'expertise' would provide support. Crispin Blunt, Parliamentary under Secretary of State at the MOJ, made an official statement on the decision, 'This funding will allow the SA to work together with counter trafficking agencies and specialist support organisations to provide an escape route for these men and women' (Ministry of Justice. 2011). An MOJ spokesperson explained, 'We have drawn on the expertise of anti-trafficking groups to develop a support system that offers victims a more diverse range of services, which will be tailored to their individual needs' (Israel. 2011).

However this research finds that these explanations have been contradicted by the consequences of the decision. Demonstrating these contradictions supports an argument that the decision was politically motivated. The claim the new contract meant support would be provided by 'specialist' organisations is dismissed by Klara Skrivankova, trafficking policy coordinator at Anti-Slavery International, who described the lack of experience of the organisations which began providing support under the contract, "some are completely new to trafficking. It's a big eye opener for them, they didn't appreciate all the issues that this client group have and how

difficult it is caring for them" (Grant. 2013). Five of the twelve sub-contracted organisations had no previous experience working with trafficked adults. (Chart 1) An interviewee from a sub-contracted organisation without previous experience explained their reactions to their experiences of working with trafficked adults for the first time,

*It's a massive learning curve for ourselves from our perspective, you have an idea but that idea changes on a daily basis and we learn as much as they [the trafficked persons] do (Appendix B. Interviewee 9).*

Some organisations with previous experience supporting trafficked persons had to begin working with cases they had no previous experience of. An interviewee described the changes for their organisation after becoming a sub-contractor,

*We work with women trafficked for any reason. Previously we did only really see sexually exploited women. But since this summer we've seen a lot more domestic servitude cases which I think shocked us all because we didn't really think about it until the first case came in and then it was quite dramatic and it was like oh we should learn more about this (Appendix B. Interviewee 10).*

Another interviewee described their organisation's motivation for becoming a sub-contractor,

*for us the ability of having this contract was the opportunity to have to focus on something we weren't dealing with and gain that expertise (Appendix B. Interviewee 11).*

This interviewee explicitly acknowledged that their organisation did not have expertise. This evidence strongly contradicts the rhetoric of support being provided by those with 'expertise.' Despite their best intentions, organisations learning how to respond will be unable to provide the support and assistance people require. The CSJ report highlights the extremely limited knowledge about trafficking which the newly sub-contracted organisation Midland Heart had. An interviewee from Midland Heart explained their surprise at discovering UK nationals are trafficked internally within the UK. This is despite the fact that between April 2009 and June 2011 the seventh most common nationality of people recognised as potentially trafficked was British, 'We were very surprised – we thought everyone would be from another country, not from the UK' (Centre for Social Justice. 2013. p38). One sub-contracted organisation uses a large number of volunteers from local churches to help support trafficked persons. An interviewee from the organisation described the volunteers as,

*experienced, professional women (Appendix B. Interviewee 12).*

This quote is evidence of a response which contradicts the government's promise of support being provided by people with expertise. Volunteers can be people with experience and expertise but the volunteers in this instance were not. One organisation which began supporting trafficked adults for the first time when it became a sub-contractor uses agency staff as support workers. An interviewee described how an agency worker had stolen the phone card of a resident in the supported accommodation to make personal telephone calls. Two of the residents were then arrested after assaulting the agency worker when they realised they had stolen their phone card,

*this agency member of staff had potentially used one of the guys phone cards and when one of the guys that was arrested went to use his phone cards there was no credit on it and he was trying to get hold of his sister in [EU Country] so there were a lot of issues about that . . . that agency member has now been struck off (Appendix B. Interviewee 9).*

It is concluded from this research that the 2011 MOJ contract should be viewed as a decision which protected government policy responses from public criticism rather than having improved the provision of support and assistance for trafficked adults.

### **Identification Denied by an Immigration Approach**

It is essential that trafficked persons are correctly identified to be able to access support and assistance (Bjerkan et al. 2005. p27). People who are not identified are excluded from the rights to support and assistance granted by the CAT (Brunovskis and Surtees. 2012. p6). The explanatory report to the CAT explains the importance of correct identification,

*To protect and assist trafficking victims it is of paramount importance to identify them correctly. . . Failure to identify a trafficking victim correctly will probably mean that victim's continuing to be denied his or her fundamental rights and the prosecution to be denied the necessary witness in criminal proceedings to gain a conviction of the perpetrator for trafficking in human beings (Council of Europe. 2005. p45).*

The UK government's official reply to GRETA's evaluation report on the UK's compliance with the CAT explains, 'We are committed to bringing as many victims as possible into the NRM' (National Referral Mechanism, the UK-wide system for

deciding whether people have been trafficked and for referring people to organisations providing support) (GRETA. 2012. p100). The findings of this research strongly dismiss this rhetoric.

The research finds instead that trafficked persons are prevented from being identified by the dominance of the immigration approach. The responses are focused on protecting the State's robust controls on immigration. Concerns about the system of support being manipulated by undocumented immigrants falsely claiming to have been trafficked serve as the justification for overzealous scrutiny in the identification of people which prevents correct identification and harms the recovery of those who are identified. This approach is demonstrated by the warning in the first IDMG report that support for trafficked persons may be abused, 'any system where there is the possibility of access to stay in the UK needs careful scrutiny from trained Competent Authorities to ensure that it is being correctly used to identify and protect genuine victims of trafficking and not abused' (IDMG. 2012. p81).

The 2004 OSCE/ODIHR handbook established the meaning of a National Referral Mechanism (NRM) for responding to trafficked persons. It explained the NRM should be a,

co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services (OSCE/ODIHR. 2004. p15).

This description of an NRM focused on providing individualised support for every person takes a genuine human rights approach. The NRM in the UK does not respond in such a way (ATMG. 2010). The ATMG submitted a damning description of the NRM in the UK to the consultation on the draft Modern Slavery Bill, 'The NRM process is at its worst discriminatory, flagrantly disregards specialist professional opinion and places victims of trafficking into situations of despair' (ATMG. 2014. p3). The NRM envisaged by the OSCE/ODIHR report understands referrals as a person being referred to a support organisation. In the UK a referral into the NRM is focused on a person's case being referred to a 'competent authority' that officially decides whether the person should have the status of a trafficked

person. The focus is on identifying immigrants who are not ‘genuine victims’ so they can be punished. Preventing potential abuse is prioritised over ensuring trafficked persons are not misidentified and excluded from the rights required by the CAT. This focus is highlighted by Malloch, Warden and Hamilton-Smith who interviewed a staff member from a support organisation in Scotland who described how the NRM can prioritise scrutiny rather than support, “Sometimes it just feels to us as though it is a vetting process. It isn’t about getting her to safety and moving her on, it’s about identifying her, it’s about whether she is telling the truth or not. And that can be very difficult” (2012. pp30-31).

The “competent authority” is responsible for making the official decision of whether a person was trafficked. The competent authority makes two separate decisions. Firstly there is a “reasonable grounds” (RG) decision. This uses the test, ‘From the information available so far I believe but cannot prove that the individual is a potential victim of trafficking.’ If the individual receives a positive RG decision then they should have a reflection period and access to government-funded support. The next stage is the “conclusive grounds” (CG) decision. This is a balance of probability test deciding “it is more likely than not” an individual has been trafficked. This is higher than the threshold for an asylum decision which uses a “reasonable degree of likelihood test.” Not only is this response unfair and unreasonable it is inconsistent with the rhetoric of the UK government which presents trafficked persons as being by far the most vulnerable and traumatised immigrants. Trafficked persons in the UK are required to prove they have been trafficked. This contradicts the presumption of innocence which is a fundamental principle of the rule of law and human rights (van den Anker. 2006. p184). The high burden of proof increases the likelihood of people receiving a negative decision. One interviewee from a charity working with immigration detainees highlighted the difficulties for a person to prove they have been trafficked,

*where is this proof? What proof? (Appendix B. Interviewee 7).*

Konrad recommends that NGO’s which support trafficked persons should be involved in the processes of officially identifying people because they have the most knowledge and experience to perform such a role (2008. p170). NGOs supporting trafficked adults in the UK are excluded from the official identification of people as



trafficked. Instead it is the immigration authorities which have been central to deciding people's status as a trafficked person. This is the most significant aspect of the dominance of concerns about controlling immigration over protecting trafficked persons. The UK Human Trafficking Centre (UKHTC) is a competent authority but is only able to decide cases of EEA nationals who already have the right to live in the UK. The competent authority for non-EEA nationals who do not have an automatic right to live in the UK has been the organisation responsible for controlling immigration. This was the UKBA until its disbandment in 2013 when it was split into two new organisations. One of those organisations is the UK Visas and Immigration (UKVI). The other organisation is Border Force which is responsible for the frontline control of the UK's borders. UKVI is presently solely responsible for determining the trafficking status decision for all non-EEA nationals.

While there are regional differences in the organisations and individuals which are able to act as a 'first responder' to make an official referral of a person into the NRM the NRM is a UK wide system which prevents regional approaches from being developed. The focus in responding to potential trafficked persons is about concerns about controlling immigration rather than on best protecting the human rights of trafficked persons and ensuring that the rights required by the CAT are upheld. This means that throughout the UK the UKVI is the sole competent authority for all cases of non-EEA nationals.

Gallagher and Holmes (2008) argue that immigration authorities should not be responsible for officially identifying people as trafficked because they lack the necessary skills, knowledge and experience to identify all those who have been trafficked. However the central role of the immigration authorities in identifying trafficked persons in the UK is even more problematic. Beyond lacking the necessary skills and expertise, staff at the immigration authorities assigned to deciding trafficking status decisions have a specific interest in finding people not to have been trafficked. The central purpose of the UKBA and the UKVI has been to control and reduce immigration and to oversee the removal of undocumented migrants from the UK (ATMG. 2013. p19). An article in *The Guardian* newspaper showed evidence that the UKVI has financially incentivised targets for case workers to reduce the numbers of immigrants in the UK (Taylor and Mason. 2014). The pressure on the immigration authorities has been exacerbated by David Cameron's public commitment to see "net

immigration in the tens of thousands rather than the hundreds of thousands” (Prince. 2010).

There is an extraordinary conflict of interest in an organisation with targets for the number of people who enter the UK and who are deported from the UK being responsible for deciding whether someone has been trafficked when this provides them a short-term right to live in the UK (Geddes et al. 2013. p47). This conflict of interest has been highlighted and strongly condemned across a multitude of key responders from across the political spectrum. For example Huw Watkins, a former DI in Gwent constabulary asks, “How can you have an organisation making decisions on a victim of trafficking when they have a performance indicator that marks them on how many people they get to leave the country?” (Centre for Social Justice. 2013. p81) The CSJ recommended the UKBA be ‘relieved of its role as Competent Authority. One single Competent Authority – under the UKHTC – should oversee all decisions. There is no justification for the UKBA to have a Competent Authority role in the NRM’ (Centre for Social Justice. 2013. p81). Furthermore the involvement of the immigration authorities in making trafficking status decisions was challenged within the UK parliament. The report of the JCDMSB recommends ‘Officials with responsibility for determining immigration claims should not take decisions on modern slavery victimhood. There is an inherent conflict of interest in such an arrangement’ (Joint Committee on the Draft Modern Slavery Bill. 2014. p63). The fieldwork research found that support organisations are strongly opposed to the immigration authorities role as competent authority. For example, one support worker argued,

*I don't think it's controversial to be saying that nobody wanted the border agency to [be a competent authority.]The only agency that it would be controversial for would be the border agency themselves who were determined, they fought tooth and nail to retain control over the NRM (Appendix B. Interviewee 1).*

Deciding whether a person has been trafficked must not be influenced by their immigration status. The findings from studying the numbers of EEA nationals positively identified in comparison to non-EEA nationals that can only be decided by the immigration authorities can be regarded as demonstrating that immigration status can negatively influence status decisions. This would violate the principle of non-discrimination. For example the first ATMG report published in 2010 highlights

enormous differences in the rate of positive identifications. 76% of UK referrals received a positive identification decision compared to 29.2% of EU nationals and 11.9% for non-EU nationals. The report explains,

The different rates of positive identification do not prove discrimination against people originating outside the EU. However, the difference in the decisions is startling. On this basis alone, these figures merit further investigation by the Home Office, to check that individuals from outside the EU are not being subject to discrimination in the decision-making process (ATMG. 2010. p9).

Theresa May finally ordered a review of the NRM in December 2013. That it has taken so long for such a review to be agreed demonstrates a disregard for the possibility that people are facing discrimination which denies them identification and excludes them from their rights. The fourth ATMG report re-examines the different rates of positive identification. It finds over 80% of EEA nationals in 2012 received positive status decisions compared to less than 20% of non-EEA nationals. From this it concludes, 'There is valid concern that the immigration status of a trafficking victim inappropriately influences NRM decisions and that hence the decision making is unfair and discriminatory' (ATMG. 2013. p8). Dorcas Erskine, national coordinator at the PP was unequivocal in her oral evidence to the JCDMSB that non-EEA nationals suffer discrimination, 'We see a discriminatory effect on victims who are from outside the EU; they are seen as immigrants first rather than victims of a crime' (Joint Committee on Draft Modern Slavery Bill. 2014b. p6). Dorcas Erskine is implicitly arguing that instead of being identified as trafficked, non-EEA nationals are identified as immigration offenders, as criminals.

GRETA's evaluation report on the UK highlights that only 21% of non-EEA nationals positively identified is 'striking lower' than the 71% of EEA nationals positively identified (GRETA. 2012. p52). However it found no evidence of discrimination. GRETA's explanation for the distinction is 'the difficulties in obtaining evidence in the case of non-EU/EEA nationals could account for the different proportion of positive conclusive decisions' (GRETA. 2012. p52). This vague and unsubstantiated explanation is highly unsatisfactory. GRETA ignores the fact that non-EEA nationals without the automatic legal right to live in the UK have their trafficking status decided by an organisation responsible for limiting the number of people entering the UK.

Glyn Williams, former Director, Asylum and Executive Director at the UKVI, attempted to explain the distinction between the rate of positive decisions for non-EEA and EEA nationals in his oral evidence to the JCDMSB. His words highlight the crux of the problem with the UKVI being solely responsible for the identification of non-EEA nationals as trafficked,

Potentially, there are some differences in the circumstances of the cases. As a generality, we think that the EEA ones tend to come off the back, as it were, of a police investigation. Very often they are people who have been caught—sorry, not caught, but found in a trafficking situation, with the traffickers possibly to hand and the police involved. It is very immediate and their evidence can be corroborated by the police (Joint Committee on Draft Modern Slavery Bill. 2014a. p2).

This quote from Glyn Williams was used in Chapter 2 of this thesis but it is necessary to repeat it here and to explore his words within a different context. While Glyn Williams misspoke, the unintentional use of the word “caught” demonstrates the UKVI’s role and the culture of the organisation’s attitude towards irregular immigrants which should mean they are not a competent authority. There is a culture of disbelief within the immigration authorities towards immigrants as they act to protect the UK’s borders and to control immigration. This culture makes discrimination inevitable in the identification of trafficked persons without the legal right to live in the UK. A culture of disbelief prevents trafficked persons from being identified. (D’Estree. 2010. p81) Caroline Spelman, member of the JCDMSB, highlighted the Committee’s concerns about the culture of disbelief surrounding the identification of trafficked persons (Joint Committee on Draft Modern Slavery Bill. Oral Evidence. 2014b). The CSJ review highlights that ‘hostile, sceptical or culturally ignorant treatment of victims can assist the perpetrators to evade justice and continue offending’ (CSJ. 2013. p35). Potential trafficked persons who are non-EEA nationals may be treated as ‘guilty until proven innocent’ (Cherti, Pennington and Grant. 2013. p63). A support worker explained how disbelief undermines identification,

*The onus is on you particularly with the Home Office to prove that you have been trafficked. How do you prove that in the face of such cynicism and difficulty? It’s a big ask when we ask women to cooperate with us or with the Home Office and the police or whoever. It’s a huge ask and I think we sometimes forget what we are actually asking of her, if she’s utterly ashamed at being raped and being prostituted, and she’s utterly distraught that it’s*

*her dad who got her into it in the first place that the man she met here who she thought was going to help her just exploited her. It's quite incredible what we ask of them (Appendix B. Interviewee 1).*

The ATMG reviewed forty negative NRM decision letters issued by the UKBA. The reasons for these negative decisions provide evidence of a response prejudiced in favour of finding people not to have been trafficked. The ATMG disagreed with 90% of the negative decisions. In analysing these negative decisions the ATMG highlights how the competent authority 'focused on small inconsistencies in the victim's account to question the credibility of the whole account, it rejected claims because of a lack of corroborative police evidence' (ATMG, 2013, p8). A senior member of a support organisation explained,

*Credibility is a word we hear a lot (Appendix B. Interviewee 13).*

This quote highlights the disbelief and scrutiny of trafficked persons by the competent authorities. This evidence shows how the immigration authorities scrutinise people to find a justification for why they should be found not to have been trafficked which leaves them with no grounds to remain in the UK and no entitlement to the rights granted by the CAT.

The research also finds that people are denied identification as trafficked for not cooperating with the police. This contradicts the principle that access to support should not be conditional on cooperation with the police. These responses discriminate against people who have had no contact with the police. Denying people who have not cooperated with the police prioritises the interests of the State. Only those who agree to cooperate to see traffickers prosecuted and convicted will be identified as trafficked. The State has no interest in positively identifying people as trafficked and giving them access to support and assistance when they will not cooperate. Evidence of these responses is highlighted in the ATMG's written submission to the JCDMSB. The submission highlights the letter a child trafficked from Pakistan received from the UKVI which explained the reasons for their negative CG decision,

*It is also noted that there is no evidence to suggest that you have contacted the police in the UK regarding your alleged experiences as a victim of trafficking. Therefore, it is not accepted that you require time to cooperate with the UK*

authorities in respect of a trafficking related criminal investigation (ATMG. 2013. p22).

The Director of UKVI's evidence to the JCDMSB similarly justified a lack of positive identifications of non-EEA nationals because their evidence could not be 'corroborated' by the police (Joint Committee on Draft Modern Slavery Bill. 2014a. p2). These responses suggest a considerable aversion to considering the guidance of people who are experts in supporting trafficked persons and who most importantly are under no pressure to give people negative decisions. The UKVI's focus on police corroboration means relying upon evidence from people whose interactions with undocumented migrants were limited to criminalising them for immigration offences prior to the construction of the trafficking discourse. A support worker described the negative responses of some police officers,

*We have also had to challenge some attitudes around asylum and immigration with police officers. We've had a few occasions where prior to even meeting the woman the police are asking us in advance how is her asylum case going what stage is she at? And I've had police officers say this to me, 'people lie to get asylum'. We obviously challenge that very, very, quickly (Appendix B. Interviewee 1).*

Positive identification is not only important because it makes support accessible but also because it means people are believed and treated with dignity and respect. A negative decision is to label someone as a liar which can be deeply damaging for them. A support worker explained,

*it's not just we don't think you are a victim of trafficking because you don't fit the criteria, it's a credibility issue, by saying you are not a victim of trafficking is saying you are a liar and you are here to manipulate the immigration process, because you're saying this, and you're not going to get to stay (Appendix B. Interviewee 13).*

One support worker considered what it must be like for a person going through this process,

*I've been through all this and I finally told somebody which was very hard for me to do and you've completely just told me that I'm a big liar and what else can I do? I'm not going to talk to anyone it's not going to help me (Appendix B. Interviewee 14).*

Chertin, Pennington and Grant quote a twenty-seven year old trafficked woman's description of the extremely negative impact that receiving a negative NRM decision had,

That kills me more, that make[s] me feel like OK I want to die. There is nothing to live for, you understand? ... Because ... if I come to you, I tell you my story, you don't believe me, you're pushing me. You're telling me to like, oh you can go and [be] r e-traffic[ked], you can go and do what you want to do, I don't care.' [Female victim, 27] (Cherti, Pennington and Grant. 2013. p66).

The immigration approach prevents positive identification of trafficked persons when a person's asylum decision influences their trafficking status decision. The UK government's reply to GRETA's report claims that decisions about a person's status as trafficked and their asylum claim are separate,

conscious of the need for impartiality in determining whether an individual is a victim of trafficking where a related asylum claim is also being considered. For that reason we have already put in place a safeguard to ensure this separation of decisions is maintained (GRETA. 2012. p104).

However Karen Bradley, Minister for Modern Slavery and Organised Crime told the Joint Committee on the Draft Modern Slavery Bill that she believes a close relationship between these decisions is beneficial, 'There is some merit in having trained professionals who understand about asylum cases to use that expertise for trafficking cases also' (Joint Committee on Draft Modern Slavery Bill. Oral Evidence. 2014c. p8). Deciding whether a person has been trafficked has no relation to asylum. The claim there is 'some merit' in the close relationship between those decisions must be strongly disputed. Karen Bradley's comment exemplifies the extent to which trafficked persons are recognised as immigrants rather than as people requiring remedies for human rights violations.

The research finds evidence of policy and practice which contradicts the rhetoric in the UK government's reply to GRETA. The research finds that these decisions are not separate. The most obvious and significant example is that the UKVI is simultaneously responsible for deciding whether non-EEA nationals are officially recognised as trafficked and granted asylum. Some staff in the UKBA who worked on asylum cases would be assigned to spend one week in the month working on NRM decisions (Centre for Social Justice. 2013. p78). Rather than being separate decisions the research finds that the asylum decision can negatively influence the outcome of a trafficking status decision. This is demonstrated by the recognition that 54% of the women the PP supported in the twelve months up to June 2013 received negative RG decisions because of 'conflicting' accounts between their asylum claim and their

trafficking claim (Home Affairs Committee. 2013. p26). Support workers described how these decisions are treated as interconnected rather than as entirely separate,

*One of the real problems in the NRM is that they will talk about risk on return in those decisions where actually that's not [the point], that's for their asylum claim to decide . . . up to, someone saying I`m giving you a negative decision and just talks about risk on return to Nigeria. Well . . . that's not the point here, the point is whether they've been trafficked or not (Appendix B. Interviewee 5).*

Practice which most blatantly challenges the rhetoric of the UK government's reply to GRETA is that asylum decisions can be copied and pasted into NRM decisions and vice-versa. A support worker quoted in the 2010 ATMG report highlighted an example of this practice,

When a woman applied for asylum, she had at the same time a substantial interview for the NRM and an asylum interview. She then got a conclusive grounds decision and the asylum decision at the same time. Both documents seemed to have been copied and pasted from one another (ATMG. 2010. p59).

The fieldwork research also identified such practice. One support worker highlighted their experience of asylum application letters being copied and pasted into trafficking decision letters,

*what we have found in the past is that the trafficking decision can inform the asylum decision, we have had negative asylum decision letters where there [have] been cut and paste jobs from the conclusive decision. We've even had ones which are cut from other letters too so they've got the woman's nationality wrong in the middle (Appendix B. Interviewee 1).*

Copying and pasting text from the letter for a different person contradicts an individualised response and treats the individual without respect or dignity. Such responses suggest contempt for the outcomes for these people.

### **The Barriers to Overturning a Negative Decision**

There are a number of significant barriers in policy which prevent trafficked persons from overturning a negative status decision. These policies dismantle the UK government's impressive rhetoric. However these barriers to identification and support are compatible with the CAT.

A genuine human rights approach requires the accessibility of all legal remedies for trafficked persons. This includes the right to appeal decisions made by the competent



authorities. The UK government has not provided trafficked persons the right to appeal negative RG or CG decisions awarded by the competent authorities. The absence of such a right is of tremendous significance. This has been noted by practitioners and researchers. Raggi Kotak, former coordinator of the Anti-Trafficking Legal Project (ATLeP), an organisation of solicitors and barristers who represent trafficked persons, argues ‘Potentially the most serious flaw in the system for the identification of victims of trafficking is the UK Government’s failure to establish an appeal system to challenge negative decisions.’ (Kotak. 2009. p2) The 2013 EHRC report explains ‘in circumstances where decisions will have profound consequences for a victim, a formal right of appeal is essential’ (Equality and Human Rights Commission. 2013. p59). Dr Aidan McQuade, Director of Anti-Slavery International argues the absence of a right to appeal ‘seems to be completely at odds with the basic principles of the rule of law’ (Joint Committee on Draft Modern Slavery Bill.2014b. p14).

Despite the enormous significance of a negative decision, an evaluation of the UK’s response which is limited to the rights granted by the CAT concludes the absence of a right to appeal is acceptable. The CAT does not require States to provide a right to appeal (ATMG. 2010. p41). It can only be argued that this is contrary to the spirit of the purpose of the CAT declared in Article 1.b ‘to protect the human rights of the victims of trafficking.’ This is denied when people are excluded from their rights because they wrongly received a negative decision they were unable to challenge.

The UK government’s claim to seek to identify and support the greatest number of people is severely undermined by the absence of a right to appeal. If the central aim of the NRM was protecting the human rights of all trafficked persons and providing them support it would provide a right to appeal negative decisions. The absence of such a right reflects this is not the priority (Brunovskis. 2012. p57). The UK government is more concerned with protecting its control over immigration by preventing people from being able to extend their time in the UK than trafficked persons being excluded from support because of incorrect negative decisions. The government’s written reply to GRETA indicates the focus on controlling immigration, ‘Once a decision has been made through the NRM by a trained Competent Authority that an individual is not a victim and has no other basis of stay, we cannot tolerate illegal presence in the UK’ (GRETA. 2012. p93). A right to appeal a negative decision

would enable people to prolong their stay in the UK as they awaited the decision of their appeal and would provide them additional time following a successful appeal.

The lack of an appeal is not only harmful for the 'P' of protection but also to the interests of the State and the P's of prevention and prosecution. The government's interests in controlling immigration into the UK and convicting traffickers are undermined by the impunity which is effectively given to traffickers when those they trafficked are denied status which prevents them providing the police evidence about their traffickers and from participating in criminal proceedings. Trafficked persons who are misidentified and then detained and deported from the UK may be re-trafficked meaning they may make another clandestine journey into the UK. Ensuring trafficked persons have the right to appeal an incorrect negative status decision benefits the short-term and long-term interests of trafficked persons and the long-term interests of the State.

The UK government established an NRM Oversight Group which reviews sample cases on an ad hoc basis (Malloch, Warden and Hamilton-Smith. 2012. p25). Randomly reviewing cases is tokenistic and inconsequential. It does nothing for those already wrongly denied identification. Support organisations have to rely upon informal requests for a negative CG or RG decision to be reconsidered if they believe it is wrong (Cherti, Pennington and Galos. 2012. p13). The only legal option available to challenge a decision is a judicial review. However this cannot be considered an acceptable alternative to a right to appeal. Stepnitz explains why, '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' (2012. p112). The number of successful cases provides evidence of the inadequacy of judicial review to overturn negative decisions. Between April 2009 and 31<sup>st</sup> October 2012 only seventeen negative decisions were challenged by judicial review. In only four cases were these decisions overturned (Hc Debate. 31 October. C243).

The GRETA report on the UK's compliance with the CAT also argues judicial review is an unsatisfactory alternative,

The possibility for judicial review is not a replacement of or an alternative to appeal because, unlike appeal, judicial review cannot re-examine the facts of the case and take a new decision; it rather looks at the lawfulness of a decision

made by a public body and has the power to challenge the way in which the decision has been made (GRETA. 2012. p53).

It is very significant GRETA highlights that judicial review is not an alternative to an appeal because the CAT does not require States to provide trafficked persons the right to appeal. This demonstrates how the body responsible for evaluating States compliance with the CAT acknowledges the inadequacies of the CAT to protect trafficked persons.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 which entered into force on 1<sup>st</sup> April 2013 significantly reduced the ability of trafficked persons to overturn a negative decision by judicial review. It excludes trafficked persons from entitlement to legal aid for judicial review unless they have received a positive RG decision (ATMG. 2013. p28). This makes judicial review inaccessible for those who need it the most. A person may require judicial review because they have received a negative decision but this decision excludes them from being eligible for legal aid for a judicial review. This is a cruel and impossible catch twenty-two situation which minimises the number of people who will be identified. Shailesh Vara, The Parliamentary Under-Secretary of State for Justice, was asked if the UK government would consider providing an exemption for trafficked persons whose status is being contested. He replied, ‘We have made it absolutely clear that for the residence test it is important that they are our people—that they have some link to this country. We have set out where there are exceptions, and that has been made abundantly clear’ (HC Deb. 18 March 2014. C624). This constitutes discrimination on the grounds of immigration status.

The already tremendous difficulties to overturn a negative decision are further exacerbated by the requirement of the 2011 MOJ contract that support organisations funded by the UK government cease all support for people within five days of them receiving a negative decision (Home Affairs Committee. 2013. p3). A support worker from the PP explained,

*[O]ne of our big concerns with the contract, with the government contract whilst we’d held the contract we were able to continue supporting women who were challenging negative NRM decisions and they [the MOJ] were absolutely clear that they weren’t going to let us to do that anymore (Appendix B. Interviewee 5).*

Trafficked persons excluded from the care of support organisations will be unable to receive the assistance they require to overturn their negative decision.

The UK should respond in a way which respects a normative genuine human rights approach. This requires that trafficked persons have a statutory right to appeal a negative status decision. This is necessary for the response to be consistent with the UK government's rhetoric that it is 'committed to bringing as many victims as possible into the NRM' (GRETA. 2012. p100).

### **Policies Contradicting Unconditional Support**

Article 12.6 of the CAT requires 'assistance to a victim is not made conditional on his or her willingness to act as a witness.' Despite some positive developments this study has found that the principle is contradicted in the UK by policies which make the responses to trafficked persons conditional, excluding them from being positively identified and accessing support and receiving protection.

Between 2003 and 2009 the PP was the only organisation funded by the UK government to support trafficked adults. The 2003 contract only supported women on the condition they had been trafficked for sexual exploitation and accessed the PP within thirty days of exiting their exploitation (Joint Committee on Human Rights. 2006. p52). Beverley Hughes former Minister for Citizenship and Immigration explained access to support was conditional on "a willingness to come forward and co-operate with the authorities in the combating of international organised crime that could lead to prosecutions of criminals" (HC Deb. 10 Mar 2003. Column 3WS). This conditionality was described by a member of staff from the charity Asylum Aid as 'unfathomable' (Women's Commission for Refugee Women and Children. 2005. p28). In practice the PP was able to exercise some discretion and make support accessible for trafficked women who did not fulfil such conditionality. Fifteen of the ninety-nine women supported between 2003 and 2006 did not fulfil all the eligibility criteria for support (Joint Committee on Human Rights. 2006. p52). The 2006 Home Office contract also made support conditional on cooperation with criminal proceedings (Craig et al. 2007. p59). The Home Office took a law-enforcement approach which only supported trafficked women who would help the authorities. The protection of trafficked persons was a means to an end rather than an end itself.

These responses disregarded the human rights of those trafficked persons who were unable or unwilling to support the police.

TARA, the sole recipient of government-funding to support trafficked women in Scotland until 2009, has only been funded to support women trafficked for sexual exploitation. However in practice TARA has supported women trafficked for other forms of exploitation if they had experienced sexual violence within the trafficking situation. Since the Scottish government began funding Migrant Help access to support is no longer conditional on the individual being a woman trafficked for sexual exploitation. Until 2009 access to government-funded support in the UK was conditional on the person being a woman who was sexually exploited or abused. During this time many trafficked women and all trafficked men were excluded from specialist support.

Article 12.7 of the CAT requires that trafficked persons give informed consent to all support and assistance provided. Consent is essential because it respects people as autonomous agents who are active participants in their support and recovery (Copic and Simeunovic-Patic. 2012. p272). This is upheld in policy in the UK to the extent trafficked persons are required to give written consent to being referred into the NRM. However access to government funded support is conditional upon a person being referred into the NRM. People are not entitled to be treated in respect of the CAT without first entering the NRM. Consequently people may feel under significant pressure to be immediately referred when the alternative is exclusion from government-funded support. The UK government's reply to GRETA warns, 'The position on illegal presence in the UK will also apply if the person does not enter the NRM and of course they will not benefit from any recovery and reflection period' (GRETA. 2012. p93). Within this context many people cannot give true consent. Trafficked persons will have to be referred to temporarily avoid detention as undocumented migrants and to have the possibility of accessing government-funded support. A support worker explained the choice people have when they are discovered,

*The police have picked them up and said 'you're either going to this project or you are going to the immigration detention centre.' They might say 'well I'll go to the nice project thanks (Appendix B. Interviewee 5).*

It is difficult to consider people to have given their consent when the alternative is punishment.

The requirement for people to be referred into the NRM does not serve to ensure protection and support is accessible and inclusive. Support and assistance will be delayed and made inaccessible by the requirement of a referral into the NRM. The 2013 US State Department Trafficking in Persons report recommends the UK government establish a 'pre-reasonable grounds' decision period which enables people to access support before having to engage with the police, competent authority or the first responder to complete an NRM referral form (US State Department. 2013. p378). The PP does not require individuals to be referred to the NRM before they can access their support. This is consistent with a genuine human rights approach. It prioritises providing unconditional support to those presumed to require it.

Making access to support conditional on a referral into the NRM demonstrates how the responses to trafficked persons prioritise concerns about controlling immigration and protecting State sovereignty. Requiring individuals to be referred to the NRM to access support means trafficked persons who are irregular migrants become known to the UKVI who can then easily have them detained and deported if they receive a negative decision. It ensures the competent authority can identify those who are not 'genuine victims' and like the victim discourse it legitimises and normalises the inaccessibility of rights for undocumented migrants. The necessity of a referral to the NRM means the State continues to determine whose human rights are upheld and whose are denied (Anderson and Andrijasevic. 2008. pp143-144).

A genuine human rights approach should require automatic discretionary leave to remain for those with a positive CG decision. The requirements to receive discretionary leave to remain in the UK contradict an unconditional response. However the response is consistent with the CAT which does not provide a right to automatic residence permits. There are two conditions for an individual to be granted leave to remain; when their "personal circumstances" require additional residency or for assisting a police investigation against traffickers. The policy for being granted discretionary leave to remain takes a law-enforcement approach. Immigration case workers only have to consider the possibility of providing

discretionary leave to remain for people on the grounds that their personal circumstances require it. Whereas the guidance states case workers should provide discretionary leave to remain to people supporting criminal investigations and proceedings. There is no comprehensive explanation of what constitutes such personal circumstances. As a consequence people are denied discretionary leave to remain despite requiring additional support and assistance. Only twenty-eight trafficked persons in 2011 and eighteen in 2012 received discretionary leave to remain on the grounds that it was necessary owing to their personal circumstances (HC Deb. 13 Jan 2014. c435W). The UK government accepts that only some trafficked persons have personal circumstances requiring them to stay in the UK beyond their short reflection period. This is contrary to recognising trafficked persons as people who have suffered human rights violations and contradicts the UK government's rhetoric on the horrors of trafficking. For the government's response to be consistent with its own description of the impact trafficking has on people it should provide automatic discretionary leave to remain for trafficked persons who seek it. The concerns about protecting controls over immigration are prioritised over the protection of trafficked persons. Automatic residence permits have not been introduced because such a policy would require a significant relaxation of the State's powers over immigration (ATMG. 2013. p42).

The most egregious violation of the principle of unconditional support and an individualised response is the construct of the "historical victim." This construct denies trafficked persons identification and excludes them from the rights required by the CAT. This response utterly contradicts the purpose of the CAT and a genuine human rights approach. The construct of the historical victim makes positive identification conditional on the competent authority accepting the person was trafficked recently enough to merit receiving support. The UKBA produced guidance describing a historical victim and how they should be treated,

there may be instances where a Competent Authority believes someone may have been a victim of trafficking, but at the time their case is referred, concludes on the facts of the case that the person is no longer in need of the protection or assistance offered under the Convention because the individual's circumstances have changed so much since the trafficking occurred. A negative decision in such cases would not be denying that someone may have been a victim of trafficking in the past, simply that at the time of assessment they did not meet the Convention criteria or need the protection or assistance that it can afford (UK Border Agency. 2010. p24).

The construct of the historical victim was ruled to be unlawful and a misrepresentation of the CAT by Lord Justice Aikens in the High Court of Justice in September 2013 (R and Secretary of State for the Home Department. 2013). The CAT does not require that people were in the trafficking situation at the time of identification or to approach the competent authorities within a certain time frame to be positively identified and treated in respect of the rights required by the CAT.

If the approach to trafficked persons was consistent with a genuine human rights approach and the UK government's rhetoric about the horrors of trafficking in persons then there would be no construct of a 'historical victim' which permits an expiration date on first accessing remedies for human rights violations. This unlawful misrepresentation of the CAT contradicts the UK government's rhetoric that it is, 'committed to bringing as many victims as possible into the NRM' (GRETA. 2012. p100). This is demonstrated by the evidence that 23% of the negative RG decisions for women supported by the PP in the twelve months up to June 2013 were because they were historical cases (Home Affairs Committee. 2013. p26). A support worker from the PP wrote an opinion comment in *The Independent* newspaper which described the consequences for those labelled as a historical victim,

Women who are deemed 'historical victims' are generally not granted the designated reflection period which should give them access to safe accommodation and specialist support, but are left in vulnerable positions of potential destitution, re-trafficking and further exploitation (Albuerne. 2012).

The UK government attempts to justify the exclusion of historical victims by arguing a person will only receive a negative decision because they are a historical victim when a significant amount of time has passed since they were trafficked. However this is contradicted by GRETA's research which highlights a case where a person received a negative decision on the grounds they were a historical victim despite only having left the trafficking situation six months previously (GRETA. 2012. p52).

The historical victim denies an individualised approach which recognises people have unique experiences and requirements and will respond differently to the trauma of trafficking. One support worker explained how the need for an individualised response was contradicted by the historical victim which takes an arbitrary approach,

*[The competent authority will] say 'well she's been here for two years that is adequate time to recover.' You can't have an arbitrary amount of time that gives a woman time to recover because women are different, impacts are*



*different, impacts can be extremely enduring. You have to take individual circumstances into account (Appendix B. Interviewee 15).*

Peoples' exposure to harm and danger may not end after they exit the trafficking situation. Trafficked persons may enter situations which are not conducive for recovery or which exacerbate and prolong their trauma and suffering. A 2013 IPPR report documented the harmful experiences trafficked persons from Nigeria endured in the UK after escaping trafficking situations. The report explains 'many experienced further exploitation or entered abusive relationships where they continued to be subjected to physical violence' (Cherti, Pennington and Grant. 2013. p56). Interviewees described cases of trafficked persons who escaped their traffickers and remained in the UK as irregular immigrants. Those people described the constant fear of being discovered by the authorities and being detained and deported. Those who have been trafficked may continue to be exploited and abused and denied their rights as a consequence of the UK government policies towards irregular immigrants.

### **A Critical Analysis of the Forty-five day Reflection Period**

The policy of the reflection period provided in the UK exemplifies the CAT's failure to protect trafficked persons human rights and guarantee responses which make individuals physical and psychological recovery possible. The reflection period illustrates the CAT's internal contradiction between its rhetoric and the realities of the rights it provides. While the reflection period provided in the UK is consistent with the CAT this policy contradicts the principles of a genuine human rights approach and conflicts with the UK government's message about trafficking in persons and its responses to those affected. The reflection period is the same duration in each of the four regions of the UK because providing trafficked persons a reflection period is considered to be an immigration issue which is an area of policy controlled by the UK government.

Article 13.1 of the CAT requires 'Each Party shall provide in its internal law a recovery and reflection period of at least thirty days, when there are reasonable grounds to believe that the person concerned is a victim' (Appendix A). This right is upheld in the UK. People who receive a positive RG decision are entitled to a forty-five day reflection period. The UK government presents this as a generous and substantial

length of time, highlighting the additional fifteen days as evidence of commitment to supporting trafficked persons. For example the Government's Strategy states, 'The UK grants a minimum forty-five day period – this is fifteen days more than the thirty day minimum standard' (HM Government. 2011. p9). The UK government's draft Modern Slavery Bill echoes this, 'We are required to provide victims with thirty days for 'reflection and recovery' but fund an additional fifteen days' (Home Office. 2013. p13).

An evaluation of the reflection period against the duration required by the CAT finds the UK's response exceeds expectations. This emphasises the limitations of the rights granted to trafficked persons by the CAT. It is not evidence of a government committed to providing comprehensive protection and support. Forty-five days cannot guarantee trafficked persons meaningful access to their rights required by the CAT. Forty-five days does not fulfil the CAT's purposes for the reflection period which requires it '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.'

The SA has not publicly challenged the problems with providing only forty-five days for a reflection period. Instead the SA upholds and defends the UK government's rhetoric. It presents the reflection period as providing sufficient time by suggesting recovery can happen very quickly. The SA 'one year review' quotes a trafficked person supported by a sub-contractor who explains their surprise at how quickly they recovered, "That I could pull my life back together so quick. I was quite surprised, I thought it would take a lot longer to pull it back together" (Salvation Army. 2012. p10). This carefully selected quote to portray the reflection period as satisfactory demonstrates how 'giving a voice' to trafficked persons does not guarantee their participation as empowered advocates for their own rights.

Abigail Stepnitz critiqued the inadequacy of the forty-five day reflection period in her evidence to the 2010 Scottish Parliament Equal Opportunities Committee inquiry into migration and trafficking when she was the national coordinator at the PP. She highlighted it does not meet internationally recognised minimum standards, 'The forty-five day reflection period . . . is not even at the minimum end of what is considered to be best practice' (Scottish Parliament Equal Opportunities Committee.

2010). The 2004 report by the Council of Europe Experts Group on Trafficking in Human Beings both called for a minimum ninety day reflection period,

A period of three months is a minimum time frame in which to ensure that the presumed trafficked person receives appropriate assistance and support, such as secure housing, psychological counselling, medical and social services, and legal consultation (Experts Group on Trafficking in Human Beings. 2004. p3).

In 2006 the Joint Committee on Human Rights recommended that the UK government introduce a minimum ninety day reflection period. Many of the Council of Europe member countries provide a minimum of ninety days for the reflection period. For example Norway provides a six month reflection period, while Romania, Poland, Slovenia and the Netherlands all provide three months.

There was consensus from participants in the fieldwork interviews that the reflection period in the UK does not provide the time necessary for reflection and recovery. A clinical psychologist explained,

*based on our expertise as the psychological people, psychological recovery does not occur in forty-five days and in fact does not even occur in ninety days which is the best practice model we'd like to see (Appendix B. Interviewee 16).*

One interviewee in particular strongly criticised the inadequacy of the duration of the reflection period given the experiences people have suffered,

*forty-five days is nowhere near along enough. It's an absurd amount of time for somebody who may well have been through significant trauma and trauma that is likely to be long lasting, life lasting, forty-five days is almost an insult, 'oh you know forty-five days, we'll allow you forty-five days to reflect', it's astonishing (Appendix B. Interviewee 7).*

Another interviewee explained,

*forty-five days is not long enough. It sounds quite long when you say it in weeks – its six and a half weeks. But when you consider that a victim may be coming out of ten, fifteen years of servitude in any form to then have six weeks to be expected to get their lives straight and make decisions about what they want to do with the rest of their life it's a bit like throwing them in at the deep end to an extreme really. . . . six weeks is a very short amount of time to get your head straight coming out of any sort of circumstances never mind one where you've had no control of your own life (Appendix B. Interviewee 10).*

It is not only support organisations who consider forty-five days insufficient. A Detective Sergeant (DS) questioned the limitations of the length of time to access support,

*The support network that kind of kicked in didn't give them a lot in terms of long term benefit. There was short term benefit . . . They are almost put back on their feet. I think they have something like a six week turn around or something ridiculously quick to get them from where they were to back into normal functioning life (Appendix B. Interviewee 17).*

A forty-five day reflection period requires people to make life changing decisions about cooperating with the authorities while they are only beginning the long process of recovery and still experiencing multiple symptoms of mental illness. Zimmerman et al (2006) studied the physical and mental health effects of trafficking upon women. The study interviewed 207 women trafficked for sexual exploitation or who had experienced sexual abuse during their trafficking experience (Zimmerman et al. 2006. p6). The research found 71% of the women experienced ten or more mental health symptoms within the first fourteen days of being supported. Between twenty-eight and fifty-six days this had reduced slightly to 52%. A forty-five day reflection period requires people to decide whether they wish to assist a criminal investigation or apply for leave to remain or asylum during this time when the majority of women in the study were suffering from ten or more symptoms. After ninety days only 6% of the women were experiencing ten or more symptoms (Zimmerman et al. 2006. p11).

An evaluation of the reflection period against the UK government's rhetoric describing the harm of trafficking in persons must conclude that forty-five days is enormously inadequate. People who have suffered human rights violations are treated as if they have only experienced a minor misdemeanour. A member of the Cross Party Group on Human Trafficking in the Northern Ireland Assembly, considered what a response consistent with the UK government's rhetoric would look like,

*they [trafficked persons] have been subjected to the most horrendous crime, a heinous crime. Surely we should have more compassion for these people and at least allow them a longer time to recover in our country before they are returned to their country? And forty-five days I think is too short. Yes, France is right, ninety days, but I would say six months to a year would be a better time (Appendix B. Interviewee 18).*

The UK government is not oblivious to the arguments that forty-five days is inadequate and considerably shorter than the reflection periods provided by the majority of signatories to the CAT. It has been recommended numerous times that the reflection period should be extended to a minimum of ninety days. The UK government has resisted such recommendations to protect its control over immigration into the UK. This is prioritised over the protection of trafficked persons. For example, the UK Government's official reply to the 26<sup>th</sup> Joint Committee on Human Rights report on human trafficking explained the UK had not yet signed the CAT because it was continuing to examine its impact upon 'immigration controls',

We are wholly sympathetic to the objectives behind the Convention and will take into account the comments made by the Committee. We are continuing to assess the level of risk associated with some of the Convention provisions and how we might implement them safely without placing more vulnerable people at risk whilst maintaining effective immigration controls (HM Government, 2006, p20).

The UK government has argued providing a substantial reflection period would be a pull factor for immigration. Concern about the reflection period's potential impact on immigration controls caused the long delay between the CAT being opened for signature on 16<sup>th</sup> May 2005 and the UK government signing the CAT on 17<sup>th</sup> December 2008 (Harvey, 2008, p218). Labour MP Meg Munn demonstrated this when she answered a question in the House of Commons in 2006 for the Minister for Women, 'We are concerned about one aspect of the convention—that the automatic reflection period may be a pull factor in respect of immigration.' In 2006 Paul Goggins, a Home Office Minister in the Labour government expressed the government's concern about the negative consequences of the reflection period, "People will claim to be victims of human trafficking when they're not, they'll use it as a way of extending time here" as quoted in (Jobe, 2009, p279).

The concerns that an extended reflection period would act as a pull factor for immigration are unsubstantiated assertions. The 2006 Joint Committee on Human Rights report dismissed such arguments as 'largely, if not entirely, unfounded' (Joint Committee on Human Rights, 2006, p65). The 2013 US State Department 'Global Report on Trafficking in Persons' declared that countries offering support 'have not found false claims to be a problem' (US State Department, 2013, p19). However the argument that these concerns not supported by evidence should influence the

response to trafficked persons is accepted outside of government. The 2013 report by the left of centre IPPR argues,

These issues need consideration: the duty to people who are victims of crime and the duty to safeguard people whose lives are in danger; the risk of encouraging irregular migration and the practical ability to provide this support must influence our response (Cherti, Pennington and Grant. 2013. p54).

The 'duty to safeguard people whose lives are in danger' is subordinate to controlling immigration.

A genuine human rights approach should not focus on the arbitrary length of time of the reflection period. Trafficked persons require an individualised response ensuring they have sufficient time to access support enabling their physical and psychological recovery and to make informed decisions about what they do next. The forty-five days reflection period is a one-size-fits-all approach which cannot effectively respond to the enormity of the different characteristics, experiences and requirements of each individual. An individualised response requires the duration of support matches the requirements of each person. The forty-five day reflection period forces peoples' needs to match the pre-determined duration of support. During a debate in the Northern Ireland Assembly on the findings of GRETA's evaluation of the UK's responses to trafficking in persons, MLA Rosaleen McCorley argued for such an individualised response,

I do not believe that a limit should be set. It must be borne in mind that people are traumatised by their experiences. It is not really possible to know what a person has been through in any given case, so limiting the period of reflection and time for consideration does not help. It should be more flexible (Northern Ireland Assembly. Official Report. 2012. p19).

The SA portrays the reflection period in the UK as providing an individualised response. Its six month reviews explains it 'can be extended if required' (Salvation Army. 2012.b). At the Home Affairs Committee in 2013 the MP Nicola Blackwood asked Ann-Marie Douglas, 'Do you think that forty-five days is a long enough period for reflection, as it is called?' Her disingenuous reply was, 'I think the forty-five days is the minimum period, and some of our victims have remained within the service for more than forty-five days' (Home Affairs Committee. 2013. p6). The PP's depiction of the reflection period as wholly inadequate is juxtaposed against the SA's portrayal of it as flexible and sufficient. GRETA supports the claim that the reflection period is

individualised, explaining it ‘can be extended, if there is evidence of on-going acute support needs related to their trafficking experience’ (GRETA. 2012. p108). This description of trafficked persons who require longer than forty-five days for reflection and recovery as having ‘acute support needs’ emphasises the limitations of the CAT’s approach.

Claims of an individualised response are contradicted in policy and practice. People are pressured into exiting support after forty-five days and not to request that their reflection period be extended. The SA’s written evidence to the Home Affairs Committee makes no reference to reflection periods being extended in practice. It only explains that ‘Once the service user has received a conclusive grounds decision they are required to leave the service’ (Home Affairs Committee. 2013. p3). The CSJ explains sub-contracted organisations are under pressure to get people to exit support before they are ready and highlights the negative consequences of this,

they are under even more pressure to move victims on quickly, and before they are ready. This is dangerous: if aftercare providers are forced to move an individual into independence when they are not prepared, the risks of that person falling back into vulnerability are very high (Centre for Social Justice. 2013. p172).

I spoke to two members of staff from two sub-contracted organisations at a SA conference on human trafficking in April 2013. Their descriptions of the reflection period policy contradicted an individualised response. One of the support workers explained,

*we have to work to some very restrictive boundaries (Appendix B. Interviewee 19).*

The other highlighted that their organisation no longer attempts to get reflection periods extended because of pressure not to from the MOJ. Bindel, Breslin and Brown (2013) interviewed staff at the SA who explained they are required to refer people to other forms of support after their forty-five day reflection period expires. They could not elaborate on the nature of this support, only explaining nobody had ‘gone on the streets’ after leaving sub-contracted support (Bindel, Breslin and Brown. 2013. p54). This demonstrates the acceptance of the most minimal standards. The ATMG highlights that sub-contracted organisations have been advised to make people homeless after their reflection period expired so they would become entitled

to other forms of support through recognition as destitute (ATMG. 2013. p35). An interviewee from a sub-contracted organisation explained a response which contradicts an individualised reflection period. A woman they had supported became homeless after they were required to stop supporting her because she had been with them for too long,

*A woman that we worked with for a long period of time were still in contact with her but we had to move her on because she'd been with us too long . . . at the moment she has no recourse and no accommodation, so we get her food parcels, bits of cash, we can no longer accommodate her but we would not stop supporting her because we're all she's got (Appendix B. Interviewee 15).*

Despite these pressures to not extend the reflection period significant numbers of people access government-funded support for considerably longer than forty-five days. This is the consequence of the competent authority frequently not making decisions within forty-five days. This is why Ann-Marie Douglas's answer was described as disingenuous. An interviewee from a government-funded support organisation explained,

*because of the lengthy decision making process the forty-five days is often academic rather than a reality (Appendix B. Interviewee 20).*

The 2010 ATMG report highlighted that out of 139 people waiting for a CG decision seventy-four waited between forty-six days and three and a half months (ATMG. 2010. p36). GRETA's evaluation report notes that between July and September 2011 the median waiting time for a CG decision was eighty-three days (GRETA. 2012. p49). The average wait for a CG decision for those supported under the SA contract is 104 days (Home Affairs Committee. 2013. p5). The fieldwork research for this thesis identified one case where a CG decision had taken nine months and the longest wait was over a year. If forty-five days does not provide the competent authorities enough time to determine whether a person is a 'genuine victim' then it cannot be considered sufficient for those people's reflection and recovery.

Some argue these delays are beneficial because they provide people longer access to support. The CSJ report explains,

*it is important to note that in some cases a slow decision from the Competent Authority can benefit a survivor. For someone who is recovering from a very traumatic experience and is in need of a high level of support, a delay in their Conclusive Grounds decision will allow them to access the support of aftercare providers for an extended period (Centre for Social Justice. 2013. p171).*



An interviewee from an organisation supporting trafficked men spoke positively about the delay in receiving a decision because it meant extended support,

*My view is that the reflection period for the clients that we've cared for has been sufficient because [in] a lot of occasions that reflection period has been much more than forty-five days because no decision has been made and with the cases we've dealt with that's been a sufficient period of time (Appendix B. Interviewee 21).*

A genuine human rights approach requires individuals have a reflection period which is sufficient for their physical and psychological recovery. The extended support in these delayed cases is not because of any intention to respond to the requirements of individuals. Any benefit is entirely unintentional. That it can be suggested people benefit when the NRM is failing is a damning assessment. Furthermore the delays in decisions can have very harmful consequences (Malloch, Warden and Hamilton-Smith. 2012. p36). People may suffer significant stress waiting for these decisions which may have very negative consequences for their overall mental health and wellbeing (ATMG. 2013. p17). A woman trafficked for domestic servitude described the impact of waiting on a decision,

I feel so worried, I don't know what's going to happen – this worries me more. My solicitor is still waiting for the Home Office. Sometimes I wake up in the middle of the night and I'm crying, I just want to know what is happening with my case . . . I keep thinking when is this going to be over (Lanai. 2011. p29).

Two interviewees from different support organisations explained the difficulties for individuals waiting on overdue decisions,

*It's an awful situation to be in, whether it's [waiting] on trafficking status or asylum status (Appendix B. Interviewee 20).*

*it is worrying because yes it is okay they have secure accommodation but then other people are moving on and this woman is still [here] . . . it's just not good for her either as an individual. But then you can't then say we'll move you on to. Where do we move them on to? We can't move them anywhere because [there are] limits to what they can access. So we will support them until they get a decision (Appendix B. Interviewee 22).*

Brunovskis (2012) argues most countries rationale for providing a reflection period has been to increase the convictions of traffickers. Protecting and supporting trafficked persons has been treated as an 'additional goal' (Brunovskis. 2012. p18). The opportunities which a reflection period should provide can be disrupted by the prioritisation of the law-enforcement and immigration approaches.

People in the UK experience a reflection period where providing support is treated like an ‘additional goal.’ The reflection period can be consumed by interviews with the police to provide evidence and intelligence about traffickers. It is also disrupted by excessive scrutiny from the competent authority in which trafficked persons have to prove they are a ‘genuine victim.’ Evaluating these responses against the CAT finds them acceptable. The CAT affirms that the prosecution of traffickers should not be undermined by providing support.

A support worker explained,

*It’s supposed to be a reflection, to me what would work as reflection is time to stop and think about what’s happened . . . But if you are actively trying to explain yourself and tell your story and people continually and sometimes not believing that story you don’t really have time to reflect properly (Appendix B. Interviewee 22).*

A support worker described the extent of the different procedures individuals can be involved with during their reflection period and how these undermine reflection and recovery,

*You have the different elements of the police interviewing you. You have the criminal one around the trafficking. You would have the rape crisis centre of the police around the abuse, . . . you would have the solicitors . . . you would have the UKBA, you would also have medical teams having examinations it is certainly for the first two weeks when women come to us it can be quite challenging at that period of time the police may even take them out to try and recoup their steps, to gather evidence, to look at their story and see whereabouts in the country where they came from, trying to catch these men who have exploited them obviously. But for the women it can be a very frightening time and it’s at that time I think that they need quite a lot of support and certainly workers here would need to be with them, befriend them, keep them safe and certainly when they get back here really all they want to do is have a bath or shower, go to bed or relax and watch television or maybe try to contact their family at home (Appendix B. Interviewee 23).*

## **Inaccessible Physical Healthcare**

A genuine human rights approach requires that the highest standards of physical healthcare are equally available to all trafficked persons without discrimination. The principle of non-discrimination is violated by practice which excludes trafficked persons from accessing primary health care because of their immigration status. These responses contradict the rhetoric of the Preamble and Article 1.b of the CAT. However the responses are compatible with the right to healthcare provided by

Article 12 (b) of the CAT which only guarantees trafficked persons with irregular immigration status the right to ‘access to emergency medical treatment.’ Article 12 (b) accepts discrimination and that States can prioritise their concerns about immigration controls over trafficked persons’ human right to healthcare.

The fieldwork research identifies trafficked persons may be prevented from or delayed in registering with General Practitioners (G.P’s) because they have no proof of their right to be in the UK. A support worker explained,

*until they receive a reasonable grounds decision G.P’s won’t allow us to register them with them. So what we’ve had to do is take them to accident and emergency where we’ve identified any immediate medical needs (Appendix B. Interviewee 21).*

The difficulties for trafficked persons to access primary healthcare have been exacerbated by inexperienced organisations becoming sub-contractors. This further undermines the UK government’s rhetoric that the 2011 MOJ contract meant organisations with ‘expertise’ would support trafficked adults. Experienced support organisations explained in the fieldwork interviews that difficulties registering people with a G.P was a historical problem which had been overcome through experience and familiarity with local surgeries and doctors,

*Registering with a GP, that’s fine now. It took a bit of time to talk to the GP practices in the areas where our houses are in terms of registering women with no identification and no proof of address . . . and sometimes outreach workers struggle a bit with that. But usually ultimately you can get past that by talking to the practice manager we don’t really have any problems with people not being able to register with GPs at all (Appendix B. Interviewee 5).*

Support workers from organisations without experience prior to becoming sub-contractors described their difficulties in navigating health services on behalf of trafficked persons without status. Two members of staff from such an organisation explained the difficulties,

*It wasn’t straight forward. They had to go and meet with the manager, with the practice manager and sit down and on a one-to-one basis make an agreement . . . it was very difficult (Appendix B. Interviewee 11).*

*it was extremely difficult, all they were doing was going backwards and forwards, going backwards and forwards with information that they had requested, go back with it and they’d come up with another excuse, go back with that information that they needed and they’d come up with another excuse. So it was extremely difficult and these women were extremely*

*vulnerable anyway and felt even more vulnerable because it felt like nobody wanted to know them (Appendix B. Interviewee 24).*

Trafficked persons have a very limited amount of time to access support and assistance. Any delays in the ability to access physical healthcare may be extremely problematic.

While inaccessibility of primary healthcare is compatible with Article 12(b) it is contrary to UK law. There is no formal obligation for a person to prove their right to residency in the UK when registering with a G.P A 2012 document by The British Medical Association makes it clear ‘Practices are not required to check the identity or immigration status of people registering to join their lists and there is no obligation on prospective patients to provide evidence in this regard’ (British Medical Association. 2012. p2). The 2010 Department of Health report ‘Review of Access to the NHS by Foreign Nationals’ affirms, ‘In applying to become a patient of a particular contractor there is no formal requirement to prove identity or immigration status’ (Department of Health. 2010. p50). Surgeries that refuse to register and treat trafficked persons because they have no status in the UK are acting inappropriately.

In May 2014 the Immigration Act became law. This legislation exacerbates the inaccessibility of the human right to healthcare for all migrants including trafficked persons. It introduces a requirement for overseas visitors to pay a levy when they enter the UK to access the NHS. The consultation document on the Immigration Bill highlights ‘a victim of human trafficking under the Council of Europe Convention on human trafficking’ would be exempt from paying for NHS services (2013. p5). However in a debate on the legislation in the House of Lords in March 2014 Lord Taylor of Holbeach acknowledged this exemption would not apply to trafficked persons who were awaiting a decision or who were attempting to overturn a negative decision,

Someone who has not been identified as a victim through the NRM and who is an illegal migrant or visitor would not be covered by the exemption for NHS charging under the existing regime. However, the NHS can write off NHS debts if individuals are subsequently identified as victims of trafficking, so there is a retrospective exemption in that regard (HL Deb. 12 March 2014. c1844).

This legislation makes the protection of the right to healthcare conditional on a referral into the NRM and a positive RG decision. This demonstrates the negative

consequences of delays in status decisions. A retrospective exemption is unsatisfactory. Those who are destitute and who are supported by organisations which cannot afford to pay the levies will be excluded from the treatment they require. All trafficked persons and migrants should have free and equal access to the NHS in the UK.

## **The Right to Counselling**

Article 12.1 of the ICESCR requires States to provide the ‘highest attainable standard’ for both mental and physical health. This is fulfilled by providing trafficked persons counselling. Article 12(d) of the CAT establishes that trafficked persons have a right to counselling. Access to counselling is crucial for long term recovery (Amiel, 2006. Apap and Medved, 2003. Bjerkan et al. 2005).

The UK government’s rhetoric portrays a response which upholds the right to counselling. The first IDMG report explained trafficked persons are ‘carefully and fully assessed and an appropriate support package to meet their needs is provided’ which include ‘counselling and mental health services’ (IDMG. 2012. p45). This is contradicted by this research which finds that many trafficked adults in the UK are unable to receive the counselling they require. The inaccessibility of counselling is a consequence of the policy of the UK government.

The GRETA evaluation report expresses concern about the provision of support for mental health, concluding, ‘specialised mental health services in particular are not guaranteed’ (GRETA. 2012. p60). A support worker explained,

*[counselling] is something that is mentioned in the Convention and somehow that’s something that’s not really happening, it’s not really happening as it should (Appendix B. Interviewee 22).*

The right to counselling is the only aspect of the response to trafficked persons where the SA deviates from the UK government’s rhetoric. This should be an indication of the extent to which the right to counselling is not being upheld. The SA’s 2013 report on trafficked men quotes the concerns of staff at sub-contracted organisations about the inaccessibility of counselling.

The policy of the forty-five day reflection period is the most important barrier to accessing counselling to address their psychological trauma. Counselling and

treatment for acute mental health problems cannot be provided within the confinements of the UK government's short term approach. This was highlighted by Dorcas Erskine in her evidence to the Home Affairs Committee. She explained the significant difficulty in accessing counselling, 'Getting the right counsellors and the right health services for the amount of trauma that victims have faced is nearly impossible in forty-five days' (Home Affairs Committee. 2013b. p2). The reflection period does not provide sufficient time for people who come from countries where talking-based therapies are a strange and difficult concept to overcome unfamiliarity with treatments or for people to overcome the difficulties in beginning to explore their experiences. An interviewee from a support organisation explained,

*we have women we supported years ago coming back and asking 'now I`m ready, now I want to have counselling', because they didn't want to at the time. It's also quite an alien concept for people. They just don't want to go and sit down and talk about everything to somebody (Appendix B. Interviewee 5).*

For the right to counselling to be upheld requires a long-term approach to providing support. An interviewee from the PP highlighted that on average the women they have supported have been with them for one-hundred days before beginning counselling.

Preconceived gendered judgements about the emotional resilience of men and women should be challenged. Both men and women will need support to overcome psychological harm. Turner-Moss et al (2013) study the physical and mental health of men and women trafficked for labour exploitation in the UK and supported in 2009 and 2010. The study finds that 57% of the men (seventeen) had one or more symptoms of Post-Traumatic Stress Disorder (Turner-Moss et al. 2014. p473). A DI explained the emotional responses of some trafficked men they had worked with,

*I've had forty-five year old builders break down in tears in front of you because they've come over here to earn some money to pay for their daughters coming of age ceremony which is a big thing in Poland and they're in tears in front of you (Appendix B. Interviewee 8).*

However it is recognised that men can find engaging with emotional and psychological support particularly difficult (Surtees. 2008. p91). An IOM study of trafficked men in the Ukraine found that men did not want "counselling" per se. Instead they wanted "moral support" with 37% of men in the target group wanting to speak to a counsellor or social worker about their emotional well-being (IOM. 2006.

p14). The 2013 SA report explained men took a long time to acknowledge they wanted support for their mental health (Salvation Army. 2013). The possibility of overcoming the barriers to decide to engage in counselling is severely undermined by the strict confinements of the reflection period. A fieldwork interviewee from a sub-contracted organisation working with men explained how forty-five days does not provide enough time to begin addressing their psychological wellbeing,

*usually they open up when we're moving them on, they've been with us six and a bit weeks when we start to talk about moving on and moving on to the next phase two support worker in the local area who is going to be supporting them longer term. That's usually when they become emotional, that's usually when they start to say about how afraid they really are and they still feel lost. But that's usually when they open [up] which is unfortunate because that's when they are leaving us (Appendix B. Interviewee 25).*

The constraints of the reflection period mean people will be restricted to a very limited number of counselling sessions which does not constitute meaningful treatment. The National Institute for Health and Clinical Excellence guidelines recommend a minimum of eight to twelve sessions of therapy to treat Post Traumatic Stress Disorder (PTSD) (ATMG. 2013. p39). Zimmerman et al found that 56% of the 207 women trafficked for sexual exploitation in their study could be initially identified as suffering PTSD (2006. p19). It is impossible for people with PTSD to receive the recommended minimum support within forty-five days. The right to counselling required by the CAT should not be regarded as upheld when a person has only one or two counselling sessions.

Furthermore there are potentially very harmful consequences of limited and incomplete counselling. Exploring trauma is a difficult process and those unable to complete a programme of counselling may be left re-traumatised and more vulnerable to re-trafficking. This violates the basic fundamental expectation that the response does no harm. A support worker quoted in the 2013 SA report explained their concern about the consequences of incomplete counselling,

*Quite often we would get a case and refer for assessment for counselling, the victim at this point may be in the system for three to four weeks already. Counsellor may say need seven weeks but the victim may need to leave at week five. That concerns me as you are really opening up a can of worms, that*

doesn't sit well with me and I don't feel good about it (Salvation Army. 2013. p18).

Counselling is also practically inaccessible because of a lack of services which can provide the support and treatment that trafficked persons will require for their mental health. A support worker explained, 'There is a massive, massive, waiting list for counselling through GP service' (Salvation Army. 2013. p18). Support organisations rely upon referring trafficked persons to services for asylum seekers and one organisation has referred women into a counselling service for a BME (Black, Minority Ethnic) client group. However such services may have very limited experience in working with trafficked adults and the trauma they might have experienced. Community mental health services may be unable to address trafficked persons particular issues and requirements (ATMG. 2013. p60).

It is apparent in the SA report that a considerable practical barrier to counselling is an absence of necessary funds. Support workers highlight that it is hard to secure counselling because it is 'expensive' (Salvation Army. 2013. p18). The sub-contracted organisation Migrant Help provides counselling in partnership with the Dover Counselling Centre. It usually takes three weeks for an individual to start the counselling programme which normally means one session a week for eight to ten weeks. If an individual immediately requested counselling on the first day of their reflection period they would only have received three counselling sessions before their reflection period ends. It is only because Migrant Help secured additional funding that those they are supporting are able to continue to access their right to counselling beyond their reflection period (Centre for Social Justice. 2013. p174). However this programme will only be accessible for those with the right to live in the UK.

Some support organisations offer internal counselling services. These responses can only offer minimal support to people who require specialised and expert counsellors. The 2013 SA report highlights that much of this counselling can be described as 'informal' (Salvation Army. 2013. p18). Interviewees from support organisations acknowledged they will be unable to address acute mental health problems and will be limited to helping people with coping mechanisms,

What we provide here is each woman would have a key worker who would be qualified and would have counselling skills but that is very different to a one to



one direct counselling and it has been my experience that the majority of women wouldn't be ready for that (Appendix B. Interviewee 23).

*We have our own counselling service here which again has a waiting list. We try and get women into that and they can work with women more [on] containment and holding techniques about what to do if you have a panic attack not going deeply into the trauma, that's really long term stuff (Appendix B. Interviewee 5).*

Some psychological expertise in counselling trafficked persons is being developed in Scotland. TARA has a seconded Consultant Clinical Psychologist and an Assistant Psychologist provided by NHS Greater Glasgow and Clyde COMPAS Trauma Service to support the women they work with. The Helen Bamber Foundation (HBF) is the most important exception to the lack of specialist counselling in the UK. Organisations which have supported people to access the HBF services spoke very positively about their work. One support worker explained,

*We've been very fortunate in being able to use the Helen Bamber Foundation, they've been fantastic (Appendix B. Interviewee 24).*

However the HBF only has offices in London which makes the service practically inaccessible for people in Scotland and Northern Ireland. A support worker from an organisation outside of London explained the challenges in assisting two women they had supported to attend appointments at the HBF. For some this is impossible. There is also a considerable waiting list to even access the service. An interviewee from the HBF highlighted,

*Our current waiting list for therapy is four to five months so I think that gives you an indication of demand and supply (Appendix B. Interviewee 16).*

The high quality of the psychological support provided by HBF is inconsequential for trafficked persons excluded from it because of the limitations of the forty-five day reflection period and the conditionality of being granted discretionary leave to remain. Only those with the right to live in the UK will have the possibility of accessing such counselling.

The inaccessibility of the right to counselling also acts as a further barrier to positive identification by the competent authorities. People who have not accessed counselling for their mental health are not considered to be sufficiently traumatised to have been trafficked. A support worker explained,

*If someone's in the NRM, they'll get a decision back saying well you say that you are traumatised or your support worker says that you are traumatised but you are not accessing services, so therefore are you really? Or that you have not accessed services so therefore you don't need them or you can't show that you need them (Appendix B. Interviewee 5).*

The inaccessibility of counselling can also prevent people from being recognised as having “personal circumstances” requiring them to be granted discretionary leave to remain. The ATMG highlights the case study of a woman trafficked for domestic servitude by a diplomat. The case study explains, ‘she was informed that she would not be granted the leave as she had no proof that she was engaged with counselling services’ (ATMG. 2013. p43). A support worker described a similar response,

*[i]t's really hard actually because sometimes women aren't ready for [long term] counselling. They come to us and they might be absolutely traumatised and in crisis, but obviously, if we get them discretionary leave part of the reason for that discretionary leave if they haven't got on-going criminal or police involvement is that they need on-going support and evidence for that support might be that they are in counselling. If they're not ready for counselling we have to be very clear that they want counselling and they need counselling but they are not quite ready for it (Appendix B. Interviewee 15).*

## **Empowering and Disempowering Responses**

A genuine human rights approach requires trafficked persons are empowered and respected as autonomous agents. The policy responses to trafficked persons deny this principle. However trafficked persons can be empowered and treated with autonomy in practice by support organisations. However Chapter 4 will examine specific disempowering practices through the rules enforced in some supported accommodation.

The UK government and regional governments have disempowered people by preventing them from becoming their own advocates by excluding them from engaging in consultations about the way to improve responses from the perspective of providing better support and protection for reflection and recovery. The most direct engagement in policy was when a trafficked woman handed a petition of 38,000 signatures calling on the government to sign the EU Directive on human trafficking. Three trafficked women invited to an event hosted by the PM on Anti-

Slavery day in 2011 to speak with the PM had their invitations withdrawn because they had pending asylum cases (Eaves, 2011b). The decision to withdraw their invitations is symbolic of how immigration concerns are prioritised over trafficked persons' human rights.

Trafficked persons are disempowered by not having a right to appeal a negative decision by a competent authority. The policy of the forty-five day reflection period is the most disempowering response. Providing trafficked persons forty-five days to reflect and recover will not enable responses in which trafficked persons can empower themselves and exit support being fully independent.

Support organisations attempt to provide empowering responses which respect autonomy within the constraints of the reflection period. Individuals are treated as equals and as active participants in their own support by being able to influence the nature of the assistance they receive. An individualised and empowering response which respects the autonomy of trafficked persons is fulfilled by organisations which encourage people to participate in devising their own personalised care plans. These enable people to decide what they wish to do during their reflection period and what they want to achieve within the limits of forty-five days. An interviewee from an organisation supporting trafficked men explained,

*we ask them what they want to do in terms of what do you want to do with your time here and through the support plan we work through their particular goals (Appendix B. Interviewee 9).*

Support organisations recognise that the choices of each person are paramount. A senior member of staff from a support organisation described the importance of respecting the autonomy of the individual,

*they all have a support plan and they have choice in it, everything is about choice, obviously we will advise, there are some things we will advise and say maybe this would be good . . . They have full control, we give them options of what they could do (Appendix B. Interviewee 12).*

An interviewee from a sub-contracted support organisation was very passionate about ensuring respect for the autonomy and self-determination of the women they support

*She has the right to make decisions, she has the right to make decisions to be respected she has the right to know about what she wants for herself and her body and those rights should be respected and we shouldn't be dictating to*

*women in a kind of we know best sense sort of way because we fucking don't know best, excuse me for swearing, but we don't (Appendix B. Interviewee 15).*

Support organisations repeatedly explained the importance of ensuring the individual has choices and is able to determine the assistance they receive. Respecting their autonomy to make their own choice is essential for their recovery. (Lisborg, 2009, p3) One member of staff from a support organisation highlighted how respecting the autonomy of those they support is essential to respect their human rights,

*It's a choice based service. I think that's the fundamental of human rights. It's up to the individual about how they want to be supported and how often they want to see their support worker or not as the case may be . . . I think that's critical . . . given their particular set of circumstances (Appendix B. Interviewee 4).*

A support worker explained the role of the organisation is to,

*make them more aware and to kind of guide them to their options, but ultimately they make all the decisions. I've never known in any instances anyone be forced to an English class or forced to the doctors because it kind of defeats the point doesn't it? (Appendix B. Interviewee 26).*

While trafficked persons are disempowered by being excluded from direct engagement in the creation and evaluation of government policy responses to trafficking in persons, support organisations enable individuals to evaluate the way that they respond to them. The SA encourages people who have been supported by sub-contracted organisations to discuss their experiences and how responses could be improved. An interviewee from the SA described what these evaluations would consider,

*Asking people how they felt when they came to the house, feelings about being safe and supported, we asked them about developing exit plans and how that was done and how effective they felt those were, how they felt about the forty-five day period how they felt about the support they received in the house and living in the house environment and their future hopes that came from having the support. And I think that was a really, really, good way of seeing how effective the services are that are being provided (Appendix B. Interviewee 27).*

This is a good way of assessing the responses to trafficked adults. However critical words and voices of trafficked persons which challenge the UK government's policy responses to trafficked persons and highlight how the rights in the CAT are not heard

in public. The testimony of trafficked persons which demonstrates inadequate and ineffective responses is not used. Only the positive voices full of praise are publicly highlighted. For example the SA's second year review report quotes one person who had received support, "I am really happy to be here and have some help after my very bad experience, I feel secure now. I would like to say a big thank you for the opportunity to live here and for the help' (Salvation Army. 2013. p16). This selective quoting does not constitute empowerment and does not enable trafficked persons to become advocates for their own rights

## **Conclusion**

In conclusion the responses to the identification and support of trafficked adults explored in this chapter contradict each of the principles of a genuine human rights approach. While the responses contradict this normative approach they are also utterly contrary to the UK government's powerful and emotive rhetoric. The responses are completely inconsistent with the descriptions of the horrors of human trafficking and the compassionate, comprehensive support which is alleged to be provided. The policy of the reflection period bears no resemblance to the UK government's description of trafficking in persons and what people have suffered. A forty-five day period denies the principles of individualised and empowering responses. The UK government's claim that its ambition is to identify and support as many trafficked persons as possible is betrayed by the construct of the historical victim. This deliberately prevents people from receiving a positive status decision which excludes them from the support and assistance required by the CAT. The historical victim contradicts the principles of an individualised and unconditional response.

The findings of this research show the UK government's approach is not focused on protecting trafficked persons human rights and providing the support and assistance required by each individual to achieve a satisfactory level of physical and psychological recovery. The rights of trafficked persons are treated as a secondary concern. It is controlling immigration which is the primary objective, protected beyond all other interests. This is exemplified by the UK government making the immigration authorities dominant in the most essential element of the response which is the identification of trafficked persons. The identification of non-EEA

nationals is so problematic that it is reasonable to claim that the principle of non-discrimination is being violated.

The chapter concludes that the rhetoric of Article 1(b) and the Preamble of the CAT are contradicted by the responses in policy and practice. However this chapter has demonstrated that the most serious problem with the UK's response, making the rights required by the CAT practically inaccessible or meaningless and ineffectual is a policy compatible with the minimum obligations of the CAT. Trafficked persons are denied their right to counselling and their rights provided in Article 12.4 by the inadequacy of the reflection period which exceeds the obligation of the CAT for a thirty day reflection period. The contradictions within the CAT means trafficked persons and their human rights are not protected. Furthermore the absence of a right to appeal within the CAT means the UK is acting acceptably despite this having the consequence of people not being identified and therefore excluded from the rights contained within the CAT. The violation of the principle of non-discrimination by practice in the UK which makes primary health care inaccessible for some trafficked persons is compatible with Article 12 of the CAT.

## **Chapter 4: Accommodation for Trafficked Adults: More than a Bed and a Roof**

### **Introduction**

This chapter studies the provision of accommodation against the rights granted by the CAT and a genuine human rights approach. The chapter explores to what extent the accommodation provided is consistent with the UK government's rhetoric. The decision to study the provision of accommodation was because the right to shelter is a fundamental and universal need of all human beings. Accommodation is essential in enabling people to feel safe from their traffickers, to reflect on their experiences and to begin to recover (Surtees. 2008b. p6). The existing difficulties in accessing support and assistance discussed in the previous chapter are exacerbated by an absence of supported accommodation. The beneficial impact of support which is provided can be negated if supported accommodation is unavailable. Most importantly the absence of accommodation may leave people at considerable risk of re-trafficking.

The evaluation of accommodation within this chapter is undertaken in the context of a near absence of critical discussion about the necessary standards and nature of accommodation which should be provided for trafficked persons. Here as before it is important to examine the regional variations in the accommodation provided. The research finds significant differences in the accommodation provided in the four regions of the UK.

The chapter finds the right to accommodation granted by the CAT to be problematic. The research explains how the CAT's description of the need for 'secure' accommodation has been over emphasised and interpreted in a paternalistic way. The chapter studies how the accommodation considered acceptable for trafficked adults by GRETA and the UK and regional governments contradicts a genuine human rights approach and the rhetoric of the UK government. The research identifies a very low threshold for the standard of the accommodation to be provided. Accommodation is accepted which provides people who have suffered human rights violations no more than a bed to sleep in and a roof over their heads (ATMG. 2013.

p18). The accommodation for trafficked adults should provide considerably more than this. The research argues that the accommodation which people access can have a significant impact upon their reflection and recovery. The chapter finds that despite improvements in the scale of the provision of supported accommodation trafficked adults continue to access accommodation which contradicts a genuine human rights approach.

The chapter critically examines the policies of a small number of sub-contracted organisations that restrict and undermine freedom of movement and communication. The chapter examines the arguments in defence of these policies and then argues why they are inappropriate. Pearson (2002) argues there is a considerable distinction between an approach protecting trafficked persons and an approach protecting their rights. A genuine human rights approach must require trafficked persons rights and freedoms are protected not infringed. The chapter argues that these policies are often disempowering and undermine autonomy. The chapter challenges the justifications for these policies and argues that they are neither necessary nor proportional in protecting trafficked persons and are instead only necessary to fulfil the ambitions of the immigration and law-enforcement approaches.

### **The Right to Accommodation**

“Shelter” is considered one of the principal “basic needs” of all human beings. Article 25.1 of the UDGR includes that everyone has a right to ‘housing.’ (United Nations. 1948) The human right to housing is included in international human rights law. Article 11.1 of the ICESCR includes a right to ‘housing.’ The Palermo Protocol discussed the provision of accommodation for trafficked persons. Article 6.3 of the Protocol states,

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing

The Palermo Protocol only requires that States “consider” providing accommodation. Accepting that States can ‘consider’ whether they provide accommodation is contrary to a genuine human rights approach. Providing accommodation for all trafficked



persons after they exit exploitation must be considered a fundamental requirement (Surtees. 2008b. p6).

The CAT was progressive in the right to accommodation it grants trafficked persons. It obliges States to provide accommodation rather than only considering providing accommodation. Article 12.1 (a) of the CAT declares the country of destination must provide, 'standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance' (Appendix A). Despite the CAT establishing the right to accommodation, limiting evaluation of the UK's response against the CAT is problematic. The imprecise language of 'appropriate and secure' has permitted an unsatisfactorily low threshold for the requirements of the accommodation. Although the explanatory report to the CAT explains 'special protected shelters are especially suitable' Article 12.1(a) does not oblige States to provide this standard of accommodation. It therefore accepts accommodation below the standards of 'special protected shelters' as 'appropriate' and 'secure.'

A genuine human rights approach establishes that specialist supported accommodation is essential. The accommodation must be suitable for people who have suffered human rights violations which have severe physical and psychological consequences. Specialist supported accommodation respects the dignity of trafficked persons and recognise them as people who have suffered human rights violations. Academics have argued that only specialist supported accommodation should be considered 'appropriate' because this is the best type of environment to uphold the wider rights to support and assistance required by the CAT (Potocky. 2010. p382). A model for accommodation consistent with a genuine human rights which provides a safe environment and hub to access support and assistance during the reflection period is found within the 2004 OSCE/ODIHR 'Handbook on National Referral Mechanisms' which argues, 'The following provisions should be covered when establishing a shelter: security, food, clothing, a small library, creative workshops, recreation and sports activities, and social contacts' (OSCE/ODIHR. 2004. p73).

## **Increased Provision**

The UK government signed the Palermo Protocol in December 2000 but did not follow its recommendation to provide accommodation until 2003. However this early provision of accommodation was inadequate. This was recognised by the 2006 Joint Committee on Human Rights report on human trafficking which argued, ‘We believe there is clearly insufficient capacity in the system to provide shelter and specialist support services for the women who need them, and we urge that capacity be expanded as a matter of priority’ (Joint Committee on Human Rights. 2006. p71). The number of spaces in supported accommodation has increased significantly since the first government-funded safe house was established by the PP in 2003. Before 2009 the UK government only funded supported accommodation for twenty-five women. The contract awarded to the PP in 2009 increased the number of spaces in supported accommodation for trafficked women in England and Wales to fifty-four. Provision expanded again under the 2011 MOJ contract. The SA’s written evidence to the Home Affairs Committee highlights that under the 2011 contract, ‘The service now includes a network of twelve diverse service providers who collectively provide no less than nineteen safe houses.’ The SA’s second year review explains that they provide ninety-two beds with a minimum of fifty-four beds which can be made available if required (The Salvation Army. 2013. p2). The increase in the number of spaces in government-funded accommodation can be attributed to social housing organisations becoming sub-contractors and supporting trafficked adults for the first time. Four of the twelve sub-contractors are social housing organisations. The PP can only accommodate nine women since it lost the MOJ contract (Home Affairs Committee. 4<sup>th</sup> June 2013).

## **Scotland**

In 2010, Kenny MacAskill, Justice Minister in the Scottish Parliament contradicted the principle of an individualised response when he attempted to justify the lack of any specialist supported accommodation in Scotland. He argued the small number of people being trafficked in Scotland made it ‘difficult to justify making the services available across Scotland on a standby basis’ (Scottish Parliament Equal Opportunities Committee. 2010). Kenny MacAskill argued the violations of an

individual's human rights may not justify the response required by the CAT. This denies the recognition of trafficking as violating human rights which requires remedies for those affected. It treats people without dignity by dismissing their trauma and suffering as insignificant. It is also contrary to the CAT which contains no concessions that States only have to provide support and assistance once a certain number of people have been trafficked.

Specialist supported accommodation is now provided in Scotland by Migrant Help which has a safe house with space for fifteen people (Malloch, Warden and Hamilton-Smith. 2012. p27). However Migrant Help will not house women trafficked for sexual exploitation. TARA does not have its own accommodation for the women it supports. It has to refer women to non-specialist accommodation providers (GRETA. 2012. p63). These include organisations supporting survivors of sexual violence and domestic abuse as well as local authority housing and National Asylum Seeker Support (NASS) accommodation. These fall below the standards of specialist supported accommodation.

The provision of accommodation in Scotland is insufficient. Women trafficked for sexual exploitation will have to move to England to access specialist supported accommodation. However DS Sandra Jamieson of the SCDEA's Human Trafficking Coordination Unit explained to the Scottish Equal Opportunities Committee in 2010 that the movement of trafficked adults from Scotland to England only occurred to protect their best interests,

Sometimes when a victim has been trafficked into Scotland the best approach is to move them to somewhere else in the country for support, so that they are away from the traffickers and cannot be found. There are excellent organisations down south that can assist with that. It is not a matter of people having to go to England to get support; an operational decision could be taken to move a person, on the basis of what is best for them. That is a victim-centred approach (Scottish Parliament Equalities Committee. 2010).

The police officer describes a response to trafficked persons which does not respect their autonomy as being victim-centred. This quote demonstrates how a victim-centred approach is not consistent with protecting trafficked persons human rights.

Furthermore despite such assurances, the GRETA report acknowledges all fifteen bedrooms in Migrant Help's accommodation were occupied when their researchers

visited (GRETA. 2012. p62). At such times people will have no choice but to leave Scotland to access specialist supported accommodation.

## **Northern Ireland**

There is no specialist supported accommodation for trafficked women in Northern Ireland. Trafficked women are housed in Women's Aid's existing refuges. A support worker explained,

*we have a network of refuges . . . I don't think accommodation problems are an issue because we've got a good network of refuges through Northern Ireland where these trafficked women can be supported and where there would be a great deal of expertise and support given to them (Appendix B. Interviewee 28).*

The GRETA report highlights 'the conditions were of a high standard' in these refuges (GRETA. 2012. p62). Regardless of the high standards, trafficked persons should be able to access specialist supported accommodation. Despite overlaps there are significant distinctions between the experiences and requirements of survivors of domestic violence and trafficked women. Accommodation used for both is problematic because the trafficked women may be stigmatized by the survivors of domestic violence because of trafficking's association with prostitution. Kulu-Glasgow et al (2012) studied accommodation for trafficked adults in Belgium, Spain, Italy and the Czech Republic. The research highlights that respondents working for organisations providing non-specialist accommodation for trafficked adults noted that some survivors of domestic violence would look down upon women trafficked for sexual exploitation (Kulu-Glasgow et al. 2012. p165). This stigmatization contradicts the requirement that the responses should do no harm. Stigmatization could be prevented by the establishment of specialist accommodation for trafficked adults. Potter and Egerton explain why there is a need for a specialist 'permanent shelter' in Northern Ireland,

*Currently, refuges and accommodation for rescued trafficking victims are temporary, whereas a more sustained, specialised approach is needed. This would provide an opportunity for specialist skills to be applied to the care of trafficking victims and put less strain on adapting existing services (Potter and Egerton. 2012. p29).*

GRETA's evaluation of the response in Northern Ireland against the CAT finds the provision of accommodation acceptable. However in order to be consistent with a

genuine human rights approach the Northern Ireland Assembly should fund the establishment of specialist supported accommodation for trafficked adults.

## **England and Wales**

In Wales BAWSO is the only organisation providing specialist supported accommodation for trafficked women. They provide accommodation for a total of thirteen women in north and south Wales. The geographical spread of accommodation throughout England has steadily increased. The 2003 contract only provided accommodation in London. The 2009 contract expanded this to London and south-Yorkshire. The 2011 MOJ contract increased this expansion and sub-contracted accommodation is now available throughout England (Chart 1). The SA argues this is beneficial because ‘service users can be moved away to a safe geographical location if necessary and appropriate’ (Home Affairs Select Committee, 2013b, p14). However it is important that the accommodation people move to can provide the support they require. This movement may be negative as it can mean people are detached from social and support networks in that area.

The written evidence submitted by the SA to the Home Affairs Select Committee portrays an individualised approach to providing accommodation under the MOJ contract, ‘Victims are accommodated with a service provider that can offer them the most suitable care, support and security depending on their situation and needs.’ However the accommodation which trafficked persons are referred to may not be the consequence of an individualised response to the requirements and choices of each person. In February 2014 there were 126 adults referred to the UK government-funded specialist support services and a further 126 adults referred in March 2014 (HC Deb, 30 April 2014, c718W, HC Deb, 9 April 2014, c274W). There is a problem of a lack of capacity. Not all of these people could have been housed in sub-contracted accommodation. This reality contradicts the portrayal of an individualised response in which trafficked persons are referred to the accommodation most appropriate for their specific requirements. Individuals may simply be housed in whatever accommodation is available rather than what is most appropriate for them.

There are considerable differences in the provision of accommodation throughout the UK. Trafficked women in Northern Ireland will be unable to access specialist supported accommodation as will women trafficked for sexual exploitation in Scotland. Women trafficked in England and Wales have the possibility of accessing specialist supported accommodation dependent upon the levels of occupancy. An individualised response is denied because not every individual will be able to access the specialist supported accommodation they require.

### **Accommodation for Trafficked Men in the UK**

The victim discourse has harmed the availability of support and assistance for trafficked men. This has caused a lack of accommodation internationally (Copic and Simeunovic-Patic in Winterdyk, Perrin and Reichel (eds.) 2012. p283). Brunovskis studies the responses to trafficked persons in Northern European countries and Belgium and Italy and highlights that not all of these countries provide specialist accommodation for men (Brunovskis. 2012. p12). The UK is no exception. States' responses to providing accommodation have failed to provide the gender equality granted by the CAT and falls short of a genuine human rights approach. Despite accommodation being a right of tremendous importance there has been limited discussion on its unavailability for men. The 2006 Joint Committee on Human Rights report called for an expansion of accommodation for trafficked women but did not even acknowledge the absence of any accommodation for men. Trafficked men naturally have the same right to accommodation as women. A person's gender is irrelevant to their need to access specialist supported accommodation.

The UK has made recent improvements in providing accommodation for trafficked men. However an important reason for this improvement was the establishment of mixed-sex accommodation which will be challenged as inappropriate and contradictory to a genuine human rights approach.

The UK government funded specialist supported accommodation for trafficked men for the first time through the 2011 MOJ contract. The 2013 SA report highlights there are 'seven sub-contracted accommodation providers who have male residents' (Salvation Army. 2013. p4). However the provision of accommodation for trafficked men in the UK remains insufficient. GRETA highlights, 'accommodation for male

victims is severely limited' (2012. p60). An interviewee from a sub-contracted organisation providing a safe house for men acknowledged the constant demand for spaces,

*We are in the process of clearing a few out, we've got four that are ready to move on and we are going to have another four coming in over the weekend, . . . the places are filled instantly, so there is a need (Appendix B. Interviewee 9).*

The language used by the interviewee does not reflect the fact they are describing trafficked persons who have suffered human rights violations having to quickly exit support to make way for new arrivals. However this language could be seen as illustrating the potential pressure that support organisations are under from the MOJ to only provide short-term support. The quote is also evidence of demand for accommodation being greater than the capacity. In this situation trafficked men will have to live in inappropriate accommodation while waiting for vacancies in supported accommodation. This inaccessibility of supported accommodation for part of the already inadequate reflection period will undermine successful recovery.

The establishment of specialist supported accommodation for men has been limited to England and Scotland. There is no such accommodation in Wales or Northern Ireland. The absence of such accommodation for men in Wales while it is available for women contradicts gender equality. Temporary accommodation for men has been made available when required in Northern Ireland but there is no permanent specialist supported accommodation for men. Although trafficked women in Northern Ireland cannot access specialist accommodation the Women's Aid refuges are more appropriate than the responses to trafficked men and therefore gender equality is denied. The absence of permanent supported accommodation for men undermines their safety and recovery. The member of the All Party Group on Trafficking in the Northern Ireland I interviewed explained their concerns about what happens to trafficked men in the absence of such accommodation,

*if men are rescued here in Northern Ireland say from forced labour or cannabis factories they really have no specific accommodation for them to get counselling or to feel safe in a safe house, they are actually placed in hostels and B&B's and very easily they can drift back again into the grips of traffickers (Appendix B. Interviewee 18).*

The UK and Scottish governments have begun funding mixed-sex accommodation. The Migrant Help safe house in Scotland has male and female residents. The GRETA

report notes that four sub-contracted organisations in England and Wales exclusively accommodate men and three provide accommodation shared by men and women (2012. p60). However GRETA does not discuss the appropriateness of this accommodation. This indicates approval that it is compatible with the CAT. The 2013 SA report described mixed sex accommodation as 'positive' but did not explain why (2013. p28).

Mixed sex accommodation contradicts the principle of a gender specific response. The 2013 US State Department trafficking report expresses concern about it, highlighting, 'some shelters housed men and women in mixed accommodations, which was inappropriate for some trafficking victims' (US State Department. 2013. p380). The acceptance of mixed sex safe houses is consistent with a response which regards the right to accommodation as upheld by providing people a roof over their head and a bed to sleep in.

Ann-Marie Douglas's oral evidence to the Home Affairs Committee explained that people will only access mixed accommodation after an assessment of whether it is appropriate for them,

we do have safe houses that provide accommodation for male and female victims, but as part of our process, the needs of every individual are assessed quite comprehensively, and if for any reason the victim did not wish to be placed in such an establishment, then we would not place them there (Home Affairs Committee. 2013b. p4).

Despite this claim of an individualised response, when the number of spaces in accommodation is smaller than the number of referrals into the NRM, people may have no choice but to enter mixed-sex accommodation. Decisions about the appropriateness of housing individuals in mixed sex accommodation are made on the basis of very limited assessments of the circumstances of each person. Women who experienced sexual violence when they were trafficked for forced labour or domestic servitude cannot be expected to immediately disclose this information to strangers outside of a relationship of trust. Individuals may be referred to mixed sex accommodation by practitioners who are oblivious to the full extent of their experiences. A written reply from a support worker described this problem,

*deciding whether or not someone is suitable for mixed gender accommodation happens in an initial needs assessment when someone is referred into the NRM and requires housing. I have concerns about how this*



*assessment is carried out and the time at which it happens. There is frequently more information that comes out during the forty-five day recovery and reflection period (which is the point of it). This can include disclosures of sexual violence (Written Reply 1).*

The use of mixed sex accommodation may be extremely problematic for such women and may cause re-traumatisation. Sen and Kelly argue ‘Women who have been trafficked should always have access to women-only accommodation’ (2007. p21). The privately funded PP does not allow women to have male guests at their safe house because of the potential distress a male presence can cause some women, particularly those who have experienced sexual violence.

The response to the accommodation for trafficked men is contrary to a genuine human rights approach. There is no specialist supported accommodation for men in two regions of the UK which should be seen as a failure to fulfil the right to accommodation required by the CAT and a contradiction of the CAT’s requirement for gender equality. The improvement in the provision of accommodation for men has been achieved by contradicting a gender specific response which risks jeopardizing peoples’ well-being and reflection and recovery and causing them re-traumatisation.

### **Inappropriate Accommodation**

Trafficked persons throughout the UK are housed in accommodation which does not guarantee their safety and security, treat them as people who have experienced human rights violations or make their rights accessible. The use of inappropriate accommodation is not simply the result of poor practice. Inappropriate accommodation is accepted in the policies of the UK government and the practice of support organisations.

Hostels, hotels, B&B’s and farms are used to house trafficked persons during their reflection period (Cherti, Pennington and Grant. 2013. p67). Trafficked women in Scotland are routinely housed in hostels (Easton and Matthews. 2012. p71).

Homeless shelters which are inappropriate for trafficked persons (Uy. 2010. p25) are also used in the UK. Craggs and Martens highlight that such accommodation can be re-traumatising for trafficked persons (Craggs and Martens. 2010. p98). People who have been trafficked are not on holiday. Public accommodation is potentially unsafe.

B&B's, hostels and hotels are transient places full of strangers. These types of accommodation do not provide an appropriate environment for reflection and recovery, they are unsecure and without specialist services or trained experienced staff. The use of this accommodation is not only contrary to a genuine human rights approach but also to the UK government's description of trafficking as an 'evil' which 'destroys lives.' People whose lives have been destroyed cannot be expected to successfully recover while living in B&B's and homeless shelters.

People may be initially housed in inappropriate accommodation by the police who are a common first responder. Between July 2011 and April 2013 the police made the most referrals to SA support, accounting for 26.97% of all referrals (Home Affairs Committee. 2013. p12). In 2013 police constabularies were the first responder in 358 cases (National Crime Agency. 2014. pp10-11). The UKHTC provides an online "Best Practice Guide" for investigating officers working on trafficking cases. The guide highlights, 'It is important to ensure that the appropriate physical healthcare and psychological support is provided to all victims in a timely manner.' (National Crime Agency) However it makes no reference to ensuring the accessibility of supported accommodation despite early access being essential for reflection and recovery.

The fieldwork research with police officers found many examples of inappropriate accommodation being used for trafficked persons immediately after they exited exploitation. One officer described an investigation where fifteen eastern-European nationals were simultaneously discovered. The officer highlighted the difficulty in dealing with so many people at once and explained how they worked with a sub-contracted organisation to accommodate them all in a church overnight. A DI from another constabulary explained where people might be accommodated while arrangements were made,

*It would just be a police building, like a hall's of residence type thing or it would be a hotel (Appendix B. Interviewee 29).*

Police halls of residence are highly inappropriate. It is well recognised trafficked persons will often be scared and distrusting of the police (Lebov, 2010. Chapkis 2003. Brennan, 2008). Housing trafficked persons in accommodation surrounded by police officers could cause them significant anxiety and distress. Another DS explained a case where they placed three girls in a hotel for a few days with a female police officer. They did eventually contact a support organisation and the UKHTC but

their response prioritised building intelligence and evidence against the traffickers over providing support to those who were trafficked.

Trafficked adults are referred to inappropriate accommodation by government-funded support organisations. The SA acknowledges it uses homeless shelters as accommodation for people during their reflection period. The SA one year review explains that in addition to the accommodation provided by the sub-contractors ‘the service has access to beds in Salvation Army Lifehouse’s’ (Salvation Army. 2012. p12). Lifehouse’s are homeless shelters by another name. Michael Emberson, former Chief Executive of Migrant Help and now Project Director for the Medaille Trust, gave evidence to the Scottish Parliament’s Equal Opportunities Committee in 2010. The minutes note he identified hotels as appropriate accommodation for trafficked adults,

Michael Emberson of Migrant Helpline explained that the use of inappropriate accommodation was less likely to arise in Scotland in comparison to the rest of the UK. He believed that there was better access to funding in Scotland and that hotel accommodation could be offered to the victims of trafficking (Scottish Parliament Equal Opportunities Committee. 2010).

GRETA acknowledges the use of such inappropriate accommodation without concern, ‘The other service provider in Scotland, TARA, does not have a dedicated safe house for victims of trafficking, but can access a range of accommodation facilities on a needs basis (women’s aid refuges, B&B, flats)’ (GRETA. 2012. p63). GRETA accepts B&B’s as compatible with the CAT’s demand for ‘appropriate’ and ‘secure’ accommodation. However a support worker explained they thought their occasional reluctant use of hotels should cause concern to those examining the UK’s response,

*using hotel accommodation, that is not good practice. It is not convenient for us. It’s a roof over her head. We avoid homeless accommodation and that type of thing so it’s deliberately done. We would not be going ‘everyone replicate this.’ It does the job for a short period of time, but it’s not ideal, but we are aware of that, and we are aware of that we would quite deservedly get a bit of a kicking for that, not a kicking, but people should be raising an eyebrow about it (Appendix B. Interviewee 1).*

The acceptance of the most minimal standards as ‘appropriate’ accommodation for trafficked adults is demonstrated by the evaluation of success in providing accommodation being limited to counting the number of “beds” which are available.

The GRETA report highlights that in addition to the Migrant Help safe house in Scotland ‘Glasgow City Council has made two beds available for trafficking victims’ (2012. p63). The report makes no reference to the conditions of the accommodation. GRETA is simply satisfied that trafficked persons are provided a bed to sleep in. The SA describes being able to provide an additional fifty-four beds when required but does not explain the nature of this accommodation. Such temporary accommodation is unlikely to offer individuals the specialist supported accommodation which will be most beneficial for their reflection and recovery.

Minimal standards for the accommodation provided for trafficked adults should not be accepted because the accommodation which people access can have profound consequences. Inappropriate accommodation undermines recovery and potentially re-traumatises people and prolongs their suffering. The 2011 EHRC report quotes an interviewee from the Scottish Refugee Council describing the consequences of inappropriate accommodation,

Some of the accommodation providers within Glasgow are better than others and some are worse, and if you end up with one of the ones which aren’t very good you’re likely to have all sorts of problems with accommodation that can really tip people over the edge (Equalities and Human Rights Commission. 2011. p84).

A young trafficked woman was quoted describing her experience of living in inappropriate accommodation and how it caused her further harm and distress,

They just keep you in the house. People are violent there. They just put drug addicts and normal people together, which is not supposed to be, because they can easily hurt them. Especially when you’re coming from a place when you’ve been through horrible stuff and [then] still face some more bad stuff (Cherti, Pennington and Grant. 2013. p68).

People are excluded from specialist supported accommodation by the introduction of the policy in April 2013 that adults referred to the NRM in England and Wales who are claiming asylum should be housed in NASS accommodation. This should be considered inappropriate accommodation for trafficked persons. Those who claim asylum after they moved into sub-contracted accommodation are expected to make a ‘prompt move’ to NASS accommodation (Home Affairs Committee. 2013. p3). This will unsettle people and disrupt their recovery, causing them to lose contact with existing support networks. This policy violates the principle of non-discrimination because it only excludes non-EEA nationals from specialist supported

accommodation. Those claiming asylum will access vastly inferior accommodation. There is no policy in Scotland and Northern Ireland that trafficked adults claiming asylum should be immediately referred to NASS accommodation. However trafficked adults in Scotland can be referred to NASS accommodation during their reflection period because of an absence of specialist supported accommodation.

This policy cannot have been determined by a desire to improve protection and support. Evidence highlighting the unsuitability of NASS accommodation for trafficked persons has been presented to the UK parliament. Amnesty International's written evidence to the 2009 Home Affairs Committee report argues, 'NASS accommodation is basic and does not meet any standard of safe housing for victims of trafficking' (Home Affairs Committee. 2009. p187). Written evidence from Barnardo's in 2012 to the Parliamentary Inquiry into Asylum Support for Children and Young People also highlights the inappropriate nature of such accommodation, 'It is clear that some NASS accommodation does not meet minimum accepted standards of living' (Barnardos. 2012. p4).

NASS accommodation should be considered as incompatible with the CAT's right to 'secure' and 'appropriate' accommodation. Malloch, Warden and Hamilton-Smith, highlight strong reservations to using NASS accommodation for trafficked adults in Scotland, 'respondents expressed serious concerns as to whether this accommodation is always safe and appropriate' (2012. p27). The 2010 ATMG report argues NASS accommodation can 'rarely be categorised as "safe"' (ATMG. 2010. p103).

The use of NASS accommodation may cause people to live in squalid living conditions comparable to those during their exploitation. An article in *The Independent* newspaper in December 2012 quotes a woman trafficked to the UK in 2000 for sexual exploitation referred to NASS accommodation with her five month old child. She describes accommodation unfit for human inhabitancy,

When I came here I said 'this house doesn't look safe for me and my child to live in', there were cockroaches and slugs . . . They took me to another property and that was absolutely disgusting, worse than this one. The kitchen smells of wee, the whole place, words cannot describe I was crying, I was screaming (Philby. 2012).

Based on research with support workers the IPPR report argues that the policy decisions of the UK government for providing accommodation amount to ‘indiscriminate warehousing and attempts to keep down costs’ (Cherti, Pennington and Grant. 2013. p68). Referring trafficked persons claiming asylum to NASS accommodation during their reflection period should be viewed as a reactive response to the insufficiency of accommodation in England and Wales. A progressive response in respect of a genuine human rights approach would be to fund the establishment of more specialist supported accommodation. In April 2013 when the policy began there were 111 people living in accommodation provided by the MOJ contract and sixty-one people using outreach services. The SA would be dependent upon additional temporary accommodation to house many of those people. By July 2013 the number of people in sub-contracted accommodation had reduced to eighty-six while the number of people reliant upon outreach services had risen to eighty-four. Housing trafficked persons in NASS accommodation creates vacancies in sub-contracted accommodation but it will be harder for those people to access support and assistance. A support worker interviewed for the 2013 ATMG report described the different outcomes for three trafficked women who were identified and referred at the same time. Two of the women accessed a safe house and the other woman was housed in NASS accommodation. The support worker explained,

The girls that had been through the safe house were a lot more confident, settled, calm ... they felt calm in knowing “I’ve got this support and this is what’s happening; I feel like I know how to talk to the solicitor and where to go if this happens; where to go if that happens”. Whereas, the girl in the community was just...bawling her eyes out and this is, like I say, the same amount of time as the other girls and just no confidence whatsoever... and basically she had seen her outreach worker maybe twice and the rest of it had been done over the phone and so she just didn’t feel like she knew what was going on (ATMG. 2013. p38).

In conclusion since 2003 when the first government-funded accommodation for trafficked adults was established the number of spaces in accommodation has increased. However this increase has not matched the continual significant increase in referrals. Trafficked persons throughout the UK access accommodation inappropriate for people who have suffered human rights violations and who require support for their physical and psychological recovery. If the UK’s response to trafficked persons is to be consistent with a genuine human rights approach then the UK government and regional governments must provide further investment to

increase the provision of gender specific specialist supported accommodation for every individual who has been trafficked.

### **Safe House Policies Contradicting a Genuine Human Rights Approach**

A small number of sub-contracted organisations in England have policies which confiscate residents' mobile phones, prevent them from leaving their safe house unattended and use curfews. None of the support organisations in Northern Ireland and Wales use such policies.<sup>2</sup>

One sub-contracted organisation supporting trafficked women does not allow residents to leave their safe house unattended during the first week they live there. The manager of this safe house also acknowledged their policy of confiscating mobile phones from the residents,

*They can't have their phone for three weeks (Appendix B. Interviewee 12).*

Another interviewee from the same organisation explained that if residents want to use a telephone they are able to use the phone in the staff office. They described the requirements for women to use the staff phone,

*[I]f provided a member of staff is consulted on it etc. and given permission. So it's not like they're totally cut off from the world (Appendix B. Interviewee 26).*

The Jarret Community safe house, the only accommodation for trafficked adults in the north east of England, accommodates women trafficked for sexual exploitation. It is run by the SA and is a sub-contracted organisation. Staff at the Jarret Community rejected requests to participate in the fieldwork research. However anecdotal evidence indicates the Jarret Community has policies potentially more restrictive than the ones critiqued here. Ann Hamilton was certainly describing this safe house in her evidence to the Scottish Parliament's Equal Opportunities Committee in 2010,

Until fairly recently, the police were keen to use a project in the north of England that involved almost a kind of lockdown, in that the door was locked once the women went in, their mobile phones were taken from them and they were controlled to a great extent (Scottish Parliament Equal Opportunities Committee. 2010).

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<sup>2</sup> Migrant Help in Scotland did not reply to the requests for them to participate in this research so their policies cannot be discussed.

A support worker anecdotally described the restrictions used in that safe house,

*very controlled situation where no private phone calls, no mobile phones, not allowed out on your own for a long period of time, doors were locked (Appendix B. Interviewee 1).*

Safe house accommodation provided for trafficked men and women provided by two sub-contracted organisations had a curfew requiring the residents to be inside the safe house by 10pm every day.

It is argued here that confiscating mobile phones and restricting and preventing trafficked adults freedom of movement outside of the safe house contradicts a genuine human rights approach. These responses are disempowering and treat people without any autonomy. However these policies have been viewed as positive responses. The 2004 OSCE/ODIHR report “National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons” describes such responses as ‘good practice.’ The report reproduces guidance from Serbia and Montenegro recommending women be accompanied on ‘recreational outings’ and that there should be ‘restriction in telephone communications’ (OSCE/ODIHR. 2004. pp74-75). The IOM’s Handbook on Direct Assistance for Victims of Trafficking includes mobile phones alongside ‘drugs, alcohol, weapons’ on a list of items that should be banned inside safe house accommodation (IOM. 2007. p130). GRETA’s silence on these policies should be interpreted as acceptance they are compatible with the CAT. These policies can be viewed as the consequence of two very different approaches. Firstly they are consistent with the construction of the victim discourse. Secondly they are determined by the prioritisation of controlling immigration and convicting traffickers. The findings of the research suggest it is the second approach which is more influential.

One interviewee from the organisation which confiscates mobile phones from the women living in their safe house for a minimum of three weeks replied somewhat bemused to the series of questions about this policy,

*[I]s that considered a human right now? (Appendix B. Interviewee 26).*

Having a mobile phone is not a human right. However confiscating mobile phones or imposing controls and restrictions on freedom of movement contradicts the principles of a genuine human rights approach that responses are empowering and



respect autonomy. The 2004 Council of Europe Experts Group on Trafficking in Human Beings report recommends the accommodation should provide ‘a set of activities aimed at fostering the person’s empowerment and autonomy’ (Experts Group on Trafficking in Human Beings. 2004. p181). The Explanatory Report of the CAT expands upon the right to accommodation provided by Article 12. It suggests accommodation should be empowering and support individuals as autonomous individuals, ‘The protection and help which the refuges provide is aimed at enabling victims to take charge of their own lives again.’ Such expectations are contradicted by policies controlling movement and communication which disempower people by preventing them from making their own decisions about their personal safety. The support organisation takes control of trafficked persons’ lives making them passive recipients of support in an unequal power relationship in which they are expected to submit to the will of their rescuer. They are denied recognition as autonomous individuals. Surtees argues,

Rules that severely restrict residents’ autonomy do not empower them to evaluate their options and make decisions about their lives and futures. To support victims in taking control of their own lives, residents must participate on their own terms, to the greatest extent possible and consistent with the recovery needs of other shelter residents (Surtees. 2008. p24).

The policies of curfews and controls are patronising, paternalistic and infantilising. They can be regarded as infantilising because they replicate the responses to trafficked children. A 2011 report by ECPAT UK highlights ‘escorted movement’ and the ‘removal of mobile phones’ as best practice when working with trafficked children (ECPAT UK. 2011. p29). A support worker from the organisation which confiscates mobile phones for three weeks and does not allow residents to leave the safe house unescorted during their first week used explicitly infantilising language to describe their curfew policy,

*We would ask women if they are going to be out towards curfew to know where they are going to be, when they expect to get home, how they are going to get home, a bit like a mum with their kids (Appendix B. Interviewee 10).*

The description of a parent-child relationship contradicts an empowering response to trafficked adults and respect for them as autonomous and equal participants. Policies controlling and restricting freedom of movement and confiscating mobile phones are consistent with the victim discourse’s conceptualisation of trafficked persons as

victims to be rescued. Trafficked persons are treated according to a narrative in which they were moved against their will and exploited until they were rescued. Trafficked persons who made a calculated and considered risk to migrate, managed to survive the situation of exploitation, or escaped the exploitation themselves are viewed as unable to make their own decisions. They are treated as bystanders in their own lives, as people who must be protected from themselves.

Restricting freedom of movement and confiscating mobile phones undermines the confidence of people to make their own decisions and to develop their independence which they are required to do extremely rapidly within a forty-five day reflection period. Trafficked persons want to have control over their lives and to be independent to restore their dignity (Skrivankova. 2010. p9). They are capable of making these decisions themselves. Support workers acknowledged the majority of the residents choose not to be out late,

*In most cases, the examples of curfews, they don't want to be out late anyway (Appendix B. Interviewee 26).*

An interviewee from a support organisation which provides accommodation for men without a curfew described the situation for the vast majority of men in regards to staying out late,

*[they] are in bed at ten o'clock. I expected them to be a little bit more 'oh I've got some freedom of I go and do whatever' but it's not the case at all. They are back in and everything is sorted (Appendix B. Interviewee 9).*

Support workers who participated in fieldwork interviews expressed the importance of ensuring their responses to trafficked persons do not create dependency. However support organisations which impose these rules can undermine trafficked persons confidence in their ability to look after themselves and to make their own decisions. Support organisations which prevent individuals from making decisions for themselves without the approval of the support workers create dependency. Accommodation which respects people's personal freedoms will better prepare people for life after they exit support (Gallagher and Pearson. 2010. p22). Successful reintegration and resettlement requires people have control over their own lives. Ann Hamilton's evidence to the Scottish Parliament's Equal Opportunities Committee in 2012 recognises the need to guarantee the security of supported accommodation and

the safety of trafficked persons but argues denying access to mobile phones or freedom of movement does not benefit recovery,

Quite often when they arrive with us, their mobile phone never stops ringing because the trafficker knows how to get to them. However, given that trafficking is a very disempowering process, we feel that locking up the women and taking their mobiles from them is not necessarily a good way of helping them to start to recover (Scottish Parliament Equal Opportunities Committee. 2010).

One support worker explained why they do not use the policies disputed here,

*We don't have a curfew, we don't take phones off women, we talk to women about their own safety and the safety needs of other women in the accommodation. We take the view that actually yes the women have experienced huge amounts of trauma but they are adults and they are certainly not stupid and I hope that doesn't sound disparaging it's not supposed to, to other services it's certainly not meant to, but that's what I think. Adult women come to us who have survived experiences that you and I could only have nightmares about, they've held jobs, they've reared children in horrific conditions and they've survived all that . . . they've escaped a situation where they've had no control over what they do, what they think, what they eat, where they go, who they see, why would you want to put them in another situation where you're watching what they do, where they go, who they see, what they eat, you know, why would you do that? (Appendix B. Interviewee 15).*

The accommodation provided during the reflection period must not replicate individuals' experiences of being trafficked (Gallagher and Pearson. 2010. p107). The EU Experts Group has recognised the denial of the right to personal freedom is one of the most serious human rights violations within the trafficking experience (Rijken and de Volder. 2009. p53). Restrictions and control over movement outside the accommodation and confiscation of mobile phones undermine and deny personal freedoms once more. A press release by Eaves Housing in April 2011 criticises the MOJ's decision to award government-funding to the SA because their responses replicate the trafficking experience. It argues the SA was 'taking away service users' mobile phones and restricting their freedom of movement – replicating the trafficking situation by keeping them under lock and key or not allowing them out alone' (Eaves. 2011. p1).

The trafficking experience can be extremely isolating, contact with the outside world may be severely restricted or stopped completely. Individuals who have their movements controlled and restricted and their mobile phones confiscated by support

organisations may find they remain detached from society, unable to freely move and communicate with people outside of their new environment. These responses are re-victimising. Adams, 2011, argues, ‘housing conditions should not infringe on the freedom of the victim, as conditions which essentially imprison the victim result in further victimisation rather than healing.’ (Adams. 2011. p231)

Silva Hove and Sally Montier from the PP argue that organisations that control movement and confiscate mobile phones perpetuate the experiences of the trafficking situation, with harmful consequences,

Staffed accommodation, where victims cannot leave unless accompanied, may be well intended but it’s Poppy’s experience that highly controlled environments can recreate the experiences from their trafficking situation instead of fostering recovery (Hove and Montier in Chandran (ed.) 2012. p182).

Easton and Matthews quote a trafficked woman who was kept locked in a windowless room by her trafficker, who felt the rules in the accommodation during her reflection period were reminiscent of her past, ‘It’s a nice place, there are people around, the only thing I’ve found hard living in a hostel is that they’ve got rules I need to follow and its challenging me psychologically and it reminds me of my past . . . I feel I still don’t have the freedom I want’ (2012. p72). van Selm (2013) examines the responses to trafficked persons in five European countries. The study highlights how a trafficked woman supported in France felt ‘having to stay in a temporary shelter, with rules insisting the residents remain indoors for their own safety, made her feel locked up – so in spite of feeling free from the experiences of exploitation there was still a sense of being trapped’ (van Selm. 2013. p37).

Some individuals will have been in highly controlled environments during their exploitation. Others will have had varying degrees of movement outside of the direct control of their traffickers. Individuals who were able to leave the site of their exploitation by themselves for short periods of time may enter supported accommodation which is initially more restrictive than when they were exploited. An interviewee described the problems with such controls for those people,

*they’ve had a degree of freedom. They’ve been able to come and go as they please. It’s not as black and white as a lot of people would like to make out. For those women going to such a restrictive support service is just terrible for them and they don’t last long and it’s not good for the staff and good for*

*the other women there and it's a very paternalistic approach (Appendix B. Interviewee 1).*

The argument in defence of these policies is they guarantee the CAT's right to 'secure' accommodation. Support organisations are remiss if they are not ensuring they provide secure accommodation. However Surtees, 2008, highlights support organisations often conclude it is preferable to be overly cautious in guaranteeing security (2008b. p20). To argue it is justifiable to deny and undermine rights and personal freedoms because it is better to be safe than sorry contradicts the requirement that the response is necessary and proportional. Interviewees from support organisations in England which control and restrict movement and communication have responded in this way, disregarding proportionality and necessity. An interviewee from the sub-contracted accommodation which prevents their residents from having their mobile phone for a minimum of three weeks explained,

*if there's any hint of something not quite right then there will be no question of you're still not having your phone until we can work it out and we feel that's okay to do because you can't risk safety at the end of the day (Appendix B. Interviewee 12).*

A member of staff from a sub-contracted organisation with a safe house for men which has a 10pm curfew explained how the motivation behind having this curfew is to ensure the safety of residents and staff,

*the safety of residents and also for the area in which they are living in ten o'clock is a respectable time to be coming back in. If you're coming back later than that it would start to raise questions in the local area because it's quite a quiet neighbourhood so it has a broader safeguarding ramification, not just we'd like you to be back by ten o'clock please (Appendix B. Interviewee 25).*

The suggestion that allowing men to return after 10pm would attract attention from the local area which could jeopardise the safety of the residents when the accommodation only has a few residents seems rather far-fetched. This safe house only accommodates a very small number of men. It seems unlikely that the movements of one or two men would draw the attention of the local community or that this would somehow result in them suffering harm or being re-trafficked.

An interviewee from the organisation which confiscates phones for three weeks and prevents residents from leaving the house unattended during their first week and has a 10pm curfew thereafter described how their safe house is monitored by CCTV,

*There's an alarm which is put on every evening when the women go to bed. So the lower level of the accommodation is alarmed and the bedrooms obviously aren't so they can move around upstairs. But they can't go downstairs or exit the property without staff being made aware of it after everyone has gone to bed (Appendix B. Interviewee 10).*

Having an alarm which is triggered if a woman goes downstairs in the night is unnecessary and disproportionate. It is also infantilising because it treats the women like children who have to be in bed at a certain time. The residents' movements are controlled both outside and inside the safe house.

Comparing the controls on movement and communication against the use of B&B's, hotels, hostels and homeless shelters during the reflection period highlights that these restrictive policies are disproportionate and unnecessary to protect people from immediately being attacked by their traffickers or re-trafficked. The acceptance of hotels and B&B's as accommodation implies people are not at any risk from their traffickers. However it is simultaneously argued they are in such danger and a risk to themselves that they must have their mobile phones confiscated and their movements controlled and restricted. Both juxtaposed responses contradict a genuine human rights approach.

The Explanatory Report to the CAT recommends the addresses of safe houses are confidential to ensure the safety of staff and residents. The locations of accommodation for trafficked persons in the UK are kept confidential. However Surtees argues 'there is little evidence that public sites are a greater risk to staff or beneficiaries' (2008. p21). This suggests people are not ordinarily in such danger from their traffickers as to make controls on movement and communication proportional or necessary. Organisations are able to ensure the safety of their staff and residents and the security of their accommodation without having to confiscate mobile phones or have controls upon movement outside the accommodation. A support worker from an organisation which does not use the policies critiqued here explained how they recognise the importance of safety and help to ensure it for their residents,

*I know you have to absolutely take women's safety seriously equally they have to take responsibility for their own safety and like I say they are not stupid women . . . A risk assessment will show she is safe in the area nobody is going to place a woman in an area of risk and the women know that if they don't take responsibility they know what the potential consequences*

*might be both in terms of themselves and their own safety and us having to potentially move them on if they've breached the confidentiality of the address. If you give women information and give them some control and power back in their lives when it's just been ripped away from them in their situation before, women respond to that (Appendix B. Interviewee 15).*

Instead of confiscating mobile telephones many organisations encourage their residents to take a new SIM card for their phone. This means people will not be pressured and threatened by frequent telephone calls from their traffickers but are empowered to communicate with close friends or family and those involved in providing them assistance. An interviewee from a support organisation described this policy and how they respect the autonomy of the women to make decisions for themselves,

*[W]e offer them a new phone and or a new SIM card, we would recommend, we tell women that it is better for them, if their trafficker has their number that they remove that SIM card, . . . we don't, we can't take the women's phones from them, it's tempting sometimes [laughs] but no, we can't do that (Appendix B. Interviewee 5).*

Several support organisations provide their residents with a mobile phone if they do not have one when they enter the accommodation. One support worker explained how access to a mobile phone was important for the security of the residents. This is in direct contrast with the argument that confiscating phones makes people safer,

*[W]hat we tell residents is to change SIM-cards, but having mobile phones is a security mechanism. If they see somebody they can call the police, they can call our on call number (Appendix B. Interviewee 11).*

Specialist supported accommodation should create an environment in which people feel safe, comfortable and relaxed. A support worker's explanation of why their organisation does not control and restrict movement was consistent with such a response,

*It's their home so we allow them to come and go as they please (Appendix B. Interviewee 24).*

The 2013 SA report on trafficked men highlighted a number of 'positive interventions reported by staff' including the use of 'firm house rules' (The Salvation Army. 2013. p28). These rules are undefined. Restrictive and firm rules can create an environment of tension, stress and fear which will be extremely negative for reflection and recovery. This is a greater danger to trafficked persons than their traffickers. The ATMG warns 'a victim is more likely to be at risk from attempted

suicide than of being located by her trafficker' (ATMG. 2013. p37). This illustrates the extent of the danger of traffickers which should not justify the confiscation of mobile phones and controls upon movement. It also demonstrates the extent of the trauma trafficked persons suffer and highlights that it is imperative that specialist supported accommodation is provided.

Gallagher and Pearson highlight 'In almost every country, protective detention is a highly unusual response to even the most violent crimes' (2010. p108). Scrutinising the critiqued policies in accommodation for trafficked persons against the accommodation for survivors of domestic violence illustrates how they are unnecessary and disproportionate. Women exiting domestic violence are at a significantly greater risk of harm than those exiting trafficking. Data from the Office for National Statistics shows that in the year 2011-2012 eighty-eight women were murdered by their partner or ex-partner (Office for National Statistics. 2013. p29). Despite the considerable dangers women in domestic violence shelters may face and despite being significantly closer to their abusers than trafficked persons they do not have their movements controlled and restricted nor have their mobile phones confiscated by those offering assistance. Brunovskis and Surtees describe the distinction between these two groups despite the greater risk to survivors of domestic violence as 'striking' (2007. p104). They acknowledge the response suggests important differences between the two groups. The 'striking' difference is that trafficking is recognised as an immigration problem.

The controls and restrictions on trafficked persons movements and communications are only necessary to protect the interests of an immigration approach. The extent to which immigration concerns permeate the response to providing accommodation is illustrated by the SA's use of the term 'absconded' to describe the twenty-one people who prematurely left sub-contracted accommodation between July 2011 and April 2013. The use of "abscond" by the organisation central to the support of all trafficked adults in England and Wales portrays trafficked persons as fugitives on the run. "Abscond" belongs within the lexicon of the immigration authorities and the police. The reasons individuals prematurely leave support are complex (Brunovskis and Surtees. 2007). The word "abscond" does not acknowledge these complexities. It does not recognise trafficked persons as people who have suffered human rights violations, who require support but are too terrified of their traffickers or the police



to engage with support organisations or who do not recognise any benefit from the support and assistance which is being offered or fear the consequences of a negative status decision.

UKBA guidance for frontline staff explains it is necessary for the accommodation to have ‘comprehensive security’ for the protection of trafficked persons,

accommodation must meet their support needs and be sufficiently secure to make sure victims cannot be kidnapped by traffickers . . . Some victims may require more comprehensive security or support arrangements, the level of trauma or sophistication of the traffickers and desire to recover a victim are factors in your consideration (UK Border Agency. 2013. p24).

However the UKBA was responsible for managing all irregular immigrants in the UK. The immigration authorities have a strong interest in ensuring trafficked persons are under close supervision during their reflection period as their legal right to be in the UK may end after forty-five days. An interviewee from a contracted organisation in Northern Ireland described how the UKBA monitored trafficked persons during their reflection periods,

*The non-EU nationals who whenever they are rescued in the UK or NI are technically here illegally. The border agency may put reporting restrictions on that individual so it could be once a week or once a fortnight reporting to the border agency as a reporting restriction (Appendix B. Interviewee 21).*

A police officer acknowledged the immigration concerns about trafficked persons which meant they required monitoring,

*if they were identified as victims of trafficking then obviously they would have to be managed in a specific way because obviously that person is effectively illegally in the UK and therefore needs to be managed properly (Appendix B. Interviewee 30).*

Glyn Williams’ oral evidence to the Joint Committee on Draft Modern Slavery Bill in which he misspoke when he described trafficked persons being “caught” illustrates why supported accommodation may use controls and restrictions upon movement and communication. Such policies help ensure trafficked persons who have been “caught” do not escape. Trafficked persons status as potential immigration offenders is ultimately more of a concern than ensuring responses to them which best enable reflection and recovery. A CHASTE safe house for trafficked women recovering from their exploitation simultaneously accommodated trafficked women who were being deported once they had no legal right to be in the UK (Gupta. 2009).

The controls over movement and communication are unnecessary to protect trafficked persons but are necessary to secure their participation in criminal investigations and proceedings against their traffickers (Gallagher and Pearson, 2010, p106). These responses take a law-enforcement approach and prioritise the interests of the State rather than a genuine human rights approach. A senior police officer in Scotland acknowledged they must prevent trafficked persons from absconding because it means the police will not get intelligence necessary to convict traffickers (Easton and Matthews, 2012, p79). Those working to support trafficked persons highlight how controlled accommodation fulfilled the police's interests. Easton and Matthews highlight the opinion of one support worker,

One representative working for a victim support service felt that the police had a preference for housing women in secure accommodation. This was less for the women's own safety, as generally with good support they posed a low flight risk and more so they could maximise the possibility that the victim provided intelligence (Easton and Matthews, 2012, p71).

A support worker described a similar priority,

*what the police would like is twenty-four hour supported accommodation where the door is locked and the woman had to say open the door for me to leave. We can't facilitate that, neither actually do we think it is that appropriate for someone (Appendix B. Interviewee 1).*

An interviewee from a sub-contracted organisation providing accommodation for men described a response in which the interests of the residents appeared subordinate to the polices,

*We facilitate the police coming into the scheme. Obviously we ask them to come either in plain clothes or we can meet them somewhere if they're in uniform because . . . when the police turn up at the door it does send a bit of an "oof" signal to the guys and they get a bit twitchy. So if we know that they are coming then we tell the guys in our morning meeting . . . so they are aware that there is going to be a knock at the door and that a police car may arrive, albeit plain (Appendix B. Interviewee 9).*

The interviewee recognised the presence of police at the accommodation had a negative impact upon residents but had not prevented such visits continuing. The 2004 OSCE and ODIHR report explains that conducting communications between residents and the police within supported accommodation means individuals are unable to 'retreat into a private sphere' (OSCE and ODIHR, 2004, p25). The practice

described by this interviewee contradicts this expectation. Allowing police officers to visit the safe house does not provide people a ‘private sphere.’

### **The Absence of Second Stage Accommodation**

Theresa May responded to a question in the House of Commons about the availability of accommodation for trafficked adults after they exit the assistance of sub-contracted organisations by explaining,

Many people will leave the refuge or protection they have been in after forty-five days, but in many cases they will be able to go into a further form of protection that will have been discussed, and the charitable and voluntary sectors are working very well on that (Hc Deb. 28 Apr 2014. C518).

This rhetoric is contradicted by the reality. The UK government and regional governments do not fund any specialist supported accommodation post reflection period. This exemplifies the short-term nature of the UK’s response. However evaluating the lack of specialist supported accommodation after the reflection period against the CAT finds this response acceptable. The CAT only requires States to uphold the right to ‘appropriate and secure’ accommodation for the duration of the reflection period. This does not provide sufficient protection for trafficked persons and their rights.

People granted discretionary leave to remain in the UK owing to their ‘personal circumstances’ are unable to access government-funded second stage supported accommodation which provides them the support necessary given their ‘personal circumstances.’ This harms the interests of the State and trafficked persons. Individuals who receive discretionary leave to remain to participate in criminal proceedings cannot access specialist supported accommodation which would be significant in helping them to manage the highly difficult experience of testifying against their traffickers. The lack of a supportive environment during this time could prevent their participation, denying the principle of access to justice and the ambitions of the State’s law-enforcement approach. A lack of crucial evidence and testimony from trafficked persons may be the difference between a successful conviction and an unsuccessful prosecution (Gallagher and Holmes, 2008. Touzenis, 2010).

Some people live in specialist supported accommodation beyond forty-five days. However this is not a consequence of an individualised response which ensures people requiring additional support can live in the accommodation longer. This is only a consequence of people having to wait longer than forty-five days for a CG decision being permitted to live in the accommodation until a decision is made. Any benefit to these individuals is entirely accidental and unintentional. The SA's written evidence to the Home Affairs Committee highlights the average wait for a CG decision for the people they supported was 104 days after the RG decision (Home Affairs Committee, 2013, p16). However during the first year the SA managed the support contract the average length of residency in sub-contracted accommodation was sixty-nine days (The Salvation Army, 2012, p3). This means many people will have exited supported accommodation before they received a CG decision. This violates the right granted by Article 10.2 of the CAT that people should be treated in respect of Article 12 paragraphs 1 and 2 until the competent authority has conclusively decided whether they were trafficked.

Trafficked persons access to supported accommodation is significantly shorter than survivors of domestic violence access to supported accommodation. One sub-contracted support organisation also has refuges for survivors of domestic violence which house people for up to six months. An interviewee described the differences between working with survivors of domestic violence and trafficking. They highlighted that survivors of domestic violence are able to leave supported accommodation once they are ready and are not under the pressures of limited access to supported accommodation which trafficked persons are,

*So you know you understand you have the emotional impact of what's happening to them but you know you don't have the concern about will I have to kick them out? (Appendix B. Interviewee 11).*

The disparity between how long survivors of domestic violence have to live in supported accommodation and those who have been trafficked cannot be justified by the level of trauma and requirements for support. I argue trafficked persons are not given the comprehensive support they require because they are discriminated against because they are recognised primarily as immigrants unlike survivors of domestic violence.

Trafficked persons are expected to make rapid transitions from the situation of exploitation to living in a supported safe house, possibly under controls undermining their autonomy and independence, to unsupported accommodation where they have to be completely independent. These are highly difficult transitions. A support worker quoted in the CSJ report argued “Going from 24/7 support to independent housing is terrifying” (Centre for Social Justice. 2013. p171).

Privately funded support organisations provide accommodation to trafficked persons beyond the forty-five day reflection period on an extremely small scale. The PP allows women to live in their safe house long after their forty-five day reflection period has ended. A member of staff at the PP explained,

*women stay in our accommodation for about a year, sometimes longer, some are shorter, we try not to make it longer than a year and then they'll access our resettlement service for another year, year and a half (Appendix B. Interviewee 5).*

Housing for Women is the only organisation in the UK providing second stage accommodation. However this service is limited to trafficked women. There is no secondary accommodation for trafficked men in the UK. Housing for Women manages eleven residential units across London for women exiting supported accommodation. One member of staff is a dedicated support worker for the women living in the accommodation. The women will be able to live in the accommodation for twelve months although some women have been supported for as long as eighteen months before becoming fully independent. As the accommodation is in London the project has only supported women from organisations within or close to London. The accommodation provides a safe and stable environment which enables people to become independent while continuing to access support from those with the necessary expertise and experience to support them.

The PP and Housing for Women are providing more comprehensive support than the UK government and regional governments. The duration of the provision of accommodation and resettlement provided by the PP and Housing for Women are consistent with a genuine human rights approach. They take an individualised approach, responding to the requirements of each woman they support. These responses are determined by providing trafficked persons the support they require rather than abiding to arbitrary and insufficient deadlines for the provision of

support determined by concerns about controlling immigration. Individuals are supported from their initial recovery and reflection through to resettlement and independence. This is an empowering response which facilitates people to develop their independence and to become self-supporting. For the UK government to take a genuine human rights approach it should provide second stage accommodation. This would help people integrate and settle into communities and be empowered as they gradually develop their independence. It would enable individuals to receive the support they require to claim their right to legal redress against their traffickers which benefits them and the State.

## **Conclusion**

Trafficked adults who are referred to the NRM and receive positive status decisions are not guaranteed to access specialist supported accommodation. This is a situation contradictory to a genuine human rights approach but not incompatible with the unsatisfactory right to accommodation established by the CAT. This chapter has shown the inadequacies of the CAT by explaining how it does not oblige States to ensure trafficked persons' access specialist supported accommodation which treats them in respect of the fact that they have suffered human rights violations and which will support them to achieve physical and psychological recovery or provide more than just a very short-term right to accommodation.

I have shown that there are significant distinctions in the responses to the accommodation of trafficked adults in the four regions of the UK which contradict the essential principles of a genuine human rights approach. The principle of gender specific responses which uphold gender equality is contradicted by the unavailability of supported accommodation for trafficked men in Wales and the provision of government-funded mixed sex accommodation in Scotland and England. The principle of an individualised response is denied as not all individuals will access specialist supported accommodation.

The chapter concludes that the realities of the response to providing accommodation bear little resemblance to a response consistent with the UK government's rhetoric and a genuine human rights approach. The response instead typifies the overall approach and response to trafficked persons in the UK. Firstly access to supported

accommodation is short-term. In none of the four regions are trafficked adults able to live in State funded specialist supported accommodation beyond the forty-five day reflection period. This denies an individualised response as it means people are unable to stay in supported accommodation for the duration they require to achieve a sufficient level of recovery.

Secondly the responses accept the most minimal standards in which the accommodation provided offers people nothing more than a bed to sleep in and a roof over their heads. Trafficked adults are referred to non-specialist accommodation intended for survivors of domestic violence, homeless people or those claiming asylum. Furthermore they may be referred to accommodation intended for the general public such as hotels and B&B's. Providing such accommodation for trafficked adults treats them as holiday makers and as tourists rather than as people who have had their human rights violated. These are not environments which can provide trafficked adults the support and assistance they require during their reflection period.

Thirdly the responses to the accommodation of trafficked adults do more to fulfil the State's interests of protecting immigration controls than protecting trafficked persons. This chapter has explained how controls and restrictions on the movements and communications in safe houses contradict a genuine human rights approach by disempowering people and denying autonomy without having any genuine value for their protection. These responses are neither necessary nor proportionate for the protection of trafficked persons and their rights. They only serve to fulfil the interests of the State. The policy of referring trafficked adults to NASS accommodation during their reflection period exemplifies the extent to which the approach responds to trafficked persons as immigrants rather than as people who have suffered human rights violations. This response discriminates against people by excluding them from specialist supported accommodation because they are claiming asylum.

The failure to take a response to the provision of accommodation for trafficked adults which respects a genuine human rights approach is detrimental to the State's ambitions to prevent trafficking and prosecute traffickers. Individuals who have a stable, safe environment will be more likely to be involved in actions which lead to the conviction of traffickers.

## **Chapter 5. Justice Served? Treating Trafficked Adults as Victims and Criminals.**

### **Introduction**

This chapter examines the policy and practical responses engaging trafficked persons with the criminal justice system. The chapter studies how policies consistent with the articles of the CAT practically exclude people from being able to access justice. The focus of the chapter is the policies of the reflection period and the conditionality of claiming residency as the primary cause of peoples' practical exclusion from access to justice. Access to justice is only partially achieved when people see their traffickers prosecuted and convicted. It also requires people are awarded compensation.

A response which respects the principle of access to justice recognises trafficked persons as the victim of crimes and human rights violations who have the right to legal remedy. They should not be instrumentalised as sources of evidence. A person's involvement within the criminal justice system must only occur because they autonomously decided to participate. This research argues that the responses to engage trafficked persons with the criminal justice system are focused on the interests of the State and fulfilling a law-enforcement approach. The chapter argues that the responses are centrally concerned with the State having remedy. The responses are not focused on providing trafficked persons access to justice. The chapter demonstrates this by exploring the pressure and coercion which trafficked persons can experience as a result of both policy and practice to cooperate with criminal investigations and proceedings. This prioritisation is further exemplified by highlighting the disregard for and inaccessibility of the right to compensation. This research finds that the compensation is not treated as an essential right. The chapter compares the different policy responses to supporting trafficked persons to claim compensation with those cooperating with law-enforcement to see their traffickers prosecuted and convicted. It is argued that the right to compensation is not protected through policy because this is not regarded as being a valuable remedy for the State. The approach in the UK contradicts the principle of access to justice whilst being primarily concerned with prosecuting and convicting traffickers. The chapter



highlights that taking a response consistent with a genuine human rights approach and upholding the principle of access to justice will benefit the interests of the State.

This chapter then studies how trafficked persons are excluded from having access to justice because they instead suffer an injustice at the hands of the State through punishment for trafficking-dependent crimes. The chapter argues how this is the most important barrier to claiming the right to legal remedy and rights to support obliged by the CAT. The research argues that this punishment contradicts each of the 3P's and the States interests.

The chapter uses new data from the research on the punishment of Vietnamese nationals trafficked for cannabis cultivation. The chapter asks how and why people are punished. The research finds that the inadequacy of Article 26 of the CAT fails to protect people from punishment. The chapter explores how the level of acceptance for this punishment is contrary to the UK government's rhetoric about trafficking in persons. The former Immigration Minister, Mark Harper, told the Home Affairs Committee in June 2013 that the criminalisation of trafficked persons does not constitute mistreatment,

I am sure there are some people who are wrongly criminalised, but even where that is the case, I do not accept that they are being mistreated, because I think generally the criminal justice system treats people in a humane manner, but there is clearly an issue about identifying people who are victims as opposed to perpetrators of crime, and we need to do better (Home Affairs Committee. 2013b. p10).

It will be explained how criminalisation does constitute mistreatment and how it is the antithesis of a genuine human rights approach. The extent to which the principles of a genuine human rights approach and the rights of the CAT are denied by the punishment of trafficked persons is examined. Punishment for trafficking-dependent crimes re-traumatised and victimises people.

### **The Inaccessibility of Justice**

Access to justice is undermined by policy and practice which contradict the rights granted by the CAT and the principles of a genuine human rights approach. The practice denying this includes people not receiving the necessary information about

their rights and inadequate responses from police officers. In policy this is denied by the limitations of the reflection period.

Trafficked persons rights are interdependent. The inaccessibility and inadequacies of support and assistance will prevent access to justice. People who were unable to access comprehensive psychological and physical healthcare may have little self-confidence and trust in the authorities. This will deter their participation in criminal investigations and proceedings (Lam and Skrivankova. 2009. p1). People who lived in inappropriate accommodation and had to rely on outreach support or were unable to receive counselling or register with a G.P may decide that despite wanting to see their traffickers punished they feel unable to participate in the processes to make that happen.

The forty-five day reflection period prevents access to justice. It does not guarantee people sufficient time to reflect and recover to the extent they feel able to re-live their ordeal by participating in police investigations, providing official evidence and testifying in criminal proceedings. Article 13.1 of the CAT which grants that the reflection period should provide people sufficient time 'to take an informed decision on cooperating with the competent authorities' is not fulfilled. The reflection period fails to provide people time to decide to cooperate with the authorities to seize their right to legal remedy. The 2013 ATMG report argues extending the reflection period to ninety days would provide people more time to make disclosures to the police, share evidence and to decide to participate in further criminal proceedings (Anti-Trafficking Monitoring Group. 2013. p57). Brunovskis argues 'A longer reflection period may make it more likely that they will eventually provide information to the authorities, as they may need substantially more time to reach the point where they can make that decision' (2012. p49). This would benefit the interests of the State and trafficked persons in fulfilling the interests of the P's of protection, prosecution and prevention.

Access to justice requires people are informed of their rights and the legal procedures available to them. Joy Ezeilo, UN Special Rapporteur on Human Trafficking, highlights the importance of this,

Trafficked persons should be provided with full and accurate information about their legal rights, how and where to obtain necessary assistance,

different legal options and procedural steps involved in seeking remedies, and consequences of exercising such legal options (Ezeilo. 2011. p12).

Article 15.1 of the CAT obliges the UK to ensure information about rights to legal redress is provided,

Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand (Appendix B).

Access to justice is denied as this right is not being comprehensively upheld in the UK. The GRETA report highlights that in Northern Ireland there were no leaflets for trafficked persons outlining their rights to legal remedy. The report also highlights the authorities would not inform people of their rights upon initial contact with them (GRETA. 2012. p59).

However a more significant barrier is that criminal complaints of trafficking made to the police have been dismissed. The 2013 ATMG report highlights the experiences of one support organisation which accompanied four Hungarian men to four different police stations in London to report they had been trafficked for forced labour. At each police station the men were treated with indifference. The police explained what had happened to them were civil concerns, not matters for the police and they would not record the crime nor investigate it (ATMG. 2013. pp43-44). Hales and Gelpsthorpe highlight similar cases of women who disclosed to the police they had been trafficked where the police made no attempt to investigate their criminal complaints. (2012. pp60-61) The fieldwork research for this thesis supports these findings. An interviewee from a sub-contracted organisation supporting trafficked men explained,

*A few of our guys now who want to give a statement so were just trying to find out, trying to locate a police station that will accept that complaint and some of them say 'no that has to go to the UKHTC centre' and we are finding that as a support service that we are having to educate the police on the NRM system and [explain to them] no, actually anybody can report a crime that has happened anywhere in the country at any police station (Appendix B. Interviewee 25).*

The extent to which such bad practice might occur is unknown. However the vast majority of police officers have received no training on human trafficking. Police officers who have no familiarity with human trafficking may respond similarly badly.

The ATMG highlights that as of July 2013 only 18% of police officers in England and Wales had completed training on human trafficking (ATMG. 2013. p14). Such flagrant denials of the right to legal remedy and exclusion from access to justice contradict a law-enforcement approach and the ambitions of the State to see traffickers convicted. Traffickers cannot be convicted when the police will not even investigate the crime. These responses demonstrate a complete lack of understanding about trafficking or any interest in those affected. These responses treat people without dignity. Making a criminal complaint of trafficking will be a very difficult thing for trafficked persons to do (Gallagher and Holmes. 2008. p331). Having overcome these fears to then encounter such dismissive responses may leave people feeling that what they have endured is considered acceptable or inconsequential causing them further anguish.

### **The Inaccessibility of Compensation**

The CAT declares that States should 'guarantee compensation' for trafficked persons. Compensation is denied in practice by trafficked persons not being informed of their rights and in policy by trafficked persons not having a right to residency for the purpose of pursuing compensation. It is explained how despite the text of the CAT calling on States to 'guarantee compensation' the policy responses which make compensation practically inaccessible are compatible with the rights within the CAT.

The examination of the inaccessibility of compensation in this chapter addresses a significant gap in some of the celebrated recent research on the UK's response to trafficked persons. The 2011 EHRC inquiry rightfully acknowledges 'remedies and compensation' are one of the 'main obligations' in 'protecting and supporting victims' (Equalities and Human Rights Commission. 2011. p20). However those strong assertions about the importance of compensation were the only reference to compensation within the entire report. The follow up report published in 2013 makes no reference to compensation. The 224 page CSJ report does not even use the word "compensation."

The SA maintains its role as a silent partner of the UK government in regard to the right to compensation. The SA has not published anything acknowledging that trafficked persons have a right to compensation nor discussed how people have been

supported to access it. None of the SA's publications or written and oral evidence to the Home Affairs Committee discusses the accessibility of compensation. The SA has not critiqued or even acknowledged the distinctions between the UK government's rhetoric on trafficking and the obligations upon the UK as a signatory to the CAT with the reality of the inaccessibility of compensation.

During a debate in the Northern Ireland Assembly in September 2013 Peter Weir of the DUP highlighted that only two out of a total of eighty people trafficked in Northern Ireland had 'managed to break down all the barriers set in place to receive the compensation that they need.' GRETA's report on the UK's compliance with the CAT declared that 'very few victims of trafficking seek compensation.' (GRETA. 2012. p8) The right to compensation is recognised as one of the most inaccessible rights for trafficked persons in the UK (Skrivankova. 2011. p276).

The UK government's response is focused on obtaining remedy for the violation of the UK's borders and the UK government's control over immigration. Providing compensation to trafficked persons is surplus to those interests. Compensation is disregarded within a response which supports trafficked persons' engagement in the criminal justice system until the moment their involvement ceases to serve the primary interest of the State to convict traffickers. The right to compensation is at best treated as an afterthought which is a nonessential aspect of the response (GRETA. 2012. p34). The UK government and regional governments have ignored and disregarded the right to compensation (La Strada and Anti-Slavery International. 2013. p40).

The 2007 UK Action Plan only provided a brief paragraph on compensation. (Lam and Skrivankova. 2008. p21) The 2009 'Update to the UK Action Plan on Tackling Human Trafficking' used the word "compensation" once in fifty-eight pages. The Government's Strategy and the draft Modern Slavery Bill made no reference to compensation. The Northern Ireland Assembly's Department Of Justice 2013 Human Trafficking Action Plan acknowledged the importance of compensation for trafficked persons but did not explain how the right will be fulfilled. It only explains 'advice on compensation' should be provided (Department of Justice. 2013. p8). The first IDMG report only uses the word "compensation" four times and does not mention Article 15 of the CAT. It provides a very brief summary of the instruments

available to pursue compensation. The report creates the illusion that compensation is easily accessible. It does not acknowledge the policy responses make compensation inaccessible in practice. The second IDMG report does not even use the word “compensation.”

The UK government has no centralised data on how many trafficked persons have received compensation or the amounts they have been awarded. The Labour MP Geoffrey Robinson highlighted this problem to the Immigration Minister in the House of Commons, ‘An amount is collected, and we have no indication or record as to how much of that is paid to victims. Until we know that we do not know how efficient the system is’ (Hc Deb. 15 July 2013. C762). The fact that the UK government has no information about the accessibility of compensation and is complacent about this highlights its disregard for whether the right is upheld.

Article 15.1 of the CAT requires trafficked persons are informed of their right to compensation and the methods to obtain it. People cannot be expected to claim compensation without being informed of their right to it. Providing people information empowers them. Article 15.1 of the CAT is not being guaranteed in the UK. Many people are not informed of their right to compensation and consequently do not apply for and receive compensation. Some of the materials produced to inform people of their rights contain no reference to compensation. Potter and Egerton argue the different methods to pursue compensation are not being utilised in Northern Ireland because of a lack of knowledge about the right to compensation (2012. p29). The Northern Ireland Law Centre published their submission to GRETA’s researchers examining the UK’s response. The submission highlighted that at that time in October 2011 no trafficked person in Northern Ireland had received compensation. Their submission explained that people are not being informed of their rights to legal remedy, ‘We are not aware of any such leaflet in Northern Ireland that outlines the rights and entitlements of victims of trafficking’ (Law Centre Northern Ireland. 2011). In September 2013 the DOJ in Northern Ireland published a leaflet providing basic information to trafficked persons about their rights which makes no reference to “compensation.” Until it was updated in October 2013, a leaflet produced by the UK government entitled ‘Help for Adult victims of human trafficking: Your rights if you’ve been trafficked into exploitation in the UK’ made no reference of the right to compensation. In 2012 the Scottish State prosecutor, Crown

Office and Procurator Fiscal Service (COPFS) published the leaflet ‘Information for Victims of Human Trafficking.’ The leaflet explains what happens if a person reports a crime, whether they will have to go to court, the nature of giving evidence in court and what support is available. However it does not mention the right to compensation (Crown Office and Procurator Fiscal Service. 2012). A solicitor in Scotland who was interviewed for the fieldwork research was asked to what extent the right to compensation is being made aware to trafficked persons. They replied,

*It isn't (Appendix B. Interviewee 32).*

The right to compensation is made inaccessible in practice by uncertainty about whose responsibility it is to inform people of their right to compensation and when this should be done (Anti-Trafficking Monitoring Group. 2013. p126). The Criminal Justice System Trafficking Toolkit ‘Specialist Arrangements for the Police’ contained no reference to informing trafficked persons of their right to compensation. Uncertainty about the duty to inform people of their right to compensation was identified in the fieldwork interviews. I asked a police officer whether they had discussed compensation with a person who was working with them to get a conviction against their trafficker, they explained,

*I certainly never with the victim in the [case name] never once had the conversation with her about at the end of this we will get your compensation sorted and it's not something that she ever raised with me . . . in terms of what they would likely to get at the end the amount of messing around for her that she was put through from our constant going up , further interviews, doing this, doing that with her, asking her this question, getting her to, do you know what?, it probably in the long run weren't worth it for her (Appendix B. Interviewee 17).*

The police officer highlighted that the individual never discussed their right to compensation. However trafficked persons cannot be expected to ask about rights they may be oblivious to. It is not their responsibility to educate themselves about their rights. It is the duty of those responding to inform them (La Strada and Anti-Slavery International. 2013. p50). Those who enquire about compensation may be scrutinised and disregarded as ‘genuine victims’ because they are viewed as having financial motivations in falsely presenting themselves as trafficked.

It is argued that the police may not inform people of their right to compensation because they do want to be seen to have induced people into testifying against their alleged traffickers because of money. The legal defence may challenge the credibility

of the witness if they think it could be argued this could have motivated them to tell the court they were trafficked. As a DI explained,

*There's a bit of an integrity issue around compensation and claims as well particularly pre, you know if it was ever considered pre-charge or pre-conviction because you don't want to ever be seen as an inducement (Appendix B. Interviewee 33).*

One interviewee from a support organisation explained how these concerns can make compensation inaccessible,

*I know the police can be quite reluctant to talk to women about compensation because that's not to be the motivation for them to go to court and it's important that women do know that and that the police are on board with that as well because I think a lot of women have missed out (Appendix B. Interviewee 5).*

The award of compensation to trafficked persons in England, Wales and Scotland through the Criminal Injuries Compensation Scheme is dependent on a person proving they have suffered criminal injury but does not require that somebody has been convicted of an offence. The police should not be prevented from informing people who report to them they have been trafficked of their right to compensation.

In 2008 the ILO estimated the global annual profits of 'organized criminal groups' from human trafficking was \$32bn (International Labour Organisation. 2008. p5). Article 23.3 of the CAT requires States to establish legislation to ensure the seizure of assets and proceeds of traffickers generated by trafficking. The UK fulfils this obligation through the 2002 Proceeds of Crime Act which enables the confiscation of assets from those convicted of crimes in each region of the UK. In the three years of 2010, 2011 and 2012 a total of £2.087.182.71 was confiscated from those convicted of trafficking offences in England and Wales (HC Deb. 1 July 2013. c391W).

Compensation is not inaccessible for trafficked persons because money is not being recovered which could compensate them for the loss of earnings and for the injuries they have suffered. This money seized from traffickers has not been used to fund compensation schemes. However this is compatible with Article 15.4 of the CAT which only recommends States use assets seized from traffickers to fund compensation schemes,

Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for



victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23' (Appendix A).

The CAT obliges States to seize the assets of traffickers but does not oblige States to use this generated wealth to compensate those who have suffered the human rights violations. An evaluation of the UK's response against the CAT finds it is acceptable that the millions of pounds seized from traffickers are not used to compensate trafficked persons. To be consistent with a genuine human rights approach States should use the money seized from the traffickers who amass enormous wealth through their exploitation and trade of human beings to fund compensation schemes. This is recommended by Principle 16 of the 2002 OHCHR Recommended Principles and Guidelines on Human Trafficking which 'requests' 'confiscated assets are used to support and compensate victims of human trafficking' (OHCHR. 2002. p2). The UN recognises 'The linking of a criminal justice measure, such as confiscation of proceeds, to victim support presents an important step forward in the integration of a human rights approach to trafficking.' (United Nations. 2011. p89) It is argued governments which seize money from traffickers but do not use at least some of those proceeds to fund support and compensation are profiting from exploitation. The NGO Global Rights explains,

Governments should not keep the assets for other purposes and those that do so are guilty of profiting from the traffickers' criminal acts. Assets from human trafficking represent the forced labour, suffering and human rights violations suffered by human beings and they should be distributed to and for the benefit of those victims (Global Rights. p13).

Compensation is made inaccessible in policy by the limitations of the forty-five day reflection period. Trafficked persons require time and support and assistance to understand their options and to decide whether to claim compensation (La Strada and Anti-Slavery International. 2013. p15). Article 13 of the CAT explains the reflection period should be sufficient for an individual to 'take an informed decision on cooperating with the competent authorities.' The reflection period should also provide individuals enough time to make an informed decision about whether to cooperate with the authorities to pursue compensation. A 2012 report for the Scottish Centre for Crime and Justice Research explained why it did not examine access to compensation, 'While acknowledging the interconnection of other issues such as provision of compensation and repatriation, this review is limited to the

provision of crisis and short to mid-term care and support services' (Malloch, Warden and Hamilton-Smith. 2012. p1). The long-term right to compensation is inaccessible within the UK government's short-term approach (Cherti, Pennington and Grant. 2013. p78). A support worker explained how the reflection period does not provide people sufficient time to decide to proceed with compensation,

*No I haven't. It's something we bring up as and when they were able to. To look at something like that is quite a future thing . . . it's something we put in later on in the process, if and when, if they're talking, and open and happy and depending on how their rest and recovery is going if that's something we feel that they would be positioned with them then we would do that but we've not had any that wanted to do that (Appendix B. Interviewee 25).*

Furthermore compensation is made inaccessible by the UK government's policy not to permit trafficked persons to have discretionary leave to remain for the purpose of claiming compensation (ATMG. 2010. p1). The Home Office explicitly explains, 'The policy regarding leave granted to victims of trafficking does not include grants of leave for the purpose of the victim seeking compensation from the trafficker' (ATMG. 2010. p117). UKVI guidance on eligibility for discretionary leave to remain declares, 'The fact that someone is seeking compensation will be relevant to the consideration but does not, in itself, merit a grant of leave' (UK Visas and Immigration. 2014. p5).

The UK's response is compatible with Article 15 of the CAT to the extent it enables trafficked persons to use existing legal remedies to access compensation (Ezeilo. 2011. p14). However compensation is practically inaccessible because trafficked persons are not able to claim discretionary leave to remain in the UK beyond forty-five days for the purpose of claiming compensation. Lord McColl explains,

At the moment, provision is made for the victims of trafficking to access compensation but it is currently rendered null and void by the fact that there is no parallel provision granting those with a credible claim permission to remain in the UK while the claim is being processed. Without this, the right to access compensation to rebuild their lives and make sure that they are not re-trafficked is purely theoretical (Hl Deb. 25 Nov. 2011).

However this crucial cause of inaccessibility is compatible with Article 14 of the CAT which does not oblige States to provide a residence permit for the purpose of pursuing compensation. There is a stark contrast between the policies of providing discretionary leave to remain for people cooperating with the police with the inability to do so to claim compensation. Guidance from the Home Office explains if 'the individual is cooperating with the police in an ongoing police investigation into their

trafficking case and their presence is required in the UK by the police for this purpose, they should be granted 12 months and 1 day DL.' The contrast demonstrates a response which takes a law enforcement approach. Trafficked persons cannot stay to have access to justice. Traffickers are to be convicted instead because their activities are harmful to the State. It is the State which must have justice against traffickers.

### **Pressure and Coercion to Cooperate with Criminal Investigations and Proceedings**

Trafficked persons are coerced and pressured into cooperating with police investigations and criminal proceedings in policy and practice. In policy this comes from the conditionality of residency and in practice this is a consequence of the responses of police officers who prioritise getting a prosecution above the recovery and wellbeing of those who have been trafficked. The ambition to see traffickers convicted must be balanced against the wellbeing and rights of those who have been trafficked. Pressure to cooperate can re-victimise and re-traumatise people.

Trafficked persons who are pressured into participating are treated only as witnesses to immigration crime and organised crime which occurs against the State. It is the State which is obtaining legal remedy and not those who were the victim of crimes and human rights violations.

Individuals will have very compelling reasons not to participate with the processes of the criminal justice system. People from countries where police corruption is common may mistrust or fear police in the UK (Easton and Matthews. 2012. p79). They may also fear repercussions for themselves and their families for testifying against their traffickers (Pomeroy. 2010. pp464-465). The authorities must not continue to deny people their autonomy as they experienced during the trafficking situation. A genuine human rights approach requires respecting trafficked persons autonomy to freely decide whether they participate in criminal investigations and proceedings against their traffickers. Participation must only occur because a person chooses to claim their right to legal remedy.

The State is interested in securing the cooperation of trafficked persons in criminal proceedings against their traffickers whose testimony is essential to achieving a conviction and is comfortable with their deportation shortly after the trial is

completed. Such responses indicate that convicting traffickers is an interest separate from concerns about the wellbeing and rights of trafficked persons (Brunovskis, 2012, p11). Haynes argues ‘An offer that involves soliciting the testimony of the trafficking victim and then deporting her cannot be considered part of a “victim-protection” approach to combating trafficking’ (Haynes, 2007, p29). This response instrumentalises people as tools for the prosecution, mimicking the relationship between traffickers and the people they traffic. Trafficked persons may be treated significantly better by the authorities in the UK but in both situations they are used by those in a position of power while they are valuable to them. Once they cease to have value they are too often discarded and deported. These experiences can be victimising and harmful, as Skrivankova explains,

Many trafficked persons have expressed frustration with the process of criminal proceedings and have said that they felt used by the criminal justice system only to testify against the traffickers. Once their role as witnesses ended and they were no longer useful for the prosecution they were simply sent home as their residence permit was issued only for the duration of the criminal proceedings. Some of them expressed that this felt like being punished, rather than their suffering being acknowledged (Skrivankova in Chandran (ed.) 2011, p283).

An interviewee from an organisation supporting trafficked men described a case in which non-EU nationals were participating in criminal proceedings against their traffickers. These men wanted to remain in the UK but it was expected they would be required to leave after the trial finished,

*when the judicial proceedings terminate then as it stands and my understanding is that they will be returned to their country of origin and that will be a managed return and we will assist with that because that's what the legislation says. There is no recourse to stay on in the UK or bring family members in . . . I've asked colleagues in the legal profession and I was quite surprised to hear that there are no special arrangements for those who do cooperate with the criminal justice process, go all the way to court and give evidence, they are key to the police's successful prosecution (Appendix B. Interviewee 21).*

People can be pressured into cooperating with criminal proceedings and investigations by the conditionality of discretionary leave to remain. UKVI guidance states discretionary leave ‘should be considered’ in respect of trafficked persons whose ‘personal circumstances’ require they can stay in the UK beyond their reflection period. The same guidance establishes that people cooperating with the police should be granted discretionary leave to remain,

Where the UK Competent Authority has conclusively identified the applicant as a victim of trafficking and the individual is cooperating with the police in an on-going police investigation into their trafficking case and their presence is required in the UK by the police for this purpose, they should be granted twelve months and one day discretionary leave (UK Visas and Immigration, 2014. p10).

A support worker explains, 'Your access to residency is not trauma informed, it's very much about cooperating with the police' (ATMG. 2013. p43). People who are scared of returning to their country of origin may feel pressured into participating with criminal proceedings as the best guarantee to receive discretionary leave to remain and to avoid deportation. Brunovskis suggests that this situation permits such a degree of pressure as to be unethical,

It must be considered whether residence as an incentive for cooperation may constitute undue inducement, or an unethical level of pressure. In practice, and especially when there is a potential future possibility to obtain permanent residence in the destination country, this can have such a high value for a victim that it may be extremely difficult to decline to cooperate (Brunovskis. 2012. p11).

This policy which is a consequence of the dominance of a law-enforcement approach will actually undermine the realisation of the ambitions of that approach. Raffaelli (2009) examines the response to trafficked persons in Italy and highlights how providing unconditional residence permits provides people the time to trust the authorities, to feel safe and to decide to participate in criminal investigations and proceedings against their traffickers. Making residency conditional upon cooperation prevents people who would have sought legal remedy against their trafficker given time for reflection and support from having the opportunity to do so. Raffaelli also highlights that making support conditional on cooperation enables legal defences to challenge the testimony of trafficked persons by arguing they have ulterior motivations to make false accusations against the defendants to receive discretionary leave to remain (2009. pp216-217). The UK government could prevent any possibility of pressure and such claims from prosecutors by providing unconditional automatic discretionary leave to remain to all trafficked persons who receive a positive CG decision. This response would be consistent with a genuine human rights approach.

The greatest pressure exerted on people to cooperate comes from police officers. This is notwithstanding that some interviewees spoke positively about the police,

highlighting that people were not pressured to cooperate. A support worker explained,

*I think the police generally that we work with will maintain that they have a victim-centred approach. Obviously they want to prosecute traffickers, everybody wants to prosecute traffickers. I want to prosecute traffickers. To be fair generally speaking we've had quite positive experiences of working with the police (Appendix B. Interviewee 15).*

It is unsurprising the greatest pressure on people to cooperate comes from the police. The police's primary purpose is to identify and arrest criminals. The police are themselves under significant pressure to identify and arrest traffickers and build strong cases resulting in prosecutions. The pressure is the consequence of the media and politicians limiting their evaluation of success in responding to trafficked persons by the number of traffickers convicted. Consequently this means the police may lose sight of the needs and rights of trafficked persons (Jahic and Finckenauer, 2005, pp36-37). However the police must balance their professional priorities against the recovery and wellbeing of trafficked persons.

The findings of my fieldwork research support existing evidence of trafficked persons experiencing considerable pressure and coercion from the police to cooperate. A twenty-three year old trafficked woman interviewed in the IPPR report explained,

*I was driven around the Hackney area with the police as they thought this was the area [where R lived, because of] the directions on the piece of paper C had given me when I escaped. I could not recognise any houses in the area. The police continued to ask me questions, they shouted at me saying I would be deported or arrested if I didn't tell the officers R's address, or any address they could take me to (Cherti, Pennington and Grant, 2013, p61).*

A support worker described a conversation they had with a member of staff from a different organisation about police pressure,

*they [the support organisation] said 'well the police just said we are coming to pick her up, and to interview her or we are coming to do this', it's not asking, it's just like 'we are' and they said about the woman not being ready and they said well she has to kind of thing, it's about saying no and knowing what the woman's rights are and if she's not ready she doesn't have to. I've seen the police, and this is in the past, well I've seen them say terrible things to the women, 'you're only here, you're not on a plane home because [of us] and therefore you have to cooperate with us' . . . There's still pressure there and I think they can come . . . storming in (Appendix B. Interviewee 5).*

These responses reduce trafficked persons to a means to an ends. This once again violates Kant's principle. Threatening to arrest a person known to have been trafficked for not cooperating is an enormously powerful form of coercion. It demonstrates a response overwhelmingly focused on successfully arresting traffickers in spite of the impact on the individual rather than because of the positive consequences for them. A support worker described how a trafficked woman reacted to the pressure from the police to cooperate,

*we've had experiences where we had a woman end up hysterical hiding under her bed because the police were insisting on interviewing her and actually to be fair to the police officer involved they contacted their senior officer to say I can't ask her anymore I'm just causing her more harm (Appendix B. Interviewee 1)*

The police's priority may be to take formal statements from trafficked persons. However those who do not want to speak formally to the police immediately after exiting the trafficking situation should be able to access support and assistance before undertaking such a difficult process. Some police officers explained how they delayed the involvement of support organisations because they were questioning the individuals to build cases against their traffickers. One DI explained,

*sometimes it'll be a case of the girls don't talk straight away and that's when we've got these scenarios of what do we do with this girl, we try to keep them for a few days try to speak to them, try to get them to trust us, trust is the main problem really (Appendix B. Interviewee 29).*

The police recognise establishing 'trust' which enables trafficked persons to cooperate with them is difficult (Lam and Skrivankova. 2009. p11). However the most effective way to establish trust is by giving individuals time and space to access support rather than pressuring individuals into giving evidence.

A DI who participated in the fieldwork research described subjecting three teenage girls trafficked for sexual exploitation to considerable pressure to cooperate. The officer justified their methods as being motivated by protecting the girls. Nonetheless this constituted significant pressure and may have been harmful for the girls' ongoing recovery. The DI did not immediately engage support organisations who could make their services available. The DI instead began by exerting considerable pressure on teenage girls who had just exited sexual exploitation. The DI explained,

*I was left with three girls then who I knew had been trafficked but who would not talk to me. So I tried a different approach, which I`m not particularly proud of, but it did actually work, which [is] we went in really hard, we told them some quite graphic home truths, when I say hard, I mean verbally, I mean being strong, being forthright, telling them how it is and being reasonably aggressive, and that`s with my officers with the interpreter there and then afterwards I put in one of my older specialist trained officers and she just put her arms around the youngest girls and acted as the mother figure, and she broke down in her tears, and spilled the beans . . . We tried the closeness, we had done all the touchy feely, we did all the touchy feely and all the stuff that is recommended, there is loads of stuff on the internet there`s loads of stuff from the agencies like PP, about how to engage with witnesses, well I`ve been in thirty years and I took all that on and I did everything I could, but in the end it was good cop – bad cop. The reason that worked is because they are more frightened of the people controlling them than they are frightened of us, so to raise the stakes and make them a little more scared of us, or be a bit aggressive, and then show the softer side I think maybe mentally allows them to see a way out (Appendix B. Interviewee 31).*

## **The Punishment of Trafficked Persons**

The UK government and regional governments have not produced any official approximations on the number of trafficked persons punished by the State for trafficking-dependent crimes (GRETA. 2012. p36). In March 2013 Emily Thornberry MP asked the Attorney-General what information the CPS has on trafficked persons punished for immigration offences since 2010. The Solicitor-General replied, ‘I am unable to provide data on the number of victims of human trafficking who have been prosecuted for immigration offences’ (HC Deb. 19 March 2013. c630W). The absence of such data enables the UK government to portray the punishment of trafficked persons as an unfortunate but small scale problem. This is in the interest of the UK government. The rhetoric portraying a compassionate response providing comprehensive support is seriously eroded by the recognition people are routinely punished for trafficking-dependent crimes. This punishment is either presented as a small scale problem or is completely ignored. The first IDMG report concedes, ‘A small number of trafficked victims may be prosecuted for offences they have committed as a consequence of their trafficking situation’ (IDMG. 2012. p37). The IDMG provides no thorough examination into the reasons for the punishment. It upholds the rhetoric of the UK government rather than examining the circumstances



and reasons of why and how people who have suffered human rights violations come to be punished by the State. When such punishment is acknowledged very little detail is provided on the nature and scale of it. The Child Exploitation and Online Protection Centre (CEOP) which is part of the NCA, published a report in 2011 entitled 'Child Trafficking Update' discussing the trafficking of Vietnamese boys for cannabis cultivation that acknowledges, 'Some children identified during police raids have been subject to criminal proceedings' (CEOP. 2011. p10). However it does not elaborate on the circumstances and outcomes of these proceedings or how many children were involved or make any reference to Article 26 of the CAT. It does not even acknowledge punishment is inappropriate.

Despite having considerable insight into it the SA has never discussed the punishment of trafficked persons in the UK. The SA report on trafficked men highlights that thirty men and women supported by contracted organisations were trafficked for 'criminal activity' but does not explain whether any of those people were prosecuted or convicted for the crimes they were compelled to commit. The SA written and oral evidence to the Home Affairs Select Committee in 2013 did not acknowledge the punishment of trafficked persons. This silence fulfils the interests of the UK government at the detriment of trafficked persons.

The SA's silence is juxtaposed against the PP which published a report documenting and critiquing the punishment of trafficked persons while it had the UK government contract for providing support. When Ann-Marie Douglas from the SA gave her evidence to the Home Affairs Committee she made no reference to the criminalisation of trafficked persons. However Dorcas Erskine, anti-trafficking coordinator at the PP who was not asked by the MPs about such criminalisation raised the issue herself when she said to the committee, 'I would ask that you perhaps look at visiting a prison and detention centre, because a lot of victims of trafficking are being criminalised' (Home Affairs Committee. 2013b. p4). The PP has also run a campaign endorsed by celebrities to end the criminalisation of trafficked persons in the UK.

Despite the lack of official government data it is undeniable trafficked adults in the UK are punished for trafficking-dependent crimes. The GRETA report highlights this fact, 'GRETA understands that there have been cases of victims of trafficking

arrested, prosecuted and convicted in relation to migration and non-migration offences, including child victims of trafficking arrested and convicted for cannabis cultivation.’ (GRETA. 2012. p75) Bail for Immigration Detainees (BID), an organisation supporting people in immigration detention centres have documented their experiences of working with trafficked persons who have been punished,

It is BID’s experience that women who have been trafficked into the UK to provide commercial sexual services are still facing prosecution and deportation for criminal offences related to their illegal entry to the UK, despite having experienced abuse and exploitation . . . BID continues to encounter other victims of trafficking who have been criminalised, for example foreign nationals serving sentences in Young Offender Institutions (YOIs) for their involvement in cannabis factories for whom the fact of their having been trafficked seems to emerge only after they have been sentenced (Bail for Immigration Detainees. 2011. p5).

The number of people being punished is high enough for the PP to justify having one full-time member of staff work exclusively with trafficked women in prisons and immigration detention centres. Every support organisation that participated in the fieldwork research had experience of working with people prosecuted and convicted for trafficking-dependent crimes. Interviewees highlighted such cases,

*I can remember a group of Chinese women last year who we took from prison, two of them. One had a baby born in prison, one was pregnant. We took them out so that they could stay with their children here. They were in because of cannabis raids but when talking to those women [it became clear] they had actually been trafficked (Appendix B. Interviewee 23).*

*At the moment there are two people who have been trafficked who have been charged. One went to prison for documents that were not their own and another was arrested multiple times for soliciting for sex and used documents that were not her own whilst in [the] situation of trafficking (Appendix B. Interviewee 22).*

There is research indicating the large numbers who have been punished. A 2008 report by the PP highlighted 21% (fifty-five) of the women supported by the PP between February 2001 and October 2007 had been in prison or immigration detention prior to accessing their support. (Stephen-Smith. 2008. p4) An FOI request revealed that between 1<sup>st</sup> April 2009 and January 2010 out of a total of 549 people referred to the NRM there were thirty-four individuals who were in immigration detention and twenty-two individuals in prison or a Young Offenders Institute at the time of their referral. The total of fifty-six accounts for just over 10% of all those referred to the NRM at that time (ATMG. 2010. p54). In January 2012 the

Conservative member Lord Henley, Minister of State for the Home Office answered a question in the House of Lords on the detention of trafficked women. He noted that between 1<sup>st</sup> April 2009 and 26<sup>th</sup> October 2011 there were sixty-seven women held in immigration detention subsequently identified as trafficked (Hl Deb. 10 Jan 2012: Column WA68). The sixty-seven women identified in detention centres compares to a total of 375 women who received a positive CG decision in a similar period between 1<sup>st</sup> April 2009 and June 30<sup>th</sup> 2011. (Serious Organised Crime Agency. 2012) Between March 2012 and June 2013 110 women recognised as potentially trafficked were referred to the PP from detention centres. The SA's written evidence submitted to the 2013 Home Affairs Select acknowledges they received six referrals from detention centres between July 2011 and April 2013 (Home Affairs Select Committee. 2013. p12). However these figures do not include trafficked men. There is a significant lack of examination of the extent of the criminalisation of trafficked men in the UK.

Between 1<sup>st</sup> April 2009 and 26<sup>th</sup> October 2011 sixty-seven women held in immigration detention were subsequently identified as trafficked. By the end of 2012 there had been sixty-nine convictions for trafficking offences in the whole of the UK (sixty-one in England and Wales, six in Scotland and two in Northern Ireland) (IDMG. 2013). In less than two and a half years almost as many trafficked women were punished by the State for being irregular immigrants than the total number of convictions for trafficking offences in the whole of the UK since the legislation on trafficking offences. The UK is punishing more trafficked persons than traffickers. This illustrates a response which is the opposite of a genuine human rights approach. I argue that the number of convictions of traffickers could be increased by protecting trafficked persons from punishment for trafficking-dependent crimes.

The punishment of trafficked persons as a consequence of them not being identified as trafficked makes it difficult to know the true scale of the problem. Hales and Gelsthorpe interviewed 103 migrant women between May 2010 and October 2011 in prison or detention for offences related to entry or departure from the UK who were potentially working under the control of others. Forty-three of those women were recognised as trafficked but only eleven of them had been referred to the NRM (Hales and Gelsthorpe. 2012. p3). The thirty-two women in the study who were not referred to the NRM would not be included in the figures of detainees referred to the NRM. The Criminal Cases Review Commission (CCRC) has raised concerns about the

potential scale of trafficked persons who have been convicted but never identified as trafficked. The CCRC produced a leaflet aimed at people who have been punished who are not conscious that their experiences constitute trafficking or are unaware of their rights.

I conducted research on the criminalisation of unrecognised trafficked persons with the aim of documenting the circumstances and experiences which were not being correctly identified as trafficking indicators and were not being recognised as requiring that the defendant should not be prosecuted or convicted. I conducted online searches of newspaper articles between April 1<sup>st</sup> 2009 and July 31<sup>st</sup> 2013 involving Vietnamese nationals convicted for their involvement in cannabis factories for the offence of the production of a class B drug. This nationality and offence were chosen because the 2012 UKHTC 'Baseline Assessment' shows that of the thirty 'potential victims' trafficked for cannabis cultivation in 2011 90% were Vietnamese (SOCA. 2012. p13). The newspaper articles were examined for examples establishing the "act", "means" and "purpose" which constitute human trafficking. In total, seventy-seven separate criminal trials involving a total of 105 defendants including ninety-four men, eight women and three minors (five individuals were adults when they were convicted but were minors when they entered the country) were examined which showed indicators of trafficking. Every case appears to warrant a referral to the NRM as numerous indicators of trafficking described in the NRM adult referral form are identifiable. The newspaper searches identified twenty-two Vietnamese adults imprisoned for cannabis cultivation between 1<sup>st</sup> July 2011 and 1<sup>st</sup> July 2012 who I believe were potentially trafficked. During this same twelve month period eleven Vietnamese nationals were supported by the SA's sub-contractors (The Salvation Army. 2012. p9). It is possible to cautiously suggest that during the first twelve months of the SA contract there may have been at least twice as many Vietnamese nationals who were trafficked who were punished by the State rather than supported.

### **The Antithesis of the Rhetoric and Rights**

Punishment replicates and perpetuates trafficked persons' experiences under exploitation. The punishment of trafficked persons contradicts the UK government's rhetoric on trafficking in persons and the response to those affected. Trafficked

persons who are punished by the State for immigration offences or for offences they were compelled to commit are not treated as people who have suffered an 'evil' and 'brutal' crime which 'destroys lives.' This punishment contradicts the principles of a genuine human rights approach and the rights and fundamental purposes of the CAT. Article 1.b of the CAT explains the purposes of the CAT are to,

protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution (Appendix A)

Punishment violates these purposes because it means people are treated as defendants and criminals not 'victims and witnesses.' Trafficked persons who are punished are denied their right to legal remedy (Gallagher and Holmes. 2008. p331). Responding to trafficked persons as defendants rather than as witnesses harms the States interests to see traffickers convicted and contradicts the purpose of the CAT for effective investigation of traffickers leading to their prosecution (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p32). A solicitor interviewed for the fieldwork research explained how such treatment prevents people supporting investigations and proceedings against their traffickers,

*because these people are being punished there is no intelligence . . . If you just do a raid, that's it, told to plead guilty, you're never ever going to get any information (Appendix B. Interviewee 32).*

In one of the cases of Vietnamese nationals convicted for cannabis cultivation a QC sentenced a woman to twelve months in prison whose case highlighted multiple indicators she had been trafficked. In sentencing the QC declared, "You were cruelly exploited by wicked criminals who used you. . . I only wish the wicked people who exploited you were in the dock with you" (Rychlikova. 2010).

The QC appears not to recognise that the prosecution and conviction of this woman tremendously undermined the possibility of prosecuting and convicting the 'wicked people' who exploited the defendant. Punishing those who have suffered human rights violations gives impunity to those who commit human rights violations.

Punishment excludes people from the rights required by the CAT. Trafficked persons who are punished are denied the right to a reflection period required by Article 13.1

of the CAT. Punishment also excludes people from claiming their Article 12 rights. Trafficked persons who should be housed in specialist supported accommodation are instead forced to live in prisons and detention centres. These are grossly inappropriate environments for reflection and recovery from physical and psychological trauma. Punishment makes the psychological support required by Article 12 inaccessible. Punishment means the State re-traumatises trafficked persons and forces them to suffer additional psychological harm when it should be providing support and protecting their human rights. In 2012 208 detainees in immigration detention centres required medical assistance as a result of self-harm. (No Deportations. 2012) An interviewee argued that the State had re-traumatised a trafficked woman by punishing her,

*I`m very concerned about this woman she has been treated very, very, badly by her original traffickers but she has certainly been re-traumatised by the way she was treated in the prison system and [immigration detention centre] (Appendix B. Interviewee 7).*

A 2012 report by the Prison Reform Trust highlights the case of a Nigerian woman trafficked to the UK for sexual exploitation who spent seven months in immigration detention for overstaying on her visa before being moved to HMP Holloway for ‘disturbing behaviour’ (Prison Reform Trust. 2012. p12). A support worker with experience working with trafficked women in prison and detention explained the negative impact of these environments on the women’s mental health,

*psychologically the women become more and more and more distressed and often time when I am waiting for decisions or waiting for information or I`m calling competent authorities or calling case owners I`m just saying, I try to explain that this women, this is a really stressful situation you have her in she’s come from one stressful situation to another and you can imagine how she is deteriorating rapidly and yeah you see a lot of deterioration in their mental health (Appendix B. Interviewee 5).*

An interviewee from a charity supporting women in prison explained the reaction of a non-EEA woman trafficked to the UK who was sentenced to one year imprisonment for possessing false documents,

*she was very angry, she was a very disruptive person, the anger was taking over everything because she couldn’t believe she was treated that way (Appendix B. Interviewee 34).*

Lord McColl describes the significant additional harm that trafficked persons suffer by being punished,

There is arguably one thing that is worse than being trafficked and that is being trafficked and then caught committing a criminal offence under duress, for which one is then prosecuted. In such situations, the victims of trafficking must feel that the whole world is against them, as first they feel the wrath of the traffickers—the law-breakers—and then they feel the wrath of the state, the law-enforcer. In this context, far from compounding the trauma of victims of trafficking, the state should seek to help. Tragically, however, what is actually happening is that victims of trafficking are being pushed into the second trauma of prosecution

An interviewee from a support organisation described how being punished by the State resembles the trafficking experience,

*It can replicate the situation they've come from. So they've come from a situation where they've been controlled either physically or psychologically maybe they were locked in maybe they weren't and they're coming to a situation where they don't have their freedom and they are once again locked in so obviously that's very stressful (Appendix B. Interviewee 14).*

Trafficked persons who are sent to prison or immigration detention centres are 'rescued' from one form of imprisonment and control only to have it replaced with another. A 2012 joint report by HM Chief Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration highlights the case of a trafficked male known only as Mr L who was trafficked to the UK aged sixteen for the purpose of cultivating cannabis. In 2009 aged seventeen he received a twenty month prison sentence for the production of a Class B drug. In September 2009 a competent authority officially recognised him as having been trafficked. Despite this Mr L was not released until March 2010 when he had completed his prison sentence. Following his departure from prison he was immediately detained. He was interviewed by researchers for the joint report in June 2011. At that time he had spent fifteen months in immigration detention. When interviewed by researchers he explained, "I feel my life is passing me by. I want to set up my own life. Until now it has been controlled by traffickers and prison staff" (HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration. 2012. p18). This young man who had endured violations of his human rights by having been trafficked recognised no distinction between his treatment by the traffickers and the State.

## **The Reasons for Punishment**

The UK government's justification for why trafficked persons are punished is that identifying everybody who has been trafficked before they are prosecuted and convicted is extremely difficult. In particular the lack of identifications is blamed on people not disclosing they have been trafficked. The IDMG explains, 'Identifying genuine victims of human trafficking is a complex task. In some cases there is no initial disclosure of the person's trafficked status' (IDMG. 2013. p28). Lord Henley highlighted the negative consequences of a lack of disclosure,

individuals can find it very hard to disclose their trafficking experiences, making their identification as victims very difficult, even with the level of training given to all front line law enforcement officers. This can mean that people may be detained for a short period of time in connection with a suspected immigration or other criminal offence before their trafficking experience is identified. Following identification they will be released into appropriate care (Hl Deb. 10 Jan 2012. Column WA67).

The case of Mr L and others forthcoming in this chapter contradict the rhetoric that people will be released after identification. However a passive response which accepts punishment as an unavoidable inevitability of a lack of disclosures must not be tolerated. Article 10 of the CAT requires States ensure that those likely to encounter trafficked persons are capable of identifying them. Article 10 and the principle of non-punishment are violated when a person is punished because those responding to them were incapable of recognising they may have been trafficked (Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2013. p12).

People do not have a duty to inform the police they have been trafficked to be positively identified and protected from punishment (Elliott. 2009. p732). It can be extremely difficult for a person to make such a disclosure (Lebov. 2009. pp8-9). Traffickers control over people is not immediately relinquished after they exit exploitation (Hales and Gelsthorpe. 2012. p3). Psychological harm, the stigma and shame of having been trafficked and the potential re-traumatisation caused by reliving the experiences can make people very reluctant to disclose their experiences to strangers who they have been told to avoid and not to trust (ATMG. 2010. p35). Trafficked persons are often unfamiliar with the terminology of trafficking (Lebov. 2010. p85). They cannot be expected to tell the authorities 'I have been trafficked.'



An interviewee from a prison reform charity with experience of working with trafficked women described the scenario of a trafficked woman coming into contact with the authorities,

*If you are articulate and you are bright and you are able to say exactly what has happened to you straight away then you could be picked up but if you are naïve and you are lacking . . . information, you don't know what to say and you are sitting there looking pathetic and the authorities have no sympathy for you because as far as they are concerned what you are trying to do is to stay in the country (Appendix B. Interviewee 34).*

Article 10 is not being upheld across the UK and consequently trafficked persons are punished. The majority of police officers in England and Wales have not received training on human trafficking which means they are unable to identify trafficking indicators and will instead treat trafficked persons as suspected criminals (CSJ. 2012. p86). In 2011 the Law Society of England and Wales published practice notes for legal professionals to recognise trafficking indicators. However it is not mandatory this information is studied. The CPS and the COPFS have not published any guidance on identifying a trafficked person. The ability to recognise a person who has been arrested as trafficked can be severely lacking. Interviewees described how police officers, solicitors, judges and UKBA officers can all fail to identify a trafficked person,

*There has been a lack, a great lack, absolutely, on many of my cases, where it should have been identified so many different times along the line whether that be by UKBA, the police, you see failure, failure, failure to identify, again and again, very clear indicators, . . . you don't have to be a trafficking expert, it's just clear indicators that aren't picked up on or explored even in the slightest from what I can tell on behalf of both UKBA, prosecution, police, CPS (Appendix B. Interviewee 14).*

An interviewee from a charity which visits and supports detainees in immigration detention centres explained how people from their organisation can be the first to identify a person may have been trafficked,

*we see cases that come into immigration detention and they've passed through so many stages . . . there's been so many points that it should have been picked up, you know, questions should have been asked and that hasn't happened and now very late down the line they are disclosing to us or somebody else that there's a problem or cases where there has been disclosure earlier on and proper attention hasn't been paid to that (Appendix B. Interviewee 35).*

The inability of key responders to identify trafficked persons is demonstrated by instances where prisoners and detainees have been the first to recognise a person has been trafficked. One interviewee described such a case,

*I had a client recently who was in prison and was thankfully identified by another inmate and was sent off to an NGO and this woman had been through the police and immigration and neither had picked up (Appendix B. Interviewee 16).*

The interviewee from a prison reform charity for women explained it is not uncommon for prisoners to be the first to identify people as trafficked,

*we get lots of it, we have a lot of women, they themselves have some experience about the whole issue of trafficking and they will ring us and say 'there's a woman who came into the prison yesterday and I can assure you that she was trafficked, can somebody see her?(Appendix B. Interviewee 34).*

People who do overcome the difficulties to make disclosures may find their claims are met with disbelief and suspicion. A DS explained,

*I think it's a very easy thing to throw up when you are two thirds of the way down in a criminal investigation about to be put on the stand to all of a sudden shout 'I was a victim (Appendix B. Interviewee 17).*

The second IDMG report argues it is more important to scrutinise disclosures to be absolutely positive people are 'genuine victims' than protecting every trafficked person from punishment. The IDMG is content that the level of scrutiny means some trafficked persons will be punished,

Identifying genuine victims of human trafficking is a complex task. In some cases there is no initial disclosure of the person's trafficked status. Even where an immediate claim of human trafficking is registered it will require careful investigation to ensure that false claims do not become a means to evade the criminal justice process. This has meant that genuine victims have been subject to prosecution in a small number of cases (IDMG. 2013. p28).

Trafficked persons experience prolonged punishment because of the inaccessibility of interpreting services in immigration detention centres. This denies their right to 'translation and interpretation services' required by Article 12.c of the CAT. A 2011 report by HM Chief Inspector of Prisons on Tinsley House detention centre highlighted the lack of interpreting services there, 'Detainees often interpreted for other detainees during private health care consultations' (HM Chief Inspector of Prisons. 2011. p41). A 2012 report by HM Chief Inspector of Prisons on Dover Immigration Removal Centre observed 'In some cases, detainees referred to as

Helping Hands were used to interpret for their peers during personal or sensitive discussions, which was inappropriate' (HM Chief Inspector of Prisons. 2012. p10). The highly informal nature of these situations may prevent trafficked persons making disclosures which would lead to their identification. In one instance the detention support manager for Dover Detainee Visitors Group explained how the lack of an interpreter prevented a trafficked person from escaping their punishment, 'We have recently had an infuriating conversation with a legal caseworker who turned down a potential victim of trafficking for legal representation. He could not assess the client's merits, he said, because the detainee could not speak English' (Detained in the UK. 2013).

Punishment is allowed to happen because it can be entirely compatible with Article 26 of the CAT which does not oblige States to protect trafficked persons from punishment. GRETA's evaluation of the UK's response to trafficking in persons expresses concern that 'victims of trafficking have been arrested, prosecuted and convicted in relation to immigration or other offences despite the existence of guidance for prosecutors referring to the obligations under Article 26 of the Convention' (GRETA. 2012. p8). However Article 26 does not guarantee non-punishment.

Article 26 is upheld when State prosecutors in the UK respond to trafficked persons using the same tests which they consider when deciding whether to prosecute anyone charged with an offence. This means deciding whether the offence was committed under duress or coercion and whether a prosecution would pass the public interest test, examining whether it is in the interest of the public to see the individual punished for the offence (Crown Prosecution Service. 2013). CPS guidance published in 2010 specifically on the importance of considering these tests when deciding whether to prosecute trafficked persons who committed the offences under compulsion. This guidance explains that in the consideration of the defence of duress it must be asked, 'was the defendant driven to do what he did because he genuinely believed that if he didn't, he or a member of his family would be killed or seriously injured?' (Crown Prosecution Service. 2010) In explaining the public interest CPS guidance requires 'Prosecutors should consider here whether the victim has effectively lost the ability to consent to his/her actions or act with free will.' The guidance also asks, 'were violence, threats or coercion used on the adult trafficked

victim to procure the commission of the offence?’ and was the victim in a vulnerable situation or put in considerable fear?’ (Crown Prosecution Service. 2013)

In Northern Ireland the PPS guidance on prosecuting human trafficking explains trafficked persons should not be prosecuted when a prosecution would not be in the public interest or when the offence was committed under duress,

Every case must be considered on its own merits and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor mitigating against prosecution. Where there is clear evidence that the person has a credible defence of duress, the case should be discontinued on evidential grounds (Public Prosecution Service. 2013. p20).

In Scotland the COPFS guidance declares, ‘There is a strong presumption against the prosecution of a credible trafficked victim for crimes that arise as a consequence of the accused being a credible trafficked victim.’

Despite describing a ‘strong presumption against the prosecution’ the COPFS guidance only requires the prosecutor to ‘consider’ avoiding the prosecution of a trafficked person. The guidance explains,

When reviewing a case, it may come to the attention of the prosecutor that the accused is a “credible” trafficked victim where the investigating officers have reason to believe that the person has been trafficked. In these circumstances, prosecutors should as in any other case where new information comes to light consider whether the public interest is best served in continuing the prosecution in respect of the offence. Prosecutors will wish to consider the seriousness of the offence, the degree of coercion used and whether a defence of coercion would be likely to be successful (Crown Office Procurator Fiscal Service. p6).

Trafficked persons do not have a statutory defence for offences they were compelled to commit or which were only committed as a consequence of having been trafficked and this is not required by Article 26. If these tests for State prosecutors are considered and a trafficked person is prosecuted and convicted then Article 26 of the CAT is respected. The research on Vietnamese nationals convicted for cannabis cultivation highlights this guidance is not protecting people from punishment. I identified a significant number of cases where prosecuting and defending solicitors and Judges acknowledged strong trafficking indicators but these cases were not discontinued and the defendants were convicted. One such case involved a twenty-

three year old Vietnamese male who went to court in July 2012. The defendant's solicitor explained how the threat of violence was used to coerce him into committing the offence, "He was threatened with violence and was told that if he did not cooperate then his life would be in danger. He took that threat seriously." It was also acknowledged by his solicitor and the Judge that he was unable to exercise autonomy and free will. His solicitor explained, "His life was controlled by this man" and the Judge acknowledged, "I accept that you were threatened and intimidated. You had people taking you about and deciding which locations you should be in" (Gibbons. 2012). Despite these descriptions of the circumstances in which the defendant committed the offence the CPS made the decision to prosecute, the case was not discontinued and the man was convicted and sentenced to a two year custodial sentence.

My research identified cases of people explicitly identified as trafficked or as slaves in court. Such recognition would demonstrate the offences were committed under considerable duress and coercion. However these people were convicted because the crimes committed against them were treated as secondary to the importance of ensuring they were punished for the offences they had committed. One case involved a young Vietnamese man who received a two year prison sentence after pleading guilty for cannabis cultivation in 2011. His solicitor explained, "Food was brought to him and he worked as a gardener. In effect he was trafficked to this country and used as a slave." Despite being described as a slave in court in sentencing the Recorder declared, "I accept that this is a story heard all the time but you will know that producing cannabis in this way is illegal – that is the reason you were brought to this country and I cannot overlook that." (The Reading Post. 2011) The Recorder's claim that they 'cannot overlook' the criminal offence which had been committed contradicts Article 26 of the CAT and the CPS guidance which establishes the possibility of not convicting trafficked persons who were compelled to commit the offences by their trafficker(s). In August 2011 a Vietnamese man received a three year prison sentence after pleading guilty for cannabis cultivation. In sentencing the Judge explained, "I accept you were not an organiser and I am further prepared to accept you were exploited by other people. . . But these are common offences and serious offences" (The Stoke Sentinel. 2011). A case from autumn 2012 involved a young Vietnamese man who was orphaned at the age of four. The man was explicitly

described as having been ‘trafficked.’ Despite this the Sheriff sentencing him to two years and eight months in prison explained,

Your solicitor suggested during her submissions to me that I should have sympathy for you and there is no doubt that I do have considerable sympathy for you . . . On the other hand cannabis is an illegal drug and you have been assisting in the production of it on a commercial scale (Watson. 2012).

Another case involves a Vietnamese national sentenced when they were nineteen but who entered the country as a minor aged only seventeen. They were sentenced to eight months in prison after pleading guilty. The Recorder declared, “I understand the difficulty you found yourself in. What you were doing was a form of what can only be described as slavery that I rule is at the bottom end culpability” (The Lancashire Telegraph. 2012).

These cases illustrate prosecutorial discretion on the non-punishment of trafficked persons in the criminal justice systems in the UK does not protect trafficked persons from punishment. Professor Tsachi Keren-Paz submitted written evidence during the consultation for the Modern Slavery Bill questioning that discretion, ‘It might be better not to leave the issue of non-prosecution of victims solely to CPS discretion. Recent court decisions reveal that victims of trafficking are still vulnerable to being found responsible when it is questionable whether they should’ (Keren-Paz. 2014). Hoshi highlights that a conviction can only be challenged if the prosecution was deemed so unreasonable that nobody could have reasonably made the decision to prosecute (2013. pp65-66). The Scottish Parliament and Northern Ireland Assembly are currently scrutinising two human trafficking Bills which would remove such prosecutorial discretion. Jenny Marra, a Labour MSP, has produced the Human Trafficking (Scotland) Bill for the Scottish Parliament. This Bill contains a non-punishment provision consistent with a genuine human rights approach,

No prosecution should proceed or continue, or penalties are imposed, if the:  
(a) Victim has been compelled to commit the criminal act as a direct consequence or as a manifestation of being subjected to – (i) threats, the use of force, or other forms of coercion, (ii) abduction, (iii) fraud, (iv) deception, (v) the abuse of power or of a position of vulnerability, or (vi) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or (b) The victim was a child (2013. p26)

In the Northern Ireland Assembly the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill contains a non-punishment clause which provides that,

Where the victim (A) has committed a criminal act as a direct consequence of the trafficking in human beings, no prosecution or imposition of penalties shall occur if— (a) A has been compelled to commit the criminal act as a direct consequence of being subjected to— (i) threats, the use of force or other forms of coercion, (ii) abduction, (iii) fraud, (iv) deception, (v) the abuse of power or of a position of vulnerability, or (vi) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or (b) A was a child.

The punishment of trafficked persons is juxtaposed with the victim discourse which focuses on individuals as innocent victims. However the stereotype of a trafficked person means individuals who do not fulfil those characteristics are not identified as genuine victims. The 2007 Action Plan explains ‘genuine victims’ should not be punished. Individuals discovered in cannabis factories or caught selling counterfeit merchandise or pickpocketing do not match the stereotype of the innocent and deserving ‘genuine victim.’ The punishment of trafficked persons occurs in part as a consequence of the victim discourse not despite it.

Trafficked persons are punished because in contradiction to the emotive rhetoric describing trafficking as an evil act punishing those who have suffered it is considered acceptable and necessary. The Government’s Strategy does not offer a robust non-punishment principle. To the contrary it accepts it, declaring, ‘We will work with the police and the criminal justice system to ensure that trafficked children found to be involved in criminal activity are dealt with from a child safeguarding perspective and not unnecessarily criminalised’ (HM Government. 2011. p24). The focus on children and the term ‘not unnecessarily criminalised’ suggests acceptance of punishing trafficked adults. The draft Modern Slavery Bill contains no clause on the non-prosecution of trafficked persons. When members of the UK government discuss trafficking policy they attempt to justify punishment rather than adopting the rhetoric of non-punishment. Lord Henley explained ‘The Government's policy is not to detain victims of trafficking except in exceptional circumstances on public order or protection grounds’ (HL Deb. 10 Jan. 2012. CWA67.). Baroness Neville was asked why trafficked women were being detained while waiting on a decision for their asylum claims. She answered,

If an individual is already detained at the point trafficking is first suspected by the UK Border Agency they would normally be released, pending consideration of their case by an expert competent authority. Detention of recognised trafficking victims occurs only in exceptional cases-for example, following a criminal conviction (HL Deb. 11 Nov 2010. CWA130).

The acceptance of the punishment of trafficked persons is apparent in the 2012 Association of Chief Police Officers report ‘Guidance on the Safer Detention and Handling of Persons in Police Custody.’ The section “detainee care” explains ‘Custody officers and staff must be aware of the potential increased vulnerability of individuals who may themselves be victims of human trafficking, extortion and/or abuse (often within the illegal sex trade)’ (Association of Chief Police Officers. 2012. p95). The guidance does not highlight that trafficked persons should have the possibility of not being prosecuted for offences which have been committed as a result of coercion and duress. The guidance makes no reference to Article 26 of the CAT and contains no suggestion that such individuals should be supported as the victims of a crime and a human rights violation rather than as criminals. Providing guidance and training for the police on how to identify and respond to trafficked persons would be the most effective way of protecting them from punishment.

The acceptance of the punishment of trafficked persons is demonstrated by people who have received a positive RG decision remaining in prison and immigration detention centres. The 2010 ATMG report highlights thirty-nine individuals who remained incarcerated in immigration detention or in prison or in a Young Offender Institute despite having received a positive RG decision (ATMG. 2010. p54). A trafficked person who receives a positive RG decision should have a reflection period and access to the rights to support required by the CAT. Staff from support organisations who were interviewed during the fieldwork research explained that in practice a positive RG decision is no guarantee of a reflection period and access to support,

*if somebody is recognised as a victim and they are referred into the NRM and they get their positive RG they can spend their reflection period in prison and it will really depend on the circumstances of their case whether they get bailed (Appendix B. Interviewee 5).*

*She received the positive decision and stayed in prison . . . I know we were told she’s going to be there for six months or seven months and she left at the end of that period. Really nobody rescued her out of prison because ‘oh now*



*we think you've been trafficked I`m so sorry, let us take you.'* She finished her time in prison (Appendix B. Interviewee 11).

*We worked with a young woman who on her release from prison was referred to us, so she did actually serve her sentence. She left prison and came into our care . . . The police referred her here while she was in prison (Appendix B. Interviewee 10).*

*a client had been referred to the NRM and they had a positive RG decision and they were in the forty-five day reflection period, they were in detention while they were awaiting their CG decision so they were in detention at that time and obviously at least part of the UKBA were aware that they had an on-going claim (Appendix B. Interviewee 35).*

These responses contradict Lord Henley's statement that, 'Following identification they will be released into appropriate care.' This statement is also contradicted by guidance published by the UKBA which explains, 'If the PVoT is in detention they will normally need to be released on temporary admission/temporary release (TA/TR), unless in the particular circumstances, their detention can be justified on grounds of public order.' (UKBA. p28) This accepts punishment. It does not define the circumstances in which it could be necessary to continue to incarcerate somebody who has experienced human rights violations to protect 'public order.' The Criminal Justice System 'Trafficking Toolkit: Specific Arrangements for the Prison Service' accepts that trafficked persons should have access to their rights to support while simultaneously being treated as criminals,

If a prisoner is to remain in prison during the forty-five day period, the Prison Service is obliged to ensure that they receive: > Access to emergency medical treatment; > Translation and interpretation services; > Counselling and information, in particular as regards their legal rights and the services available to them, in a language they can understand; > Assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders (Criminal Justice System. pp63-64).

Trafficked persons are punished because of the prioritisation of controlling immigration above protecting trafficked persons human rights. Trafficked persons are primarily identified and treated as immigration offenders rather than as people who have suffered human rights violations. Damian Green, former Immigration Minister, speaking as Minister for Policing and Criminal Justice, during a debate in the House of Commons in May 2013, attempted to justify the punishment of trafficked persons because they have violated immigration laws,

people should comply with the law, and if the criminal offence is an immigration offence—it could be trafficking or fraud—it is still a criminal offence, and to suggest that people who commit immigration offences should gain benefits from it seems completely unacceptable (Hc Deb. 9 May 2013. C246).

To describe trafficked persons as benefitting from the experience of being trafficked is completely contradictory to the rhetoric describing trafficking in persons.

Hales and Gelsthorpe (2012) highlight the case of a woman trafficked for sexual exploitation given a false passport by her trafficker when she was made homeless after being thrown out of the brothel she had been forced to live in for seven years. Her barrister was aware she had been trafficked but urged her to plead guilty for the possession of the false document. It was acknowledged in court the woman was trafficked but she was convicted for possessing a false passport. In sentencing the judge explained, “I take this (the fact that she was a victim of trafficking) into account, but due to the fact that she had knowingly used a false document I have no option but to sentence her [to imprisonment] for six months” (Hale and Gelsthorpe. 2012. p75). Hoyle, Bosworth and Dempsey highlighted the case of a woman who served a five month prison sentence for using false immigration documents after being told by her solicitor to plead guilty to the offence despite the fact that she told the solicitor that she had been trafficked (2011. p325). Support workers described similar responses from solicitors,

*there is very little awareness among the person representing them . . .they've usually got a duty criminal solicitor who has hundreds of other cases. They've got a false document, they are holding the false document, they are like 'plead guilty' especially where they are looking at deportation if they can plead guilty and try and get under twelve months they won't get an automatic deportation they'll take into account those kind of things maybe they'll offer trafficking as a mitigating circumstance for a lesser sentence but they are not actually thinking let's get this case totally dropped (Appendix B. Interviewee 5).*

Individuals may initially be treated in respect of the rights required by the CAT and guaranteed their reflection period and provided support and assistance. However after this trafficked persons may be punished as immigration offenders. They make a metamorphosis from victim of trafficking to ‘illegal’ immigrant. All concern and sympathy vanishes and becomes secondary to their unlawful presence in the UK. Lord Henley acknowledged a case where ‘a victim was detained at the end of her period of recovery and reflection pending removal.’ A DI who participated in the

fieldwork interviews explained a case where trafficked women were detained and deported after initially being supported,

*the girls [women] who came over from Malaysia were illegal, they'd out stayed and they were illegal and they didn't support, or they didn't give the evidence to support a prosecution and although they were supportive of what the police were trying to do eventually what actually happened was they got detained and taken back to Malaysia by the UKBA, by the immigration service, so as such although they were victims they were then detained really treated as suspects I guess, but if they are illegal here they can't stay here forever just because something nasty has happened (Appendix B. Interviewee 33).*

The women who were initially supported because they were identified as having been trafficked eventually came to be treated as criminals who were detained as undocumented migrants. This final response exemplifies how protecting immigration controls is the most important priority and how the rights to support are temporary in a response limited to short-term crisis intervention.

## Conclusion

This chapter has highlighted that beyond being denied their rights to support trafficked persons can be denied their human right to legal remedy. The short-term approach excludes trafficked persons from accessing justice. The limited reflection period offered by the UK government and the policy that discretionary leave to remain will not be awarded on the grounds that a person requires additional residency to decide whether they want to participate in bringing justice against their traffickers and to claim compensation. The chapter has found these responses to be compatible with the CAT's minimum obligations. The CAT's rhetoric of the importance of States ensuring access to justice is not upheld by the realities of the rights which it provides for trafficked persons in order to access legal remedy,

The right to compensation provides trafficked persons the possibility of a life changing remedy. A genuine human rights approach focused on the protection of the human rights of trafficked persons would respond to guarantee legal remedy was upheld to provide the possibility of transformational restorative justice. This chapter and this thesis have demonstrated how the approach to trafficked persons in the UK is determined by the interests of the State to control immigration and convict traffickers. Providing trafficked persons' time and support to claim compensation fulfils the interests of the State. The financial autonomy and protection which compensation can provide has tremendous importance in preventing people from being re-trafficked and thus fulfils the P of prevention.

The chapter concludes that ensuring trafficked persons' participation in the criminal justice system is focused on the State having remedy for the violation of the nation's borders by traffickers who facilitate undocumented immigration and operate criminal enterprises using exploited people. The dominance of the State's interests is encapsulated by the conditionality of discretionary leave to remain for trafficked persons. However the State's response undermines the possibility of trafficked persons making an empowered decision to claim their right to legal remedy and to pursue access to justice. The responses to trafficked persons do not provide the time and assistance for their physical and psychological recovery and to establish trust in the authorities and the confidence to support criminal proceedings against their

traffickers. This is detrimental to the long-term interest of trafficked persons and the State.

Trafficked persons engagement with the criminal justice system should be an empowering experience as they claim their right to legal remedy and to testify against their traffickers to see them convicted and punished. This chapter has identified that to the contrary trafficked persons' experiences of the criminal justice system can be tremendously disempowering as they pressured and coerced into cooperating with investigations and proceedings against their traffickers. However the most tremendously disempowering response is that instead of enjoying restorative justice trafficked adults are made to suffer punishment for crimes they were compelled to commit or which they committed as a consequence of being trafficked. Presently more trafficked persons in the UK are being punished for trafficking dependent crimes than compensated for having been trafficked. These responses are antithetical of a genuine human rights approach and what the CAT asserts is its purpose. However the criminal prosecutors in the four regions of the UK fulfil Article 26 by providing for the possibility of the non-punishment of trafficked persons. While the punishment of trafficked persons is the antithesis of a genuine human rights approach this chapter has demonstrated it can be regarded as entirely consistent with the non-punishment provision established in the CAT.

## Conclusions and Recommendations

The Preamble of the CAT declares ‘respect for victims’ rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives.’

Article 1.b of the CAT establishes that the purpose of the CAT is,

to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution

The explanatory report to the CAT declares what States must provide in their responses to trafficked persons,

allow victims to recover and escape the influence of traffickers. Victims recovery implies, for example, healing of the wounds and recovery from the physical assault which they have suffered. That also implies that they have recovered a minimum of psychological stability

It is concluded from this research that the response to trafficked adults in the UK utterly contradicts these declarations. However the research has explained how the rights contained within the CAT contradict and betray that powerful rhetoric. The CAT does not provide a genuine human rights approach. The rights within the CAT do not protect trafficked persons’ human rights and does not make the recovery and protection of trafficked persons the paramount concern. The limitations of the rights contained within the CAT and all it omits means that many problematic aspects of the responses in the UK in which trafficked persons human rights are not upheld and the necessary support for people’s physical and psychological is not provided are compatible with the CAT. The CAT permits responses in the UK which make the rights to support and assistance it obliges either inaccessible or of little value.

On the basis of my findings I conclude that there are significant differences in the responses to trafficked adults in the four regions of the UK. Most significantly is the absence of specialist supported accommodation for trafficked adults in Northern Ireland and for men in Wales while such accommodation is available for men and women in England and Scotland. While the practical delivery of support varies, the possibility for radically different responses in the different regions of the UK is prevented by the UK government’s strict control over immigration policy. Trafficked persons in all four regions are referred into a UK wide NRM. The governments in

Scotland and Northern Ireland are unable to establish their own unique responses to the provision of discretionary leave to remain and the duration of the reflection period. However there is no evidence that the governments in these regions have desires to improve upon the policy responses of the UK government. The guidance for the regional State prosecutors to the three different criminal justice systems in the UK to upholding Article 26 of the CAT are worded differently but amount to the same response. This is a response which does not provide trafficked persons satisfactory protection from punishment.

This study concludes that the response to trafficked adults in the UK is limited to short-term crisis intervention when long-term comprehensive support is necessary to provide people the possibility of recovery, resettlement and reintegration. The UK government only provides a forty-five day reflection period to access support and assistance with no guarantee of residency and specialist support beyond that. That this surpasses the right granted by CAT demonstrates the CAT's failure to provide an approach which protects trafficked persons human rights. The research has provided evidence exemplifying that forty-five days is grossly inadequate to enable sufficient physical and psychological recovery and for people to make decisions which will have significant consequences for their lives. With the delays in CG decisions many people have their support terminated at the moment they are officially recognised as having been trafficked. This is not a response in which the protection of trafficked persons and their rights is paramount. However this is not a response which contradicts the rights obliged by the CAT.

The research concludes that the responses to trafficked persons in policy and practice consistently contradict the UK government's descriptions of trafficking in persons. The responses are unrecognisable from the rhetoric. The policy responses do not treat trafficked persons as people who have endured human rights violations. At best they are treated as people who only require respite care, at worst they are treated as immigration offenders and as criminals who must be punished. The draft Modern Slavery Bill typifies the extent of the distinction between the words of government and the action that is being taken. Theresa May wrote in its foreword 'we tackle this problem from every angle, whilst always keeping the plight of victims at the very heart of our policies and in everything we do.' (Home Office. 2013. p.v) However the various organisations and individuals who submitted written evidence to the public

consultation on the draft Bill were agreed there is a complete absence of any focus on providing support and assistance in the draft Bill. TARA's submission highlights 'The draft bill contains no reference to Protection needs, rights and entitlements of Victims of Trafficking required by the current Council of Europe Convention on Action Against Trafficking in Human Beings and the EU Directive.' This thesis concludes the 'plight of victims' is not at 'the very heart' of the policy responses to trafficking in persons in the UK. The lack of a right to appeal a negative status decision, an inadequate reflection period, deliberate and unlawful exclusion of people from identification through the construct of the historical victim, conditional discretionary leave to remain, the acceptance of mixed sex accommodation and the central involvement of the immigration authorities in identification are all policies which reveal the government's passionate and emotive claims surrounding trafficking to be entirely baseless.

The findings of this study conclude that the UK government's response to trafficked persons is dictated by the focus on controlling immigration and convicting traffickers. It is these ambitions which are at 'the very heart' of the responses to trafficked persons in policy and practice. The Government's Strategy and the Draft Modern Slavery Bill both make controlling immigration and punishing traffickers paramount. The dominance of the immigration approach pervades all elements of the response. The most significant and visible example of this is immigration authorities being solely responsible for the identification of trafficked persons from outside the EEA. It is further displayed by the conditionality of being granted discretionary leave to remain and the acknowledgement that support is limited out of concern about its potential impact on controlling immigration. The prioritisation of the interests of the State in taking a successful law-enforcement approach beyond the rights and recovery of trafficked persons is illustrated in policy by discretionary leave to remain which permits people to remain to cooperate with the police but not to claim compensation and the focus on police corroboration in identification.

The ambitions to convict traffickers and control immigration are severely undermined by the negative impact that prioritising these interests have upon the responses to trafficked persons. The prioritisation of these objectives takes a simplistic and short-term approach. Providing comprehensive long-term support and assistance would benefit each element of the 3P's. The inaccessibility of



comprehensive support and assistance such as specialist supported accommodation and access to long-term counselling programmes will prevent individuals from feeling able to claim their right to legal remedy against their traffickers. The short-term approach focused on convicting traffickers means a policy response where only trafficked persons cooperating with criminal investigations and proceedings can be guaranteed discretionary leave to remain. Trafficked persons who are yet to decide whether to cooperate, who are terrified of potential reprisals from the traffickers, who are still uncertain of whether they can trust the police in the UK and require further support before feeling confident enough to decide to provide evidence and testify against their traffickers may have to leave the UK before they are able to decide to cooperate. This excludes people from accessing justice while the State is simultaneously prevented from seeing the traffickers punished.

This thesis concludes that the responses to trafficked persons in the UK contradict every principle which is fundamental and essential to a genuine human rights approach. If the UK government responded to trafficked persons in respect of these principles it would not only have a transformational impact upon the support and assistance which trafficked persons receive but also on prosecuting and convicting traffickers. Providing a response to trafficked persons which guaranteed every individual sufficient time for psychological and physical recovery and which protected their rights would see trafficked persons return to their country of origin in circumstances that best protect them from being re-trafficked and the UK from having its controls over immigration circumvented.

I will finish by concluding how the principles of a genuine human rights approach are contradicted in the UK and emphasise a number of recommendations that the UK government should adopt.

The principle of an individualised response is denied by the recognition that not every individual who has been trafficked in the UK is able to access the rights to support and assistance obliged by the CAT. The policy of the forty-five day reflection period accepts a one-size-fits-all approach which is the antipode of an individualised response. The UK government should at a very minimum provide all trafficked persons the statutory right to a ninety day reflection period in the Modern Slavery Bill. This would see the UK fulfil the recommended minimum standard achieved in

numerous European countries. However I want to argue a reflection period of a minimum of six months should be provided to establish trafficked adults at least the same duration of support and assistance as is provided to the survivors of domestic violence in the UK. Such a response would transcend crisis intervention and would treat trafficked persons in a manner consistent with the UK government's rhetoric and the recognition of trafficking as violating human rights. Six months would provide considerably more time to enable responses which addressed the individual requirements of every person. However ultimately a response which is focused on the protection and recovery of each individual should grant trafficked persons as long a reflection period as they require to achieve a satisfactory level of physical and psychological recovery and to decide whether they want to cooperate with the police or to stay in the UK or to return to their country of origin. The reflection period should demonstrate that the responses are centrally concerned with protecting the human rights of trafficked persons and providing for every individuals recovery. Access to support and assistance should not be terminated because the individual is judged to have been in the UK too long. An arbitrary cap on the duration of the reflection period is most harmful for those who have suffered the most and who find overcoming the trauma of their human rights violations the most difficult. Furthermore this study found a near total absence of secondary supported accommodation for trafficked adults, with none whatsoever for trafficked men. I recommend that the UK government and regional governments should show commitment to an individualised response and a long-term approach to supporting trafficked adults by establishing the first government funded second stage accommodation.

I conclude that the responses to trafficked persons in the UK leave many people without the possibility of having access to justice. This principle is not protected because of the severe constraints of the UK's approach which is limited to short-term crisis intervention. Trafficked persons who are non-EEA nationals are only guaranteed the duration of their reflection period to decide to cooperate with the police to see their traffickers punished or to claim compensation. This is simply not enough time for many people to make such a tremendously important decision. Furthermore access to justice is inaccessible because trafficked persons are unable to claim discretionary leave to remain to claim compensation as they are entitled to for

cooperating with criminal investigations and proceedings against their traffickers. The failure to protect the human right to legal remedy is perplexing because the right to legal redress is a unique aspect of the response to trafficked persons because it is entirely compatible with the interests of the State and of a law-enforcement approach. When people are excluded from legal remedy the State is denied the possibility of successfully convicting traffickers and obtaining its own remedy for the violation of its territorial integrity and immigration controls. The UK government should extend the reflection period and provide unconditional discretionary leave to remain so people can be empowered by claiming their right to legal remedy to have restorative justice against their traffickers which includes receiving compensation and seeing their traffickers punished. The UK government should also provide trafficked persons the right to appeal a negative status decision.

The recognition of human trafficking as violating human rights demands the State provides trafficked persons with remedies and redress. The punishment of trafficked persons in the UK for trafficking-dependent crimes is a gross contradiction of this and the principle of access to justice. This thesis has highlighted how people's right to support and assistance are inaccessible in policy and practice. However the most significant barrier to this support is the punishment of trafficked persons by the State. On the basis of this research the thesis concludes that current responses are not providing trafficked persons' protection from unjust punishment. The acceptance of this punishment which constitutes the most harmful response to trafficked persons is the grossest betrayal of the UK government's rhetoric. This punishment has negative consequences not only for those who are re-victimised and re-traumatised but also for the interests of the State to see traffickers prosecuted and convicted. As long as trafficked persons continue to suffer the injustice of being punished for trafficking-dependent crimes their traffickers will be protected from facing justice. They will instead have the freedom to continue to profit from the exploitation of human beings. Ensuring protection from punishment will have a beneficial impact on prosecution and prevention. As the Barrister Parosha Chandran explained to the Committee for Justice in the Northern Ireland Assembly,

Until non-prosecution becomes a substantive right, and whilst it remains in the hands of an individual prosecutor in an individual court on an individual day to make an individual decision that may not be overseen by anybody, we will continue to have a completely uneven, piecemeal and flawed system of

protection for victims of trafficking. We will continue to have growth exponentially of human trafficking as a profitable business in the United Kingdom (Northern Ireland Assembly Committee for Justice. 2014. p6).

I recommend the Scottish Parliament and Northern Ireland Assembly put into legislation the clauses on non-punishment in the Bills on human trafficking they are currently debating at the time of writing. The UK government has recently announced that it will include a clause for the non-punishment of trafficked persons within the Modern Slavery Bill. I recommend that it should provide a statutory defence from prosecution for identified trafficked persons who committed trafficking-dependent offences.

The principle of gender equality and gender specific responses are contradicted in the UK. The most significant contradiction is the acceptance of mixed sex supported accommodation for trafficked adults in England and Scotland. This accommodation may harm the reflection and recovery of both men and women. The current systems and responses cannot guarantee that trafficked adults will only access specialist supported accommodation suitable for their particular needs. Therefore I recommend that the UK and Scottish government should abolish the use of mixed sex accommodation for trafficked adults during their reflection periods to take a response which is consistent with the EU Directive and a genuine human rights approach. Examining the UK's overall response then gender equality is contradicted. The provision of specialist supported accommodation for trafficked women throughout the UK is considerably better than for men. I recommend the Welsh Assembly should establish specialist supported accommodation for trafficked men in Wales to achieve equality in its responses to trafficked women who accommodation is made available for in Wales. I recommend that the UK government and regional governments ensure the availability of sufficient specialist supported accommodation for trafficked men and women to end the practice of housing trafficked adults in inappropriate accommodation.

The research has identified discrimination in the responses to trafficked adults in the UK in policy and practice. The policy of housing all trafficked adults in England and Wales who are applying for asylum in NASS accommodation during their reflection period discriminates against people in their access to specialist supported accommodation for trafficked adults. Such a policy exemplifies the extent to which

trafficked persons are primarily recognised and treated as immigrants. This policy should be rescinded. Most importantly are the repeated accusations of discrimination in the responses to the identification of trafficked persons by the UKBA and the UKVI. The possibility of discrimination against people based on their nationality and immigration status can be very easily ended. I recommend that the UK government should end the UKVI's role as competent authority. Having an organisation which faces a conflict of interest in every trafficking status decision it has to make is completely inappropriate.

Trafficked persons should be empowered and their autonomy respected. On the basis of the analysis of policy responses to trafficked adults I conclude that these principles are not upheld. The short-term crisis intervention which rushes trafficked persons through inadequate support to simply fulfil the State's minimum requirements is far from empowering. In particular the policy responses make the right to compensation which provides people the opportunity of financial empowerment inaccessible. The research concludes that trafficked persons are disempowered in practice by support organisations that undermine their autonomy through controls and restrictions on their movements and communications through the rules in their safe houses. These are not responses which prepare people to rapidly be thrust into being entirely self-dependent. Trafficked persons who exit support organisations with high dependence may be at a greater risk of re-trafficking. Furthermore trafficked persons have not had opportunities to become advocates for their own rights and to make a critical contribution to the understanding of the responses to trafficked persons in the UK. Having gained experience of interviewing people and building contacts with support organisations I would like to undertake future research conducting ethical and sensitive interviews with trafficked persons to ensure that they can properly involve them in the debate on the UK's response.

The research has found that the possibility of access to forms of support and assistance, identification and residency are made conditional in policy and practice. The thesis concludes that the principle of responding to trafficked persons unconditionally is not upheld. If the responses to trafficked adults in the UK were centrally focused on the recovery of trafficked persons and the protection of their human rights these aspects of conditionality would not be present. I recommend that the competent authorities should immediately end the practice of giving people

negative status decisions because they are deemed to be a 'historical victim.'

Furthermore I recommend that the conditionality of discretionary leave to remain is ended and that the UK government provides discretionary leave of one year and a day to all trafficked persons who seek to remain in the UK beyond their reflection period.

If the UK government adopts the recommendations proposed in this conclusion the UK will become the world leader in responding to trafficking in persons that David Cameron purports it to be.

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## Appendices

### Appendix A

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

**Warsaw, 16.V.2005**

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force on 1 December 2009. As a consequence, as from that date, any reference to the European Community shall be read as the European Union.

#### Preamble

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Recalling the declarations by the Ministers for Foreign Affairs of the Member States at the 112th (14-15 May 2003) and the 114th (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe on trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec

(2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

Chapter I – Purposes, scope, non-discrimination principle and definitions

Article 1 – Purposes of the Convention

1 The purposes of this Convention are:

a to prevent and combat trafficking in human beings, while guaranteeing gender equality

b to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

c to promote international cooperation on action against trafficking in human beings.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

#### Article 2 – Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

#### Article 3 – Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### Article 4 – Definitions

For the purposes of this Convention :

a "Trafficking in human beings" 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 or 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 of 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;

b The consent of a victim of “trafficking in human beings” to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;

d "Child" shall mean any person under eighteen years of age;

e "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

#### Chapter II – Prevention, co-operation and other measures

#### Article 5 – Prevention of trafficking in human beings

- 1 Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
- 2 Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
- 3 Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
- 4 Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
- 5 Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.
- 6 Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

#### Article 6 – Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a research on best practices, methods and strategies;
- b raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

#### Article 7 – Border measures

- 1 Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.
- 2 Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
- 3 Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
- 4 Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
- 5 Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.
- 6 Parties shall strengthen co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

#### Article 8 – Security and control of documents

Each Party shall adopt such measures as may be necessary:

- a To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- b To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

#### Article 9 – Legitimacy and validity of documents

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

### Chapter III – Measures to protect and promote the rights of victims, guaranteeing gender equality

#### Article 10 – Identification of the victims

1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

3 When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

4 As soon as an unaccompanied child is identified as a victim, each Party shall:

a provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;

b take the necessary steps to establish his/her identity and nationality;

c make every effort to locate his/her family when this is in the best interests of the child.

#### Article 11 – Protection of private life

1 Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

2 Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

3 Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging

the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

#### Article 12 – Assistance to victims

- 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:
  - a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - b access to emergency medical treatment;
  - c translation and interpretation services, when appropriate;
  - d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - e assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - f access to education for children.
- 2 Each Party shall take due account of the victim's safety and protection needs.
- 3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
- 4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
- 5 Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
- 6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
- 7 For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

#### Article 13 – Recovery and reflection period



1 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.

2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

#### Article 14 – Residence permit

1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

a the competent authority considers that their stay is necessary owing to their personal situation;

b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.

4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.

5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

#### Article 15 – Compensation and legal redress

- 1 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.
- 2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.
- 3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

#### Article 16 – Repatriation and return of victims

- 1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.
- 2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.
- 3 At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.
- 4 In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.
- 5 Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes

should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

6 Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

7 Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

#### Article 17 – Gender equality

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

#### Chapter IV – Substantive criminal law

##### Article 18 – Criminalisation of trafficking in human beings

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

##### Article 19 – Criminalisation of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

##### Article 20 – Criminalisation of acts relating to travel or identity documents

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- a forging a travel or identity document;
- b procuring or providing such a document;
- c retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

##### Article 21 – Attempt and aiding or abetting

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph a, of this Convention.

#### Article 22 – Corporate liability

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person;
- c an authority to exercise control within the legal person.

2 Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

#### Article 23 – Sanctions and measures

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2 Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.

4 Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of *bona fide* third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

#### Article 24 – Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- a the offence deliberately or by gross negligence endangered the life of the victim;
- b the offence was committed against a child;
- c the offence was committed by a public official in the performance of her/his duties;
- d the offence was committed within the framework of a criminal organisation.

#### Article 25 – Previous convictions

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

#### Article 26 – Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, 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.

### Chapter V – Investigation, prosecution and procedural law

#### Article 27 – *Ex parte* and *ex officio* applications

1 Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

2 Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the

complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.

3 Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

#### Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities

1 Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:

a Victims;

b As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;

c witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;

d when necessary, members of the family of persons referred to in subparagraphs a and c.

2 Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.

3 A child victim shall be afforded special protection measures taking into account the best interests of the child.

4 Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.

5 Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

## Article 29 – Specialised authorities and co-ordinating bodies

1 Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.

2 Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.

3 Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.

4 Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

## Article 30 – Court proceedings

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- a the protection of victims' private life and, where appropriate, identity;
- b victims' safety and protection from intimidation,

in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

## Article 31 – Jurisdiction

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

- a in its territory; or

- b on board a ship flying the flag of that Party; or
- c on board an aircraft registered under the laws of that Party; or
- d by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;
- e against one of its nationals.

2 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.

3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.

4 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

5 Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

## Chapter VI – International co-operation and co-operation with civil society

### Article 32 – General principles and measures for international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- preventing and combating trafficking in human beings;
- protecting and providing assistance to victims;
- investigations or proceedings concerning criminal offences established in accordance with this Convention.

### Article 33 – Measures relating to endangered or missing persons



1 When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.

2 The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

#### Article 34 – Information

1 The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

2 A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.

3 Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

4 All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.

#### Article 35 – Co-operation with civil society

Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

#### Chapter VII – Monitoring mechanism

#### Article 36 – Group of experts on action against trafficking in human beings

1 The Group of experts on action against trafficking in human beings (hereinafter referred to as "GRETA"), shall monitor the implementation of this Convention by the Parties.

2 GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.

3 The election of the members of GRETA shall be based on the following principles:

a they shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;

b they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;

c no two members of GRETA may be nationals of the same State;

d they should represent the main legal systems.

4 The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

#### Article 37 – Committee of the Parties

1 The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

#### Article 38 – Procedure

1 The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of

each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.

2 GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.

3 GRETA may request information from civil society.

4 GRETA may subsidiarily organise, in co-operation with the national authorities and the “contact person” appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.

5 GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.

6 On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.

7 Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

## Chapter VIII – Relationship with other international instruments

### Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention

against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

#### Article 40 – Relationship with other international instruments

- 1 This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.
- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties. [\(1\)](#)
- 4 Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.

#### Chapter IX – Amendments to the Convention

##### Article 41 – Amendments

- 1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43.
- 2 Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

## Chapter X – Final clauses

### Article 42 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, the non member States which have participated in its elaboration and the European Community.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4 In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

### Article 43 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

### Article 44 – Territorial application

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### Article 45 – Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

#### Article 46 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### Article 47 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Convention in accordance with Articles 42 and 43;

d any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;

- e any denunciation made in pursuance of the provisions of Article 46;
- f any other act, notification or communication relating to this Convention,
- g any reservation made under Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16<sup>th</sup> day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

## Appendix B

### Fieldwork Interviews

	Organisation	Date	Nature of Interview
Interviewee 1	Support Organisation	10 <sup>th</sup> May 2011	Face to face
Interviewee 2	Member of Parliament	6 <sup>th</sup> September 2011	Face to face
Interviewee 3	Support Organisation	24 <sup>th</sup> October 2011	Face to face
Interviewee 4	Support Organisation	24 <sup>th</sup> October 2011	Face to face
Interviewee 5	Support Organisation	14 <sup>th</sup> August 2012	Face to face
Interviewee 6	Police	25 <sup>th</sup> January 2012	Telephone
Interviewee 7	Immigration Detention Charity	31 <sup>st</sup> January 2012	Telephone
Interviewee 8	Police	2 <sup>nd</sup> December 2011	Telephone
Interviewee 9	Support Organisation	30 <sup>th</sup> August 2012	Telephone
Interviewee 10	Support Organisation	21 <sup>st</sup> October 2011	Face to face
Interviewee 11	Support Organisation	27 <sup>th</sup> February 2012	Face to face
Interviewee 12	Support Organisation	21 <sup>st</sup> October 2011	Face to face
Interviewee 13	Support Organisation	10 <sup>th</sup> May 2011	Face to face
Interviewee 14	Support Organisation	12 <sup>th</sup> March 2012	Face to face
Interviewee 15	Support Organisation	1 <sup>st</sup> February 2012	Face to face
Interviewee 16	Trauma Counselling Charity	6 <sup>th</sup> February 2012	Face to face
Interviewee 17	Police	31 <sup>st</sup> July 2012	Face to face
Interviewee 18	MLA	15 <sup>th</sup> February 2012	Telephone
Interviewee 19	Support Organisation	24 <sup>th</sup> April 2013	Informal. Face to face
Interviewee 20	Support Organisation	28 <sup>th</sup> February 2012	Face to face
Interviewee 21	Support Organisation	16 <sup>th</sup> July 2012	Telephone
Interviewee 22	Support Organisation	22 <sup>nd</sup> February 2012	Telephone
Interviewee 23	Support	29 <sup>th</sup> February 2012	Telephone



	Organisation		
Interviewee 24	Support Organisation	27 <sup>th</sup> February 2012	Face to face
Interviewee 25	Support Organisation	15 <sup>th</sup> February 2012	Telephone
Interviewee 26	Support Organisation	21 <sup>st</sup> October 2011	Face to face
Interviewee 27	Support Organisation	28 <sup>th</sup> February 2012	Face to face
Interviewee 28	Support Organisation	20 <sup>th</sup> February 2012	Telephone
Interviewee 29	Police	21 <sup>st</sup> November 2011	Telephone
Interviewee 30	Police	12 <sup>th</sup> July 2011	Face to face
Interviewee 31	Police	23 <sup>rd</sup> August 2011	Face to face
Interviewee 32	Solicitor	27 <sup>th</sup> January 2012	Telephone
Interviewee 33	Police	31 <sup>st</sup> July 2012	Face to face
Interviewee 34	Prison Reform Charity	21 <sup>st</sup> February 2012	Face to face
Interviewee 35	Immigration Detention Charity	13 <sup>th</sup> February 2012	Telephone

## **Appendix C**

### **Interview Questions for Support Workers.**

Do you place any pre-conditions on supporting individuals?

Have you supported any individuals who have not gone through the NRM?

What assistance does your organisation provide?

What accommodation do you provide? Do you have any rules in the accommodation?  
What are they?

How do you help individuals to access health care? (Physical and psychological)?

What support is available to people after they leave your accommodation?

What involvement do trafficked persons have in decision making around these responses and to what extent are trafficked persons empowered through support and assistance provided?

How long do you typically provide support for trafficked persons? What are the longest periods of assistance that you have provided? What is your opinion of the 45 day reflection period offered in the UK as an adequate amount of time in which to reflect and recover?

What are your experiences of working with the police? How do they balance seeking criminal prosecutions of traffickers with respect for the human rights and best interests of trafficked persons?

To what extent do you provide an individual approach and avoid one-size-fits all measures?

How do you evaluate the services you provide and what involvement do trafficked persons have in this evaluation?

Have you worked with individuals who have been involved in assisting a criminal investigation or making a compensation claim?

Have you worked with trafficked persons who have been criminalised, prosecuted, convicted and detained for offences relating to the situation of trafficking?

To what extent has immigration status acted as a barrier to the protection of trafficked persons and the accessibility of their human rights?

Have you worked with people who have received a negative conclusive grounds decision who you believe to have been trafficked?

How has the change in the government contract changed how your organisation works with trafficked persons?

## **Appendix D**

### **Interview Questions for the Police.**

What are the priorities for the police in responding to trafficking?

What are the processes that happen following the identification of a potential victim of trafficking?

How do you work with other organisations providing support for trafficked persons? Which organisations have you worked with?

How do you balance the need to get prosecutions with supporting trafficked persons?

To what extent do trafficked persons want to actively pursue justice against their traffickers?

Have you worked with trafficked persons who have made compensation claims? What have the outcomes of these claims been?

What happens when individuals identified as victims of trafficking do not wish to cooperate with criminal investigations against their traffickers?

What training have you had on human trafficking and working with those who have been trafficked?

Have trafficked persons been prosecuted for offences committed whilst in the situation of trafficking?

## **Appendix E**

### **Interview Questions for Immigration Detainee Support Workers.**

Have you identified trafficked persons who were previously arrested and imprisoned for offences relating to the situation of trafficking?

How are trafficked persons in detention coming to your attention?

What do you do if you suspect someone might be a victim of trafficking? Have people self-identified as having been trafficked?

Are the authorities aware that trafficked persons in detention are victims of trafficking?

Have you worked with individuals who were in detention then recognised as a potential victim and referred to the NRM but remained in detention for a short time or for the full duration of the 45 day reflection period?

Have you worked with individuals who have been given a negative decision and have then been placed into detention? Have you worked with individuals who have gone into detention after the reflection period has ended?

What sort of trauma is this detention causing people?

In what ways does the detention of trafficked persons violate and make inaccessible their human rights?

How do these responses compare with policy statements and claims of a victim-centred approach?

What can be done to rectify these situations?